

*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 D2: Oil and Gas

Purpose and Effect

This Section reserves oil and gas and the regulation of the UK oil and gas industry, subject to certain exceptions.

General

Legislative competence to make provision regarding the oil and gas industry is reserved. This covers all the UK Government's current powers and functions in relation to the oil and gas industry, subject to express exceptions. The manufacture of gas and the conveyance and shipping and supply of gas other than through pipes are not reserved. Land based operations in support of off-shore exploration for, and exploitation of, oil and natural gas are also not reserved. This overall reservation 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 |
| CC | 30-Mar-98 | 1005 |
| LC | 23-Jul-98 | 1133 |
| LR | 3-Nov-98 | 194 |
| LR | 3-Nov-98 | 195 |

Details of Provisions

Reservation

Competence to legislate about oil and gas is reserved. The specific list of subjects included in the reservation indicates its scope in more detail. The specific subjects listed are:

- (a) the ownership of, exploration for and exploitation of deposits of oil and natural gas. This covers the subject-matter of the Petroleum (Production) Act 1934 and related legislation,

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which vests ownership of oil and gas deposits in the Crown and provides for a system of licensing persons to explore for and exploit such deposits;

- (b) *the subject-matter of section 1 of the Mineral Exploration and Investment Grants Act 1972 (contributions in connection with mineral exploration) so far as relating to exploration for oil and gas.* This covers the giving of financial assistance relating to exploration for oil and gas. Financial assistance is generally a devolved matter except for financial assistance specifically in relation to a reserved commercial activity such as oil and gas exploration. Financial assistance in respect of other types of mineral exploration is not reserved. This power is also a “shared power” under section 56 which means that a UK Minister can also exercise this power in or as regards Scotland;
- (c) offshore installations and pipelines. This covers generally the regulation of such installations and pipelines, including the construction or laying and dismantling of them;
- (d) *the subject-matter of the Pipe-lines Act 1962 (including section 5 (deemed planning permission))* so far as relating to pipelines within the meaning of section 65 of that Act. The 1962 Act provides for authorisation of the laying of pipelines on land. In practice it applies mainly to oil and gas pipelines, since section 65 excludes many types of pipe, including water and air pipes and sewers. Section 5 of the Pipelines Act has been mentioned for the avoidance of doubt since deemed planning permission for other types of development is granted under planning legislation and is therefore not reserved;
- (e) the application of Scots law and the jurisdiction of the Scottish courts in relation to offshore activities. Part IV of the Oil and Gas (Enterprise) Act 1982 provides for the application in relation to oil and gas installations on the Continental Shelf of the civil and criminal laws of the different parts of the United Kingdom, and the jurisdiction of their courts;
- (f) *pollution relating to oil and gas exploration and exploitation, but only outside controlled waters (within the meaning of the Control of Pollution Act 1974).* This is the subject-matter of the Prevention of Oil Pollution Act 1971. Pollution from ships, as opposed to installation and pipelines, is now governed by the Merchant Shipping Act 1995, which is also reserved. Pollution in controlled waters - relevant territorial, coastal, inland and ground waters - is not reserved. The marine environment apart from this reservation is generally not reserved;
- (g) *the subject-matter of Part II of the Food and Environment Protection Act 1985* so far as relating to oil and gas exploration and exploitation, but only in relation to activities outside such controlled waters. This is necessary to ensure that the reservation of matters relating to the oil and gas industry covers the regulation under the 1985 Act of activities in the sea, such as the deposit of substances or articles in the sea and incineration and flaring of gas, so far as those activities relate to oil and gas exploration and exploitation. It ensures that the Ministerial powers under the 1985 Act to exempt from the licensing regime under the Food and Environment Protection Act 1985 “operational discharges” from oil and gas installations and, where compatible with international obligations and where safe to do so, to license the deposit in the sea of oil-related articles such as redundant oil installations are reserved to the UK Government. “Marine dumping” not relating to oil and gas exploration and exploitation is not a reserved matter and to that extent the Scottish Ministers exercise the licensing powers under the Food and Environment Protection Act 1985 within Scottish waters and for operations commencing in Scotland;
- (h) restrictions on navigation, fishing and other activities in connection with offshore activities. Sections 3 to 7 of the Offshore Petroleum Development (Scotland) Act 1975 provide for the designation by the Secretary of State of sea areas within territorial waters where certain activities are restricted. Part III of the Petroleum Act 1987 provides for safety zones where navigation is restricted in the immediate vicinity of installations in territorial waters or the Continental Shelf;
- (i) liquefaction of natural gas. This covers the subject-matter of section 9 of the Energy Act 1976, which regulates the liquefaction of natural gas; and

