

*These notes refer to the Scotland Act 2012 (c.11)
which received Royal Assent on 1st May 2012*

SCOTLAND ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS (AND SCHEDULES)

Part 2: Ministers and Their Powers

Section 15: Power to vary retrospective decisions about non-legislative acts

55. Section 102 of the 1998 Act confers power on a court or tribunal to remove or limit the retrospective effect of its decision, or suspend the effect of its decision, where it has decided that:
- An Act of the Scottish Parliament or any provision of such an Act is not within the legislative competence of the Scottish Parliament; or
 - A member of the Scottish Government does not have the power to make, confirm or approve any subordinate legislation that they have purported to make, confirm or approve.
56. This section provides that this power also extends to any other purported exercise of a function by a member of the Scottish Government where a court or tribunal has determined that such exercise is outside devolved competence. So, for example, a court or tribunal will have the powers specified in section 102 if it determines that the exercise of any function by a member of the Scottish Government was outside devolved competence by virtue of being incompatible with Convention rights or Community law.