

*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 60: Transfers to the Scottish Ministers**

##### **Purpose and Effect**

This section confers power, by way of subordinate legislation, to transfer to the Scottish Ministers property and liabilities of the UK Government in connection with any transfer or functions to the Scottish Ministers or to provide them with rights or interests in such property where the property is not being transferred.

##### **General**

This is the second in a series of four sections dealing with the property and liabilities of the Scottish Executive, including the First Minister and the Lord Advocate. See the general note to section 59.

Further provision about the making of subordinate legislation under this section is to be found in sections 112 to 115 and Schedule 7. In general, the powers may be exercised by Her Majesty by Order in Council or by a Minister of the Crown by order and, in either case, if the instrument is made without a draft having been approved by each House of the Westminster Parliament, it is subject to annulment in pursuance of a resolution of either House of that Parliament.

This power was exercised in making the Transfer of Property (Scottish Ministers) Order 1999 ([S.I. 1999/1104](#)).

##### **Parliamentary Consideration**

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CR	12-May-98	244
LC	14-Jul-98	240
LC	30-Jul-98	1647

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

Subsection (1) confers power, by subordinate legislation, to provide (a) for the transfer to the Scottish Ministers of any property belonging to a Minister of the Crown or government department or (b) for the Scottish Ministers to have rights or interests in relation to any such property (whether in connection with its transfer or otherwise). This power has to be read subject to subsection (3) which limits its scope.

Subsection (2) confers power, by subordinate legislation, to provide for the transfer to the Scottish Ministers of any liabilities to which a Minister of the Crown or government

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department is subject. This power has also to be read subject to subsection (3) which limits its scope.

Subsection (3) limits the scope of the order which may be made under this section by providing that it can only be made “in connection with” any transfer or sharing of functions of a Minister of the Crown by virtue of section 53, 63 or 89 or in any other circumstances in which the person making the legislation considers it appropriate to do so for the purposes of this Act.

Section 53 provides for the automatic transfer of Ministerial functions to the Scottish Ministers so far as they are exercisable within devolved competence; section 63 provides for the transfer of specific Ministerial functions to the Scottish Ministers relating to reserved matters etc and section 89 provides for an Order in Council to be made in connection with the functions relating to a cross border public authority.

Under the Transfer of Property (Scottish Ministers) Order 1999 ([S.I. 1999/1104](#)), general provision is made for the transfer of rights and interests in land and corporeal moveable property (other than excepted property) used wholly or mainly for or in connection with a transferred function i.e. a function which is transferred to the Scottish Ministers by virtue of sections 53, 63 or 89. Special provision is made for special cases.