

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

SCOTLAND ACT 1998

EXPLANATORY NOTES

SCHEDULES

SCHEDULE 6: Devolution Issues

Details of Provisions

Part 1 - Preliminary

Part 1 (paragraphs 1 and 2) defines “devolution issue” for the purposes of this Schedule as meaning one of a series of questions in the following sub-paragraphs:

sub-paragraph (a), a question whether an Act of the Scottish Parliament or any provision of such an Act is within the Parliament’s legislative competence;

sub-paragraph (b), a question whether any function which any person purported or is proposing to exercise is a function of the Scottish Ministers, the First Minister or the Lord Advocate. This would include any question as to whether the function has transferred to the Scottish Ministers under section 53 or has remained with a Minister of the Crown;

sub-paragraph (c), a question whether the purported or proposed exercise of a function by a member of the Scottish Executive is or would be within devolved competence. This is relevant, for example, as to whether a function is exercisable by the Scottish Ministers by virtue of section 53;

sub-paragraph (d), a question whether a purported or proposed exercise of a function by a member of the Scottish Executive is incompatible with any of the Convention Rights or with Community law;

sub-paragraph (e), a question whether a failure to act by a member of the Scottish Executive is incompatible with any of the Convention Rights or with Community law;

sub-paragraph (f), any other question about whether a function is exercisable within devolved competence or in or as regards Scotland, and any other question arising by virtue of the Scotland Act about reserved matters. The questions swept up into this sub-paragraph can arise in various circumstances. For example, there could be a question whether Her Majesty is making an Order in Council within devolved competence (see note on section 118) or whether a function is exercisable “in or as regards Scotland” so that it may transfer by an order under section 63 or whether a public body is a Scottish public authority whose functions are exercisable only “in or as regards Scotland” (see definition in section 126(1)) or whether the functions of a body relate to a reserved matter (see section 126(3)).

Paragraph 2 provides that a devolution issue should not be taken to arise in proceedings before a court or tribunal merely because a party argues that there is such a question if the court or tribunal considers the argument to be frivolous or vexatious.