

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

SCOTLAND ACT 1998

EXPLANATORY NOTES

COMMENTARY

SECTION 31: Scrutiny of Bills before introduction

Purpose and Effect

This section deals with the responsibility of the Scottish Executive to scrutinise Bills which they introduce to ensure they are within the competence of the Parliament and to make a statement to that effect. It also requires the Presiding Officer to take a view on the legislative competence of a Bill and to state his decision.

General

This section forms part of the set dealing with the legislative competence of the Parliament.

An Executive Bill (that is, a Bill introduced by a member of the Scottish Executive) cannot be introduced without a statement by the member in charge of it that it is, in his view, within the legislative competence of the Parliament. However, this does not apply to a “Member’s Bill” or a “Private Bill”.

All Bills require a statement from the Presiding Officer on or before the introduction of the Bill as to whether or not in his view the provisions of the Bill would be within the legislative competence of the Parliament and to state his decision. The Standing Orders also require the Presiding Officer, if he considers that the provisions of the Bill would not be within legislative competence, to state what those provisions are and the reasons for his view. There is a similar provision in the case of Private Bills in Standing Orders.

The fact that the Presiding Officer considers that a Bill, or any provision in it, would not be within the legislative competence of the Parliament does not prevent the introduction of the Bill. He does not therefore exercise a veto over the introduction of a Bill. However, any such view is something which will be taken into account by the Scottish Executive and the Parliament during the passage of the Bill and, if it is passed, by the UK and Scottish Law Officers in determining whether to refer the Bill to the Judicial Committee of the Privy Council under section 33.

Amendments which are made to a Bill during its passage do not require any similar statements. Furthermore, the question whether an amendment is within the legislative competence of the Parliament is not a matter which is taken into account in determining its admissibility. The Standing Orders of the Parliament make further provision in this regard.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	28-Jul-98	1349

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<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	28-Jul-98	1354
LC	28-Jul-98	1358
LR	28-Oct-98	1960
LR	28-Oct-98	1961
L3	9-Nov-98	532

Details of Provisions

Subsection (1) requires a member of the Scottish Executive in charge of a Bill to make a statement on or before introduction of the Bill stating that in his view the provisions of the Bill would be within the legislative competence of the Parliament. This only applies to an Executive Bill, that is a Bill introduced by a member of the Executive. The Standing Orders of the Parliament require that this statement forms part of the documents which are required to accompany a Bill on its introduction, known as the “accompanying documents”.

Subsection (2) requires the Presiding Officer to decide on or before the introduction of a Bill whether or not in his view the provisions of the Bill would be within the legislative competence of the Parliament and to state his decision. This statement is required in the case of every Bill which is introduced into the Parliament. The Standing Orders provide that this statement must form part of the “accompanying documents” for a Bill.

The Standing Orders also require the Presiding Officer, if he considers that the provisions of the Bill would not be within legislative competence, to state what those provisions are and the reasons for his view. There is a similar provision in the case of Private Bills.

Subsection (3) provides that the form of any statement and the manner in which it is to be made should be determined under standing orders and that standing orders may provide for any statement to be published.