

*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 118: Subordinate instruments

Purpose and Effect

This section modifies references in any pre-commencement enactment to the procedure in the Westminster Parliament to which certain subordinate legislation is subject so that it is subject to procedures in the Scottish Parliament rather than the Westminster Parliament.

It applies to subordinate legislation made, confirmed or approved by a member of the Scottish Executive (or certain other persons) within devolved competence. It also applies to subordinate legislation made by a Scottish public authority with mixed functions or no reserved functions (whether or not within devolved competence) or by certain other persons within devolved competence, such as Her Majesty by Order in Council.

General

This section forms part of a set of sections concerned with modifying pre-commencement enactments following devolution.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CR	12-May-98	244
LR	2-Nov-98	11

Details of Provisions

Subsection (1) provides that subsection (2) applies in relation to the exercise within devolved competence by a member of the Scottish Executive of a function to make, confirm or approve subordinate legislation. In other words, it applies to powers to make subordinate legislation which have transferred to the Scottish Ministers under section 53.

Subsection (2) states that, if any pre-commencement enactment makes provision for a statutory instrument or a draft of an instrument to be laid before either or both Houses of Parliament or for the annulment or approval by resolution of such an instrument, then, in relation to subordinate legislation made, confirmed or approved by a member of the Scottish Executive within devolved competence, any references to either or both Houses of Parliament shall instead be a reference to the Scottish Parliament.

Thus where a function of making regulations has transferred to the Scottish Ministers under section 53, and those regulations would previously have been subject to

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annulment in the UK Parliament, regulations made by the Scottish Ministers would be subject to annulment in the Scottish Parliament.

Subsection (3) makes similar provision in relation to functions of making, confirming or approving subordinate legislation exercisable by a Scottish public authority with mixed functions or no reserved functions.

A Scottish public authority with mixed functions or no reserved functions is defined in section 126(1) and paragraphs 1 and 2 of Part III of Schedule 5 (e.g. local authorities or the Registrar General for Births, Deaths and Marriages for Scotland).

Unlike subsections (2) and (4), this is not restricted to the exercise of functions within devolved competence so, for example, regulations made by the Registrar General which relate to a reserved matter such as abortion will be subject to procedure in the Scottish Parliament.

Subsection (4) makes similar provision to subsection (2) in relation to functions of making, confirming or approving subordinate legislation exercisable by a person other than a Minister of the Crown or those persons dealt within subsections (2) and (3) within devolved competence e.g. Her Majesty in Council or the Privy Council.

Subsection (5) ensures that if a pre-commencement enactment applies the Statutory Instruments Act 1946 to statutory instruments made by a person other than a Minister of the Crown as if they were made by a Minister of the Crown then the 1946 Act will apply in cases to which subsection (3) or (4) applies as if the subordinate legislation were made by Scottish Ministers.

Where the subordinate legislation which is referred to in this section is made by statutory instrument, the Scotland Act 1998 (Transitory and Transitional Provisions)(Statutory Instruments) Order 1999 ([S.I. 1999/1096](#)) includes them in the definition of Scottish Statutory Instrument, disapplies the Statutory Instruments Act 1946 to S.S.I.s and makes its own provision. The Standing Orders of the Parliament make provision for the way in which the Parliament and its committees exercise these parliamentary procedures in relation to S.S.I.s and scrutinise them.