

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

SCOTLAND ACT 1998

EXPLANATORY NOTES

COMMENTARY

SECTION 28: Acts of the Scottish Parliament

Purpose and Effect

This section provides that the Parliament may make laws, sets out the arrangements for Bills of the Scottish Parliament, once passed, to receive Royal Assent as signified by Her Majesty under the Scottish Seal, and makes general provisions relating to the making of laws by the Scottish Parliament. It also confirms that the UK Parliament remains sovereign.

General

This section empowers the Scottish Parliament to make legislation. It forms part of the set of sections which deal with the legislative competence of the Parliament and the passing of legislation. Sections 29-36 make further provision in this regard.

Provision about the numbering, citation, publication and interpretation of Acts of the Scottish Parliament are matters for the Parliament but, until the Scottish Parliament makes such provision, transitional provisions are contained in the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 ([S.I. 1999/1379](#)).

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	28-Jan-98	357
LC	21-Jul-98	785
LC	21-Jul-98	793
LR	28-Oct-98	1945
LR	28-Oct-98	1947

Details of Provisions

Subsection (1) confers the power on the Scottish Parliament to make laws, to be known as Acts of the Scottish Parliament (ASP). This is subject to section 29 which imposes limitations upon the legislative competence of the Parliament.

Subsection (2) provides that proposed Acts are to be known as Bills. A Bill will become an Act of the Scottish Parliament when it has been passed by the Parliament and has received Royal Assent.

Subsection (3) contains provisions regarding Royal Assent. A Bill receives Royal Assent at the beginning of the day on which Letters Patent under the Scottish Seal

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signed with Her Majesty's own hand signifying Her Majesty's Assent are recorded in the Register of the Great Seal by the Keeper of the Registers of Scotland. The form of these Letters Patent is prescribed by the Scottish Parliament (Letters Patent and Proclamations) Order 1999 (S.I. 1999/737) which is made under section 38. Section 38(2) requires the Keeper, on recording the Letters Patent signifying Her Majesty's Assent to a Bill, to intimate the date of recording to the Clerk.

Subsection (4) provides that the date of Royal Assent shall be written by the Clerk on the Act of the Scottish Parliament and shall form part of it. In addition, the date when Royal Assent is given to an ASP is usually given in the next Business Bulletin of the Parliament.

Subsection (5) provides that the validity of an Act of the Scottish Parliament is not affected by any invalidity in the proceedings of the Parliament leading to its enactment. What is meant by any invalidity in the proceedings of the Parliament is not defined but there are other provisions in the Act which envisage that the proceedings may be invalid for some reason-see sections 1(4) and 17(5). However, this subsection is intended to protect ASPs from being challenged on procedural grounds, for example, on the grounds that some rule in the standing orders regulating the proceedings of the Parliament has not been complied with - see Lord Sewel H.L. *Deb* vol 593 col 1946. However, it is not thought that this subsection would protect an ASP from challenge if the Bill had not been passed by the Parliament before it had been submitted for Royal Assent because this would not meet the requirements of section 28(2).

Subsection (6) confirms that every Act of the Scottish Parliament shall be judicially noticed (i.e. it does not need to be proved in any court proceedings). The Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379) makes provision for the publication of ASPs by or under the authority of the Queen's Printer for Scotland (see section 92) and for the master copy of the ASP to be kept by the Keeper of the Records.

Subsection (7) makes it clear that the power of the Westminster Parliament to make laws for Scotland is not affected. This express provision confirms the sovereignty of the United Kingdom Parliament.

Lord Sewel indicated in the House of Lords during the passage of the Scotland Bill (H.L. *Deb* vol. 592 col. 791) that "we would expect a convention to be established that Westminster would not normally legislate with regard to devolved matters without the consent of the Scottish Parliament". This has come to be known as the Sewel Convention. The House of Commons agreed to follow this practice by adopting on 21 October 1999 the 4th Report of the House of Commons Procedures Committee, *The Procedural Consequences of Devolution* (HC 185 1998-99). The Government agreed to obey the Convention in paragraph 13 of the *Memorandum of Understanding and Supplementary Agreements* between it and the devolved administrations, first presented to Parliament in July 2000. The Government and the Scottish Executive have also issued further guidance on the Convention.