

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

SCOTLAND ACT 1998

EXPLANATORY NOTES

POWERS TO MAKE SUBORDINATE LEGISLATION

SECTION 115: Subordinate legislation: procedure

Purpose and Effect

This section makes provision as to the procedure to which subordinate legislation made under the Scotland Act is to be subject in the UK and/or Scottish Parliaments.

General

Most orders under the Act are subject to some form of procedure in the Westminster Parliament only. Others, such as those relating to the disqualification from membership of the Scottish Parliament, and the procedures for Royal Assent to Acts of the Scottish Parliament, are subject to procedure in the Scottish Parliament only. Some orders are subject to procedure in both the Westminster and Scottish Parliaments. This is used where both Parliaments have an interest, for example in the modification of the list of reserved matters, the executive devolution of functions to the Scottish Ministers and in the adaptation of cross-border public authorities.

Some orders are expressly made subject to affirmative resolution procedure, requiring the Parliament(s) to take an active part in the making of the order. This is the case for orders which are considered to be most important, such as the provisions relating to elections, modification of the list of reserved matters; the adaptation of Ministerial functions (e.g. in relation to fisheries), and the determination of the boundary of Scottish waters. With the exception of minor orders such as orders appointing regional returning officers (section 12(5)) which require no Parliamentary procedure, all other orders are subject to negative resolution procedure and can be annulled in pursuance of a resolution of Parliament, unless for the reasons explained in the following paragraphs they are dealt with as an affirmative instrument.

Details of provisions

Subsection (1) introduces Schedule 7, which determines the Parliamentary procedure to which subordinate legislation under the Act is to be subject. See the note on Schedule 7 for further information.

Subsections (2) and (3) deal with the transitional circumstances where, by virtue of Schedule 7, a power to make subordinate legislation is subject to procedure in the Scottish Parliament but the power needs to be exercised before the Scottish Parliament itself is in existence. For example, the power in section 15 to specify office-holders who are disqualified from membership of the Scottish Parliament is to be subject to Type D procedure (laid in draft and approved by the Scottish Parliament), but a list of office-holders is clearly required for the first elections to the Parliament. Subsections (2) and (3) provide that such powers may nevertheless be brought into force at any time after the passing of the Scotland Act (although this may be before the Parliament is in existence) and that subordinate legislation under the power may be made subject to a different type

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of procedure for the period until the principal appointed day (1 July 1999), with this procedure being specified by subordinate legislation under section 129(1).

This power was exercised in making the Scotland Act 1998 (Transitory and Transitional Provisions) (Subordinate Legislation under the Act) Order 1998 ([S.I. 1998/3216](#)), which adjusted the procedures for orders under sections 15, 38 and 97 and paragraphs 2 and 7 of Schedule 2. In the case of orders under section 15, which were mentioned above, the first order was made subject to Type B procedure (laid in draft and approved by both Houses of the UK Parliament).

As from the principal appointed day (1st July 1999), the parliamentary procedure for all orders is as set out in Schedule 7, and the powers in subsections (2) and (3) are effectively spent.