



# Scotland Act 1998

## 1998 CHAPTER 46

### PART V

#### MISCELLANEOUS AND GENERAL

##### *Juridical*

#### **98 Devolution issues.**

Schedule 6 (which makes provision in relation to devolution issues) shall have effect.

#### **99 Rights and liabilities of the Crown in different capacities.**

- (1) Rights and liabilities may arise between the Crown in right of Her Majesty's Government in the United Kingdom and the Crown in right of the Scottish Administration by virtue of a contract, by operation of law or by virtue of an enactment as they may arise between subjects.
- (2) Property and liabilities may be transferred between the Crown in one of those capacities and the Crown in the other capacity as they may be transferred between subjects; and they may together create, vary or extinguish any property or liability as subjects may.
- (3) Proceedings in respect of—
  - (a) any property or liabilities to which the Crown in one of those capacities is entitled or subject under subsection (1) or (2), or
  - (b) the exercise of, or failure to exercise, any function exercisable by an office-holder of the Crown in one of those capacities,may be instituted by the Crown in either capacity; and the Crown in the other capacity may be a separate party in the proceedings.
- (4) This section applies to a unilateral obligation as it applies to a contract.
- (5) In this section—

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“office-holder”, in relation to the Crown in right of Her Majesty’s Government in the United Kingdom, means any Minister of the Crown or other office-holder under the Crown in that capacity and, in relation to the Crown in right of the Scottish Administration, means any office-holder in the Scottish Administration,

“subject” means a person not acting on behalf of the Crown.

**100 Human rights.**

- (1) This Act does not enable a person—
  - (a) to bring any proceedings in a court or tribunal on the ground that an act is incompatible with the Convention rights, or
  - (b) to rely on any of the Convention rights in any such proceedings,
 unless he would be a victim for the purposes of Article 34 of the Convention (within the meaning of the <sup>M1</sup>Human Rights Act 1998) if proceedings in respect of the act were brought in the European Court of Human Rights.

- (2) Subsection (1) does not apply to the Lord Advocate, the Advocate General, the Attorney General [<sup>F1</sup>, the Advocate General for Northern Ireland] or the Attorney General for Northern Ireland.

- (3) This Act does not enable a court or tribunal to award any damages in respect of an act which is incompatible with any of the Convention rights which it could not award if section 8(3) and (4) of the Human Rights Act 1998 applied.

[<sup>F2</sup>(3A) Subsection (3B) applies to any proceedings brought by virtue of this Act against the Scottish Ministers or a member of the Scottish Government in a court or tribunal on the ground that an act of the Scottish Ministers or a member of the Scottish Government is incompatible with the Convention rights.

- (3B) Proceedings to which this subsection applies must be brought before the end of—
  - (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,

but that is subject to any rule imposing a stricter time limit in relation to the procedure in question.

- (3C) Subsection (3B) 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.

- (3D) In subsections (3A) and (3B) “ 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).

- (3E) In subsection (3B) “ rule ” has the same meaning as it has in section 7(5) of the Human Rights Act 1998. ]

<sup>F3</sup>(...) .....

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<sup>F3</sup>(...) .....

- (4) <sup>F4</sup>... [<sup>F5</sup>Subject to subsection (3D),]in this section “act” means—
- (a) making any legislation,
  - (b) any other act or failure to act, if it is the act or failure of a member of the [<sup>F6</sup>Scottish Government].

#### Textual Amendments

- F1** Words in s. 100(2) inserted (12.4.2010) by Justice (Northern Ireland) Act 2002 (c. 26), ss. 28, 87, Sch. 7 para. 7; S.R. 2010/113, art. 2, Sch. para. 19(a)
- F2** S. 100(3A)-(3E) inserted (3.7.2012) by Scotland Act 2012 (c. 11), ss. 14(6), 44(5) (with s. 14(8)); S.I. 2012/1710, art. 2(g)
- F3** S. 100(3A)-(3E) omitted (3.7.2012) by virtue of Scotland Act 2012 (c. 11), ss. 14(1)(a), 44(5) (with s. 14(5)); S.I. 2012/1710, art. 2(g)
- F4** Words in s. 100(4) omitted (3.7.2012) by virtue of Scotland Act 2012 (c. 11), ss. 14(1)(b), 44(5) (with s. 14(5)); S.I. 2012/1710, art. 2(g)
- F5** Words in s. 100(4) inserted (3.7.2012) by Scotland Act 2012 (c. 11), ss. 14(7), 44(5) (with s. 14(8)); S.I. 2012/1710, art. 2(g)
- F6** Words in Act substituted (3.7.2012) by Scotland Act 2012 (c. 11), ss. 12(2)(a), 44(5) (with s. 12(3)); S.I. 2012/1710, art. 2(f)

#### Marginal Citations

- M1** 1998 c. 42.

