

*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

### SCHEDULES

SCHEDULE 7: Procedure for Subordinate Legislation

#### Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	8-Oct-98	624
LR	28-Oct-98	2039
Stage	Date	Column
LR	2-Nov-98	16
LR	2-Nov-98	122
LR	2-Nov-98	123
LR	2-Nov-98	125
L3	9-Nov-98	542
LCCCLA	17-Nov-98	1201

#### Details of Provisions

The Table in paragraph 1 sets out the type of parliamentary procedure to which subordinate legislation under the various powers provided by the Scotland Act is to be subject. For each power specified in the left-hand column, the appropriate type of procedure is normally that in the corresponding entry in the right-hand column. The parliamentary procedure is designated by a letter from A to K, with these being explained in paragraph 2. This is subject to the special cases set out in paragraphs 3 and 4, where the procedure is altered in certain circumstances. Two other special cases are provided for in the notes at the foot of the table.

Where a power to make subordinate legislation does not appear in the table (e.g. the power in section 103(3)(c)), such subordinate legislation is not subject to any parliamentary procedure.

Paragraph 2 explains each of the types of procedure ("Type A" to "Type K"). These differ as to:

- (a) whether the instrument is to be subject to procedure in:
  - the Houses of Commons and Lords only (Types B, C, G and I);
  - the House of Commons only (Type E and K);
  - the Scottish Parliament only (Types D and J); or

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both Parliaments (Types A, F and H).

(b) whether the instrument is to be:

laid in draft and approved (Types A to E);

subject to annulment (unless laid in draft and approved) (Types F and G); or

subject to annulment (Types H to K).

In relation to the United Kingdom Parliament, references to orders being laid in draft and approved or being subject to annulment are to be interpreted with reference to the Statutory Instruments Act 1946 and the standing orders of each House. In relation to the Scottish Parliament, such references are to be interpreted with reference to the Scotland Act 1998 (Transitory and Transitional Provisions)(Statutory Instruments) Order 1999 ([S.I. 1999/1096](#)) and to the Standing Orders of the Parliament.

Paragraph 3 alters the procedure to which an instrument would be subject where it contains provisions which "add to, replace or omit any part of the text of an Act". In any such case, the type of procedure is changed to one which requires the instrument to be laid in draft and approved by the Parliament or Parliaments concerned. Thus, if an order under paragraph 7 of Schedule 2 (normally subject to Type H - annulment by either Parliament) were to amend primary legislation, then it would instead be subject to Type A (laid in draft and approved by both Parliaments). This paragraph gives effect to the report of the Delegated Powers and Deregulation Committee of the House of Lords (24th report 1997/98) which recommended that any "Henry VIII power" used to amend primary legislation should be subject to affirmative resolution procedure.

Paragraph 4 provides that, where the general power to make transitory or transitional provision conferred by section 129(1) is used to appropriate sums from the Scottish Consolidated Fund or for sums to be appropriated in aid, then the instrument is to be laid in draft and approved by the Scottish Parliament. The use of the power in this way is also constrained by section 112(2), which requires it to be exercised by Her Majesty in Council. The use of section 129(1) in this way is necessary to put in place the transitional financial arrangements for the year 1999-2000. Note that the procedure for such orders was further amended by article 5 of the Scotland Act 1998 (Transitory and Transitional Provision) (Subordinate Legislation under the Act) Order 1998 ([S.I. 1998/3216](#)) for the period up to the principal appointed day.

Paragraph 5 provides that subordinate legislation made under an open power (or by Order in Council under section 89 or 90) which revokes, amends or re-enacts subordinate legislation under that power may be subject to a different procedure from the original subordinate legislation. For example, the original subordinate legislation may be made by Order in Council subject to affirmative resolution procedure, but this may be revoked by an order subject to annulment.