



Scotland Act 2016

2016 CHAPTER 11

PART 1

CONSTITUTIONAL ARRANGEMENTS

Legislation by the Parliament

11 Super-majority requirement for certain legislation

- (1) The Scotland Act 1998 is amended as follows.
- (2) Section 31 (scrutiny of Bills before introduction) is amended as follows.
- (3) In the heading for “before introduction” substitute “for legislative competence and protected subject-matter”.
- (4) After subsection (2) insert—

“(2A) The Presiding Officer shall, after the last time when a Bill may be amended but before the decision whether to pass or reject it, decide whether or not in his view any provision of the Bill relates to a protected subject-matter and state his decision.”
- (5) At the end insert—

“(4) For the purposes of this Part a provision of a Bill relates to a protected subject-matter if it would modify, or confer power to modify, any of the matters listed in subsection (5) (but not if the provision is incidental to or consequential on another provision of the Bill).
- (5) The matters are—
 - (a) the persons entitled to vote as electors at an election for membership of the Parliament,
 - (b) the system by which members of the Parliament are returned,

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- (c) the number of constituencies, regions or any equivalent electoral area, and
- (d) the number of members to be returned for each constituency, region or equivalent electoral area.”

(6) After that section insert—

“31A Two-thirds majority for Bills relating to a protected subject-matter

If the Presiding Officer states under section 31(2A) that in his view any provision of a Bill relates to a protected subject-matter, the Bill is not passed unless the number of members voting in favour of it at the final stage is at least two-thirds of the total number of seats for members of the Parliament.”

(7) Section 32 (submission of Bills for Royal Assent) is amended as follows.

(8) In subsection (2)(a) after “under section” insert “32A or”.

(9) After subsection (2) insert—

“(2A) The Presiding Officer shall not submit a Bill for Royal Assent if the Supreme Court has decided on a reference made in relation to the Bill under section 32A(2)(b) that any provision of the Bill relates to a protected subject-matter, unless since the decision the Bill has been approved in accordance with standing orders made by virtue of section 36(5).”

(10) After that section insert—

“32A Scrutiny of Bills by the Supreme Court (protected subject-matter)

(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 relates to a protected subject-matter to the Supreme Court for decision.

(2) Subject to subsection (3), he may make a reference in relation to a Bill—

- (a) at any time during the period of four weeks beginning with the rejection of the Bill, if the Presiding Officer has made a statement under section 31(2A) that in his view any provision of the Bill relates to a protected subject-matter, and
- (b) at any time during the period of four weeks beginning with the passing of the Bill, if the Presiding Officer has made a statement under section 31(2A) that in his view no provision of the Bill relates to a protected subject-matter, unless the number of members voting in favour of the Bill at its passing is at least two-thirds of the total number of seats for members of the Parliament.

(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 since the notification the Bill has been approved or rejected in accordance with standing orders made by virtue of section 36(5).”

(11) Section 33 (scrutiny of Bills by the Supreme Court) is amended as follows.

(12) In the heading after “Supreme Court” insert “(legislative competence)”.

- (13) In subsection (2)(b) omit “subsequent”.
- (14) In section 35(3) (power to intervene in certain cases)—
- (a) in paragraph (b) omit “subsequent”, and
 - (b) in paragraph (c) after “section” insert “32A(2)(b) or”.
- (15) Section 36 (stages of Bills) is amended as follows.
- (16) In subsection (4) after paragraph (a) insert—
- “(aa) the Supreme Court decides on a reference made in relation to the Bill under section 32A(2)(b) that any provision of the Bill relates to a protected subject-matter.”.
- (17) After that subsection insert—
- “(4A) Standing orders shall provide for an opportunity for the reconsideration of a Bill after its rejection if (and only if), on a reference made in relation to the Bill under section 32A(2)(a), the Supreme Court decides that no provision that is subject to the reference relates to a protected subject-matter.”
- (18) In subsection (5) for “any Bill amended on reconsideration” substitute “—
- (a) any Bill amended on reconsideration in accordance with standing orders made by virtue of subsection (4)(a), (b) or (c), and
 - (b) any Bill reconsidered in accordance with standing orders made by virtue of subsection (4)(aa) or (4A),”.
- (19) In subsection (6)—
- “(a) after “28(2)” insert “, 31(2A), 31A, 32A(2)(b)”;
 - (b) for “which has been amended on reconsideration” substitute “to which subsection (5)(a) or (b) applies”.

12 Scope to modify the Scotland Act 1998

- (1) The Scotland Act 1998 is amended as follows.
- (2) In paragraph 4 of Schedule 4 (protection of Scotland Act 1998 from modification) for sub-paragraph (2) substitute—
- “(2) This paragraph does not apply to modifying—
 - (a) the following sections in Part 1 (the Scottish Parliament)—
 - (i) section 1(2) to (5),
 - (ii) section 2(1), (2), (2B) and (3) to (6),
 - (iii) sections 3 to 12,
 - (iv) sections 13 to 22,
 - (v) sections 24 to 26,
 - (vi) section 27(1) and (2),
 - (vii) section 28(4) and (5),
 - (viii) section 31(3),
 - (ix) section 36(1)(a) and (b), and (2) and (3), and
 - (x) sections 38 to 42,
 - (b) the following sections in Part 2 (the Scottish Administration)—
 - (i) section 44(1)(a) to (c) and (2),

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- (ii) section 45(3) to (7),
 - (iii) section 46(1) to (3),
 - (iv) section 47(2) and (3)(b) to (e),
 - (v) section 48(2) to (4),
 - (vi) section 49(2), (3) and (4)(b) to (e), and
 - (vii) section 50,
 - (c) in Part 3 (financial provisions)—
 - (i) section 69(2) to (5), and
 - (ii) section 70(1) to (5) and (7) to (9),
 - (d) in Part 5 (miscellaneous and general), sections 81 to 83, 85, 91, 92(1), (2) and (4) to (6), 93, 94 and 97,
 - (e) the following provisions in Part 6 (supplementary)—
 - (i) section 112(1) and (3) to (5), section 113 (except the application of subsection (9)), section 115 and Schedule 7 (so far as those sections and that Schedule apply to any power exercisable within devolved competence to make subordinate legislation),
 - (ii) sections 118, 120 and 121, and
 - (iii) section 124 (so far as that section applies to any power exercisable within devolved competence to make subordinate legislation),
 - (f) Schedule 1 (constituencies, regions and regional members),
 - (g) paragraphs 1, 2(1) and 3 to 6 of Schedule 2 (Scottish Parliamentary corporate body), and
 - (h) paragraphs 1 to 6 of Schedule 3 (standing orders - further provision).”
- (3) In paragraph 1 of Schedule 7 (procedure for subordinate legislation) in the entry for section 97 for “Type A” substitute “Type D”.