

*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 37: Acts of Union

Purpose and Effect

This section provides that the Acts of Union are to have effect subject to the provisions of the Scotland Act.

General

This section seeks to ensure that nothing in the Act, or anything authorised by the Act, such as the provisions authorising the Scottish Parliament to make laws, could be challenged on the grounds that it is contrary to the Acts of Union.

The Acts of Union were passed by the Scottish Parliament and the English Parliament and gave effect to the Treaty of Union between Scotland and England and Wales.

This section is intended to make it clear that it is Parliament's intention that, in so far as there may be any inconsistencies between the Acts of Union and provisions in this Act, including anything authorised by the Act, the Acts of Union are to have effect subject to what is in, or authorised by, this Act.

There are, however, various provisions in the Scotland Act which prevent the Scottish Parliament from modifying certain matters mentioned in the Acts of Union. Paragraph 1(2)(a) of Schedule 4 prevents the Parliament from modifying Articles 4 and 6 of the Acts of Union "so far as they relate to freedom of trade". Article 4 provides in part that "all the subjects of the United Kingdom of Great Britain shall from and after the Union have full freedom and intercourse of trade and navigation to and from any port or place within the United Kingdom..."

In addition, paragraph 4(1) of Schedule 4 has the effect of preventing the Parliament from amending the Scotland Act, including references in that Act to the Court of Session or the High Court (such as section 95 or Schedule 6) but, by virtue of paragraph 9 of that Schedule, the Parliament could change the titles of these courts and of the judges in them.