

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

SCOTLAND ACT 1998

EXPLANATORY NOTES

COMMENTARY

Part II: the Scottish Administration

SECTION 55: Functions exercisable with agreement

Purpose and Effect

This section provides that any existing requirements for a function to be exercised by a Minister of the Crown only with the agreement of, or after consultation with, another Minister of the Crown should cease to have effect in relation to the exercise of any function transferred to a member of the Scottish Executive by virtue of section 53. An exception is made for the designation of enterprise zones where a requirement for Treasury consent is maintained because of the tax privileges conferred by such status.

General

This section forms part of the set dealing with the conferral of functions upon members of the Scottish Executive. Section 53 makes provision for the transfer of Ministerial functions exercisable within devolved competence. Some of those functions can only be exercised with the consent of, or after consultation with, another Minister of the Crown, such as the Treasury.

There are two reasons for dispensing with these requirements when the functions are exercised by the Scottish Ministers. Firstly, it would in general be inappropriate for these controls to continue to apply when the Scottish Ministers are exercising those functions. Secondly, in many cases, the function of being consulted, or of giving agreement, would have itself transferred to the Scottish Ministers and it would be confusing to require Scottish Ministers to consult or agree with themselves.

This section therefore dispenses with these requirements. An exception is made for functions under the Local Government, Planning and Land Act 1980 of designating enterprise zones. This reflects the need for continuing Treasury oversight of the tax privileges conferred by the grant of enterprise zone status.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	10-Feb-98	205
LC	28-Jul-98	1491
LR	28-Oct-98	2039

Details of Provisions

Subsection (1) provides that any statutory provision, or any provision not contained in an enactment, requiring a Ministerial function to be exercised only with the agreement

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of, or after consultation with, another Minister of the Crown should cease to have effect when the function is exercised by a member of the Scottish Executive by virtue of section 53. Section 126(1) defines “Minister of the Crown” as including the Treasury. “Agreement” is intended to include also requirements of consent, concurrence or approval.

Subsection (2) defines “statutory provision” for the purposes of subsection (1) as any provision of any pre-commencement enactment (as defined by section 53(3)) other than paragraph 5 or paragraph 15 of Schedule 32 to the Local Government, Planning and Land Act 1980. Paragraph 5 of Schedule 32 to the 1980 Act confers a power upon the Secretary of State, with the consent of the Treasury, to make an order designating an enterprise zone. Paragraph 15 confers a power to modify such an order, again with the consent of the Treasury. This ensures that the consent requirement is not removed by subsection (1).

Paragraph 1(2)(d) of Schedule 4 lists the provisions requiring the consent of the Treasury amongst the enactments protected from modification by the Scottish Parliament. By virtue of Part III of Schedule 4, the function of giving consent in each case will not transfer to the Scottish Ministers.