



# Scotland Act 2012

## 2012 CHAPTER 11

### PART 2

#### MINISTERS AND THEIR POWERS

##### *The Scottish Ministers*

#### **12 The Scottish Government**

- (1) The Scottish Executive is renamed the Scottish Government.
- (2) Accordingly, in the 1998 Act—
  - (a) for “Scottish Executive” in each place substitute “Scottish Government”;
  - (b) in the heading to section 81 and the italic cross-heading preceding it, for “Executive” substitute “Government”.
- (3) Subsection (2) does not apply to section 31(1) of the 1998 Act (as to which, see section 6 of this Act).
- (4) Unless the context requires otherwise, any reference to the Scottish Executive in any enactment, instrument or other document made before the date on which this section comes into force (except the enactments mentioned in subsections (2) and (3)) is to be read as a reference to the Scottish Government.

#### **13 Exercise of power to make Order disqualifying persons from membership of the Parliament**

- (1) The 1998 Act is amended as follows.
- (2) In section 112 (subordinate legislation: general), after subsection (5) insert—
  - “(6) Section 27 of the Interpretation and Legislative Reform (Scotland) Act [2010 \(asp 10\)](#) (functions exercisable by Scottish statutory instrument) applies to the function of making an Order in Council under section 15(1) or (2).”

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*Status: This is the original version (as it was originally enacted).*

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- (3) In section 92 (Queen’s Printer for Scotland), after subsection (4) insert—
- “(4A) For the purposes of subsection (4)(c), the function of Her Majesty of making an Order in Council under section 15(1) or (2) (power to specify persons disqualified from membership of the Parliament) is to be regarded as being exercisable within devolved competence.”
- (4) In section 104 (power to make provision consequential on legislation of, or scrutinised by, the Parliament), after subsection (2) insert—
- “(3) For the purposes of subsection (2)(c), the function of Her Majesty of making an Order in Council under section 15(1) or (2) (power to specify persons disqualified from membership of the Parliament) is to be regarded as being exercisable within devolved competence.”
- (5) In Schedule 4 (enactments etc protected from modification), in paragraph 11 (general exceptions: subordinate legislation), after sub-paragraph (3) insert—
- “(4) For the purposes of sub-paragraph (3)(c), the function of Her Majesty of making an Order in Council under section 15(1) or (2) (power to specify persons disqualified from membership of the Parliament) is to be regarded as being exercisable within devolved competence.”

#### **14 Time limit for human rights actions against Scottish Ministers etc**

- (1) In section 100 of the 1998 Act the following (as inserted by the [Convention Rights Proceedings \(Amendment\) \(Scotland\) Act 2009 \(asp 11\)](#)) are omitted—
- (a) subsections (3A) to (3E);
  - (b) in subsection (4), the words “Subject to subsection (3D),”.
- (2) The Convention Rights Proceedings (Amendment) (Scotland) Act [2009 \(asp 11\)](#) is repealed.
- (3) Omit paragraph 4A of Schedule 4 to the 1998 Act.
- (4) The Scotland Act 1998 (Modification of Schedule 4) Order 2009 ([S.I. 2009/1380](#)) is revoked.
- (5) Subsections (1) to (4) above do not apply to any proceedings brought before this section comes into force.
- (6) After subsection (3) of section 100 of the 1998 Act insert—
- “(3A) Subsection (3B) applies to any proceedings brought by virtue of this Act against the Scottish Ministers or a member of the Scottish Government in a court or tribunal on the ground that an act of the Scottish Ministers or a member of the Scottish Government is incompatible with the Convention rights.
- (3B) Proceedings to which this subsection applies must be brought before the end of—
- (a) the period of one year beginning with the date on which the act complained of took place, or
  - (b) such longer period as the court or tribunal considers equitable having regard to all the circumstances,

but that is subject to any rule imposing a stricter time limit in relation to the procedure in question.

(3C) Subsection (3B) does not apply to proceedings brought by the Lord Advocate, the Advocate General, the Attorney General, the Attorney General for Northern Ireland or the Advocate General for Northern Ireland.

(3D) In subsections (3A) and (3B) “act” does not include the making of any legislation but it does include any other act or failure to act (including a failure to make legislation).

(3E) In subsection (3B) “rule” has the same meaning as it has in section 7(5) of the Human Rights Act 1998.”

(7) In subsection (4) of that section at the beginning insert “Subject to subsection (3D),”.

(8) Subsections (6) and (7) above apply to any proceedings brought after this section comes into force (including proceedings in respect of an act taking place before this section comes into force).

## **15 Power to vary retrospective decisions about non-legislative acts**

In section 102 of the 1998 Act (powers of courts or tribunals to vary retrospective decisions), in subsection (1) at the end add “, or

- (c) any other purported exercise of a function by a member of the Scottish Government was outside devolved competence.”