

*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 C3: Competition

Details of Provisions

Reservation

What is reserved is the regulation of anti-competitive practices and agreements; abuse of dominant position; monopolies and mergers. This includes all matters relating to that regulation, including:

- (a) the powers to investigate any body or person for the purposes of enforcing competition law;
- (b) the administration of competition law through the respective powers of the Secretary of State for Trade and Industry, the Director General of Fair Trading and any other authority exercising competition functions.

Exception

What is excepted from the reservation is the regulation of particular practices in the legal profession for the purpose of regulating that profession or the provision of legal services. What constitutes the legal profession for this purpose is expressly defined.

This is intended to reflect the former position in terms of which the Secretary of State for Scotland had policy responsibility for regulating the legal profession and the provision of legal services in Scotland. This is mainly for the purpose of the protection of the public (or, in other words, consumer protection) but also includes regulating the rules and organisations of the legal profession, where the regulation may affect competition in the provision of legal services. For example, provisions increasing the provision of court services by permitting certain solicitor advocates to have a right of audience in the Court of Session and High Court requires, in order to be effective, to be accompanied by provisions which regulate rules of conduct by advocates which, by being anti-competitive, might thwart that policy objective - see, for example, section 31 of the Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 ("the 1990 Act") which requires the Faculty of Advocates to submit certain rules for the approval of the Secretary of State for Scotland who, in turn, is required to consult the Director General of Fair Trading. One of the effects of this exception is that the functions exercisable by the Secretary of State for Scotland were, upon devolution, transferred to the Scottish Ministers under section 53. However the Scottish Ministers are still required to consult the DGFT before exercising those functions.

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The exception does not, however, enable the Scottish Parliament to legislate generally about the regulation of anti-competitive practices concerning the legal profession in Scotland. This remains a matter for the UK Parliament. Nor does the exception limit the ability of the UK competition authorities to investigate anti-competitive practices concerning the Scottish legal profession and apply to the members of that profession the provisions of general competition legislation.

Interpretation

The expression “legal profession” is defined as meaning not only advocates and solicitors but also qualified conveyancers and executry practitioners who are authorised under the 1990 Act to provide conveyancing and executry services respectively.