

INTERPRETATION AND LEGISLATIVE REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT - BACKGROUND

Part 2: Scottish Statutory Instruments

Section 27 - Definition of “Scottish statutory instrument”

57. This section contains the definition of SSI. It provides that the document by which certain statutory functions are exercised will, by default, be an SSI. Subject to the exceptions in subsection (3), those functions are:
- any function of the Scottish Ministers, the First Minister or the Lord Advocate of making, confirming or approving orders, regulations and rules;
 - any function of Her Majesty of making an Order in Council which is conferred by an ASP, a Scottish instrument (as defined by section 1(4)) or any other enactment provided the function is exercised within devolved competence (as defined by section 54 of the Scotland Act 1998);
 - any function of the High Court of Justiciary of making an act of adjournal; and
 - any function of the Court of Session of making an act of sederunt.
58. This provision ensures that those functions which are most commonly exercised by SSI will automatically be caught by the definition, without the enabling enactment having to provide that the function is to be exercised by SSI. In other cases it may be less obvious that the function should be exercisable by SSI, particularly where the instrument made in exercise of the function is not of a legislative nature. The Act allows for this by providing that the document by which certain statutory functions are exercised will only be an SSI if so provided in the enabling (or any other) enactment. Those functions are:
- any function of the Scottish Ministers, the First Minister or the Lord Advocate to make, confirm or approve subordinate legislation other than orders, regulations and rules (such as directions, schemes, bye-laws and warrants); and
 - any function of any other person of making, confirming or approving subordinate legislation.
59. Subsection (5) repeals section 10 of the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1966 \(c.19\)](#). That section provided for the functions of making acts of adjournal and acts of sederunt, absent any provision to the contrary, to be exercisable by SI. That section is no longer required as section 27(2)(d) and (e) of the Act provide for the functions of making acts of adjournal and acts of sederunt to be exercisable by SSI.
60. Subsection (6) introduces schedule 2. Schedule 2 (discussed in more detail below) modifies enactments that predate the Act to reflect the provision made in section 27 for classifying documents as SSIs.