

*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 8, Paragraph 15: European Communities Act 1972**

##### **Purpose and Effect**

This paragraph makes various modifications to the European Communities Act 1972.

##### **General**

This provision is one of a number dealing with the relations between the Scottish Parliament and Executive and the European Union. Schedule 5 provides that international relations including those with the European Communities (and their institutions) are to be reserved to the UK Parliament and Government. But the Scottish Parliament and Executive are responsible for observing and implementing obligations under Community law in relation to devolved matters.

Section 29 provides that it is *ultra vires* for the Scottish Parliament to legislate in a way that is incompatible with Community law. Section 53 transfers to the Scottish Ministers any functions of Ministers of the Crown of observing and implementing Community Law in relation to devolved matters in or as regards Scotland. Section 57(1) provides that, notwithstanding that transfer, Ministers of the Crown shall continue to be able to exercise those functions as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972. Section 57(2) provides that it is *ultra vires* for the Scottish Executive to make subordinate legislation or otherwise to act in any way which is incompatible with Community law.

##### **Details of Provisions**

The European Communities Act 1972 is not reserved but certain sections of the Act are entrenched by paragraph 2 of Schedule 4.

The effect of section 53 is that Scottish Ministers are able to exercise the powers under section 2(2) of the 1972 Act to make regulations for the purpose of implementing any Community obligation in relation to devolved matters and as regards Scotland.

Paragraph 15 of Schedule 8 makes certain necessary amendments to the 1972 Act.

Paragraph 15(1) states that the European Communities Act shall be amended.

Paragraph 15(2) provides that in section 2 of the 1972 Act (general implementation of Treaties), references to a statutory power or duty include a power or duty conferred by an Act of the Scottish Parliament (or an instrument made under such an Act); and references to an enactment include an enactment within the meaning of the Scotland Act.

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Paragraph 15(3) makes provisions about regulations made by the Scottish Ministers, or an Order in Council made on the recommendation of the First Minister, under section 2 of the 1972 Act.

Paragraph 15(3)(a) provides that the Scottish Ministers do not require to be “designated” in order to make regulations under section 2(2) of the 1972 Act. Section 2(2) of the 1972 Act provides that a “designated” Minister may make regulations for the purpose of implementing any Community obligation, or enabling any such obligation to be implemented. Section 2(2) further provides that any “designated Minister” means such Minister of the Crown as may from time to time be designated by Order in Council. The amendment removes the need for Scottish Ministers to be designated by Order in Council before they can exercise the powers under section 2(2) to make regulations to give effect to Community obligations for Scotland.

Paragraphs 15(3)(b) and (c) make further minor amendments in relation to such regulations or Orders in Council made under section 2. Paragraph 15(3)(b) provides that references to an Act of Parliament shall be read as referring to an Act of the Scottish Parliament. Paragraph 15(3)(c) provides that paragraph 2(2) of Schedule 2 (which makes provision about the parliamentary procedure for statutory instruments made under section 2(2)) shall have effect as if the references to each, or either, House of Parliament were to the Scottish Parliament.

Paragraph 15(4) provides that in section 3(4), which relates to evidence, references to a government department include any part of the Scottish Administration.