

*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 D1: Electricity

Purpose and Effect

This Section reserves the generation, transmission, distribution and supply of electricity and the regulation of the electricity supply industry. Matters relating to the control of pollution are excepted.

General

This Section reserves the generation, transmission, distribution and supply of electricity in Scotland. The subject-matter of the legislation governing privatisation of the electricity supply industry is also reserved. This is in line with a general reservation of energy matters.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	1004

Details of Provisions

Reservation

The reservation covers the generation, transmission, distribution and supply of electricity. This would include the regulation of the electricity supply industry under Part I of the Electricity Act 1989. That Part gives the Secretary of State and the Director General of Electricity Supply extensive powers to regulate the industry through a system of licensing of generation, transmission and supply, sets out the duties of public electricity suppliers, and imposes further controls for the protection of the public interest and the protection of consumers.

The reservation also covers the subject-matter of Part II of the 1989 Act, which deals with the re-organisation of the industry by privatisation.

Exception

The subject-matter of Part I of the Environmental Protection Act 1990, which makes provision for the control of pollution is excepted from the reservation.

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 Electricity Act 1989 (c.29):</p>	
<p>(a) section 2(2)(b) and (3)(a);</p>	<p>Section 2(2)(b) - The function of the Secretary of State to determine that the area for which a consumers' committee is appointed shall consist of the authorised areas of two or more public electricity suppliers.</p> <p>Section 2(3)(a) - The function of the Secretary of State of being consulted by the Director before appointment of the chairman of a consumers' committee.</p>
<p>(b) section 3;</p>	<p>The duties of the Secretary of State to exercise the functions assigned or transferred to him by Part I of the Act in the manner which he considers is best calculated to achieve certain ends, so far as relating to functions exercisable by the Scottish Ministers under this Order.</p>
<p>(c) sections 32(1) and (9), 33, 34, 35, 36, 37, 39(1)(a) and 58:</p>	<p>Section 32(1) - The function of the Secretary of State after consultation with the Director and the suppliers concerned by order to require each public electricity supplier to make and produce evidence of arrangements for electricity to be available to the supplier from non-fossil fuel sources.</p> <p>Section 32(9) - The function of the Secretary of State by regulations to provide that subsections (5) to (8) shall have effect in relation to certain types of generating station with modifications, and to provide that electricity generated outside the United Kingdom shall be treated as generated by a non-fossil fuel generating station in such circumstances and to such extent as prescribed.</p> <p>Section 33 (1), (6) and (7) - The function of the Secretary of State by regulations to provide for imposition of a fossil fuel levy on public electricity suppliers and others, for collection of payments in respect of it and prescribe a person to collect them, and to provide for the making to such suppliers of payments out of the payments so collected and to make ancillary provisions; requirements as to the manner of exercise of the functions.</p> <p>Section 34 - The function of the Secretary of State by order to vary the minimum capacity of generating stations to which the section applies; functions of</p>

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	<p>the Secretary of State to give directions to persons operating generating stations as regards fuel stocks etc., and ancillary powers.</p> <p>Section 35 - The functions of the Secretary of State to give a direction requiring a person authorised by licence to transmit electricity to give information or advice for purposes connected with section 34; and to give a direction requiring him to operate his system in a specified manner or to achieve specified objectives; requirement to lay directions before Parliament.</p>
	<p>Section 36 - The function of the Secretary of State to consent to construction, extension or operation of a generating station; functions of the Secretary of State by order to vary the minimum capacity above which the requirement for consent applies and to grant exemptions to the requirement for consent.</p> <p>Section 37 - The function of the Secretary of State to consent to an electric line being installed or kept installed above ground; function to prescribe by regulations cases where the requirement for consent does not apply.</p> <p>Section 39(1)(a) - The functions of the Secretary of State to consent to regulations made by the Director prescribing standards of performance in electricity supply services to tariff customers in individual cases.</p> <p>Section 58 - The function of the Secretary of State to give to persons licensed to transmit electricity directions to secure that neither that person nor any other person obtains unfair commercial advantage from possession of information; requirement upon the Secretary of State to publish a copy of directions; function of the Secretary of State to enforce compliance with such directions by civil proceedings.</p>
(d) section 60;	The function for regulations made by the Secretary of State to provide for certain matters.
(e) section 61;	The powers to take certain proceedings concurrently, so far as enabling the Secretary of State to exercise his functions in the proceedings concurrently.

