

# **INTERPRETATION AND LEGISLATIVE REFORM (SCOTLAND) BILL**

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## **EXPLANATORY NOTES**

### **(AND OTHER ACCOMPANYING DOCUMENTS)**

#### **CONTENTS**

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Interpretation and Legislative Reform (Scotland) Bill introduced in the Scottish Parliament on 15 June 2009:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 27-PM.

## **EXPLANATORY NOTES**

### **INTRODUCTION**

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

4. The provisions in the Interpretation and Legislative Reform (Scotland) Bill are of a highly technical nature. The Bill broadly restates the existing law contained in the three statutory instruments listed in paragraph 5 below. Any departures from the existing position are highlighted where appropriate. Specifically the Bill deals with:

- the publication, interpretation and operation of Acts of the Scottish Parliament (“ASPs”) and instruments made under them;
- the making of subordinate legislation in the form of a Scottish statutory instrument (“SSI”), the procedures which apply to it in the Scottish Parliament and its publication;
- the special procedure which applies to orders that are subject to special parliamentary procedure; and
- giving the Scottish Ministers a power, by order, to make limited amendments to enactments in order to facilitate their consolidation.

5. Up until now, the first three of these matters have been regulated by three transitional orders made by the UK Government under the Scotland Act 1998, namely:

- the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379) (“the Interpretation Order”);
- the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (S.I. 1999/1096) (“the SI Order”); and
- the Scotland Act 1998 (Transitory and Transitional Provisions) (Orders subject to Special Parliamentary Procedure) Order 1999 (S.I. 1999/1593) (“the SPP Order”).

### **PART 1: INTERPRETATION**

#### **INTRODUCTORY**

##### **Purpose of Part 1**

6. Part 1 of the Bill contains the provisions which are to apply in relation to the interpretation and operation of future Acts of the Scottish Parliament (“ASPs”) and instruments made under them.

## **General approach**

7. The provisions in Part 1 of the Bill will govern the interpretation and operation of ASPs and instruments made under them which are enacted on or after the day Part 1 of the Bill is brought into force.

8. Westminster Acts and instruments made under them are, and will continue to be, subject to the interpretation provisions in the Interpretation Act 1978 (“the 1978 Act”). Since power was devolved to the Scottish Parliament in 1999, ASPs and instruments made under them have been subject to the interpretation provisions in the Interpretation Order and that will remain the case for all such legislation enacted before Part 1 of the Bill comes into force.

9. For the avoidance of doubt, where legislation is amended the amendments are interpreted in accordance with the interpretation provisions applicable to the legislation being amended not the legislation making the amendments. For instance, if an ASP is enacted after Part 1 of the Bill comes into force its interpretation will be governed by the Bill. But if that ASP inserts a new section into a Westminster Act, the interpretation of that new section will be governed by the 1978 Act.

## **PART 1**

### **Section 1: Application of Part 1**

10. Subsection (1) provides that Part 1 will apply to ASPs which receive Royal Assent on the same day as, or after the coming into force of, Part 1 of the Bill; to “Scottish instruments” which are made on or after that day (regardless of when the ASP received Royal Assent); and this Bill. The Part is therefore forward-looking.

11. A “Scottish instrument” is defined in section 1(4) in terms of a fixed list of instruments made by virtue of an ASP (whenever passed) which includes: Orders in Council; orders; regulations; rules; a scheme; a warrant; and byelaws.

12. Subsection (7) provides the Scottish Ministers with a power to modify (which includes amend or repeal) the definition of “Scottish instrument” in section 1(4) by order. Any such order will be subject to the affirmative procedure.

#### *Existing ASPs and instruments*

13. Part 1 does not apply to existing ASPs and instruments made under them in the period since devolution and before the coming into force of the Part. The Interpretation Order would continue to apply in relation to ASPs and instruments made under them before that day. This is given effect to by the making of saving provision in section 56(2).

#### *Westminster Acts and instruments made under them*

14. Part 1 also does not apply to Acts of Parliament and instruments made under them, even although they may relate to devolved matters. The principal reason for that is that it would create uncertainty and confusion for the reader if some provisions in Westminster Acts fell to be

interpreted in accordance with Part 1 while other provisions fell to be interpreted in accordance with the 1978 Act.

#### *Disapplication*

15. Subsection (2) contains a general qualification of subsection (1) so that a provision of Part 1 does not apply in two cases. The first (which would be the case in any event) is where there is express provision in an ASP or Scottish instrument that differs from the provision in Part 1. The second is where there is no express provision but the context of the provision being construed means that the provision of Part 1 cannot have been intended to apply.

16. There is one important exception to the second case. It relates to the applicability of the legislation to the Crown in section 20 and is explained in more detail in the commentary on that section.

#### *Application of Part to provisions of ASPs and instruments*

17. Part 1 has to be read subject to subsections (5) and (6). Those subsections make the Part applicable to a provision of an ASP or instrument in the same way as the Part applies to an ASP or instrument.

### **Section 2: Commencement of ASPs**

18. This section contains the proposed default rule that would apply where an ASP (or, by virtue of section 1(5), a provision of an ASP) is silent as to commencement.

19. The rule differs from the previous provision in the Interpretation Order (paragraph 2 of Schedule 1) in that, instead of providing that the ASP comes into force at the beginning of the day on which the Act receives Royal Assent, it provides that the ASP or provision comes into force at the beginning of the day after the day on which the Bill for the ASP receives Royal Assent.

