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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order modifies certain enactments in consequence of the Interpretation and Legislative Reform (Scotland) Act 2010 (“the 2010 Act”).

The following enactments are amended by articles 3, 4 and 10 (respectively) to ensure that subordinate legislation made under them is subject to the negative procedure as defined by section 28 of the 2010 Act:—

- (a) section 40 of the Sheriff Courts (Scotland) Act 1907;
- (b) section 12 of the Public Records (Scotland) Act 1937; and
- (c) section 12E of the Sheriff Courts (Scotland) Act 1971.

Prior to schedule 3 to the 2010 Act coming into force on 6th April 2011, subordinate legislation made under the Harbours Act 1964, the Roads (Scotland) Act 1984 and the Transport and Works (Scotland) Act 2007 (collectively referred to in this Note as “the Transport Acts”) was, in certain circumstances, subject to the made affirmative procedure. Under that procedure the subordinate legislation could be made, but could not come into force unless it was laid before and approved by a resolution of the Scottish Parliament. With effect from 6th April 2011, paragraph 6 of schedule 3 to the 2010 Act modified the Transport Acts so that subordinate legislation made on or after that date which would formerly have been subject to the made affirmative procedure is instead subject to the affirmative procedure as defined by section 29 of the 2010 Act. Subordinate legislation subject to the affirmative procedure cannot be made unless a draft of the Scottish statutory instrument containing it is laid before, and approved by resolution of, the Scottish Parliament. In consequence of the change from made affirmative procedure to the affirmative procedure (as defined by section 29 of the 2010 Act), references in the Transport Acts to subordinate legislation that has been made should, in the circumstances where the affirmative procedure applies, be references to subordinate legislation contained in a draft Scottish statutory instrument. To that end, articles 5 to 7 modify the Harbours Act 1964, articles 12 to 15 modify the Roads (Scotland) Act 1984 and articles 18 to 22 modify the Transport and Works (Scotland) Act 2007.

Any subordinate legislation that was made under one of the Transport Acts before 6th April 2011 and was, at that time, subject to the made affirmative procedure remains subject to that procedure by virtue of article 5 of [S.S.I. 2011/88](#). Accordingly, article 8 provides that the modifications made to the Harbours Act 1964 by articles 5 to 7 of this Order do not apply in relation to subordinate legislation made under that Act before 6th April 2011. Article 16 makes equivalent provision in relation to the modifications this Order makes to the Roads (Scotland) Act 1984.

As enacted section 54A(5) of the Harbours Act 1964 applied in relation to the revocation, amendment or re-enactment of any subordinate legislation that was, by virtue of that section, subject to the made affirmative procedure. Article 6(d) amends section 54A(5) so that it applies instead in relation to the revocation, amendment or re-enactment of subordinate legislation subject to the affirmative procedure by virtue of that section as amended by this Order. Article 9 makes transitional provision so that despite its amendment by article 6(d), section 54A(5) applies in relation to the revocation, amendment or re-enactment of subordinate legislation that was made before 6th April 2011 and was, by virtue of that section, subject to the made affirmative procedure. Article 17 makes equivalent provision in relation to the Roads (Scotland) Act 1984.

Article 11 modifies the European Communities Act 1972 to replace a reference to article 11 of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999,

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which ceased to have effect on 6th April 2011 by virtue of section 55(4) of the 2010 Act, with a reference to section 28 of the 2010 Act.