

These notes relate to the Convention Rights Proceedings (Amendment) (Scotland) Act 2009 (asp 11) which received Royal Assent on 23 July 2009

CONVENTION RIGHTS PROCEEDINGS (AMENDMENT) (SCOTLAND) ACT 2009

EXPLANATORY NOTES

SUMMARY AND BACKGROUND TO THE ACT

3. The [Convention Rights Proceedings \(Amendment\) \(Scotland\) Act 2009 \(asp 11\)](#) amends the Scotland Act 1998 to create a statutory time limit for bringing proceedings under that Act alleging a breach of Convention rights by the Scottish Ministers or a member of the Scottish Executive. The Act ensures that the same time limit applies regardless of whether proceedings are brought under the Scotland Act or the Human Rights Act 1998.
4. In terms of section 57(2) of the Scotland Act a member of the Scottish Executive has no power to act incompatibly with any of the Convention rights. A person whose Convention rights have been breached by a member of the Scottish Executive may bring proceedings under the Scotland Act in respect of that breach. Section 126(1) of the Scotland Act defines “the Convention rights” to have the same meaning as that term has in the Human Rights Act.
5. Section 1 of the Human Rights Act defines “the Convention rights” as certain rights and fundamental freedoms, derived from the European Convention on Human Rights, set out in Schedule 1 to that Act. Section 6 of the Human Rights Act makes it unlawful for a public authority to act incompatibly with the Convention rights. The victim of an unlawful act in terms of section 6 may bring proceedings under section 7(1)(a). However, unless a stricter time limit is imposed by the procedure for bringing those proceedings, section 7(5) requires proceedings be brought within one year from the date of the unlawful act complained of. That time limit may be extended on equitable grounds at the discretion of the court or tribunal hearing the case.
6. The members of the Scottish Executive, individually and collectively, fall within the definition of a “public authority” for the purposes of the Human Rights Act. Proceedings may therefore be brought against them in respect of any alleged breach of Convention rights under that Act but subject to the one year time limit. Proceedings may also be brought against them in respect of any alleged breach of Convention rights under the Scotland Act. Proceedings brought under the latter Act are not subject to the one year time limit which would apply were they brought under the Human Rights Act (*Somerville v. Scottish Ministers 2008 S.C. (H.L.) 45*).
7. The Act amends the Scotland Act, by inserting provisions to create a time limit for Convention rights proceedings brought under it. The amendment applies to all proceedings brought on the ground, whether in whole or in part, that an act of the Scottish Ministers or a member of the Scottish Executive is incompatible with the Convention rights. The time limit the Act creates is substantially the same as the time limit for proceedings brought under the Human Rights Act. It applies to proceedings brought on or after 2 November 2009. It does not apply to proceedings brought by the Lord Advocate, the Advocate General for Scotland, the Attorney General, the Attorney

*These notes relate to the Convention Rights Proceedings (Amendment)
(Scotland) Act 2009 (asp 11) which received Royal Assent on 23 July 2009*

General for Northern Ireland or the Advocate General for Northern Ireland (“the Law Officers”).