



Scotland Act 1998

1998 CHAPTER 46

PART VI

SUPPLEMENTARY

Subordinate legislation

116 Transfer of property: supplementary.

- (1) This section applies in relation to subordinate legislation under section 60, 62, 90 or 109 or paragraph 2 of Schedule 2.
- (2) Any such subordinate legislation may, in particular—
 - (a) provide for the creation of rights or interests, or the imposition of liabilities or conditions, in relation to property transferred, or rights or interests acquired, by virtue of such legislation,
 - (b) provide for any property, liabilities or conditions to be determined under such legislation,
 - (c) make provision (other than provision imposing a charge to tax) as to the tax treatment of anything done by virtue of such legislation.
- (3) No order shall be made by a Minister of the Crown by virtue of subsection (2)(c), and no recommendation shall be made to Her Majesty in Council to make an Order in Council by virtue of subsection (2)(c), without the agreement of the Treasury.
- (4) Subordinate legislation to which this section applies shall have effect in relation to any property or liabilities to which it applies despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the transfer of the property or liabilities.
- (5) A right of pre-emption, right of irritancy, right of return or other similar right shall not operate or become exercisable as a result of any transfer of property by virtue of any subordinate legislation to which this section applies.

Changes to legislation: There are currently no known outstanding effects for the Scotland Act 1998, Section 116. (See end of Document for details)

- (6) Any such right shall have effect in the case of any such transfer as if the transferee were the same person in law as the transferor and as if no transfer of the property had taken place.
- (7) Such compensation as is just shall be paid to any person in respect of any such right which would, apart from subsection (5), have operated in favour of, or become exercisable by, that person but which, in consequence of the operation of that subsection, cannot subsequently operate in his favour or (as the case may be) become exercisable by him.
- (8) Any compensation payable by virtue of subsection (7) shall be paid by the transferor or by the transferee or by both.
- (9) Subordinate legislation under this subsection may provide for the determination of any disputes as to whether and, if so, how much, compensation is payable by virtue of subsection (7) and as to the person to whom or by whom it shall be paid.
- (10) Subsections (4) to (9) apply in relation to the creation of rights or interests, or the doing of anything else, in relation to property as they apply in relation to a transfer of property; and references to the transferor and transferee shall be read accordingly.
- (11) A certificate issued by the Secretary of State that any property or liability has, or has not, been transferred by virtue of subordinate legislation under section 60 or 62 or paragraph 2 of Schedule 2 shall be conclusive evidence of the transfer or (as the case may be) the fact that there has not been a transfer.
- (12) A certificate issued by the Secretary of State and the Scottish Ministers that any property or liability has, or has not, been transferred by virtue of an Order in Council under section 90 or 109 shall be conclusive evidence of the transfer or (as the case may be) the fact that there has not been a transfer.
- (13) In this section “right of return” means any right under a provision for the return or reversion of property in specified circumstances.

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