



Interpretation and Legislative Reform (Scotland) Bill

Bill Number:	SP Bill 27
Introduced on:	15 June 2009
Introduced by:	Alex Salmond MSP (Executive Bill)
Passed:	28 April 2010
Royal Assent:	3 June 2010

Passage of the Bill

The [Interpretation and Legislative Reform \(Scotland\) Bill](#) (SP Bill 27) was introduced in the Parliament on 15 June 2009. Stage 1 commenced on 23 June 2009 with the Subordinate Legislation Committee as the lead committee and the Standards, Procedures and Public Appointments Committee as the secondary committee. The Stage 1 (general principles) debate took place on [13 January 2010](#) and the [Bill was passed](#) following the Stage 3 parliamentary debate on [28 April 2010](#).

Purpose and objectives of the Bill

The Interpretation and Legislative Reform (Scotland) Bill was a highly technical Bill which, in replacing three transitional orders made under the Scotland Act 1998, sought to provide the Scottish Parliament with its own distinct subordinate legislation procedures. The transitional orders replaced were SI 1999/1096; SI 1999/1379 and SI 1999/1593.

Provisions of the Bill

As well as providing a definition of a Scottish Statutory Instrument (SSI), the Bill also dealt with the publication, interpretation and operation of Acts of the Scottish Parliament and instruments made under them.

In addition, the Bill provided procedures for dealing with orders which require a special parliamentary procedure which were not included in the new procedures established by the Transport and Works (Scotland) Act 2007.

The Scottish Government also used the Bill (s34) to introduce the means to give Ministers the power to change the procedure, on a resolution of the Parliament, to which devolved subordinate legislation is subject by amending the parent Act.

The Bill also introduces a substantive change to the law (s20) in that it contains a provision under which Acts of the Scottish Parliament or Scottish instruments bind the Crown except in so far as an Act or instrument provides otherwise. This reverses the previous default provision in which the Crown was not bound unless so stated in an Act or instrument. The legal community raised concerns about this proposed change.

Finally, the Bill, as introduced, sought to allow Scottish Ministers to amend Acts or SSIs in advance of their re-enactment in a Consolidation or Codification Bill to the extent that such amendments, “facilitate, or are otherwise desirable in connection with, the consolidation of the law on the subject”. However, concerns were raised in committee that this power was too wide and was open to misuse. As a consequence, the provision was removed by Scottish Government amendment at stage 2.

Parliamentary consideration

The Scottish Government provided a [response to the Committee’s Stage 1 Report](#) on 12 February 2010. This response led to a series of Government amendments at Stage 2. The Subordinate Legislation Committee considered the Bill at [Stage 2 on 16 March 2010](#)

The amendments which were agreed to included:

- An amendment to Section 12 to clarify that the date at which a reference in an Act of the Scottish Parliament or a Scottish instrument to a European Union instrument is to be fixed is the date the Act receives Royal Assent or the instrument is made. This is to ensure that amendments made to EU instruments during the passage of a Bill are caught, including amendments still to come into force.
- Amendments to section 26 to provide that where an Act of the Scottish Parliament or Scottish instrument requires a document to be served on a person and where such documents are to be served electronically, agreement in writing has first to be given by both parties.

Section 28 was amended so that instruments subject to negative procedure which the Parliament has resolved to annul, other than instruments which contain an Order in Council, must be revoked by order by the responsible authority. ‘Responsible authority’ in this provision includes not just Scottish Ministers but any responsible authority.

- Section 30, which provides for devolved subordinate legislation, which is not subject to either negative or affirmative procedure by virtue of an enactment to be laid before Parliament, was amended to include a list

of Acts and statutory provisions excluded from this requirement. Subordinate legislation made under these Acts tend to be of a highly localised and temporary nature, e.g. road closures.

- Section 33 was amended to clarify the position that, where enabling powers subject to different scrutiny procedures (affirmative or negative) are combined in a single instrument, that instrument must be subject to the highest level of scrutiny of the combination. In other words, if a power to make devolved subordinate legislation subject to affirmative procedure is combined with a power to make devolved subordinate legislation subject to negative procedure, the resulting instrument will be subject to affirmative procedure.
- The Scottish Government also introduced an amendment (S42A) to require the responsible authority to provide signed copies of each SSI to the Keeper of the Records of Scotland and to make the Keeper responsible for the preservation of such SSIs.
- In response to a recommendation from the Committee, the Government laid amendments to give Ministers power to make such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.

At Stage 3, which took place on [28 April 2010](#), a number of minor amendments – including amendments to simplify classification of court rules as SSIs for every act of adjournal and act of sederunt – were lodged by the Scottish Government and agreed to by the Parliament on the same day the Parliament passed the Bill.