



Scotland Act 1998

1998 CHAPTER 46

PART II

THE SCOTTISH ADMINISTRATION

Ministerial functions

52 Exercise of functions

- (1) Statutory functions may be conferred on the Scottish Ministers by that name.
- (2) Statutory functions of the Scottish Ministers, the First Minister or the Lord Advocate shall be exercisable on behalf of Her Majesty.
- (3) Statutory functions of the Scottish Ministers shall be exercisable by any member of the Scottish Executive.
- (4) Any act or omission of, or in relation to, any member of the Scottish Executive shall be treated as an act or omission of, or in relation to, each of them; and any property acquired, or liability incurred, by any member of the Scottish Executive shall be treated accordingly.
- (5) Subsection (4) does not apply in relation to the exercise of—
 - (a) functions conferred on the First Minister alone, or
 - (b) retained functions of the Lord Advocate.
- (6) In this Act, “retained functions” in relation to the Lord Advocate means—
 - (a) any functions exercisable by him immediately before he ceases to be a Minister of the Crown, and
 - (b) other statutory functions conferred on him alone after he ceases to be a Minister of the Crown.
- (7) In this section, “statutory functions” means functions conferred by virtue of any enactment.

53 General transfer of functions

- (1) The functions mentioned in subsection (2) shall, so far as they are exercisable within devolved competence, be exercisable by the Scottish Ministers instead of by a Minister of the Crown.
- (2) Those functions are—
 - (a) those of Her Majesty’s prerogative and other executive functions which are exercisable on behalf of Her Majesty by a Minister of the Crown,
 - (b) other functions conferred on a Minister of the Crown by a prerogative instrument, and
 - (c) functions conferred on a Minister of the Crown by any pre-commencement enactment,but do not include any retained functions of the Lord Advocate.
- (3) In this Act, “pre-commencement enactment” means—
 - (a) an Act passed before or in the same session as this Act and any other enactment made before the passing of this Act,
 - (b) an enactment made, before the commencement of this section, under such an Act or such other enactment,
 - (c) subordinate legislation under section 106, to the extent that the legislation states that it is to be treated as a pre-commencement enactment.
- (4) This section and section 54 are modified by Part III of Schedule 4.

54 Devolved competence

- (1) References in this Act to the exercise of a function being within or outside devolved competence are to be read in accordance with this section.
- (2) It is outside devolved competence—
 - (a) to make any provision by subordinate legislation which would be outside the legislative competence of the Parliament if it were included in an Act of the Scottish Parliament, or
 - (b) to confirm or approve any subordinate legislation containing such provision.
- (3) In the case of any function other than a function of making, confirming or approving subordinate legislation, it is outside devolved competence to exercise the function (or exercise it in any way) so far as a provision of an Act of the Scottish Parliament conferring the function (or, as the case may be, conferring it so as to be exercisable in that way) would be outside the legislative competence of the Parliament.

55 Functions exercisable with agreement

- (1) A statutory provision, or any provision not contained in an enactment, which provides for a Minister of the Crown to exercise a function with the agreement of, or after consultation with, any other Minister of the Crown shall cease to have effect in relation to the exercise of the function by a member of the Scottish Executive by virtue of section 53.
- (2) In subsection (1) “statutory provision” means any provision in a pre-commencement enactment other than paragraph 5 or 15 of Schedule 32 to the Local Government, Planning and Land Act 1980 (designation of enterprise zones).

56 Shared powers

- (1) Despite the transfer by virtue of section 53 of any function under—
- (a) section 17(1) of the Ministry of Transport Act 1919 (power to make advances for certain purposes),
 - (b) any Order in Council under section 1 of the United Nations Act 1946 (measures to give effect to Security Council decisions),
 - (c) section 9 of the Industrial Organisation and Development Act 1947 (levies for scientific research, promotion of exports, etc.),
 - (d) section 5 of the Science and Technology Act 1965 (funding of scientific research),
 - (e) section 1 of the Mineral Exploration and Investment Grants Act 1972 (contributions in respect of mineral exploration),
 - (f) sections 10 to 12 of the Industry Act 1972 (credits and grants for construction of ships and offshore installations),
 - (g) sections 2, 11(3) and 12(4) of the Employment and Training Act 1973 (power to make arrangements for employment and training etc. and to make certain payments),
 - (h) sections 7 to 9 and 11 to 13 of the Industrial Development Act 1982 (financial and other assistance for industry), and
 - (i) sections 39 and 40 of the Road Traffic Act 1988 (road safety information and training),
- the function shall be exercisable by a Minister of the Crown as well as by the Scottish Ministers.
- (2) Despite the transfer of any other function by virtue of section 53, the function shall, if subordinate legislation so provides, be exercisable (or be exercisable so far as the legislation provides) by a Minister of the Crown as well as by the Scottish Ministers.
- (3) Subordinate legislation under subsection (2) may not be made so as to come into force at any time after the function in question has become exercisable by the Scottish Ministers.
- (4) Any power referred to in section 53(2)(a) to establish, maintain or abolish a body, office or office-holder having functions which include both—
- (a) functions which are exercisable in or as regards Scotland and do not relate to reserved matters, and
 - (b) other functions,
- shall, despite that section, be exercisable jointly by the Minister of the Crown and the Scottish Ministers.
- (5) In subsection (4), “office-holder” includes employee or other post-holder.

57 Community law and Convention rights

- (1) Despite the transfer to the Scottish Ministers by virtue of section 53 of functions in relation to observing and implementing obligations under Community law, any function of a Minister of the Crown in relation to any matter shall continue to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

Status: This is the original version (as it was originally enacted).

- (2) A member of the Scottish Executive has no power to make any subordinate legislation, or to do any other act, so far as the legislation or act is incompatible with any of the Convention rights or with Community law.
- (3) Subsection (2) does not apply to an act of the Lord Advocate—
- (a) in prosecuting any offence, or
 - (b) in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland,
- which, because of subsection (2) of section 6 of the Human Rights Act 1998, is not unlawful under subsection (1) of that section.

58 Power to prevent or require action

- (1) If the Secretary of State has reasonable grounds to believe that any action proposed to be taken by a member of the Scottish Executive would be incompatible with any international obligations, he may by order direct that the proposed action shall not be taken.
- (2) If the Secretary of State has reasonable grounds to believe that any action capable of being taken by a member of the Scottish Executive is required for the purpose of giving effect to any such obligations, he may by order direct that the action shall be taken.
- (3) In subsections (1) and (2), “action” includes making, confirming or approving subordinate legislation and, in subsection (2), includes introducing a Bill in the Parliament.
- (4) If any subordinate legislation made or which could be revoked by a member of the Scottish Executive contains provisions—
- (a) which the Secretary of State has reasonable grounds to believe to be incompatible with any international obligations or the interests of defence or national security, or
 - (b) which make modifications of the law as it applies to reserved matters and which the Secretary of State has reasonable grounds to believe to have an adverse effect on the operation of the law as it applies to reserved matters,
- the Secretary of State may by order revoke the legislation.
- (5) An order under this section must state the reasons for making the order.