



# Scotland Act 1998

## 1998 CHAPTER 46

### PART I

#### THE SCOTTISH PARLIAMENT

##### *Legislation*

#### **28 Acts of the Scottish Parliament**

- (1) Subject to section 29, the Parliament may make laws, to be known as Acts of the Scottish Parliament.
- (2) Proposed Acts of the Scottish Parliament shall be known as Bills; and a Bill shall become an Act of the Scottish Parliament when it has been passed by the Parliament and has received Royal Assent.
- (3) A Bill receives Royal Assent at the beginning of the day on which Letters Patent under the Scottish Seal signed with Her Majesty's own hand signifying Her Assent are recorded in the Register of the Great Seal.
- (4) The date of Royal Assent shall be written on the Act of the Scottish Parliament by the Clerk, and shall form part of the Act.
- (5) The validity of an Act of the Scottish Parliament is not affected by any invalidity in the proceedings of the Parliament leading to its enactment.
- (6) Every Act of the Scottish Parliament shall be judicially noticed.
- (7) This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland.

#### **29 Legislative competence**

- (1) An Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament.

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- (2) A provision is outside that competence so far as any of the following paragraphs apply—
- (a) it would form part of the law of a country or territory other than Scotland, or confer or remove functions exercisable otherwise than in or as regards Scotland,
  - (b) it relates to reserved matters,
  - (c) it is in breach of the restrictions in Schedule 4,
  - (d) it is incompatible with any of the Convention rights or with Community law,
  - (e) it would remove the Lord Advocate from his position as head of the systems of criminal prosecution and investigation of deaths in Scotland.
- (3) For the purposes of this section, the question whether a provision of an Act of the Scottish Parliament relates to a reserved matter is to be determined, subject to subsection (4), by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.
- (4) A provision which—
- (a) would otherwise not relate to reserved matters, but
  - (b) makes modifications of Scots private law, or Scots criminal law, as it applies to reserved matters,
- is to be treated as relating to reserved matters unless the purpose of the provision is to make the law in question apply consistently to reserved matters and otherwise.

### **30 Legislative competence: supplementary**

- (1) Schedule 5 (which defines reserved matters) shall have effect.
- (2) Her Majesty may by Order in Council make any modifications of Schedule 4 or 5 which She considers necessary or expedient.
- (3) Her Majesty may by Order in Council specify functions which are to be treated, for such purposes of this Act as may be specified, as being, or as not being, functions which are exercisable in or as regards Scotland.
- (4) An Order in Council under this section may also make such modifications of—
  - (a) any enactment or prerogative instrument (including any enactment comprised in or made under this Act), or
  - (b) any other instrument or document,
 as Her Majesty considers necessary or expedient in connection with other provision made by the Order.

### **31 Scrutiny of Bills before introduction**

- (1) A member of the Scottish Executive in charge of a Bill shall, on or before introduction of the Bill in the Parliament, state that in his view the provisions of the Bill would be within the legislative competence of the Parliament.
- (2) The Presiding Officer shall, on or before the introduction of a Bill in the Parliament, decide whether or not in his view the provisions of the Bill would be within the legislative competence of the Parliament and state his decision.

- (3) The form of any statement, and the manner in which it is to be made, shall be determined under standing orders, and standing orders may provide for any statement to be published.

### **32 Submission of Bills for Royal Assent**

- (1) It is for the Presiding Officer to submit Bills for Royal Assent.
- (2) The Presiding Officer shall not submit a Bill for Royal Assent at any time when—
- (a) the Advocate General, the Lord Advocate or the Attorney General is entitled to make a reference in relation to the Bill under section 33,
  - (b) any such reference has been made but has not been decided or otherwise disposed of by the Judicial Committee, or
  - (c) an order may be made in relation to the Bill under section 35.
- (3) The Presiding Officer shall not submit a Bill in its unamended form for Royal Assent if—
- (a) the Judicial Committee have decided that the Bill or any provision of it would not be within the legislative competence of the Parliament, or
  - (b) a reference made in relation to the Bill under section 33 has been withdrawn following a request for withdrawal of the reference under section 34(2)(b).
- (4) In this Act—
- “Advocate General” means the Advocate General for Scotland,
  - “Judicial Committee” means the Judicial Committee of the Privy Council.

