



# Interpretation and Legislative Reform (Scotland) Act 2010

2010 asp 10

## PART 2

### SCOTTISH STATUTORY INSTRUMENTS

#### *Definition*

#### **27 Definition of “Scottish statutory instrument”**

- (1) The document by which a function to which this section applies is exercised is to be known as a “Scottish statutory instrument”.
- (2) This section applies to—
  - (a) a function of the Scottish Ministers, the First Minister or the Lord Advocate of making, confirming or approving an order, regulations or rules under an enactment,
  - (b) a function of the Scottish Ministers, the First Minister or the Lord Advocate of making, confirming or approving other subordinate legislation under an enactment if the enactment conferring the function or any other enactment provides for the function to be exercisable by Scottish statutory instrument,
  - (c) a function of Her Majesty of making an Order in Council by virtue of—
    - (i) an Act of the Scottish Parliament,
    - (ii) a Scottish instrument, or
    - (iii) any other enactment, so far as the function is exercisable within devolved competence,
  - (d) a function of the High Court of Justiciary of making an act of adjournal under an enactment,
  - (e) a function of the Court of Session of making an act of sederunt under an enactment, and
  - (f) a function of any other person of making, confirming or approving subordinate legislation if the enactment conferring the function or any other enactment provides for the function to be exercisable by Scottish statutory instrument.

- (3) Despite subsection (2), this section does not apply to—
- (a) a function falling within subsection (2)(a), (c), (d) or (e) where the enactment conferring the function or any other enactment provides that the function is not to be exercisable by Scottish statutory instrument,
  - (b) a function of agreeing, consenting to or otherwise approving subordinate legislation made by a Minister of the Crown,
  - (c) a function which is exercised jointly with a Minister of the Crown, or
  - (d) a function of making an Order in Council which is, or a draft of which is, to be laid before each House of Parliament as well as the Scottish Parliament.
- (4) The reference in subsection (2)(c)(iii) to a function's being exercisable within devolved competence is to be construed in accordance with section 54 of the Scotland Act 1998 (c. 46).
- (5) Section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 (c. 19) (acts of adjournal and acts of sederunt to be statutory instruments) is repealed.
- (6) Schedule 2 makes transitional and consequential provision.

#### *Parliamentary scrutiny*

### **28 Instruments subject to the negative procedure**

- (1) This section applies where, by virtue of an enactment, devolved subordinate legislation is subject to the negative procedure.
- (2) The Scottish statutory instrument containing the subordinate legislation must be laid before the Scottish Parliament as soon as practicable after the instrument is made (and in any event at least 28 days before the instrument comes into force).
- (3) The Parliament may, before the expiry of the period of 40 days beginning with the date on which the instrument is laid before it, resolve that the instrument be annulled.
- (4) Where the Parliament makes such a resolution in relation to an instrument—
  - (a) so far as the instrument is not in force on the date of the resolution, the instrument is not to come into force after that date (despite any provision in it for its coming into force),
  - (b) so far as the instrument is in force on that date, nothing further is to be done or continued under, or in reliance on, the instrument after that date.
- (5) Where the Parliament makes such a resolution in relation to an instrument which contains an Order in Council or an Order of Council, Her Majesty may by Order in Council revoke the instrument.
- (6) Where the Parliament makes such a resolution in relation to any other instrument, the responsible authority must by order revoke the instrument.
- (7) Any such resolution or revocation does not affect—
  - (a) the validity of anything previously done under the instrument, or
  - (b) the making of a new Scottish statutory instrument.

- (8) In calculating the period of 28 days mentioned in subsection (2), or the period of 40 days mentioned in subsection (3), no account is to be taken of any time during which the Scottish Parliament is dissolved or in recess for more than four days.
- (9) In subsection (6), “responsible authority”, in relation to a Scottish statutory instrument, means—
- (a) the Scottish Ministers in a case where the instrument is made, confirmed or approved by the Scottish Ministers, the First Minister or the Lord Advocate, and
  - (b) in any other case, the person who made, confirmed or approved the instrument.
- (10) An order under subsection (5) or (6) is to be made by Scottish statutory instrument.

## **29 Instruments subject to the affirmative procedure**

- (1) This section applies where, by virtue of an enactment, devolved subordinate legislation is subject to the affirmative procedure.
- (2) The subordinate legislation is not to be made unless a draft of the Scottish statutory instrument containing it is laid before, and approved by resolution of, the Scottish Parliament.
- (3) If the requirements of subsection (2) are not complied with in relation to any subordinate legislation to which this section applies, the purported subordinate legislation has no effect.
- (4) Subsection (3) is without prejudice to section 32(3).

## **30 Other instruments laid before the Parliament**

- (1) This section applies where devolved subordinate legislation is not, by virtue of an enactment, subject to the negative procedure or the affirmative procedure.
- (2) The Scottish statutory instrument containing the subordinate legislation must be laid before the Scottish Parliament as soon as practicable after the legislation is made (and in any event before the legislation is due to come into force).
- (3) References in subsections (1) and (2) to devolved subordinate legislation do not include references to subordinate legislation made under an enactment mentioned in subsection (4).
- (4) Those enactments are—
- (a) the Harbours Act 1964 (c. 40),
  - (b) the Water (Scotland) Act 1980 (c. 45),
  - (c) the Road Traffic Regulation Act 1984 (c. 27),
  - (d) the Roads (Scotland) Act 1984 (c. 54),
  - (e) section 1, 2 or 8 of the Salmon Act 1986 (c. 62),
  - (f) the Natural Heritage (Scotland) Act 1991 (c. 28),
  - (g) section 33, 34 or 35 of the [Salmon and Freshwater Fisheries \(Consolidation\) \(Scotland\) Act 2003 \(asp 15\)](#),
  - (h) article 53 of the Scotland Act 1998 (River Tweed) Order 2006 (S.I.2006/2913),

(i) the [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#).

