

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

SCOTLAND ACT 1998

EXPLANATORY NOTES

POWERS TO MAKE SUBORDINATE LEGISLATION

SECTION 116: Transfer of property: supplementary

Purpose and Effect

This section makes further provision in relation to the transfer of property under sections 60, 62, 90 and 109 and paragraph 2 of Schedule 2 dealing with property held by the Scottish Parliamentary Corporate Body (SPCB).

General

This section is linked to the series of provisions dealing with the transfer of property and liabilities to the Scottish Ministers and the Lord Advocate and to the SPCB. Sections 60 and 62 enable subordinate legislation to provide for the transfer of certain property and liabilities to the Scottish Ministers in connection with the exercise of their devolved functions and to the Lord Advocate in connection with the exercise of his retained functions. Section 109 provides for the reverse mechanism to that in sections 60 and 62, allowing property to be transferred from the Scottish Ministers and Lord Advocate to UK Ministers or government departments. Section 90 provides for the transfer of property of cross-border public authorities and paragraph 2 of Schedule 2 provides for the transfer of property to the SPCB.

Details of Provisions

Subsection (1) provides that this section applies in relation to subordinate legislation transferring property and liabilities under sections 60 (Transfers to the Scottish Ministers), 62 (Transfers to the Lord Advocate), 90 (power to transfer property of cross-border public authorities), 109 (agreed redistribution of property and liabilities) and paragraph 2 of Schedule 2 which provides for the transfer of property to the SPCB.

Subsection (2) provides that any subordinate legislation under those provisions may in particular:

provide for the creation of rights or interests, or the imposition of liabilities or conditions in relation to property transferred, or rights and interests acquired under the legislation;

provide for any property, liabilities and conditions to be determined by virtue of such legislation, rather than being specified in it; and

make provision (other than provision imposing a charge to tax) as to the tax treatment of anything done by or under such legislation. An example of this would be exemption from stamp duty, in respect of the transfers of the property of cross-border public authorities.

Subsection (3) provides that the power under subsection (2)(c) to make provision as to the tax treatment of a transfer may be exercised only with the agreement of the Treasury.

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Subsection (4) provides that subordinate legislation to which this section applies has effect in relation to property or liabilities to which it applies despite any provision which would otherwise prevent, penalise or restrict the transfer of the property or liabilities.

Subsection (5) provides that a right of pre-emption, right of irritancy, right of return or other similar right shall not operate or become exercisable as a result of any transfer under subordinate legislation to which this section applies.

Subsection (6) provides that the rights in subsection (5) shall have effect in the case of any transfer under subordinate legislation to which this section applies as if the transferee were the same person in law as the transferor and as if no transfer of property had taken place.

Subsection (7) provides for just compensation to be paid to any person in respect of a right which, apart from subsection (5) would have operated in favour of that person or be exercisable by him, but which in consequence of the operation of subsection (5) cannot subsequently operate in his favour or be exercisable by him.

Subsection (8) provides that any compensation payable under subsection (7) shall be paid by the transferor, transferee or both.

Subsection (9) provides that subordinate legislation under this section can provide for the determination of any disputes as to whether and to whom or by whom such compensation is to be paid and how much that compensation should be.

This power has been exercised up to September 2001 in article 12(2) of [S.I. 1999/1104](#); article 6(2) of [S.I. 1999/1105](#); and article 4(2) of [S.I. 1999/1106](#).

Subsection (10) provides that subsections (4) to (9) apply in relation to the creation of rights or interests or the doing of anything else in relation to property in the same way as they apply to transfers of property.

Subsection (11) provides that a certificate issued by the Secretary of State that any property or liability has, or has not, been transferred by virtue of subordinate legislation under various powers is to be taken as conclusive evidence of the transfer (or lack thereof).

Subsection (12) makes similar provision to subsection (11) in respect of transfers under sections 90 and 109. In these cases the certificate is to be issued jointly by the Secretary of State and the Scottish Ministers.

Subsection (13) defines “right of return” as any right under a provision for the return or reversion of property in specified circumstances.