

INTERPRETATION AND LEGISLATIVE REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT - BACKGROUND

Part 1: Interpretation

Section 1 - Application of Part 1

11. Subsection (1) provides that Part 1 applies to ASPs which receive Royal Assent on or after 4 June 2010 (the day on which Part 1 came into force); to “Scottish instruments” which are made on or after that day (regardless of when the ASP was passed); and to the Act itself. The Part is therefore forward-looking.
12. A “Scottish instrument” is defined in subsection (4) as being an instrument of a type listed in subsection (5) which is made under an ASP (whenever passed) or under both an ASP and an Act of Parliament (again, whenever passed). The instruments listed in subsection (5) are: Orders in Council; orders; regulations; rules (including acts of sederunt and acts of adjournal and other rules of court); schemes; warrants; and byelaws.
13. Subsection (8) provides the Scottish Ministers with a power to modify (which includes amend or repeal – definition in schedule 1) by order the definition of “Scottish instrument” in subsection (5). Any such order is subject to the affirmative procedure.

Existing ASPs and instruments

14. [Part 1](#) does not apply to existing ASPs and instruments made under them in the period since devolution and up to 4 June 2010. The Interpretation Order continues to apply in relation to ASPs and instruments made under them before that day. This is given effect to by the making of saving provision in section 55(2).

Acts of Parliament and instruments made under them and hybrid instruments

15. [Part 1](#) also does not apply to Acts of Parliament and instruments made under them, even although they may relate to devolved matters. The principal reason for that is that it would create uncertainty and confusion for the reader if some provisions in Acts of Parliament fell to be interpreted in accordance with [Part 1](#) while other provisions fell to be interpreted in accordance with the 1978 Act. [Part 1](#) does, however, apply to an instrument which is made under powers contained both in an Act of Parliament and in an ASP (a “hybrid” instrument). This ensures that the same interpretative provisions apply to the whole of that hybrid instrument.

Disapplication

16. Subsection (2) contains a general qualification of subsection (1) so that a provision of [Part 1](#) does not apply in two cases. The first (which would be the case in any event) is where there is express provision in an ASP or Scottish instrument that differs from the provision in [Part 1](#). The second is where there is no express provision but the context

*These notes relate to the Interpretation and Legislative Reform (Scotland)
Act 2010 (asp 10) which received Royal Assent on 3 June 2010*

of the provision being construed means that the provisions of Part 1 cannot have been intended to apply.

17. There is one important exception to the second case. It relates to the applicability of the legislation to the Crown in section 20 and is explained in more detail in the commentary on that section.

Application of Part to provisions of ASPs and instruments

18. Subsections (6) and (7) make the Part applicable to a provision of an ASP or instrument in the same way as the Part applies to the whole ASP or instrument.