(5) The Scottish Ministers may by order modify subsection (4).

(6) An order under this section is subject to the affirmative procedure.

### **31 Failure to lay instruments in accordance with section 28(2) or 30(2)**

(1) This section applies where section 28 or 30 applies in relation to devolved subordinate legislation.

(2) Failure to lay the Scottish statutory instrument containing the legislation in accordance with the laying requirements does not affect the validity of the instrument.

(3) Where the instrument is laid before the Scottish Parliament, but not in accordance with the laying requirements, the responsible authority must explain to the Presiding Officer why the laying requirements have not been complied with.

(4) The explanation is to be given in writing as soon as practicable after the instrument is laid before the Parliament.

(5) In this section, “the laying requirements” are—

(a) in the case where section 28 applies, the requirements of subsection (2) of that section,

(b) in the case where section 30 applies, the requirements of subsection (2) of that section.

(6) In subsection (3), “responsible authority”, in relation to a Scottish statutory instrument, means—

(a) the Scottish Ministers in a case where the instrument is—

(i) made, confirmed or approved by the Scottish Ministers, the First Minister or the Lord Advocate,

(ii) an Order in Council, or

(iii) an Order of Council, and

(b) in any other case, the person who made, confirmed or approved the instrument.

### **32 Laying of Scottish statutory instruments before the Scottish Parliament**

(1) This section applies where an enactment authorises or requires the laying of a Scottish statutory instrument, or a draft of such an instrument, before the Scottish Parliament.

(2) Unless the contrary intention appears, the reference to the laying of the instrument, or draft instrument, is to be construed as a reference to the taking of such action as is specified in standing orders of the Parliament as constituting the laying of a Scottish statutory instrument, or a draft of such an instrument, before the Parliament.

(3) Failure to lay an instrument, or draft instrument, in accordance with the enactment does not affect the validity of the instrument.

### *Combination of certain powers*

#### **33 Combination of certain powers**

- (1) This section applies where—
  - (a) a power of a person to make devolved subordinate legislation is subject to the affirmative procedure,
  - (b) a power of a person to make devolved subordinate legislation is subject to the negative procedure,
  - (c) section 30 applies to a power of a person to make devolved subordinate legislation, or
  - (d) a power of a person to make devolved subordinate legislation does not fall within any of paragraphs (a) to (c).
- (2) If the person considers that it is desirable to exercise two or more of the powers together, the powers may be exercised together and by the same Scottish statutory instrument.
- (3) If the powers exercised together include a power of the type mentioned in paragraph (a) of subsection (1), the devolved subordinate legislation contained in the instrument is subject to the affirmative procedure.
- (4) If the powers exercised together do not include a power of the type mentioned in paragraph (a) of subsection (1) but include a power of the type mentioned in paragraph (b) of that subsection, the devolved subordinate legislation contained in the instrument is subject to the negative procedure.
- (5) If the powers exercised together do not include a power of the type mentioned in paragraph (a) or (b) of subsection (1), section 30 applies to the devolved subordinate legislation contained in the instrument.
- (6) Any other requirements relating to the exercise of one of the powers continue to apply only in relation to the exercise of that power.
- (7) References in this section to devolved subordinate legislation do not include references to subordinate legislation in relation to which an enactment provides, or has the effect of providing, that the subordinate legislation, or the Scottish statutory instrument containing it, cannot remain in force unless it is approved by resolution of the Scottish Parliament.

### *Further provision about procedures*

#### **34 Power to change procedure to which subordinate legislation is subject**

- (1) Subsection (2) applies if—
  - (a) in relation to a function of making, confirming or approving devolved subordinate legislation which is subject to the negative procedure, the Scottish Parliament resolves that the subordinate legislation should instead be subject to the affirmative procedure,
  - (b) in relation to a function of making, confirming or approving devolved subordinate legislation which is subject to the affirmative procedure, the Parliament resolves that the subordinate legislation should instead be subject to the negative procedure, or

- (c) in relation to a function of making, confirming or approving devolved subordinate legislation to which section 30 applies, the Scottish Parliament resolves that the subordinate legislation should instead be subject to the negative or the affirmative procedure.
- (2) The Scottish Ministers may by order make such modifications of any enactment as are necessary for the purpose of giving effect to the resolution.
- (3) An order under this section is subject to the affirmative procedure.

### **35 Procedures prescribed in pre-commencement enactments**

Schedule 3 modifies procedures prescribed in pre-commencement enactments.

*Statutory instruments subject to procedure in the Scottish Parliament*

### **36 Statutory instruments subject to procedure in the Scottish Parliament**

Schedule 4 makes provision for the application of certain provisions of this Part in relation to statutory instruments, and draft statutory instruments, which are subject to procedure in the Scottish Parliament.

*Interpretation of Part 2*

### **37 Interpretation of Part 2**

In this Part—

“devolved subordinate legislation” means subordinate legislation (other than special procedure orders) which is to be made by Scottish statutory instrument,

“enactment” includes any enactment comprised in this Act,

“special procedure order” means an order in relation to which Part 4 applies.