



# Scotland Act 1998

## 1998 CHAPTER 46

### PART V

#### MISCELLANEOUS AND GENERAL

##### *Juridical*

#### **102 Powers of courts or tribunals to vary retrospective decisions.**

- (1) This section applies where any court or tribunal decides that—
  - (a) an Act of the Scottish Parliament or any provision of such an Act is not within the legislative competence of the Parliament, or
  - (b) a member of the [<sup>F1</sup>Scottish Government] does not have the power to make, confirm or approve a provision of subordinate legislation that he has purported to make, confirm or approve [<sup>F2</sup>, or
  - (c) any other purported exercise of a function by a member of the Scottish Government was outside devolved competence.]
- (2) The court or tribunal may make an order—
  - (a) removing or limiting any retrospective effect of the decision, or
  - (b) suspending the effect of the decision for any period and on any conditions to allow the defect to be corrected.
- (3) In deciding whether to make an order under this section, the court or tribunal shall (among other things) have regard to the extent to which persons who are not parties to the proceedings would otherwise be adversely affected.
- (4) Where a court or tribunal is considering whether to make an order under this section, it shall order intimation of that fact to be given to—
  - (a) the Lord Advocate, and
  - (b) the appropriate law officer, where the decision mentioned in subsection (1) relates to a devolution issue (within the meaning of Schedule 6), [<sup>F3</sup> or to a compatibility issue,]

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*Changes to legislation: There are currently no known outstanding effects for the Scotland Act 1998, Section 102. (See end of Document for details)*

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unless the person to whom the intimation would be given is a party to the proceedings.

(5) A person to whom intimation is given under subsection (4) may take part as a party in the proceedings so far as they relate to the making of the order.

[<sup>F4</sup>(5A) Where the decision mentioned in subsection (1) is a decision of the Supreme Court on a compatibility issue, the power to make an order under this section is exercisable by the High Court of Justiciary instead of the Supreme Court.]

(6) Paragraphs 36 and 37 of Schedule 6 apply with necessary modifications for the purposes of subsections (4) and (5) as they apply for the purposes of that Schedule.

(7) In this section—

[<sup>F5</sup> “ compatibility issue ” has the meaning given by section 288ZA of the Criminal Procedure (Scotland) Act 1995, ]

“intimation” includes notice,

“the appropriate law officer” means—

- (a) in relation to proceedings in Scotland, the Advocate General,
- (b) in relation to proceedings in England and Wales, the Attorney General,
- (c) in relation to proceedings in Northern Ireland, the [<sup>F6</sup> Advocate General for Northern Ireland].

#### Textual Amendments

- F1** Words in Act substituted (3.7.2012) by Scotland Act 2012 (c. 11), **ss. 12(2)(a)**, 44(5) (with s. 12(3)); S.I. 2012/1710, art. 2(f)
- F2** S. 102(1)(c) and words added (3.7.2012) by Scotland Act 2012 (c. 11), **ss. 15**, 44(5); S.I. 2012/1710, art. 2(h)
- F3** Words in s. 102(4)(b) inserted (22.4.2013) by Scotland Act 2012 (c. 11), **ss. 36(3)(a)**, 44(5); S.I. 2013/6, art. 2(c)
- F4** S. 102(5A) inserted (22.4.2013) by Scotland Act 2012 (c. 11), **ss. 36(3)(b)**, 44(5); S.I. 2013/6, art. 2(c)
- F5** Words in s. 102(7) inserted (22.4.2013) by Scotland Act 2012 (c. 11), **ss. 36(3)(c)**, 44(5); S.I. 2013/6, art. 2(c)
- F6** Words in s. 102(7) substituted (12.4.2010) by Justice (Northern Ireland) Act 2002 (c. 26), ss. 28, 87, **Sch. 7 para. 10**; S.R. 2010/113, **art. 2**, Sch. para. 19(b)

#### Modifications etc. (not altering text)

- C1** S. 102 amended (6.5.1999) by S.I. 1999/1347, **rule 8(1)(a)**

**Changes to legislation:**

There are currently no known outstanding effects for the Scotland Act 1998, Section 102.