

*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 30: Legislative competence: supplementary

Purpose and Effect

This section introduces the list of reserved matters in Schedule 5. It also provides power, by Order in Council, to modify Schedules 4 or 5 and to specify that functions should be treated as being, or not being, exercisable “in or as regards Scotland” for particular purposes.

General

This section is part of a set dealing with the legislative competence of the Scottish Parliament. Section 28 provides for the Parliament to be able to make laws known as Acts of the Scottish Parliament (ASPs). Section 29 limits the legislative competence of the Scottish Parliament to make ASPs. Sections 31 to 36 make provision for the scrutiny of the *vires* of Bills of the Scottish Parliament and for associated procedural matters. Schedule 4 sets out restrictions on modification of a number of enactments and rules of law. Schedule 5 defines reserved matters.

This section provides a power to modify the legislative competence of the Parliament by making modifications to Schedules 4 and 5 and by deeming functions to be or not to be exercisable in or as regards Scotland. This power is exercisable by Her Majesty by Order in Council. Further provision about the making of an Order in Council under section 30 is to be found in sections 112 to 115 and Schedule 7. In particular, section 114(3) provides that it may have retrospective effect and Schedule 7 provides that it is subject to Type A procedure, namely that it is subject to affirmative resolution in both the UK and Scottish Parliaments.

Section 30 therefore permits certain alterations to be made to the legislative competence of the Scottish Parliament but only with the agreement of both Parliaments. This is the only way in which the Scotland Act envisages that subordinate legislation under that Act can modify Schedules 4 and 5. The Westminster Parliament could, of course, make such alterations unilaterally by virtue of its sovereignty (section 28(7)).

Under section 30(3), an Order in Council may be made specifying functions which are to be treated as being or not being exercisable in or as regards Scotland for different purposes of the Act such as sections 53 and 63.

However, before a function can be specified in such an Order in Council as being exercisable in or as regards Scotland, it must be capable of being exercisable separately in or as regards Scotland. Where this is not already the case, section 106 enables an Order in Council to be made to modify a function to make it so exercisable for the purpose of enabling or facilitating its transfer to the Scottish Ministers. This power was exercised in the Scotland Act 1998 (Modification of Functions) Order 1999 (S.I. 1999/1756) and in the Scotland Act 1998 (Modification of Functions) Order 2000 (S.I. 2000/1458).

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	29-Jan-98	607
CR	12-May-98	254
LC	21-Jul-98	835
LC	21-Jul-98	843
LR	28-Oct-98	1918

Details of Provisions

Subsection (1) provides that Schedule 5 (which defines reserved matters) shall have effect. Under section 29(2)(b) a provision in an ASP which relates to reserved matters is outside the legislative competence of the Scottish Parliament.

Subsection (2) provides that Her Majesty may by Order in Council modify Schedules 4 or 5 in ways which She considers necessary or expedient.

This power has been exercised in the Scotland Act 1998 (Modifications of Schedules 4 and 5) Order 1999 ([S.I. 1999/1749](#)), the Scotland Act 1998 (Modifications of Schedule 4) Order 2000 ([S.I. 2000/1831](#)), the Scotland Act 1998 (Modification of Schedule 5) Order 2000 ([S.I. 2000/3252](#)) and the Scotland Act 1998 (Modification of Schedule 5) Order 2001([S.I. 2001/1456](#)).

Subsection (3) provides that Her Majesty may by Order in Council specify functions which are to be treated, for such purposes of this Act as may be specified, as being, or as not being, functions which are exercisable in or as regards Scotland. See the general note above and the note on section 29(2)(a).

Section 30 (3) was inserted into the Bill principally for the purpose of enabling provision to be made to make it clear which Ministerial functions relating to the regulation of sea fisheries outside Scotland would transfer to the Scottish Ministers under section 53 and what would be the competence of the Scottish Parliament to confer or remove such functions from them - see H.L. *Deb* 21 July 1998 vol. 592 col. 835 *et seq.* This was given effect to in the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 ([S.I. 1999/1748](#)). That Order also made provision in respect of functions relating to prisoners, agriculture and marine dredging.

The power has also been exercised for the purposes of section 63 which makes provision for an Order in Council to transfer additional functions which are exercisable in or as regards Scotland to the Scottish Ministers including functions relating to reserved matters examples include article 2 of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2000 ([S.I. 2000/1563](#)) and article 2 of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2000 ([S.I. 2000/3253](#)).

Subsection (4) provides that an Order in Council under this section may also make such modifications of any enactments, prerogative instruments, other instruments or documents as is considered necessary or expedient in connection with other provision made by the Order. This includes any enactment in or made under the Scotland Act.