

*These notes relate to the Convention Rights Proceedings (Amendment) (Scotland) Act 2009 (asp 11) which received Royal Assent on 23 July 2009*

# **CONVENTION RIGHTS PROCEEDINGS (AMENDMENT) (SCOTLAND) ACT 2009**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **SUMMARY AND BACKGROUND TO THE ACT**

3. The Convention Rights Proceedings (Amendment) (Scotland) Act 2009 (asp 11) amends the Scotland Act 1998 to create a statutory time limit for bringing proceedings under that Act alleging a breach of Convention rights by the Scottish Ministers or a member of the Scottish Executive. The Act ensures that the same time limit applies regardless of whether proceedings are brought under the Scotland Act or the Human Rights Act 1998.
4. In terms of section 57(2) of the Scotland Act a member of the Scottish Executive has no power to act incompatibly with any of the Convention rights. A person whose Convention rights have been breached by a member of the Scottish Executive may bring proceedings under the Scotland Act in respect of that breach. Section 126(1) of the Scotland Act defines “the Convention rights” to have the same meaning as that term has in the Human Rights Act.
5. **Section 1** of the Human Rights Act defines “the Convention rights” as certain rights and fundamental freedoms, derived from the European Convention on Human Rights, set out in Schedule 1 to that Act. Section 6 of the Human Rights Act makes it unlawful for a public authority to act incompatibly with the Convention rights. The victim of an unlawful act in terms of section 6 may bring proceedings under section 7(1)(a). However, unless a stricter time limit is imposed by the procedure for bringing those proceedings, section 7(5) requires proceedings be brought within one year from the date of the unlawful act complained of. That time limit may be extended on equitable grounds at the discretion of the court or tribunal hearing the case.
6. The members of the Scottish Executive, individually and collectively, fall within the definition of a “public authority” for the purposes of the Human Rights Act. Proceedings may therefore be brought against them in respect of any alleged breach of Convention rights under that Act but subject to the one year time limit. Proceedings may also be brought against them in respect of any alleged breach of Convention rights under the Scotland Act. Proceedings brought under the latter Act are not subject to the one year time limit which would apply were they brought under the Human Rights Act (*Somerville v. Scottish Ministers 2008 S.C. (H.L.) 45*).

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7. The Act amends the Scotland Act, by inserting provisions to create a time limit for Convention rights proceedings brought under it. The amendment applies to all proceedings brought on the ground, whether in whole or in part, that an act of the Scottish Ministers or a member of the Scottish Executive is incompatible with the Convention rights. The time limit the Act creates is substantially the same as the time limit for proceedings brought under the Human Rights Act. It applies to proceedings brought on or after 2 November 2009. It does not apply to proceedings brought by the Lord Advocate, the Advocate General for Scotland, the Attorney General, the Attorney General for Northern Ireland or the Advocate General for Northern Ireland (“the Law Officers”).

## COMMENTARY ON SECTIONS

### *Section 1 – Limitation period for certain Convention rights proceedings*

8. This section amends section 100 of the Scotland Act by inserting new subsections (3A) to (3E). Subsection (3A) explains what proceedings the time limit applies to. Subsection (3B) defines the time limit.
9. Subsection (3C) provides that the time limit does not apply to proceedings brought by the Law Officers. Subsection (3D) defines the word “act”. In terms of subsection (3A), the time limit will apply to proceedings premised on the ground that an “act” is incompatible with the Convention rights. As it is defined by subsection (3D) “act” does not include making legislation, therefore the time limit will not apply to proceedings challenging the Convention compatibility of subordinate legislation made by the Scottish Government. Subsection (3E) puts beyond doubt that the time limit will apply to proceedings brought on or after 2 November 2009, even if the act complained of took place before that date.

### *Section 2 – Commencement and short title*

10. This section provides that the Act will come into force on the day after it receives Royal Assent and for its short title.

## PARLIAMENTARY HISTORY

11. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which proceedings at that Stage took place and the references to the Official Report of those proceedings.

<b>Proceedings and Reports</b>	<b>Reference</b>
<b>Introduction</b>	
15 June 2009	<i>SP Bill 28</i> <a href="http://www.scottish.parliament.uk/s3/bills/28-ConRights/b28s3-introd.pdf">http://www.scottish.parliament.uk/s3/bills/28-ConRights/b28s3-introd.pdf</a>
<b>Motion to treat as an Emergency Bill</b>	
Consideration by the Parliament	18 June 2009, cols 18517-18518 <a href="http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0618-02.htm#Col18517">http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0618-02.htm#Col18517</a>
<b>Stage 1</b>	
Consideration by the Parliament	18 June 2009, cols 18519-18539

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	<a href="http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0618-02.htm#Col18519">http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0618-02.htm#Col18519</a>
<b>Stage 2</b>	
Committee of the Whole Parliament	18 June 2009, col 18608 <a href="http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0618-02.htm#Col18608">http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0618-02.htm#Col18608</a>
<b>Stage 3</b>	
Consideration by the Parliament	18 June, 2009, cols 18609-18616 <a href="http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0618-02.htm#Col18609">http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0618-02.htm#Col18609</a>
<b>Royal Assent</b>	23 July 2009