



# Scotland Act 1998

## 1998 CHAPTER 46

### PART VI

#### SUPPLEMENTARY

##### *General modification of enactments*

#### 117 Ministers of the Crown.

So far as may be necessary for the purpose or in consequence of the exercise of a function by a member of the [<sup>F1</sup>Scottish Government] within devolved competence, any pre-commencement enactment or prerogative instrument, and any other instrument or document, shall be read as if references to a Minister of the Crown (however described) were or included references to the Scottish Ministers.

#### Textual Amendments

- F1** Words in Act substituted (3.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 12(2)(a)**, 44(5) (with s. 12(3)); [S.I. 2012/1710](#), art. 2(f)

#### Modifications etc. (not altering text)

- C1** S. 117 modified (15.12.1999) by [S.I. 1999/3321](#), **art. 3(2)(a)**  
S. 117 applied (with modifications) (1.7.1999) by [S.I. 1999/1750](#), arts. 1(1), 6(2)(a), **Sch. 5**; [S.I. 1998/3178](#), **art. 3**  
S. 117 applied (15.12.2000) by [S.I. 2000/3253](#), **art. 5(1)** (with art. 6)  
S. 117 applied (16.6.2000) by [S.I. 2000/1563](#), **art. 7(1)** (with art. 9)  
S. 117 applied (with modifications) (15.3.2001) by [S.I. 2001/954](#), **arts. 1(1)**, 3(1)(3)  
S. 117 applied (with modifications) (1.11.2001) by [S.I. 2001/3504](#), **arts. 1(1)**, 3(1)(3) (with art. 4)
- C2** S. 117 applied (with modifications) (27.6.2002) by [The Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order \(S.I. 2002/1630\)](#), {art. 3(1)(3)}
- C3** S. 117 applied (with modifications) (28.3.2003) by [The Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2003 \(S.I. 2003/415\)](#), arts. 1(1), **4(1)(3)** (with art. 5)

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*Changes to legislation: There are currently no known outstanding effects for the Scotland Act 1998, Cross Heading: General modification of enactments. (See end of Document for details)*

- C4 S. 117 applied (with modifications) (10.10.2003) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2003 (S.I. 2003/2617), arts. 1(1), **5(1)(3)** (with art. 6)
- C5 S. 117 applied (with modifications) (29.7.2004) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2004 (S.I. 2004/2030), arts. 1(1), **6(1)(3)** (with art. 7)
- C6 S. 117 applied (with modifications) (23.3.2005) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849), **art. 5** (with art. 6)
- C7 S. 117 applied (with modifications) (15.2.2006) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2006 (S.I. 2006/304), arts. 1(1), **4** (with art. 5)
- C8 S. 117 applied (with modifications) (13.3.2006) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006 (S.I. 2006/1040), arts. 1(1), **5** (with art. 6)
- C9 S. 117 applied (with modifications) (16.12.2006) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 3) Order 2006 (S.I. 2006/3258), arts. 1(1), **4(1)(3)** (with art. 5)
- C10 S. 117 applied (with modifications) (E.W.S.) (1.10.2007) by The Scotland Act 1998 (Cross-Border Public Authorities) (Traffic Commissioner for the Scottish Traffic Area) Order 2007 (S.I. 2007/2139), **art. 3** (with art. 4)
- C11 S. 117 applied (with modifications) (12.10.2007) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2007 (S.I. 2007/2915), arts. 1(1), **5(1)(3)** (with art. 6)
- C12 S. 117 applied (with modifications) (E.W.S.) (10.7.2008) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2008 (S.I. 2008/1776), arts. 1(1), **3**

## 118 Subordinate instruments.

- (1) Subsection (2) applies in relation to the exercise by a member of the [<sup>F1</sup>Scottish Government] within devolved competence of a function to make, confirm or approve subordinate legislation.
- (2) If a pre-commencement enactment makes provision—
  - (a) for any instrument or the draft of any instrument made in the exercise of such a function to be laid before Parliament or either House of Parliament,
  - (b) for the annulment or approval of any such instrument or draft by or in pursuance of a resolution of either or both Houses of Parliament, or
  - (c) prohibiting the making of such an instrument without that approval,
 the provision shall have effect, so far as it relates to the exercise of the function by a member of the [<sup>F1</sup>Scottish Government] within devolved competence, as if any reference in it to Parliament or either House of Parliament were a reference to the Scottish Parliament.
- (3) Where—
  - (a) a function of making, confirming or approving subordinate legislation conferred by a pre-commencement enactment is exercisable by a Scottish public authority with mixed functions or no reserved functions, and
  - (b) a pre-commencement enactment makes such provision in relation to the exercise of the function as is mentioned in subsection (2),
 the provision shall have effect, so far as it relates to the exercise of the function by that authority, as if any reference in it to Parliament or either House of Parliament were a reference to the Scottish Parliament.
- (4) Where—
  - (a) a function of making, confirming or approving subordinate legislation conferred by a pre-commencement enactment is exercisable within devolved competence by a person other than a Minister of the Crown, a member of the