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- (j) the conveyance, shipping and supply of gas through pipes. This covers the subject-matter of the Gas Acts 1986 and 1995, which regulate the industry of conveying, shipping and supplying gas through pipes.

Exceptions from Reservation

The following are excepted from the reservation:

- (a) *the subject-matter of sections 10 to 12 of the Industry Act 1972* (credits and grants for construction of ships and offshore installations). This makes it clear that the giving of financial assistance, in the form of credits and grants, for the construction of ships and offshore installations is not a reserved matter. Paragraph 4 of Part III of Schedule 5 provides that the giving of financial assistance to industry for the purposes of promoting or sustaining economic development or employment is not a reserved matter. This means that the Parliament can make provision of a general nature for assistance to industry including those which operate in reserved areas, but it does not have competence to legislate for such assistance specifically in relation to a reserved commercial activity such as oil and gas exploration. Section 56 also provides for certain powers, including this one, relating to the giving of financial assistance to industry which are not reserved to be “shared powers”, so that a UK Minister can continue to exercise those powers in or as regards Scotland. For example, the power to give financial assistance in relation to mineral exploration (other than for oil and gas which is a reserved matter as explained above) is a shared power under section 56(1)(e);
- (b) *the subject-matter of the Offshore Petroleum Development (Scotland) Act 1975*, other than sections 3 to 7. This ensures that the provision of financial assistance under the 1975 Act for onshore activities in support of offshore activities, for instance construction of installations, are not reserved. This is in line with the fact that assistance to industry generally is not reserved;
- (c) *the subject-matter of Part I of the Environmental Protection Act 1990*, which makes provision for the control of pollution.
- (d) the manufacture of gas. The production of combustible gas other than natural gas is thus not reserved; and
- (e) the conveyance, shipping and supply of gas other than through pipes.

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](#)).

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| <p>The Pipelines Act 1962 (c.58), sections 1, 4, 5, 9, 9A, 10, 11, 12, 13 (except subsection (7)), 15, 26A, 35, 36, 38, 39(2), 43 and 44 and Schedules 1 and 2 (except paragraph 8).</p> | <p>Sections 1, 4 & 5 - All functions of the Secretary of State as “the Minister” under the sections (control of construction of pipe-lines), so far as relating to pipe-lines beginning and ending in Scotland. Sections 9, 9A & 10 - All functions of the Secretary of State as “the Minister” under the sections (avoidance of construction of superfluous pipe-lines), so far as relating to pipe-lines beginning and ending in Scotland. Section 11 - All functions of the Secretary of State as “the Minister” under the section (compulsory acquisition of land for construction of pipe-lines), so far as relating to pipe-lines beginning and ending in Scotland. Sections 12 & 13 - All functions of the Secretary of State as “the Minister” under the</p> |
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| | <p>sections (compulsory acquisition of rights over land for construction of pipe-lines), so far as relating to pipe-lines beginning and ending in Scotland.</p> <p>Section 15 - All functions of the Secretary of State as “the Minister” under the section (power to place pipe-lines in streets), so far as relating to pipe-lines beginning and ending in Scotland.</p> <p>Section 26A - All functions of the Secretary of State under the section (availability of funds) so far as relating to pipe-lines beginning and ending in Scotland.</p> <p>Sections 35, 36 & 38 - All functions of the Secretary of State as “the Minister” to receive notices under the sections (information), so far as relating to pipe-lines beginning and ending in Scotland.</p> <p>Section 39(2) - The function of the Secretary of State to determine certain disputes, so far as relating to pipe-lines beginning and ending in Scotland.</p> <p>Section 43 - All functions of the Secretary of State as “the Minister” under the section (preservation of amenity), so far as relating to pipe-lines beginning and ending in Scotland.</p> <p>Section 44 - The duty of the Secretary of State as “the Minister” to have constant regard to the need of protecting certain water against pollution, so far as relating to pipe-lines beginning and ending in Scotland.</p> <p>Schedule 1 - All functions of the Secretary of State as “the Minister” under the Schedule (applications for grant of pipe-line construction authorisation), so far as relating to pipe-lines beginning and ending in Scotland.</p> <p>Schedule 2 - All functions of the Secretary of State as “the Minister” under the Schedule (applications for grant of compulsory purchase orders and compulsory rights orders), so far as relating to pipe-lines beginning and ending in Scotland.</p> |
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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).