### 101 Interpretation of Acts of the Scottish Parliament etc.

- (1) This section applies to—
- (a) any provision of an Act of the Scottish Parliament, or of a Bill for such an Act, and
  - (b) any provision of subordinate legislation made, confirmed or approved, or purporting to be made, confirmed or approved, by a member of the [<sup>F6</sup>Scottish Government],
- which could be read in such a way as to be outside competence.
- (2) Such a provision is to be read as narrowly as is required for it to be within competence, if such a reading is possible, and is to have effect accordingly.
- (3) In this section “competence”—
- (a) in relation to an Act of the Scottish Parliament, or a Bill for such an Act, means the legislative competence of the Parliament, and
  - (b) in relation to subordinate legislation, means the powers conferred by virtue of this Act.

#### Textual Amendments

- F6** Words in Act substituted (3.7.2012) by Scotland Act 2012 (c. 11), ss. 12(2)(a), 44(5) (with s. 12(3)); S.I. 2012/1710, art. 2(f)

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## 102 Powers of courts or tribunals to vary retrospective decisions.

- (1) This section applies where any court or tribunal decides that—
- (a) an Act of the Scottish Parliament or any provision of such an Act is not within the legislative competence of the Parliament, or
  - (b) a member of the [<sup>F6</sup>Scottish Government] does not have the power to make, confirm or approve a provision of subordinate legislation that he has purported to make, confirm or approve [<sup>F7</sup>, or
  - (c) any other purported exercise of a function by a member of the Scottish Government was outside devolved competence.]
- (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 intimation of that fact to be given to—
- (a) the Lord Advocate, and
  - (b) the appropriate law officer, where the decision mentioned in subsection (1) relates to a devolution issue (within the meaning of Schedule 6), [<sup>F8</sup>or to a compatibility issue,]
- unless the person to whom the intimation would be given is a party to the proceedings.
- (5) A person to whom intimation is given under subsection (4) may take part as a party in the proceedings so far as they relate to the making of the order.
- [<sup>F9</sup>(5A) Where the decision mentioned in subsection (1) is a decision of the Supreme Court on a compatibility issue, the power to make an order under this section is exercisable by the High Court of Justiciary instead of the Supreme Court.]
- (6) Paragraphs 36 and 37 of Schedule 6 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—
- [<sup>F10</sup> “ compatibility issue ” has the meaning given by section 288ZA of the Criminal Procedure (Scotland) Act 1995, ]
- “intimation” includes notice,
- “the appropriate law officer” means—
- (a) in relation to proceedings in Scotland, the Advocate General,
  - (b) in relation to proceedings in England and Wales, the Attorney General,
  - (c) in relation to proceedings in Northern Ireland, the [<sup>F11</sup>Advocate General for Northern Ireland].

### Textual Amendments

- F6** Words in Act substituted (3.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 12(2)(a)**, 44(5) (with s. 12(3)); [S.I. 2012/1710](#), art. 2(f)

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- F7** S. 102(1)(c) and words added (3.7.2012) by Scotland Act 2012 (c. 11), **ss. 15**, 44(5); S.I. 2012/1710, art. 2(h)
- F8** Words in s. 102(4)(b) inserted (22.4.2013) by Scotland Act 2012 (c. 11), **ss. 36(3)(a)**, 44(5); S.I. 2013/6, art. 2(c)
- F9** S. 102(5A) inserted (22.4.2013) by Scotland Act 2012 (c. 11), **ss. 36(3)(b)**, 44(5); S.I. 2013/6, art. 2(c)
- F10** Words in s. 102(7) inserted (22.4.2013) by Scotland Act 2012 (c. 11), **ss. 36(3)(c)**, 44(5); S.I. 2013/6, art. 2(c)
- F11** Words in s. 102(7) substituted (12.4.2010) by Justice (Northern Ireland) Act 2002 (c. 26), ss. 28, 87, **Sch. 7 para. 10**; S.R. 2010/113, **art. 2**, Sch. para. 19(b)

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**Modifications etc. (not altering text)**

- C1** S. 102 amended (6.5.1999) by S.I. 1999/1347, **rule 8(1)(a)**

### **103 The Judicial Committee.**

**F12** .....

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**Textual Amendments**

- F12** S. 103 repealed (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 146, 148(1), Sch. 9 para. 101, **Sch. 18 Pt. 5**; S.I. 2009/1604, **art. 2**

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