



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 [^{F1}Scottish Government].
- (4) Any act or omission of, or in relation to, any member of the [^{F1}Scottish Government] 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 [^{F1}Scottish Government] 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.

Status: Point in time view as at 06/05/2021.

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

Textual Amendments

- F1** Words in Act substituted (3.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 12(2)(a)**, 44(5) (with s. 12(3)); [S.I. 2012/1710](#), **art. 2(f)**

Commencement Information

- II** S. 52 in force for certain purposes at 6.5.1999 and for all remaining purposes at 20.5.1999 by [S.I. 1998/3178](#), **art. 2(2)**

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—
- those of Her Majesty’s prerogative and other executive functions which are exercisable on behalf of Her Majesty by a Minister of the Crown,
 - other functions conferred on a Minister of the Crown by a prerogative instrument, and
 - 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—
- an Act passed before or in the same session as this Act and any other enactment made before the passing of this Act,
 - an enactment made, before the commencement of this section, under such an Act or such other enactment,
 - subordinate legislation under section 106, to the extent that the legislation states that it is to be treated as a pre-commencement enactment.

[^{F2}(3A) But see sections 9, 32 and 51 of the Scotland Act 2016 (which give “pre-commencement enactment” a different meaning for functions exercisable within devolved competence by virtue of certain provisions of that Act).]

- (4) This section and section 54 are modified by Part III of Schedule 4.

Textual Amendments

- F2** S. 53(3A) inserted (5.9.2016) by [Scotland Act 2016 \(c. 11\)](#), **ss. 32(3)**, 72(4)(b); [S.I. 2016/759](#), **reg. 3(i)**

Modifications etc. (not altering text)

- C1** S. 53 restricted (1.7.1999) by [S.I. 1999/1592](#), **arts. 1, 3**, **Sch. 1**; [S.I. 1998/3178](#), **art. 3**
S. 53 excluded (30.6.1999) by [S.I. 1999/1746](#), **arts. 1, 3**; [S.I. 1998/3178](#), **art. 3**
- C2** S. 53 explained (6.5.1999) (*temp.* until 1.7.1999) by [S.I. 1999/1042](#), **art. 2**
- C3** S. 53 extended (6.5.1999) (*temp.*) by [S.I. 1999/901](#), **art. 3(3)**
- C4** S. 53 extended (30.6.1999) by [S.I. 1999/1748](#), **arts. 4-8**
- C5** S. 53 excluded (15.11.2004) by [Children Act 2004 \(c. 31\)](#), **ss. 6(9)**, 67(1)
- C6** S. 53 excluded (5.9.2016) by [Scotland Act 2016 \(c. 11\)](#), **ss. 33(1)**, 72(4)(b); [S.I. 2016/759](#), **reg. 3(j)**
- C7** S. 53(2)(a) modified (1.7.1999) by [S.I. 1999/1756](#), **arts. 5-7**

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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.

Modifications etc. (not altering text)

- C8** S. 54 applied (S.) (6.4.2011) by [Interpretation and Legislative Reform \(Scotland\) Act 2010 \(asp 10\), ss. 27\(4\), 58\(3\); S.S.I. 2011/17, art. 3\(a\)](#)

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 [^{F1}Scottish Government] 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 ^{M1}Local Government, Planning and Land Act 1980 (designation of enterprise zones).

Textual Amendments

- F1** Words in Act substituted (3.7.2012) by [Scotland Act 2012 \(c. 11\), ss. 12\(2\)\(a\), 44\(5\)](#) (with s. 12(3)); [S.I. 2012/1710, art. 2\(f\)](#)

Marginal Citations

- M1** 1980 c. 65.

56 Shared powers.

- (1) Despite the transfer by virtue of section 53 of any function under—
 - (a) section 17(1) of the ^{M2}Ministry of Transport Act 1919 (power to make advances for certain purposes),
 - (b) any Order in Council under section 1 of the ^{M3}United Nations Act 1946 (measures to give effect to Security Council decisions),
 - (c) section 9 of the ^{M4}Industrial Organisation and Development Act 1947 (levies for scientific research, promotion of exports, etc.),

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- (d) section 5 of the ^{M5}Science and Technology Act 1965 (funding of scientific research),
- (e) section 1 of the ^{M6}Mineral Exploration and Investment Grants Act 1972 (contributions in respect of mineral exploration),
- (f) sections 10 to 12 of the ^{M7}Industry Act 1972 (credits and grants for construction of ships and offshore installations),
- (g) sections 2, 11(3) and 12(4) of the ^{M8}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 ^{M9}Industrial Development Act 1982 (financial and other assistance for industry), and
- (i) sections 39 and 40 of the ^{M10}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.

