



Northern Ireland Act 1998

1998 CHAPTER 47

PART VIII

MISCELLANEOUS

Judicial scrutiny

79 Devolution issues

Schedule 10 (which makes provision in relation to devolution issues) shall have effect.

80 Legislative power to remedy ultra vires acts

- (1) The Secretary of State may by order make such provision as he considers necessary or expedient in consequence of—
 - (a) any provision of an Act of the Assembly which is not, or may not be, within the legislative competence of the Assembly; or
 - (b) any purported exercise by a Minister or Northern Ireland department of his or its functions which is not, or may not be, a valid exercise of those functions.
- (2) An order under this section may—
 - (a) make provision having retrospective effect;
 - (b) make consequential or supplementary provision, including provision amending or repealing any Northern Ireland legislation, or any instrument made under such legislation;
 - (c) make transitional or saving provision.

81 Powers of courts or tribunals to vary retrospective decisions

- (1) This section applies where any court or tribunal decides that—
 - (a) any provision of an Act of the Assembly is not within the legislative competence of the Assembly; or

Status: This is the original version (as it was originally enacted).

- (b) a Minister or Northern Ireland department does not have the power to make, confirm or approve a provision of subordinate legislation that he or it has purported to make, confirm or approve.
- (2) The court or tribunal may make an order—
- (a) removing or limiting any retrospective effect of the decision; or
 - (b) suspending the effect of the decision for any period and on any conditions to allow the defect to be corrected.
- (3) In deciding whether to make an order under this section, the court or tribunal shall (among other things) have regard to the extent to which persons who are not parties to the proceedings would otherwise be adversely affected.
- (4) Where a court or tribunal is considering whether to make an order under this section, it shall order notice of that fact to be given to—
- (a) the Attorney General for Northern Ireland; and
 - (b) where the decision mentioned in subsection (1) relates to a devolution issue (within the meaning of Schedule 10), the appropriate authority,
- unless the person to whom the notice would be given is a party to the proceedings.
- (5) A person to whom notice is given under subsection (4) or, where such notice is given to the First Minister and the deputy First Minister, those Ministers acting jointly may take part as a party in the proceedings so far as they relate to the making of the order.
- (6) Paragraphs 37 and 38 of Schedule 10 apply with necessary modifications for the purposes of subsections (4) and (5) as they apply for the purposes of that Schedule.
- (7) In this section “the appropriate authority” means—
- (a) in relation to proceedings in Northern Ireland, the First Minister and the deputy First Minister;
 - (b) in relation to proceedings in England and Wales, the Attorney General;
 - (c) in relation to proceedings in Scotland, the Lord Advocate and the Advocate General for Scotland.

82 The Judicial Committee

- (1) Any decision of the Judicial Committee in proceedings under this Act shall be stated in open court and shall be binding in all legal proceedings (other than proceedings before the Committee).
- (2) No member of the Judicial Committee shall sit and act as a member of the Committee in proceedings under this Act unless he holds or has held—
- (a) the office of a Lord of Appeal in Ordinary; or
 - (b) high judicial office as defined in section 25 of the Appellate Jurisdiction Act 1876 (ignoring for this purpose section 5 of the Appellate Jurisdiction Act 1887).
- (3) Her Majesty may by Order in Council—
- (a) confer on the Judicial Committee in relation to proceedings under this Act such powers as Her Majesty considers necessary or expedient;
 - (b) apply the Judicial Committee Act 1833 in relation to proceedings under this Act with exceptions or modifications;

- (c) make rules for regulating the procedure in relation to proceedings under this Act before the Judicial Committee.
- (4) A statutory instrument containing an Order in Council under subsection (3)(a) or (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In this section “proceedings under this Act” means proceedings on a question referred to the Judicial Committee under section 11 or proceedings under Schedule 10.

83 Interpretation of Acts of the Assembly etc

- (1) This section applies where—
 - (a) any provision of an Act of the Assembly, or of a Bill for such an Act, could be read either—
 - (i) in such a way as to be within the legislative competence of the Assembly; or
 - (ii) in such a way as to be outside that competence; or
 - (b) any provision of subordinate legislation made, confirmed or approved, or purporting to be made, confirmed or approved, by a Northern Ireland authority could be read either—
 - (i) in such a way as not to be invalid by reason of section 24 or, as the case may be, section 76; or
 - (ii) in such a way as to be invalid by reason of that section.
- (2) The provision shall be read in the way which makes it within that competence or, as the case may be, does not make it invalid by reason of that section, and shall have effect accordingly.
- (3) In this section “Northern Ireland authority” means a Minister, a Northern Ireland department or a public authority (within the meaning of section 76) carrying out functions relating to Northern Ireland.