

Draft Order in Council laid before Parliament and the Scottish Parliament under paragraphs 1 and 2 of Schedule 7 to the Scotland Act 1998, for approval by resolution of each House of Parliament and of the Scottish Parliament

DRAFT STATUTORY INSTRUMENTS

2009 No. (S.)

**CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND**

The Scotland Act 1998 (Modification of Schedule 4) Order 2009

Made - - - - 2009

Coming into force in accordance with article 1(1)

At the Court at Buckingham Palace, the day of 2009

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 115 of, and paragraphs 1 and 2 of Schedule 7 to, the Scotland Act 1998⁽¹⁾, a draft of this Order has been—

- (a) laid before, and approved by resolution of, each House of Parliament; and
- (b) laid before, and approved by resolution of, the Scottish Parliament.

Accordingly, Her Majesty, in exercise of the powers conferred on Her by section 30(2) of that Act, is pleased, by and with the advice of Her Privy Council, to order, as follows:

Citation, commencement and extent

1.—(1) This Order may be cited as the Scotland Act 1998 (Modification of Schedule 4) Order 2009 and shall come into force on the day after the day on which it is made.

(2) This Order extends to Scotland only.

Limitation period for certain human rights proceedings brought by virtue of the Scotland Act 1998

2. In Schedule 4 to the Scotland Act 1998 (enactments etc. protected from modification), after paragraph 4 insert—

(1) 1998 c. 46.

“4A.—(1) Paragraph 4 does not apply to prevent an Act of the Scottish Parliament modifying this Act to make provision requiring any proceedings to which this paragraph applies to be brought before the end of the relevant period.

(2) This paragraph applies to any proceedings against the Scottish Ministers or a member of the Scottish Executive that may, by virtue of this Act, be brought in any court or tribunal by any person (other than a person mentioned in sub-paragraph (3)) on the ground that an act of the Scottish Ministers or of a member of the Scottish Executive is incompatible with the Convention rights.

(3) This paragraph does not apply to proceedings brought by the Lord Advocate, the Advocate General, the Attorney General, the Attorney General for Northern Ireland or the Advocate General for Northern Ireland.

(4) In sub-paragraph (1) “relevant period” in relation to any proceedings to which this paragraph applies means—

- (a) the period of one year beginning with the date on which the act complained of took place; or
- (b) such longer period as the court or tribunal considers equitable having regard to all the circumstances.

(5) An Act of the Scottish Parliament may provide for the provision mentioned in sub-paragraph (1) to have effect subject to any rule imposing a stricter time limit in relation to the procedure in question.

(6) In this paragraph “act” does not include the making of any legislation but it does include any other act or failure to act (including a failure to make legislation).”.

Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 4 to the Scotland Act 1998 (c. 46) (“the 1998 Act”) by adding a new paragraph 4A. Schedule 4 is concerned with laws, including the 1998 Act, that cannot be modified by the Scottish Parliament.

The new paragraph 4A enables the Scottish Parliament to modify the 1998 Act so as to provide that certain proceedings have to be brought before the end of a limitation period. The proceedings are those brought (other than by specified Law Officers) in any court or tribunal against the Scottish Ministers or a member of the Scottish Executive, by virtue of the 1998 Act, on the ground that an act of the Scottish Ministers or of a member of the Scottish Executive is incompatible with “the Convention rights” (a term which under the 1998 Act has the same meaning as in the Human Rights Act 1998 (c. 42)). The term “act” includes all acts and omissions other than the making of legislation.

The amendment enables the Scottish Parliament to provide that the period within which such proceedings must be brought is the period of one year beginning with the date on which the act complained of took place or such longer period as the court or tribunal considers equitable having regard to all the circumstances. It also enables the Scottish Parliament to legislate so that the provision it makes may have effect subject to any stricter time limit applicable to the procedure in question.