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[<sup>F1</sup>Scottish Government] or a Scottish public authority with mixed functions or no reserved functions, and

- (b) a pre-commencement enactment makes such provision in relation to the exercise of the function as is mentioned in subsection (2),

the provision shall have effect, so far as it relates to the exercise of the function by that person within devolved competence, as if any reference in it to Parliament or either House of Parliament were a reference to the Scottish Parliament.

- (5) If a pre-commencement enactment applies the <sup>M1</sup>Statutory Instruments Act 1946 as if a function of the kind mentioned in subsection (3) or (4) were exercisable by a Minister of the Crown, that Act shall apply, so far as the function is exercisable as mentioned in paragraph (a) of subsection (3) or (as the case may be) (4), as if the function were exercisable by the Scottish Ministers.

#### Textual Amendments

- F1** Words in Act substituted (3.7.2012) by Scotland Act 2012 (c. 11), ss. 12(2)(a), 44(5) (with s. 12(3)); S.I. 2012/1710, art. 2(f)

#### Modifications etc. (not altering text)

- C13** S. 118 applied (1.7.1999) by S.I. 1999/1747, arts. 1, 4; S.I. 1998/3178, art. 3  
S. 118 modified (15.12.1999) by S.I. 1999/3321, art. 3(2)(a)  
S. 118 applied (with modifications) (1.7.1999) by S.I. 1999/1750, arts. 1(1), 6(2)(a), Sch. 5; S.I. 1998/3178, art. 3  
S. 118 applied (16.6.2000) by S.I. 2000/1563, art. 7(1) (with art. 9)  
S. 118 applied (15.12.2000) by S.I. 2000/3253, art. 5(1) (with art. 6)  
Ss. 118-121 applied (14.12.2000) by S.I. 2000/3251, art. 3 (with art. 4)  
S. 118 applied (with modifications) (1.11.2001) by S.I. 2001/3504, arts. 1(1), 3(1)(3) (with art. 4)
- C14** S. 118 applied (with modifications) (28.3.2003) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2003 (S.I. 2003/415), arts. 1(1), 4(1)(3) (with art. 5)
- C15** S. 118 applied (with modifications) (29.7.2004) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2004 (S.I. 2004/2030), arts. 1(1), 6(1)(3) (with art. 7)
- C16** S. 118 applied (with modifications) (23.3.2005) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849), art. 5 (with art. 6)
- C17** S. 118 applied (with modifications) (15.2.2006) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2006 (S.I. 2006/304), arts. 1(1), 4 (with art. 5)
- C18** S. 118 applied (with modifications) (13.3.2006) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006 (S.I. 2006/1040), arts. 1(1), 5 (with art. 6)
- C19** S. 118 applied (with modifications) (16.12.2006) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 3) Order 2006 (S.I. 2006/3258), arts. 1(1), 4(1)(3) (with art. 5)
- C20** S. 118 applied (with modifications) (E.W.S.) (1.10.2007) by The Scotland Act 1998 (Cross-Border Public Authorities) (Traffic Commissioner for the Scottish Traffic Area) Order 2007 (S.I. 2007/2139), art. 3 (with art. 4)
- C21** S. 118 applied (with modifications) (E.W.S.) (10.7.2008) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2008 (S.I. 2008/1776), arts. 1(1), 3
- C22** S. 118(5) excluded (1.7.1999) by S.I. 1999/1096, arts. 1(b), 3(6); S.I. 1998/3178, art. 3

#### Marginal Citations

- M1** 1946 c. 36.

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## 119 Consolidated Fund etc.

