

CONSTITUTIONAL REFORM ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 Duty to Convene Commission: Special Rules

Jurisdiction, relation to other courts etc

Section 40: Jurisdiction

157. This section makes provision for the jurisdiction of the Supreme Court, which is in essence that of the House of Lords in appellate matters together with the jurisdiction of the Judicial Committee of the Privy Council in relation to devolution issues under the Scotland Act 1998, Government of Wales Act 1998 and Northern Ireland Act 1998.
158. Subsection (1) provides that the Supreme Court is to be, as is the House of Lords, a superior court of record, and accordingly has the inherent powers of such a court.
159. Subsections (2) and (3) reproduce the effect of section 3 of the Appellate Jurisdiction Act 1876, conferring on the Supreme Court the appellate jurisdiction exercised by virtue of that section by the House of Lords. The other appellate jurisdiction of the House of Lords, and the jurisdiction of the Judicial Committee of the Privy Council in relation to devolution issues, are transferred to the Supreme Court by virtue of subsection (4) and Schedule 9 (which is introduced by that subsection).
160. Since the provisions work by transferring the existing jurisdiction, the appeal process (except to the extent that it would be covered by Supreme Court Rules made under section 45) and the types of appeal from each jurisdiction, including leave requirements, and the routes of recourse otherwise, will remain the same as is currently the case for the House of Lords and Judicial Committee of the Privy Council.
161. Subsection (5) makes provision for the Supreme Court to have the power, as does the House of Lords, to determine any questions it deems necessary to determine, for the purposes of doing justice in an appeal to it, under this Act or any other Act.

Section 41: Relation to other courts etc

162. This section makes provision as to the effect of decisions of the Supreme Court as judicial precedents. The essence of the provision is that a decision made by the Supreme Court under particular jurisdiction should have the same effect as a decision of the body in which the jurisdiction is currently vested (whether that is the House of Lords or the Judicial Committee of the Privy Council). So in the case of jurisdiction transferred from the House of Lords, a decision of the Supreme Court on an appeal from one jurisdiction within the United Kingdom will not have effect as a binding precedent in any other such jurisdiction, or in a subsequent appeal before the Supreme Court from another such jurisdiction. In the case of the devolution jurisdiction transferred from the Judicial Committee of the Privy Council, a decision of the Supreme Court will be binding in all legal proceedings except for subsequent proceedings before the Supreme Court itself.

*These notes refer to the Constitutional Reform Act 2005
(c.4) which received Royal Assent on 24 March 2005*

163. Subsection (1) provides that nothing in the provisions of the Act about the Supreme Court is to affect the distinctions between the separate legal systems of the parts of the United Kingdom. This recognises that those legal systems are separate, and that there is a variety of distinctions between them, so that, for example, Scotland differs from Northern Ireland in some ways, and in other ways from England and Wales.
164. Subsection (2) provides that a decision of the Supreme Court on an appeal from a court in one part of the United Kingdom is to be regarded as the decision of a court of that part of the United Kingdom. So, for example, a decision on appeal from the Court of Session would be regarded as a decision of a Scottish court, and would have binding effect in Scottish courts accordingly, but would not have binding effect in English courts (although it might, like the decision of the House of Lords in *Donoghue v. Stevenson*, be found by English courts to be so persuasive an authority as to be readily followed). Subsection (2) does not apply in relation to decisions in devolution proceedings.
165. Subsections (3) and (4) make provision to maintain the status quo in relation to the effect of decisions in devolution proceedings. The status quo is that, by virtue of section 103(1) of the Scotland Act 1998, section 82(1) of the Northern Ireland Act 1998 and paragraph 32 of Schedule 8 to the Government of Wales Act 1998, a decision of the Judicial Committee of the Privy Council in the exercise of its devolution jurisdiction is “binding in all legal proceedings (other than proceedings before the Committee)”.
166. Subsection (3) accordingly provides that a decision of the Supreme Court on a devolution matter will not bind the Court itself when subsequently making a decision on a devolution matter, but will otherwise be “binding in all legal proceedings”, mirroring the wording of section 103(1) of the Scotland Act 1998 and its counterparts.
167. Subsection (4) defines “devolution matter”, by reference not only to those matters which are “devolution issues” in the Scotland Act, Northern Ireland Act and Government of Wales Act, but also to the possibility of a reference to the Court, under the Scotland Act and Northern Ireland Act alone, of the question whether a Bill or part of a Bill of the Scottish Parliament or Northern Ireland Assembly is within the Parliament’s or Assembly’s legislative competence.