### **33 Scrutiny of Bills by the Judicial Committee**

- (1) The Advocate General, the Lord Advocate or the Attorney General may refer the question of whether a Bill or any provision of a Bill would be within the legislative competence of the Parliament to the Judicial Committee for decision.
- (2) Subject to subsection (3), he may make a reference in relation to a Bill at any time during—
- (a) the period of four weeks beginning with the passing of the Bill, and
  - (b) any period of four weeks beginning with any subsequent approval of the Bill in accordance with standing orders made by virtue of section 36(5).
- (3) He shall not make a reference in relation to a Bill if he has notified the Presiding Officer that he does not intend to make a reference in relation to the Bill, unless the Bill has been approved as mentioned in subsection (2)(b) since the notification.

### **34 ECJ references**

- (1) This section applies where—
- (a) a reference has been made in relation to a Bill under section 33,
  - (b) a reference for a preliminary ruling has been made by the Judicial Committee in connection with that reference, and
  - (c) neither of those references has been decided or otherwise disposed of.
- (2) If the Parliament resolves that it wishes to reconsider the Bill—

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- (a) the Presiding Officer shall notify the Advocate General, the Lord Advocate and the Attorney General of that fact, and
  - (b) the person who made the reference in relation to the Bill under section 33 shall request the withdrawal of the reference.
- (3) In this section “a reference for a preliminary ruling” means a reference of a question to the European Court under Article 177 of the Treaty establishing the European Community, Article 41 of the Treaty establishing the European Coal and Steel Community or Article 150 of the Treaty establishing the European Atomic Energy Community.

### **35 Power to intervene in certain cases**

- (1) If a Bill contains provisions—
- (a) which the Secretary of State has reasonable grounds to believe would be incompatible with any international obligations or the interests of defence or national security, or
  - (b) which make modifications of the law as it applies to reserved matters and which the Secretary of State has reasonable grounds to believe would have an adverse effect on the operation of the law as it applies to reserved matters,
- he may make an order prohibiting the Presiding Officer from submitting the Bill for Royal Assent.
- (2) The order must identify the Bill and the provisions in question and state the reasons for making the order.
- (3) The order may be made at any time during—
- (a) the period of four weeks beginning with the passing of the Bill,
  - (b) any period of four weeks beginning with any subsequent approval of the Bill in accordance with standing orders made by virtue of section 36(5),
  - (c) if a reference is made in relation to the Bill under section 33, the period of four weeks beginning with the reference being decided or otherwise disposed of by the Judicial Committee.
- (4) The Secretary of State shall not make an order in relation to a Bill if he has notified the Presiding Officer that he does not intend to do so, unless the Bill has been approved as mentioned in subsection (3)(b) since the notification.
- (5) An order in force under this section at a time when such approval is given shall cease to have effect.

### **36 Stages of Bills**

- (1) Standing orders shall include provision—
- (a) for general debate on a Bill with an opportunity for members to vote on its general principles,
  - (b) for the consideration of, and an opportunity for members to vote on, the details of a Bill, and
  - (c) for a final stage at which a Bill can be passed or rejected.
- (2) Subsection (1) does not prevent standing orders making provision to enable the Parliament to expedite proceedings in relation to a particular Bill.

- (3) Standing orders may make provision different from that required by subsection (1) for the procedure applicable to Bills of any of the following kinds—
  - (a) Bills which restate the law,
  - (b) Bills which repeal spent enactments,
  - (c) private Bills.
- (4) Standing orders shall provide for an opportunity for the reconsideration of a Bill after its passing if (and only if)—
  - (a) the Judicial Committee decide that the Bill or any provision of it would not be within the legislative competence of the Parliament,
  - (b) a reference made in relation to the Bill under section 33 is withdrawn following a request for withdrawal of the reference under section 34(2)(b), or
  - (c) an order is made in relation to the Bill under section 35.
- (5) Standing orders shall, in particular, ensure that any Bill amended on reconsideration is subject to a final stage at which it can be approved or rejected.
- (6) References in subsection (4), sections 28(2) and 38(1)(a) and paragraph 7 of Schedule 3 to the passing of a Bill shall, in the case of a Bill which has been amended on reconsideration, be read as references to the approval of the Bill.