



# Convention Rights (Compliance) (Scotland) Act 2001

2001 asp 7

## PART 6

### POWER TO MAKE REMEDIAL ORDERS

#### 12 Remedial orders

- (1) In the circumstances set out in subsection (2) below, the Scottish Ministers may, by order (in this Part of this Act, a “remedial order”), make such provision as they consider necessary or expedient in consequence of—
- (a) an Act of Parliament or an Act of the Scottish Parliament;
  - (b) any subordinate legislation made under any such Act;
  - (c) any provision of any such Act or subordinate legislation; or
  - (d) any exercise or purported exercise of functions by a member of the Scottish Executive,
- which is or may be incompatible with any of the Convention rights.
- (2) Those circumstances are that the Scottish Ministers are of the opinion that there are compelling reasons for making a remedial order as distinct from taking any other action.
- (3) A remedial order may—
- (a) make different provision for different purposes;
  - (b) relate to—
    - (i) all cases to which the power to make it extends;
    - (ii) those cases subject to specified exceptions; or
    - (iii) any particular case or class of case;
  - (c) make—
    - (i) any supplementary, incidental or consequential provision; or
    - (ii) any transitory, transitional or saving provision,which the Scottish Ministers consider necessary or expedient;

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- (d) modify any enactment or prerogative instrument or any other instrument or document relating to the exercise or purported exercise of functions by the Scottish Ministers;
  - (e) make provision (other than provision creating criminal offences or increasing the punishment for criminal offences) which has retrospective effect;
  - (f) provide for the delegation of functions.
- (4) A remedial order shall not, however, create any criminal offence punishable—
- (a) on summary conviction, with imprisonment for a period exceeding three months or with a fine exceeding the amount specified as level 5 on the standard scale;
  - (b) on conviction on indictment, with a period of imprisonment exceeding two years.
- (5) The conferring by subsection (1) above of the power to make remedial orders does not prejudice the extent of any other power.

### **13 Procedure for remedial orders: general**

- (1) A remedial order shall be made by statutory instrument.
- (2) No remedial order shall be made unless laid in draft before and approved by resolution of the Scottish Parliament.
- (3) Before laying a draft remedial order for the purposes of subsection (2) above, the Scottish Ministers shall—
  - (a) lay a copy of the proposed draft order, together with a statement of their reasons for proposing to make the order, before the Scottish Parliament;
  - (b) give such public notice of the contents of the proposed draft order as they consider appropriate and invite persons wishing to make observations on the draft order to do so, in writing, within the period of 60 days beginning with the day on which that public notice was given or the day on which the draft order was laid under this subsection, whichever is earlier, or, if both those actions occurred on the same day, that day;
  - (c) have regard to any written observations submitted within that period.
- (4) When laying a draft remedial order for the purposes of subsection (2) above, the Scottish Ministers shall lay before the Scottish Parliament a statement—
  - (a) summarising all the observations to which they had to have regard under subsection (3)(c) above; and
  - (b) specifying the changes (if any) which they have made in the draft order and the reasons for them.
- (5) In reckoning, for the purposes of subsection (3)(b) above, any period of 60 days no account shall be taken of any time during which the Scottish Parliament is dissolved or is in recess for more than four days.

### **14 Procedure for remedial orders: urgent cases**

- (1) Where it appears to the Scottish Ministers that, for reasons of urgency, it is necessary to make a remedial order without following the procedure under section 13(2) to (4) above, they may do so.

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- (2) After so making a remedial order, the Scottish Ministers shall forthwith—
  - (a) give such public notice of the contents of the order as they consider appropriate and invite persons wishing to make observations on the order to do so, in writing, within the period of 60 days beginning with the day on which it was made;
  - (b) lay the order, together with a statement of their reasons for having made it, before the Scottish Parliament.
- (3) The Scottish Ministers shall have regard to any written observations submitted within the period mentioned in subsection (2)(a) above.
- (4) As soon as practicable after the end of that period, the Scottish Ministers shall lay before the Scottish Parliament a statement—
  - (a) summarising all the observations to which they had to have regard under subsection (3) above; and
  - (b) specifying the modifications (if any) which they consider it appropriate to make to the remedial order.
- (5) If modifications have been specified under subsection (4)(b) above, the Scottish Ministers shall—
  - (a) make a remedial order by virtue of this subsection giving effect to those modifications and replacing the remedial order made under subsection (1) above; and
  - (b) lay the remedial order made by virtue of this subsection before the Scottish Parliament,or (where the modification specified consists only of the proposed revocation of the remedial order), by order, simply revoke the remedial order made under subsection (1) above.
- (6) If, at the end of the period of 120 days beginning with the day on which a remedial order was made under subsection (1) above, the Scottish Parliament has not, by resolution, approved the order or any remedial order made by virtue of subsection (5) above replacing it, then the remedial order or, as the case may be the replacement remedial order ceases to have effect (but without that affecting anything done under that order or the power to make a fresh remedial order, whether under the procedure set out in section 13 above or this section).
- (7) Subsection (6) above has no effect where the Scottish Ministers have, before the end of the period referred to in that subsection, simply revoked the remedial order made under subsection (1) above.
- (8) An order made under subsection (5) above simply revoking a remedial order made under subsection (1) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (9) In reckoning, for the purposes of subsections (2)(a), (6) and (7) above, any period of 60 or 120 days, no account shall be taken of any time during which the Scottish Parliament is dissolved or is in recess for more than four days.

**Changes to legislation:**

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