

*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

### COMMENTARY

#### Part V: Miscellaneous and General

##### ***SECTION 104: Power to make provision consequential on legislation of, or scrutinised by, the Parliament***

This section enables Her Majesty or a Minister of the Crown by subordinate legislation, subject to procedure at Westminster, to make provision which is considered necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament or by various classes of subordinate legislation.

#### **General**

To be effective, an ASP may require consequential provision to be made to the law relating to reserved matters or the law elsewhere in the UK, such as, for example, to make cross-border provisions for prisoners. It may also be necessary to provide for the enforcement of provisions of an ASP in the rest of the UK where this may be necessary or desirable to maintain a coherent scheme of enforcement throughout the UK. An example might be legislation making the conditions of Scottish fishing licences enforceable as a matter of English law.

However, the legislative competence of the Parliament to make such consequential provision is extremely limited. It may be able to make certain consequential amendments of the law on reserved matters by virtue of paragraph 3 of Schedule 4 but this power is very limited and, in any event, it does not enable the Parliament to legislate otherwise than as a matter of Scots law. Many consequential provisions require to take effect in the law of England.

Similar problems also apply to subordinate legislation made under an ASP and certain other classes of subordinate legislation made under a Westminster Act, such as a statutory instrument made by Scottish Ministers under powers transferred under section 53 and which is subject to supervision by the Scottish Parliament.

Accordingly, this section enables the UK Government to make subordinate legislation to deal with the consequences of provision made by or under an Act of the Scottish Parliament or by such subordinate legislation.

#### **Parliamentary Consideration**

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	8-Oct-98	624
LR	2-Nov-98	96
LR	2-Nov-98	98

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LR	2-Nov-98	109

### **Details of Provisions**

Subsection (1) provides that subordinate legislation may make any provision considered necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament or made by certain subordinate legislation under a Westminster Act as mentioned in subsection (2).

Further provision about the making of such subordinate legislation is to be found in sections 112 to 115 and Schedule 7. It may take the form of an Order in Council or an order made by a Minister of the Crown. It is subject to negative procedure at Westminster unless it modifies an Act, in which case it is subject to affirmative procedure. An example of its exercise is the Public Finance and Accountability (Scotland) Act 2000 (Transfer of NAO Staff etc.) Order 2000 ([S.I. 2000/935](#)).

Subsection (2) specifies the classes of subordinate legislation under a Westminster Act to which subsection (1) applies. They are subordinate legislation made under a Westminster Act by:

- (a) a member of the Scottish Executive. This could be in the exercise of powers transferred by section 53 or by an executive devolution order under section 63;
- (b) Scottish public authority with mixed functions or no reserved functions. These expressions are defined in section 126(1) and paragraphs 1 and 2 of Part III of Schedule 5;
- (c) any other person (other than a Minister of the Crown) if the function of making the legislation is exercisable within devolved competence. This would include Orders in Council made by Her Majesty within devolved competence.

Such subordinate legislation will come under the control of the Scottish Parliament - see the note on section 118.