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| The Offshore Petroleum Development (Scotland) Act 1975 (c.8), section 3. | The function of the Secretary of State by order to declare a part of the sea surrounding Scotland which is within United Kingdom waters to be designated area. |
| The Food and Environment Protection Act 1985 (c.48), sections 5, 6, 7 and 10(1) and Schedule 3. | Section 5 - The functions of the Secretary of State as licensing authority in relation to deposits of substances or articles in the sea or under the sea bed, the scuttling of vessels, |

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| | <p>loading with a view to such deposit and towing or propelling with a view to scuttling.</p> <p>Section 6 - The functions of the Secretary of State as licensing authority in relation to incineration of substances or articles at sea or loading for that purpose.</p> <p>Section 7 - The function of the Ministers of making orders to exempt operations from the requirement to be licensed.</p> <p>Section 10(1) - The function of carrying out operations to protect the marine environment.</p> <p>Schedule 3 - The functions of the Secretary of State as licensing authority of dealing with representations concerning the refusal to grant, the variation or revocation of, or the provisions contained in, a licence.</p> |
| <p>The Petroleum Act 1998 (c.17), sections 32(1), 33(1), 34(7), 35(1), 37(1) and 39(1).</p> | <p>Section 32(1) - The function of the Secretary of State of approving an abandonment programme.</p> <p>Section 33(1) - The function of the Secretary of State of preparing his own abandonment programme.</p> <p>Section 34(7) - The functions of the Secretary of State of determining whether a change to an abandonment programme shall be made and of giving notice of his determination.</p> <p>Section 35(1) - The function of the Secretary of State of withdrawing approval for an abandonment programme.</p> <p>Section 37(1) - The function of the Secretary of State of requiring remedial action to be taken where an abandonment programme has not been carried out or where a condition has not been complied with.</p> <p>Section 39(1) - The function of the Secretary of State of making regulations relating to the abandonment of offshore installations and submarine pipelines.</p> |

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2000 ([S.I. 2000/3253](#)).

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| <p>The Gas Act 1986 (c.44), section 9(3)(a) and Schedule 3, Parts I and III</p> | <p>The functions of the Secretary of State in relation to authorising the compulsory purchase of land by a public gas supplier so far as relating to pie-lines beginning and ending in Scotland.</p> |
| <p>The Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999 (S.I. 1999/1672)</p> | <p>The functions of the Secretary of State in connection with the making of an environmental determination in relation to pipe-line works proposed to be carried out by a public gas transporter so far as relating to pie-lines beginning and ending in Scotland.</p> |

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| The Pipe-line Works (Environmental Impact Assessment) Regulations 2000 (S.I. 2000/1928) | The functions of the Secretary of State to consider environmental impact before granting a pipe-line construction authorisation so far as relating to pipe-lines beginning and ending in Scotland. |
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