

*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

### COMMENTARY

#### **Part II: the Scottish Administration**

#### SECTION 54: Devolved competence

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

Subsection (1) provides that references in the Act to the exercise of a function being within or outside devolved competence should be read in accordance with this section. However, as with the definition of the legislative competence of the Parliament in section 29, it is defined negatively by defining what is meant by exercising a function outside devolved competence.

Subsection (2) indicates that it would be outside devolved competence to make a certain provision in subordinate legislation or to confirm or approve subordinate legislation containing such provision. The provision in question is one which it would be outside the legislative competence of the Parliament (which is defined by section 29) to include in an Act of the Scottish Parliament. This means that any Ministerial function to make, confirm or approve subordinate legislation in a pre-commencement enactment only transfers to the Scottish Ministers under section 53 to the extent that any provision made under it could be included in an ASP.

Section 118(1) and (2) modify the procedure contained in any pre-commencement enactment in relation to the exercise by Scottish Ministers within devolved competence of any function to make, confirm or approve subordinate legislation.

Subsection (3) applies to functions other than those relating to making, confirming or approving subordinate legislation. It provides that it is outside devolved competence to exercise such functions (or to exercise them in any way) if a provision of an Act of the Scottish Parliament conferring those functions (or conferring them so as to be exercisable in that way) would be outside the Parliament's legislative competence. This means in effect that any such Ministerial function in a pre-commencement enactment only transfers to the Scottish Ministers under section 53 to the extent that it would be within the legislative competence of the Parliament to confer it by an ASP. The Parliament can only confer a function which is exercisable within its legislative competence, for example a function which is exercisable in or as regards Scotland or compatible with Community law or any Convention rights.