Modifications etc. (not altering text)

- C9** S. 56(1)(g) modified (5.9.2016) by [Scotland Act 2016 \(c. 11\), ss. 31\(5\), 72\(4\)\(b\)](#); [S.I. 2016/759, reg. 3\(h\)](#)

Commencement Information

- I2** S. 56 wholly in force at 1.7.1999; s. 56 not in force at Royal Assent see s. 130; s. 56(2) in force for certain purposes at 25.1.1999 by [S.I. 1998/3178, art. 2\(2\)](#), [Sch. 1](#); s. 56 in force at 1.7.1999 in so far as not already in force by [S.I. 1998/3178, art. 2\(1\)](#)

Marginal Citations

- M2** 1919 c. 50.
M3 1946 c. 45.
M4 1947 c. 40.
M5 1965 c. 4.
M6 1972 c. 9.
M7 1972 c. 63.
M8 1973 c. 50.

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M9 1982 c. 52.

M10 1988 c. 52.

57 ^{F3} ... **Convention rights** [^{F4}and retained EU law].

^{F5}(1)

(2) A member of the [^{F1}Scottish Government] 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 ^{F6}....

(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,

^{F7} ...

[^{F8}(4) A member of the Scottish Government has no power to make, confirm or approve any subordinate legislation so far as the legislation modifies retained EU law and the modification is of a description specified in regulations made by a Minister of the Crown.

(5) But subsection (4) does not apply—

- (a) so far as the modification would be within the legislative competence of the Parliament if it were included in an Act of the Scottish Parliament, or
- (b) to the making of regulations under [^{F9}—
 - (i) Part 1 or 1B of Schedule 2 to the European Union (Withdrawal) Act 2018 (power to deal with deficiencies arising from withdrawal and certain powers in connection with the EU withdrawal agreement),
 - (ii) Schedule 4 to that Act (powers in connection with fees and charges), ^{F10}...
 - (iii) section 12, 13 or 14 of the European Union (Withdrawal Agreement) Act 2020 (certain powers relating to citizens' rights)] [^{F11}, ^{F12}...
 - (iv) section 31, 32 or 33 of the European Union (Future Relationship) Act 2020 (powers in connection with future relationship agreements etc.)] [^{F13}, or
 - (v) section 1(1) or 2(1) of the Trade Act 2021.]

(6) A Minister of the Crown must not lay for approval before each House of the Parliament of the United Kingdom a draft of a statutory instrument containing regulations under subsection (4) unless—

- (a) the Scottish Parliament has made a consent decision in relation to the laying of the draft, or
- (b) the 40 day period has ended without the Parliament having made such a decision.

(7) For the purposes of subsection (6) a consent decision is—

- (a) a decision to agree a motion consenting to the laying of the draft,
- (b) a decision not to agree a motion consenting to the laying of the draft, or
- (c) a decision to agree a motion refusing to consent to the laying of the draft;

and a consent decision is made when the Parliament first makes a decision falling within any of paragraphs (a) to (c) (whether or not it subsequently makes another such decision).

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- (8) A Minister of the Crown who is proposing to lay a draft as mentioned in subsection (6) must—
- (a) provide a copy of the draft to the Scottish Ministers, and
 - (b) inform the Presiding Officer that a copy has been so provided.
- (9) See also paragraph 6 of Schedule 7 (duty to make explanatory statement about regulations under subsection (4) including a duty to explain any decision to lay a draft without the consent of the Parliament).
- (10) No regulations may be made under subsection (4) after the end of the period of two years beginning with exit day.
- (11) Subsection (10) does not affect the continuation in force of regulations made under subsection (4) at or before the end of the period mentioned in subsection (10).
- (12) Any regulations under subsection (4) which are in force at the end of the period of five years beginning with the time at which they came into force are revoked in their application to the making, confirming or approving of subordinate legislation after the end of that period.
- (13) Subsections (6) to (11) do not apply in relation to regulations which only relate to a revocation of a specification.
- (14) The restriction in subsection (4) is in addition to any restriction in section 7 of the European Union (Withdrawal) Act 2018 or elsewhere on the power of a member of the Scottish Government to make, confirm or approve any subordinate legislation so far as the legislation modifies retained EU law.
- (15) In this section—
- “the 40 day period” means the period of 40 days beginning with the day on which a copy of the draft instrument is provided to the Scottish Ministers, and, in calculating that period, no account is to be taken of any time during which the Parliament is dissolved or during which it is in recess for more than four days.]

