

*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 V: Miscellaneous and General**

SECTION 90: Power to transfer property of cross-border public authorities

#### **Purpose and Effect**

This section enables an Order in Council to provide for the transfer of property and liabilities of a cross-border public authority where an Act of the Scottish Parliament has provided for any of its functions to be no longer exercisable in or as regards Scotland.

#### **General**

This is the third of three sections dealing with cross-border public authorities. Section 88 provides for such authorities to be designated by Order in Council. Section 89 enables arrangements for accountability and control to be tailor-made for particular cross-border authorities. The present section makes provision for the circumstance when the Scottish Parliament legislates to remove the devolved Scottish functions of a cross-border public authority. This is most likely to occur because of decision to set up a separate, Scottish, authority. It may be appropriate for some of the property or liabilities to be transferred. This section enables this to be done. Section 116(2)(c) makes clear that such an order can make provision about the tax treatment of such transfers.

#### **Parliamentary Consideration**

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CR	12-May-98	197
CC	4-Mar-98	1135

#### **Details of Provisions**

Subsection (1) defines the circumstances when the section is applicable. These are when an Act of the Scottish Parliament has provided for any of the functions of a cross-border public authority (an authority specified by an Order in Council made under section 88) to be no longer exercisable in or as regards Scotland.

Subsection (2) provides that an Order in Council can transfer any property (defined in section 126(1) as including rights and interests of any description) to which the section applies and can provide that any person will have rights and interests in relation to such property.

Subsection (3) defines the property to which the section applies - essentially that belonging to a cross-border public authority which appears to be used in relation to the functions which are no longer to be exercisable in or as regards Scotland (or which,

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when last used in connection with the exercise of any function, was used in relation to the functions no longer to be exercisable in or as regards Scotland).

Subsection (4) provides that an Order in Council can also transfer liabilities of a cross-border public authority which appear to have been incurred for or in connection with the exercise of functions which are no longer to be exercisable in or as regards Scotland.

Subsection (5) requires the cross-border public authority concerned to be consulted before a recommendation is made to Her Majesty in Council to make an Order under this section.

Further provision about the making of subordinate legislation is to be found in sections 112 to 115 and Schedule 7. In particular, an Order under section 90 is subject to negative procedure in both the Scottish and United Kingdom Parliaments, unless it contains provisions which amend the text of an Act, in which case it is subject to affirmative procedure in both Parliaments.

Similar provision to section 90 is also made in section 33 of the [Food Standards Act 1999 \(c.28\)](#) in relation to the Food Standards Agency and in section 70 (2) of the [Care Standards Act 2000 \(c.14\)](#) in relation to the Central Council for Education and Training in Social Work.