

# CONVENTION RIGHTS (COMPLIANCE) (SCOTLAND) ACT 2001

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## EXPLANATORY NOTES

### THE ACT

#### Part 6

#### Power to Make Remedial Orders

##### Remedial orders

87. [Section 12\(1\)](#) confers power on the Scottish Ministers to make remedial orders and defines the scope of that power. Further clarification of the scope of the power is contained in section 12(3). A remedial order may be made as a consequence of any Act of Parliament, Act of the Scottish Parliament, subordinate legislation made under any such Act, any provision in any such Act or subordinate legislation or any exercise or purported exercise of functions by a member of the Scottish Executive, which is or may be incompatible with any of the Convention rights. Ministers may make such provision as they consider necessary or expedient. Section 12(2) further provides that before using the power, Ministers must be satisfied that there are compelling reasons for taking the remedial order route as opposed to some other route (such as using primary legislation). Similar wording appears in section 10(2) of the Human Rights Act 1998.
88. [Section 12\(3\)\(d\)](#) enables a remedial order to modify any enactment, prerogative instrument (such as an Order in Council), other instrument or document provided these relate to the exercise or purported exercise of functions by the Scottish Ministers.
89. [Section 12\(3\)\(e\)](#) provides that a remedial order may make provision which has retrospective effect, since actions or provisions which are or may be incompatible are likely to have already taken practical effect. This mirrors the provision that is made for remedial orders under the Human Rights Act (see paragraph 1(1)(b) of schedule 2 to that Act) and the subordinate power in the Scotland Act 1998 to remedy *ultra vires* Acts or exercises of functions (see sections 107 and 114 of the Scotland Act). However, provisions which increase the punishment for, or create, criminal offences are specifically excluded from having retrospective effect. Section 12(3)(f) specifies that the remedial order may provide for the delegation of functions.
90. [Section 12\(4\)](#) restricts the scope for creating offences in a remedial order by imposing maximum penalties which may be imposed for any such criminal offences. For an offence punishable on summary conviction, the maximum penalty is restricted to 3 months' imprisonment or a fine not exceeding level 5 on the standard scale. For more serious offences, punishable on indictment, the maximum penalty is restricted to 2 years' imprisonment. No limit is placed on the fine that may be imposed.
91. [Section 12\(5\)](#) confirms that the conferring of this power to make a remedial order does not affect any other power which the Scottish Ministers may have to remedy the ECHR incompatibility, such as any existing powers to make regulations.