- (1) In this section “Scottish functions” means—
- (a) functions of the Scottish Ministers, the First Minister or the Lord Advocate which are exercisable within devolved competence,
  - (b) functions of any Scottish public authority with mixed functions or no reserved functions.
- (2) Subject to subsections (3) and (5), a provision of a pre-commencement enactment which—
- (a) requires or authorises the payment of any sum out of the Consolidated Fund or money provided by Parliament, or
  - (b) requires or authorises the payment of any sum into the Consolidated Fund,
- shall cease to have effect in relation to any Scottish functions.
- (3) A provision of a pre-commencement enactment which—
- (a) charges any sum on the Consolidated Fund,
  - (b) requires the payment of any sum out of the Consolidated Fund without further appropriation, or
  - (c) requires or authorises the payment of any sum into the Consolidated Fund by a person other than a Minister of the Crown,
- shall have effect in relation to any Scottish functions as if it provided for the sum to be charged on the Scottish Consolidated Fund or required it to be paid out of that Fund without further approval or required or authorised it to be paid into that Fund (as the case may be).
- (4) Subsections (2) and (3) do not apply to the words from the beginning of section 2(3) of the <sup>M2</sup>European Communities Act 1972 (general implementation of Treaties) to “such Community obligation”.
- (5) A provision of a pre-commencement enactment which authorises any sums to be applied as money provided by Parliament instead of being paid into the Consolidated Fund shall have effect in relation to any Scottish functions as if it authorised those sums to be applied as if they had been paid out of the Scottish Consolidated Fund in accordance with rules under section 65(1)(c) instead of being paid into that Fund.
- (6) Where a power to lend money under a pre-commencement enactment is exercisable by the Scottish Ministers, subsection (7) applies to any sums which, for the purpose or as the result of the exercise of the power, would be required (apart from that subsection)
- (a) to be issued by the Treasury out of the National Loans Fund, or
  - (b) to be paid into that Fund.
- (7) Those sums shall instead—
- (a) be paid out of the Scottish Consolidated Fund without further approval, or
  - (b) be paid into that Fund,
- (as the case may be).

### Modifications etc. (not altering text)

- C23** S. 119 applied (1.7.1999) by S.I. 1999/1747, arts. 1, 4; S.I. 1998/3178, art. 3  
S. 119 modified (15.12.1999) by S.I. 1999/3321, art. 3(2)(b)

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- S. 119 applied (with modifications) (1.7.1999) by S.I. 1999/1750, arts. 1(1), 6(2)(b), **Sch. 5**; S.I. 1998/3178, **art. 3**
- Ss. 119-121 applied (16.6.2000) by S.I. 2000/1563, **art. 7(2)** (with art. 9)
- Ss. 118-121 applied (14.12.2000) by S.I. 2000/3251, **art. 3** (with art. 4)
- Ss. 119-121 applied (15.12.2000) by S.I. 2000/3253, **art. 5(2)** (with art. 6)
- S. 119 applied (with modifications) (15.3.2001) by S.I. 2001/954, **arts. 1(1), 3(2)(3)**
- S. 119 applied (with modifications) (1.11.2001) by S.I. 2001/3504, **arts. 1(1), 3(2)(3)** (with art. 4)
- C24** S. 119 applied (with modifications) (27.6.2002) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2002 (S.I. 2002/1630), **art. 3(2)(3)**
- C25** S. 119 applied (with modifications) (28.3.2003) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2003 (S.I. 2003/415), arts. 1(1), **4(2)(3)** (with art. 5)
- C26** S. 119 applied (with modifications) (10.10.2003) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2003 (S.I. 2003/2617), arts. 1(1), **5(2)(3)** (with art. 6)
- C27** S. 119 applied (with modifications) (29.7.2004) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2004 (S.I. 2004/2030), arts. 1(1), **6(2)(3)** (with art. 7)
- C28** S. 119 applied (with modifications) (16.12.2006) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 3) Order 2006 (S.I. 2006/3258), arts. 1(1), **4(2)(3)** (with art. 5)
- C29** S. 119 applied (with modifications) (12.10.2007) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2007 (S.I. 2007/2915), arts. 1(1), **5(2)(3)** (with art. 6)

#### Marginal Citations

**M2** 1972 c. 68.

## 120 Accounts and audit.

A provision of a pre-commencement enactment which—

- (a) requires any account to be examined, certified and reported on by, or to be open to the inspection of, the Comptroller and Auditor General, or
- (b) requires him to have access to any other document for carrying out any such examination,

shall have effect in relation to any Scottish functions (within the meaning of section 119) as if the references to the Comptroller and Auditor General were to the Auditor General for Scotland.

