

*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 V: Miscellaneous and General

SECTION 106: Power to adapt functions

General

This section complements:

section 53, which makes provision for the transfer to the Scottish Ministers of functions exercisable within devolved competence; and

section 63, which enables the “executive devolution” to the Scottish Ministers of additional functions so far as they are exercisable in or as regards Scotland, or their adaptation so that they are exercisable only after consultation, or agreement, with the Scottish Ministers.

Some functions require amendment before they can transfer to the Scottish Ministers under section 53 or in an executive devolution order under section 63 so as to make them exercisable separately in or as regards Scotland or before they can transfer under section 53 by making them otherwise separately exercisable within devolved competence. This would be the case, for example, where a function is expressly or impliedly confined by its terms to a UK or GB-wide exercise. The present section enables the functions to be split, or otherwise adapted, by means of subordinate legislation at the instance of the UK Government and with the approval of Westminster so that they can be transferred to the Scottish Ministers by virtue of section 53 or 63.

The section makes particular provision for European Community or international obligations expressed in quantitative terms. Where the subordinate legislation is to be used to split such an obligation so that part of the Ministerial function of observing and implementing it can be transferred to the Scottish Ministers, the order cannot be made unless they have been consulted. The section further provides that the Secretary of State’s powers of intervention under section 58 can be used to ensure that the Scottish Ministers’ share of such an obligation is met.