

*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 8, Paragraph 5: Private Legislation Procedure (Scotland) Act 1936

Purpose and Effect

This amendment is intended to ensure that a promoter of private legislation may not apply for a provisional order under the Private Legislation Procedure (Scotland) Act 1936 where the powers sought are wholly within the competence of the Scottish Parliament. Such powers should be sought from the Scottish Parliament under whatever private legislation procedure it provides.

General

Section 53 transfers powers to the Scottish Ministers to make, confirm or approve subordinate legislation including certain types of subordinate legislation in the nature of private legislation, namely, special procedure orders and provisional orders. Section 94 modifies existing enactments for those purposes, and also ensures that the powers to make or confirm provisional orders conferred by the 1936 Act are not transferred.

Section 28 gives the Scottish Parliament power to make laws for Scotland to be known as Acts of the Scottish Parliament. It is inherent in this power that the Scottish Parliament is able to pass private Acts as well as public and general Acts, section 36(3) allows the Parliament to provide a modified Bill procedure for private Bills and section 94(2) allows the Parliament to make provision for special procedure orders. The Scottish Parliament has now made provision for Private Bills in its Standing Orders.

Details of Provisions

The 1936 Act provides a procedure by way of provisional order, rather than a private Bill in the UK Parliament, by which any public authority or person may obtain parliamentary powers in relation to certain matters in Scotland. This paragraph amends section 1 of that Act so as to ensure that it does not apply where the powers sought are wholly within the competence of the Scottish Parliament. Such powers would have to be sought from the Scottish Parliament under its private legislation procedures, or from the UK Parliament by other means, such as the promotion of a private Bill.

The 1936 Act procedure could still be used where the powers sought relate to both devolved and reserved matters.

See also article 13 of the Scotland Act 1998 (General Transitory, Transitional and Savings Provisions) Order 1999 (S.I. 1999/901) (inserted by article 4 of S.I. 1999/1334), which provides that the amendment made by paragraph 5 of Schedule 8 to the Scotland Act does not affect the operation of the Private Legislation Procedure (Scotland) Act 1936 in relation to any petition for a Provision Order presented to the Secretary of State before the principal appointed day. This provision ensures that those applications

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which were already in progress on the principal appointed day were not affected by the amendment.