#### Modifications etc. (not altering text)

- C30** S. 120 applied (1.7.1999) by S.I. 1999/1747, **arts. 1, 4**; S.I. 1998/3178, **art. 3**
- S. 120 modified (15.12.1999) by S.I. 1999/3321, **art. 3(2)(b)**
- S. 120 applied (with modifications) (1.7.1999) by S.I. 1999/1750, arts. 1(1), 6(2)(b), **Sch. 5**; S.I. 1998/3178, **art. 3**
- S. 120 excluded (1.4.1999) (*temp.* until 1.4.2000) by S.I. 1999/441, **arts. 1(5), 23**
- Ss. 119-121 applied (16.6.2000) by S.I. 2000/1563, **art. 7(2)** (with art. 9)
- Ss. 118-121 applied (14.12.2000) by S.I. 2000/3251, **art. 3** (with art. 4)
- Ss. 119-121 applied (15.12.2000) by S.I. 2000/3253, **art. 5(2)** (with art. 6)
- C31** S. 120 applied (with modifications) (28.3.2003) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2003 (S.I. 2003/415), arts. 1(1), **4(2)(3)** (with art. 5)

## 121 Requirements to lay reports etc. before Parliament.

- (1) This section applies where—

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- (a) a pre-commencement enactment makes provision for any report to be laid before Parliament or either House of Parliament, and
  - (b) the report concerns Scottish functions.
- (2) If the report only concerns Scottish functions, it shall be laid instead before the Scottish Parliament.
- (3) In any other case, it shall be laid before the Scottish Parliament as well as before Parliament or (as the case may be) either House of Parliament.
- (4) In this section—
- “report” includes accounts and any statement,
  - “Scottish functions” has the same meaning as in section 119.

#### Modifications etc. (not altering text)

- C32** S. 121 applied (1.7.1999) by [S.I. 1999/1747, arts. 1, 4](#); [S.I. 1998/3178, art. 3](#)  
S. 121 applied (with modifications) (1.7.1999) by [S.I. 1999/1750, arts. 1\(1\), 6\(2\)\(b\)](#); [S.I. 1998/3178, art. 3](#)  
S. 121 excluded (1.7.1999) (temp.) by [S.I. 1999/441, arts. 1\(5\), 24](#)  
Ss. 119-121 applied (16.6.2000) by [S.I. 2000/1563, art. 7\(2\)](#) (with [art. 9](#))  
Ss. 118-121 applied (14.12.2000) by [S.I. 2000/3251, art. 3](#) (with [art. 4](#))  
Ss. 119-121 applied (15.12.2000) by [S.I. 2000/3253, art. 5\(2\)](#) (with [art. 6](#))
- C33** S. 121 applied (with modifications) (27.6.2002) by [The Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2002 \(S.I. 2002/1630\), art. 3\(2\)\(3\)](#)

## 122 Crown land.

- (1) In any provision about the application of any pre-commencement enactment to Crown land—
- (a) references to a Minister of the Crown or government department shall be read as including the Scottish Ministers and the Lord Advocate, and
  - (b) references to a Minister of the Crown or government department having the management of the land shall be read as including any member of the <sup>[F1]</sup>Scottish Government] having the management of the land.
- (2) In this section, “Crown land” has the meaning given by section 242 of the <sup>M3</sup>Town and Country Planning (Scotland) Act 1997.

#### Textual Amendments

- F1** Words in Act substituted (3.7.2012) by [Scotland Act 2012 \(c. 11\), ss. 12\(2\)\(a\), 44\(5\)](#) (with [s. 12\(3\)](#)); [S.I. 2012/1710, art. 2\(f\)](#)

#### Marginal Citations

- M3** 1997 c. 8.

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## 123 Stamp duty.

In section 55 of the <sup>M4</sup>Finance Act 1987 (Crown exemption from stamp duty) references to a Minister of the Crown shall be read as including the Scottish Ministers, the Lord Advocate and the Parliamentary corporation.

### Commencement Information

**II** S. 123 in force for certain purposes at 6.5.1999 and at 20.5.1999 for all remaining purposes by [S.I. 1999/3178, art. 2\(2\)](#)

### Marginal Citations

**M4** 1987 c. 16.

## 124 Modification of sections 94 and 117 to 122.

- (1) Subordinate legislation may provide for any provision of sections 94 and 117 to 122 not to apply, or to apply with modifications, in such cases as the person making the legislation considers appropriate.
- (2) Subordinate legislation made by Her Majesty in Council or a Minister of the Crown under this Act may, in connection with any other provision made by the legislation, also provide for any provision of sections 94 and 117 to 122 not to apply, or to apply with modifications.

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**Changes to legislation:**

There are currently no known outstanding effects for the Scotland Act 1998, Cross Heading:  
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