Textual Amendments

- F1** Words in Act substituted (3.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 12(2)(a)**, 44(5) (with s. 12(3)); [S.I. 2012/1710](#), art. 2(f)
- F3** Words in s. 57 heading omitted (31.12.2020) by virtue of [European Union \(Withdrawal\) Act 2018 \(c. 16\)](#), s. 25(4), **Sch. 3 para. 13(2)(a)** (with s. 19, Sch. 8 para. 37); [S.I. 2020/1622](#), reg. 3(1) (with regs. 10, 22)
- F4** Words in s. 57 heading inserted (31.12.2020) by [European Union \(Withdrawal\) Act 2018 \(c. 16\)](#), s. 25(4), **Sch. 3 para. 13(2)(b)** (with s. 19, Sch. 8 para. 37); [S.I. 2020/1622](#), reg. 3(1) (with reg. 10)
- F5** S. 57(1) omitted (31.12.2020) by virtue of [European Union \(Withdrawal\) Act 2018 \(c. 16\)](#), s. 25(4), **Sch. 3 para. 13(2)(c)** (with s. 19, Sch. 8 para. 37); [S.I. 2020/1622](#), reg. 3(1) (with regs. 10, 22)
- F6** Words in s. 57(2) omitted (31.12.2020) by virtue of [European Union \(Withdrawal\) Act 2018 \(c. 16\)](#), s. 25(4), **Sch. 3 para. 1(a)** (with s. 19, Sch. 8 paras. 37, 41, 42); [S.I. 2020/1622](#), reg. 3(1) (with regs. 10, 22)
- F7** Words in s. 57(3) omitted (22.4.2013) by virtue of [Scotland Act 2012 \(c. 11\)](#), **ss. 36(2)**, 44(5); [S.I. 2013/6](#), art. 2(c)
- F8** S. 57(4)-(15) inserted (26.6.2018 for specified purposes, 31.12.2020 in so far as not already in force) by [European Union \(Withdrawal\) Act 2018 \(c. 16\)](#), s. 25(3)(a), **Sch. 3 para. 1(b)** (with s. 19, Sch. 2

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paras. 3(5), 14(5), Sch. 8 para. 37, Sch. 8 para. 41, Sch. 8 para. 42); S.I. 2020/1622, reg. 3(l) (with reg. 10)

- F9** S. 57(5)(b)(i)-(iii) substituted for words (31.1.2020 for specified purposes, 31.12.2020 in so far as not already in force) by European Union (Withdrawal Agreement) Act 2020 (c. 1), s. 42(7), **Sch. 5 para. 19** (with s. 38(3)); S.I. 2020/75, reg. 4(n)(vi); S.I. 2020/1622, reg. 5(j) (with reg. 10)
- F10** Word in s. 57(5)(b)(ii) omitted (31.12.2020) by virtue of European Union (Future Relationship) Act 2020 (c. 29), s. 40(7), **Sch. 6 para. 1**; S.I. 2020/1662, reg. 2(ff)
- F11** S. 57(5)(b)(iv) and preceding word inserted (31.12.2020) by European Union (Future Relationship) Act 2020 (c. 29), s. 40(7), **Sch. 6 para. 1**; S.I. 2020/1662, reg. 2(ff)
- F12** Word in s. 57(5)(b)(iii) omitted (6.5.2021) by virtue of Trade Act 2021 (c. 10), **Sch. 3 para. 1**; S.I. 2021/550, reg. 2(h)
- F13** S. 57(5)(b)(v) and word inserted (6.5.2021) by Trade Act 2021 (c. 10), **Sch. 3 para. 1**; S.I. 2021/550, reg. 2(h)

Modifications etc. (not altering text)

- C10** S. 57(2) restricted (1.3.2019) by European Union (Withdrawal) Act 2018 (c. 16), s. 25(4), Sch. 8 para. 41(6)(9) (with s. 19, Sch. 8 para. 37); S.I. 2019/399, reg. 2
- C11** S. 57(2) excluded (19.5.2020) by European Union (Withdrawal Agreement) Act 2020 (c. 1), s. 42(7), **Sch. 5 para. 64** (with s. 38(3)); S.I. 2020/518, reg. 2(p)(v)
- C12** S. 57(2) restricted (31.12.2020) by European Union (Future Relationship) Act 2020 (c. 29), s. 40(6)(g), **Sch. 6 para. 12**
- C13** S. 57(2) excluded in part (6.5.2021) by Trade Act 2021 (c. 10), **Sch. 3 para. 4**; S.I. 2021/550, reg. 2(h)
- C14** S. 57(4)-(15): power to repeal conferred (4.7.2018) by European Union (Withdrawal) Act 2018 (c. 16), **ss. 12(9)-(11), 25(4)** (with s. 19, Sch. 8 paras. 37, 41); S.I. 2018/808, reg. 3(c)

Commencement Information

- I3** S. 57(1) in force at 1.7.1998, s. 52(2) in force at 6.5.1998, s. 57(3) in force at 20.5.1999 by S.I. 1998/3178, **arts. 2(2), 3**

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 [F¹Scottish Government] 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 [F¹Scottish Government] 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 [F¹Scottish Government] 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,

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the Secretary of State may by order revoke the legislation.

(5) An order under this section must state the reasons for making the order.

Textual Amendments

F1 Words in Act substituted (3.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 12(2)(a)**, 44(5) (with s. 12(3));
[S.I. 2012/1710](#), art. 2(f)

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