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(f) Schedule 3, Part I;	<p>Schedule 3, paragraph 1 - The function of the Secretary of State to authorise a licence holder to purchase compulsorily land required for a purpose connected with his activities.</p> <p>Schedule 3, paragraph 2(3) - The function of the Secretary of State by order to amend the period specified in paragraph 2(2)(b) (which relates to the Director's duties in cases where his consent to a compulsory purchase order is required).</p> <p>Schedule 3, paragraph 3(2) - The function of the Secretary of State to authorise a licence holder to purchase land compulsorily for the purpose of exchange of land.</p>
(g) Schedule 3, Part III, paragraphs 15, 16, 17 and 20, including paragraph 11 of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42) as applied by those provisions;	<p>The function of the Secretary of State, under paragraph 11 of the First Schedule, Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 as applied by Schedule 3 paragraphs 15, 16, 17 and 20, to certify certain matters, in which case special parliamentary procedure will not apply, and procedural requirements of that paragraph as so applied.</p>
(h) Schedule 4, paragraphs 6, 8, 9 and 10(4)(b);	<p>Schedule 4, para 6(3), (4) & (5) - The function of the Secretary of State to grant necessary wayleaves, and ancillary powers and duties.</p> <p>Schedule 4, para 8(4) & (5) - The functions of the Secretary of State in connection with temporary continuation of wayleaves.</p> <p>Schedule 4, paragraph 9(5) and (6) - The function of the Secretary of State to make orders relating to felling and lopping of trees etc.</p> <p>Schedule 4, paragraph 10(4)(b) - The function of the Secretary of State to consent to works for the purpose of ascertaining the nature of the subsoil.</p>
(i) Schedule 5;	<p>All functions of the Secretary of State under Schedule 5 (water rights for hydro-electric generating stations in Scotland), including power by order to authorise persons to abstract and divert and use water, and ancillary powers and duties.</p>
(j) Schedule 8; and	<p>All functions of the Secretary of State under Schedule 8 (consents under sections 36 and 37), including functions by regulations to make provision for determining fees and to provide for</p>

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	various procedural matters, and ancillary powers and duties.
(k) Schedule 9, paragraphs 3 and 5.	Schedule 9, paragraph 3(2) and (3) - All functions of the Secretary of State in considering proposals under sections 36 or 37 to have regard to certain amenity considerations and to avoid, so far as possible, causing injuries to fisheries. Schedule 9, paragraph 5 - The function and duties of the Secretary of State relating to the Fisheries Committee, Scotland.

The following functions have been made concurrently exercisable by a Minister of the Crown and the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

The European Communities Act 1972 (c.68) , section 2(2) and the European Communities (Designation) Order 1988 (S.I. 1988/785).	The function of the Minister of Agriculture, Fisheries and Food, the Treasury and any one or more Secretaries of State to make provision for the purposes specified in section 2(2) in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, so far as relating to the subject matter of Part III (Electricity Applications) of the Environmental Assessment (Scotland) Regulations 1988 (S.I. 1988/1221, amended by S.I. 1990/526, 1994/2012).
The Electricity Act 1989 (c.29) , section 98(1) and (2).	The function of the Secretary of State to serve a notice on a licence holder or exempted person requiring him to supply statistical information.

The following functions have been made exercisable by a Minister of the Crown subject to a requirement for agreement of or consultation with the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

The Electricity Act 1989 (c.29) , sections 5(1) and 6(1) and (2)	Section 5(1) - The functions of the Secretary of State after consultation with the Director by order to grant exemption from paragraph (a) or (c) of section 4(1) (which prohibits unlicensed generation or supply). Section 6(1) - The functions of the Secretary of State after consultation with the Director to grant a licence authorising generation, transmission or supply of electricity, or to consent to the granting of such a licence by the Director, or to give general authority to the Director to grant such a licence. Section 6(2) - The functions of the Secretary of State after consultation with the Director to grant a licence authorising any person to
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	supply electricity to any premises specified or of a description specified in the licence, or to extend such a licence, or to consent to the Director doing these things, or to give general authority to the Director to do these things.
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The following functions are included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2000([S.I. 2000/3253](#)).

Electricity Act 1989 (c. 29) sections 32 and 32A ¹	Section 32 - The function of the Secretary of State, by order, to impose upon an electricity supplier a renewables obligation. Section 32A - The function of the Secretary of State to include various matters in such an order.
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¹ Section 32 was substituted by section 62 of the Utilities Act 2000 and section 32A was added by section 63 of the [Utilities Act 2000\(c.27\)](#). They will come into effect when section 62 or, as the case may be, section 63 is commenced.

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