

**EXPLANATORY MEMORANDUM TO THE
SCOTLAND ACT 1998 (MODIFICATIONS OF SCHEDULE 5) ORDER 2005**

2005 No. 865 (S. 3)

1. This Explanatory Memorandum has been prepared by the Scotland Office and is laid before the UK Parliament by Command of Her Majesty.

This Memorandum contains information for the Joint Committee on Statutory Instruments and House of Lords Merits of Statutory Instruments Committee in respect of the draft Scotland Act 1998 (Modifications of Schedule 5) Order 2005.

2. **Description**

2.1 The order is being made under the power provided by Section 30(2) of the Scotland Act 1998. Section 30(2) orders have the purpose and effect of modifying the legislative competence of the Scottish Parliament. They do so by either increasing or reducing the list of matters reserved by Schedule 4 or Schedule 5 to the Scotland Act. This order modifies Schedule 5.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Background**

4.1 Article 2 amends the reservation at Section H2 (Health and Safety) of Schedule 5 to the Scotland Act 1998. The amendment will permit the Scottish Parliament to legislate in relation to fire safety on construction sites and on premises that on 1st July 1999 were listed in Part I of Schedule 1 to the Fire Certificates (Special Premises) Regulations 1976 (S.I. 1976/2003).

5. **Extent**

5.1 This order applies to the United Kingdom.

6. **European Convention on Human Rights**

6.1 The Parliamentary Under Secretary of State for Scotland has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Scotland Act 1998 (Modifications of Schedule 5) Order 2005 are compatible with the Convention rights.

7. **Policy background**

7.1 Fire safety law is currently undergoing reform across the UK. Its reform for Scotland is being addressed in the Fire (Scotland) Bill, following 2 consultations on the fire service in Scotland by the Scottish Executive: *The Scottish Fire Service of the Future* published in April 2002, and *The Scottish Fire and Rescue Service: Proposals for Legislation* published in October 2003.

7.2 Fire safety reform in England and Wales is being achieved by means of an order under the Regulatory Reform Act 2001, for which the Office of the Deputy Prime Minister (ODPM) has responsibility. The reform of fire safety law in England and Wales resulted in the Health and Safety Executive (HSE) and ODPM revisiting the fire safety policy split. The subsequent drafting of the Regulatory Reform Order (RRO) reflected the agreement reached with regard to the split in policy responsibility between HSE and ODPM.

7.3 A number of fire safety matters for which ODPM have policy responsibility, and which are therefore addressed by the RRO for England and Wales, relate to the reservation at Section H2 of the 1998 Act. Accordingly, these are outside the Scottish Parliament's legislative competence. Amending the reservation to give the Scottish Parliament legislative competence in respect of those matters described in paragraph 4.1 will therefore allow a consistent split of policy responsibility across the UK between HSE and ODPM in England and Wales, and HSE and the Scottish Executive in Scotland.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this order, as it has no impact on business, charities, or voluntary bodies. This is a constitutional measure that concerns a transfer of legislative competence to the Scottish Parliament

8.2 There is no impact on the public sector or public spending.

9. Contact

Glenn Preston at the Scotland Office, Department for Constitutional Affairs (Glenn.Preston@scotland.gsi.gov.uk) can answer any queries regarding the order.