



# Scotland Act 1998

## 1998 CHAPTER 46

### PART I

#### THE SCOTTISH PARLIAMENT

##### *Proceedings etc.*

#### **22 Standing orders.**

- (1) The proceedings of the Parliament shall be regulated by standing orders.
- (2) Schedule 3 (which makes provision as to how certain matters are to be dealt with by standing orders) shall have effect.

#### **23 Power to call for witnesses and documents.**

- (1) The Parliament may require any person—
  - (a) to attend its proceedings for the purpose of giving evidence, or
  - (b) to produce documents in his custody or under his control,concerning any subject for which any member of the Scottish Executive has general responsibility.
- (2) Subject to subsection (3), the Parliament may impose such a requirement on a person outside Scotland only in connection with the discharge by him of—
  - (a) functions of the Scottish Administration, or
  - (b) functions of a Scottish public authority or cross-border public authority, or Border rivers functions (within the meaning of section 111(4)), which concern a subject for which any member of the Scottish Executive has general responsibility.
- (3) In relation to the exercise of functions of a Minister of the Crown, the Parliament may not impose such a requirement on—
  - (a) him (whether or not he continues to be a Minister of the Crown), or

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- (b) a person who is or has been in Crown employment, within the meaning of section 191(3) of the <sup>M1</sup>Employment Rights Act 1996, unless the exercise concerns a subject for which any member of the Scottish Executive has general responsibility.
- (4) But the Parliament may not impose such a requirement in pursuance of subsection (3) in connection with the exercise of functions which are exercisable—
- (a) by the Scottish Ministers as well as by a Minister of the Crown, or
  - (b) by a Minister of the Crown only with the agreement of, or after consultation with, the Scottish Ministers.
- (5) Subsection (4)(b) does not prevent the Parliament imposing such a requirement in connection with the exercise of functions which do not relate to reserved matters.
- (6) Where all the functions of a body relate to reserved matters, the Parliament may not impose such a requirement on any person in connection with the discharge by him of those functions.
- (7) The Parliament may not impose such a requirement on—
- (a) a judge of any court, or
  - (b) a member of any tribunal in connection with the discharge by him of his functions as such.
- (8) Such a requirement may be imposed by a committee or sub-committee of the Parliament only if the committee or sub-committee is expressly authorised to do so (whether by standing orders or otherwise).
- (9) A person is not obliged under this section to answer any question or produce any document which he would be entitled to refuse to answer or produce in proceedings in a court in Scotland.
- (10) A procurator fiscal is not obliged under this section to answer any question or produce any document concerning the operation of the system of criminal prosecution in any particular case if the Lord Advocate—
- (a) considers that answering the question or producing the document might prejudice criminal proceedings in that case or would otherwise be contrary to the public interest, and
  - (b) has authorised the procurator fiscal to decline to answer the question or produce the document on that ground.

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

- C1** S. 23(2)(b) extended (1.4.2000) by 1999 c. 28, s. 35(1)(a) (with s. 38); S.I. 2000/1066, art. 2
- C2** S. 23(2)(b) modified (1.12.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), s. 25(4), Sch. 7 para. 2; S.I. 2002/2202, art. 2(2)
- C3** S. 23(2)(b) modified (27.7.2004) by Energy Act 2004 (c. 20), ss. 2(10), 198(2), Sch. 1 para. 17(a); S.I. 2004/1973, art. 2
- C4** S. 23(2)(b) modified by Private Security Industry Act 2001 (c. 12), s. 2A (as inserted (E.W.S) (30.6.2006 for S. and 6.7.2006 for E.W.) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 171(1), 178(6), Sch. 15 para. 3; S.S.I. 2006/381, art. 2)
- C5** S. 23(2)(b) extended (26.11.2008) by Climate Change Act 2008 (c. 27), ss. 32(2), 100(1), Sch. 1 para. 27(2)(a)

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#### Commencement Information

- II** S. 23 wholly in force; s. 23 not in force at Royal Assent see s. 130; s. 23 in force for certain purposes at 6.5.1999 and for all remaining purposes at 1.7.1999 by S.I. 1998/3178, arts. 2(2), 3

#### Marginal Citations

- M1** 1996 c. 18.

### 24 Witnesses and documents: notice.

- (1) A requirement under section 23 shall be imposed by the Clerk giving the person in question notice in writing specifying—
- (a) the time and place at which the person is to attend and the particular subjects concerning which he is required to give evidence, or
  - (b) the documents, or types of documents, which he is to produce, the date by which he is to produce them and the particular subjects concerning which they are required.
- (2) Such notice shall be given—
- (a) in the case of an individual, by sending it, by registered post or the recorded delivery service, addressed to him at his usual or last known address or, where he has given an address for service, at that address,
  - (b) in any other case, by sending it, by registered post or the recorded delivery service, addressed to the person at the person's registered or principal office.

### 25 Witnesses and documents: offences.

- (1) Any person to whom a notice under section 24(1) has been given who—
- (a) refuses or fails to attend proceedings as required by the notice,
  - (b) refuses or fails, when attending proceedings as required by the notice, to answer any question concerning the subjects specified in the notice,
  - (c) deliberately alters, suppresses, conceals or destroys any document which he is required to produce by the notice, or
  - (d) refuses or fails to produce any such document,
- is guilty of an offence.
- (2) Subsection (1) is subject to sections 23(9) and (10) and 27(3).
- (3) It is a defence for a person charged with an offence under subsection (1)(a), (b) or (d) to prove that he had a reasonable excuse for the refusal or failure.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding three months.
- (5) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) any person who was purporting to act in any such capacity,
- he, as well as the body corporate, is guilty of that offence and liable to be proceeded against accordingly.

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## **26 Witnesses and documents: general.**

- (1) The Presiding Officer or such other person as may be authorised by standing orders may—
  - (a) administer an oath to any person giving evidence in proceedings of the Parliament, and
  - (b) require him to take the oath.
- (2) Any person who refuses to take an oath when required to do so under subsection (1) (b) is guilty of an offence.
- (3) Subsection (4) of section 25 applies to an offence under subsection (2) as it applies to an offence under that section.
- (4) Standing orders may provide for the payment of allowances and expenses to persons—
  - (a) attending proceedings of the Parliament to give evidence, or
  - (b) producing documents which they have been required or requested to produce, whether or not in pursuance of a notice under section 24(1).
- (5) For the purposes of sections 23 to 25 and this section, a person shall be taken to comply with a requirement to produce a document if he produces a copy of, or an extract of the relevant part of, the document.

## **27 Participation of the Scottish Law Officers.**

- (1) If the Lord Advocate or the Solicitor General for Scotland is not a member of the Parliament—
  - (a) he may participate in the proceedings of the Parliament to the extent permitted by standing orders, but may not vote, and
  - (b) standing orders may in other respects provide that they are to apply to him as if he were such a member.
- (2) Subsection (1) is without prejudice to section 39.
- (3) The Lord Advocate or the Solicitor General for Scotland may, in any proceedings of the Parliament, decline to answer any question or produce any document relating to the operation of the system of criminal prosecution in any particular case if he considers that answering the question or producing the document—
  - (a) might prejudice criminal proceedings in that case, or
  - (b) would otherwise be contrary to the public interest.

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