

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

SCOTLAND ACT 1998

EXPLANATORY NOTES

COMMENTARY

Part V: Miscellaneous and General

SECTION 100: Human rights

Purpose and Effect

The purpose of this section is to ensure that, so far as possible, there is compatibility between the Scotland Act and the Human Rights Act 1998 with regard to who would have title and interest to bring proceedings on the ground that an act of a member of the Scottish Executive is incompatible with the Convention rights and the amount of damages which may be awarded if such an act is incompatible.

General

The Scotland Act has various devices which ensure that a member of the Scottish Executive would be acting *ultra vires* if he made any subordinate legislation or did any other act which is incompatible with any of the Convention rights - see, for example, section 57(2). The question whether an act by a member of the Scottish Executive is incompatible with Convention rights is a devolution issue and proceedings raising such questions attract the special procedures set out in Schedule 6.

This section provides that the only persons, apart from the Law Officers, who can bring proceedings on the ground that an act of a member of the Scottish Executive is incompatible with Convention rights or rely on Convention rights in proceedings are victims for the purposes of Article 34 of the Convention. This is similar to what is provided by section 7(1) of the Human Rights Act 1998. Article 34 requires applications to the European Court of Human Rights to be from "any person, non-governmental organisation or groups of individuals claiming to be a victim of a violation of a Convention right".

This section also restricts the amount of damages which a court or tribunal may award in respect of such an act which is incompatible with Convention rights to the damages which could be awarded if section 8(3) and (4) of the Human Rights Act applied. Section 8(3) provides, in effect, that no award of damages should be made unless, taking account of all the circumstances of the case, the court is satisfied that "the award is necessary to afford just satisfaction to the person in whose favour it is made". Section 8(4) provides that, in determining whether to award damages or the amount of the award, the court must take into account the principles applied by the European Court of Human Rights under Article 41 of the Convention.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	6-Oct-98	427

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<i>Stage</i>	<i>Date</i>	<i>Column</i>
LR	2-Nov-98	77
L3	9-Nov-98	592

Details of Provisions

Subsection (1) provides that the Scotland Act does not enable a person to bring proceedings in a court or tribunal on the grounds that an act is incompatible with the Convention rights or to rely on Convention rights in such proceedings unless he would be a “victim” for the purposes of Article 34 of the Convention (within the meaning of the Human Rights Act 1998) if proceedings in respect of the act were brought in the European Court of Human Rights.

Subsection (2) provides that subsection (1) does not apply to the Law Officers (the Lord Advocate, the Advocate General, the Attorney General or the Attorney General for Northern Ireland). They will be able to bring such proceedings even although they are not victims.

Subsection (3) provides that the Scotland 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.

Subsection (4) defines act for the purposes of this section. “Act” means (a) making any legislation and (b) any other act, or failure to act, of a member of the Scottish Executive.