

*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

### COMMENTARY

#### **Part II: the Scottish Administration**

#### SECTION 58: Power to prevent or require action

##### **General**

This section forms part of the set dealing with the functions of the Scottish Administration including sections 53 and 54 which make provision for the transfer to the Scottish Ministers of Ministerial functions exercisable within devolved competence and section 63 which provides for the transfer of additional functions by executive devolution.

Apart from the fact that a member of the Scottish Executive is accountable to the Parliament for the way in which he exercises his functions, the normal control upon the exercise of these functions is a *vires* control exercised by the courts. The effect of sections 53 and 54 is that the functions transferred under section 53 require to be exercised within devolved competence and of section 57(2) is that it would be *ultra vires* for a member of the Scottish Executive to act (or to fail to act) in a way which would be incompatible with any of the ECHR rights incorporated in UK law or with European Community law - see the note on section 57. Any question whether the exercise or non-exercise of a function by a member of the Scottish Executive is *ultra vires* on these grounds is a devolution issue for the purposes of Schedule 6.

However, there are certain limited circumstances where, even although it may be within their competence, the UK Government can exercise a policy control to prevent something which Scottish Ministers propose to do or require them to take some action or to revoke any subordinate legislation made by them. This section defines what those circumstances are.

This section is similar to section 35 which enables the Secretary of State, in certain circumstances, to prevent Bills from being submitted for Royal Assent.