

*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**

##### **Part V: Miscellaneous and General**

##### **SECTION 103: The Judicial Committee**

##### **Purpose and Effect**

This section provides for the membership of the Judicial Committee of the Privy Council in proceedings under the Scotland Act and enables certain powers to be conferred on the Judicial Committee in relation to such proceedings. It also provides that decisions of the Judicial Committee in these proceedings will be binding on all other courts.

##### **General**

The White Paper on Scotland's Parliament proposed in Chapter 4 that the Judicial Committee of the Privy Council should become the ultimate court of last resort on matters concerning the competence of the Parliament and the Executive.

This is reflected in:

- (a) section 33 which provides for scrutiny of Bills by the Judicial Committee following a reference by the Advocate General, Lord Advocate or the Attorney General within four weeks after its passing by the Parliament; and
- (b) Schedule 6 to the Act which defines devolution issues and provides for special procedures for proceedings raising such issues, including references of, or appeals upon, such issues to the Judicial Committee.

Section 103 provides for the membership of the Judicial Committee in proceedings under the Act and for the conferring of certain powers on the Judicial Committee in relation to such proceedings.

##### **Parliamentary Consideration**

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CR	12-May-98	204
LC	8-Oct-98	614
LC	8-Oct-98	620
LR	2-Nov-98	108
L3	9-Nov-98	592

## **Details of Provisions**

Subsection (1) provides that any decision of the Judicial Committee in proceedings under this Act shall be stated in open court. It also states that any such decision will be binding in all legal proceedings except proceedings before the Committee itself. This effectively means that the Judicial Committee's decisions will be binding on all other courts and tribunals but not binding on itself.

Subsection (2) provides for the membership of the Judicial Committee in proceedings under the Act.

Membership of the Judicial Committee normally includes the Lords of Appeal in Ordinary (Law Lords), the Lord Chancellor, the Lord Justices of Appeal and members of the Privy Council who have been judges in the higher courts of Commonwealth states.

Paragraph 4.17 of the White Paper proposed that membership of the Judicial Committee for the purposes of the Scotland Act should be restricted to the Law Lords and that at least 5 Law Lords should sit. However, this section extends membership to include those members of the Judicial Committee who are either serving or retired Law Lords or who hold or have held "high judicial office" as defined in section 25 of the Appellate Jurisdiction Act 1876. This will include serving and retired Lord Chancellor, judges of the Court of Session and judges of the English ( or Northern Irish) High Court or Court of Appeal.

Section 5 of the Appellate Jurisdiction Act 1887 is disapplied because this extends the definition of "high judicial office" to include members of the Judicial Committee (and Lords of Appeal in Ordinary). This would, therefore, undermine the intended restriction of membership for Scotland Act purposes.

Subsection (3) provides that Her Majesty may by Order in Council, in relation to proceedings under this Act, confer such powers upon the Judicial Committee as She considers necessary or expedient, make rules for regulating the procedure before the Judicial Committee and apply the Judicial Committee Act 1833 with exceptions or modifications.

This power has been exercised in making the Judicial Committee (Devolution Issues) Rules 1999 (S.I. 1999/665) and the Judicial Committee (Powers in Devolution Cases) Order 1999 (S.I. 1999/1320).

Subsection (4) defines "proceedings under this Act" which is used throughout this section. Effectively, the provisions of section 103 apply to cases where the competence of a Bill, or any provision of a Bill, have been referred to the Judicial Committee for decision (section 33) or where the Judicial Committee is considering a "devolution issue" as defined in Schedule 6.