

*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

### SCHEDULES

#### Schedule 5

### Part II: Preliminary paragraphs

### SECTIONS

#### *Section E2: Rail Transport*

#### **Purpose and Effect**

This Section reserves the provision and regulation of railway services, including rail safety, rail transport security, the subject-matter of the Channel Tunnel Act 1987 and the Railway Heritage Act 1996. Certain matters are excepted. This section was amended by [S.I. 2000/3252](#).

#### **Parliamentary Consideration**

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	31-Mar-98	1052

#### **Details of Provision**

##### Reservation

The provision and regulation of railway services is a reserved matter. This includes rail safety. The interpretation provision at the end of the Section provides that railway services are those defined in section 82 of the Railways Act 1993 but excluding the wider meaning of railway given by section 81(2) of that Act. This means that railway services for the purposes of the reservation include services in relation to the carriage of passengers (including luggage, parcels and mail) and of goods and services in relation to stations, maintenance facilities and the provision and operation of the rail network itself. As the wider meaning of “railway” does not apply (“railway” having the meaning given by section 67(1) of the Transport and Works Act 1992), tramways and guided transport systems are not included, therefore the Scottish Parliament has legislative competence in regard to those matters.

The following are also reserved:

- (a) rail transport security;
- (b) the subject-matter of the *Channel Tunnel Act 1987*; and
- (c) the subject-matter of the *Railway Heritage Act 1996* which provides powers to make a railway heritage scheme.

##### Exceptions

As amended by [S.I. 2000/3252](#) there are four main exceptions from the reservation:

- (a) Grants so far as relating to railway services. However, certain grant provisions noted below continue to be reserved by way of exceptions to the general exception. This means that the Scottish Parliament is able to legislate about capital and revenue grants for services relating to the carriage of passengers, stations, maintenance facilities and the rail network itself. Legislative and executive competence includes, without the need for express mention, powers in relation to special grants to local authorities under section 108A of the Local Government Finance Act 1992 and grants for public passenger transport services under section 56 of the Transport Act 1968, where the grants relate to railway services.

The matters which are not within this exception and thus continue to be reserved are:

- i. *the subject-matter of section 63 of the Railways Act 1993*. This section provides for government financial assistance where railway administration orders are made;
  - ii. *grants in relation to railway services as defined in section 82(1)(b) of the Railways Act 1993* (carriage of goods by railway); and
  - iii. *the subject-matter of section 136 of the Railways Act 1993*. This section deals with compensation payable to a passenger service operator who is required to run a passenger service which would not be commercially viable in accordance with a public service obligation under Council Regulation ([EEC](#)) 1191/69 as amended.
- (b) Imposing requirements about the preparation and submission of strategies relating to the provision of rail services on Scottish public authorities with mixed functions relating to such services. The purpose of this exception which was added by [S.I. 2000/3252](#), was to enable the Scottish Parliament to legislate in the [Transport \(Scotland\) Act 2001 \(asp 2\)](#) to empower the Scottish Ministers to require Scottish public authorities with mixed functions to produce joint transport strategies specifically covering the provision of rail services.
- (c) The transfer of functions of passenger transport executives or passenger transport authorities relating to the provision and regulation of rail services conferred by Part II of the [Transport Act 1968\(c.73\)](#) and sections 32 to 36 of the [Railways Act 1993\(c.43\)](#) to, and the allocation of such functions among, Scottish public authorities (other than cross-border public authorities and public authorities exercising functions solely in relation to reserved matters) which may be set up wholly or mainly to exercise functions relating to transport. The purpose of this exception, which was added by [S.I. 2000/3252](#), was to enable the Scottish Parliament to legislate in the [Transport \(Scotland\) Act 2001 \(asp 2\)](#) to confer on, or allocate among, certain Scottish public authorities the same rail responsibilities as any other passenger transport executive. It does not, however, enable the Scottish Parliament to create new types of passenger transport executive rail functions.

### **Executive Devolution**

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](#)).

<a href="#">The Railways Act 1993 (c.43):</a>	
(a) section 74(1) and (3);	Section 74(1) - The function of receiving from the Rail Regulator his annual report on his activities during each financial year and the activities of the Monopolies and Mergers Commission during the same year so far as relating to references made to the Commission by the Regulator. Section 74(3) - The function of the Secretary of State to comply with

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	the duty to lay before Parliament a copy of every report made by the Rail Regulator under section 74(1) and to arrange for publication of every such report.
(b) section 75(1) and (2);	Section 75(1) - The function of the Secretary of State to receive from the Director of Passenger Rail Franchising his annual report of his activities during each financial year and the general performance of franchisees during that year in carrying out their functions under franchise agreements. Section 75(2) - The function of the Secretary of State to comply with the duty to lay before each House of Parliament a copy of every report made to him by the Franchising Director under section 75(1) and to arrange for the publication of every such report.
(c) section 76(6)(a);	The function of the Secretary of State to receive a report of the findings of the Central Rail Users' Consultative Committee where it has investigated any matter.
(d) section 79(1);	The function of the Secretary of State of receiving the annual report of the Central Rail Users Consultative Committee and the duty to lay a copy of those reports before each House of Parliament.
(e) section 137; and	Section 137(1) - The function of the Secretary of State to enter into agreements with goods service operators for the making of payments in respect of track access charges. Section 137(2) - The function of the Secretary of State to be satisfied that certain benefits are likely to result from the provision of services under an agreement. Section 137(3) - The function of the Secretary of State for making payments under agreements entered into under this section shall be paid out of money provided by Parliament. Section 137(4) - The definition of "goods service operator" and "track access charge".
(f) section 139(1), (2), (3), (5) and (6).	Section 139(1) - The function of the Secretary of State to make grants towards the provision of facilities for or in connection with the carriage of goods by railway or the loading or unloading of such goods.

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Section 139(2) - The function of the Secretary of State to be satisfied as to the matters set out in paragraphs (a) to (c).

Section 139(3) - The function of the Secretary of State to take a view as to the nature and purpose of the expenditure to be grant aided.

Section 139(5) - The function of the Secretary of State to consider an application under that subsection and to require supporting evidence with respect to the matters set out in paragraphs (a) to (c).

Section 139(6) - The function of the Secretary of State to impose terms and conditions.