

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

## **SCOTLAND ACT 1998**

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### **EXPLANATORY NOTES**

#### **COMMENTARY**

SECTION 34: ECJ references

#### **Purpose and Effect**

This section makes provision in a case where a reference has been made to the Judicial Committee under section 33 and the Judicial Committee has, in turn, made a reference for a preliminary ruling to the European Court of Justice (ECJ). In such a case, if the Scottish Parliament resolves to reconsider the Bill, the Law Officer making the reference to the Judicial Committee is required to request the withdrawal of the reference to the Judicial Committee.

#### **General**

The kind of circumstance in which a reference to the Judicial Committee might lead to a reference for a preliminary ruling to the ECJ is where there is some dispute as to whether a provision in the Bill is incompatible with EC law. If there is a question as to what is the EC law, this question should be referred to the ECJ for a preliminary ruling. However it will be for the Judicial Committee to determine whether the provision in the Bill is incompatible with whatever the ECJ hold the law to be.

If such a reference is made to the ECJ, this could lead to a considerable delay before the Bill might be able to be enacted and commenced. This could be unfortunate if the provision in question is not an essential part of the Bill or could easily be amended or deleted so as to remove the problem. This section is intended to enable the reference to the Judicial Committee to be withdrawn if the Parliament resolves that it is prepared to reconsider the Bill. If the Judicial Committee agree that the reference can be withdrawn, this does not mean that the Presiding Officer can then submit the Bill for Royal Assent in its original state: section 32(3)(b) prevents this.

However, if the Parliament amends the Bill on reconsideration, the Law Officers have a further period of 4 weeks in which to refer the Bill again to the Judicial Committee. The Secretary of State also has a further period of 4 weeks in which to decide whether to make an order under section 35.

This is the only circumstance in which the Parliament is able to reconsider a Bill after it has been referred to the Judicial Committee and before the Judicial Committee have reached a decision on the reference.

Procedures for reconsideration of Bills are provided for the Standing Orders of the Parliament.

#### **Parliamentary Consideration**

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	28-Jul-98	1398

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<i>Stage</i>	<i>Date</i>	<i>Column</i>
LR	28-Oct-98	2006

### **Details of Provisions**

Subsection (1) provides that this section applies where a reference has been made to the Judicial Committee by a Law Officer under section 33 and the Judicial Committee has, in turn, made a reference for a preliminary ruling and neither of those references has been decided or otherwise disposed of. A reference for a preliminary ruling is defined in subsection (3).

Subsection (2) provides that, if the Parliament resolves to reconsider the Bill, the Presiding Officer shall notify the Advocate General, the Lord Advocate and the Attorney General of that fact and the Law Officer who made the reference to the Judicial Committee is required to request the withdrawal of the reference. There is no obligation upon the Judicial Committee to accede to such a request.

Subsection (3) defines a “reference for a preliminary ruling” as meaning a reference of a question to the ECJ under Article 177 of the Treaty establishing the European Community, Article 41 of the Treaty establishing the European Coal and Steel Community or Article 150 of the Treaty establishing the European Atomic Energy Community.