

*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**

#### **POWERS TO MAKE SUBORDINATE LEGISLATION**

SECTION 119: Consolidated Fund, etc.

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

Subsection (1) defines the “Scottish functions” in relation to which the modifications apply as (a) functions of the Scottish Ministers, the First Minister or the Lord Advocate which are exercisable within devolved competence and (b) functions of any Scottish public authority with mixed functions or no reserved functions.

A Scottish public authority with mixed functions or no reserved functions is defined in section 126(1) and paragraphs 1 and 2 of Part III of Schedule 5 (e.g. local authorities or the Registrar General for Births, Deaths and Marriages for Scotland).

Subsection (2) provides that, subject to subsections (3) and (5), a provision of a pre-commencement enactment which requires or authorises the payment of any sum out of the Consolidated Fund or money provided by Parliament, or requires or authorises the payment of any sum into the Consolidated Fund, shall cease to have effect.

Subsection (3) states that a provision of a pre-commencement enactment which (a) charges any sum on the Consolidated Fund, (b) requires the payment of any sum out of the Consolidated Fund without further appropriation, or (c) requires or authorises the payment of any sum into the Consolidated Fund by a person other than a Minister of the Crown shall have effect in relation to Scottish functions, as if it provided for the sum to be charged on the Scottish Consolidated Fund, or required it to be paid out of that Fund without further approval or paid to that Fund as the case may be.

Subsection (4) restricts the application of subsections (2) and (3) in relation to section 2(3) of the European Communities Act 1972. It provides that section 107 of the Act shall not apply to the words in section 2(3) of the 1972 Act from the beginning of that subsection to “such Community obligation”.

It is necessary to ensure that section 119 does not apply to the first part of section 2(3) of the 1972 Act, down to the words “such Community obligation” because that part relates to charges required to meet payments to the European institutions and payments in respect of contributions or loans to the European Investment Bank. It is not the intention that such charges should be capable of being met out of the Scottish Consolidated Fund.

Subsection (5) states that a provision of a pre-commencement enactment which authorises any sums to be applied as money provided by Parliament instead of being paid into the Consolidated Fund, shall apply to any Scottish functions as if it authorised those sums to be applied as if they had been paid out of the Scottish Consolidated Fund (in accordance with the rules under section 65(1)(c)) instead of being paid into that Fund.

Subsections (6) and (7) apply where a power to lend money is exercisable by the Scottish Ministers under a pre-commencement enactment, and for the purpose or as a result of the exercise of the power, sums would require to be issued by the Treasury out of the National Loans Fund or be paid into that Fund. Subsection (7) provides that those sums

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shall instead be paid out of the Scottish Consolidated Fund without further approval,  
or be paid into that Fund.