### **Section 3: Commencement of Acts and instruments: time of day**

20. This section would apply where an ASP or Scottish instrument (or, by virtue of section 1(5) and (6), a provision of an ASP or instrument) specifies the day on which it is to come into force. The Act, instrument or provision would come into force at the beginning of the day.

### **Section 4: Exercise of powers before commencement of Act of the Scottish Parliament**

21. This section enables certain powers conferred by a provision in an ASP to be exercised during the “pre-commencement period”, which is the period beginning with the day on which the Bill for the ASP receives Royal Assent and ending immediately before the enabling provision comes into force if it is necessary or expedient to do so. Examples of when this power could be exercised include making a Scottish instrument, establishing bodies corporate, making appointments, giving notice or documents or prescribing forms.

22. The new provision is similar to the existing provision in paragraph 10 of Schedule 1 to the Interpretation Order, but the wording in that paragraph is not very clear in terms of when the

powers can be exercised and when they can have effect. The new provision makes it clear that the powers can be exercised in the pre-commencement period only but any subordinate legislation or anything else cannot have effect before the provision conferring the power comes into force. The new provision defines what is meant by the “pre-commencement period”.

### **Section 5: Power to appoint to an office**

23. This section sets out the other powers (such as a power to determine the terms and conditions of appointment, or a power to remove or suspend a person from the office or to reappoint or reinstate a person to the office) that are available where an ASP confers power to appoint a person to an office. This is a new section, modelled on section 12 of the New Zealand Interpretation Act 1999. It contains material that would otherwise be likely to be set out in ASPs which contain provision appointing a person to an office. The inclusion of this section has two consequences. First, it will shorten ASPs as it would make it unnecessary for ASPs to deal with these matters (except in cases where some other provision was wanted from a policy viewpoint). Second, it will promote consistency of approach as between ASPs where there was no policy or other justification for taking a different approach in relation to the conferring of these ancillary powers.

### **Section 6: Power to revoke, amend and re-enact**

24. This provision makes it clear that the power to make a Scottish instrument includes the ancillary powers to revoke, amend and re-enact. These additional powers are no longer “implied” powers. Since it provides that these ancillary powers are included in and therefore form part of the principal power, the words in paragraph 11 of Schedule 1 to the Interpretation Order which provide that the powers to revoke, amend and re-enact are “exercisable in the same manner and subject to the same conditions or limitations” can be omitted as unnecessary. This section is similar to but wider than the existing provision in paragraph 11 because it would apply where an ASP confers power to make any instrument and not just some of them.

### **Section 7: Carrying out of powers and duties more than once**

25. This provision replicates the effect of the existing provision in paragraph 9 of Schedule 1 to the Interpretation Order providing that where a power has been conferred or a duty imposed by an ASP or a Scottish statutory instrument then that power or duty may be exercised or performed on more than one occasion, as and when required. It further provides that where a power is conferred or duty imposed by an ASP or a Scottish statutory instrument on an office holder then the office holder may exercise the power or perform the duty.

### **Section 8: Additional powers on commencement by order**

26. Section 8 is a new section. It provides for the exercise of powers in relation to the commencement of an ASP allowing that such power may provide for different days to be appointed for different purposes. It also provides that the commencement power will include ancillary powers to make such transitory, transitional or saving provisions as the Scottish Ministers consider appropriate.

## **Sections 9 to 11: References to ASPs, Acts of Parliament and Acts of the Parliaments of Scotland**

27. Section 9 makes provision as to how ASPs and Scottish instruments are to refer to ASPs, Acts of Parliament and Acts of the Parliaments of Scotland. ASPs may be cited by reference to their short title or by their year followed by the letters “asp” and number. Sections 10 and 11 make provision as to when ASPs cite an Act of Parliament, or of the Parliaments of Scotland up to and including 1707.

28. The sections essentially replicate the effect of article 5 of the Interpretation Order, though section 9 contains new material (subsection (1)(b)) to reflect the requirements set out in section 38(6) as respects “official prints” of ASPs (i.e. setting out the functions to be undertaken by the Clerk of the Scottish Parliament).

## **Section 12: References to EU instruments**

29. This section replicates paragraph 16 of Schedule 1 to the Interpretation Order, which was inserted by section 25(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”), except that the references in that provision to “Community instrument” have been changed to “EU instrument” to take account of amendment to the European Communities Act 1972 (c.68) by the European Union (Amendment) Act 2008 (c.7).

30. The section provides that a reference to an “EU instrument” is a reference to that instrument as amended, extended or applied by another “EU instrument” only up to the date of the reference. So it would not include a reference to that instrument as amended, extended or applied by an “EU instrument” after the date of the reference. If the reference included amendments made after that date then it would be an ambulatory reference i.e. that it includes a reference to that enactment as amended by enactments after the date of the reference. The approach in this section is different from what is proposed in section 14 (references to other legislative provisions). The reason for the difference is that paragraph 1A of Schedule 2 to the European Communities Act 1972, as inserted by section 28 of the 2006 Act, confers power to make ambulatory references to “EU instruments”. This allows decisions to be taken on a case by case basis as to whether references to EU instruments should be ambulatory.

## **Section 13: References to portions of legislative provisions**

31. The provision replicates paragraph 15(1) of Schedule 1 to the Interpretation Order and deals with the case where an ASP or instrument refers to a portion of an “enactment” (which is defined as including Acts of Parliament and instruments made under them) by referring to words, sections and so on from or to which the portion extends. This will arise often where textual amendments are being made. For example, where an ASP amends another ASP by substituting new text for the passage from “word x” to “word y”. In that case, the portion to be substituted would include word x and word y.

32. The expression “enactment” is defined in schedule 1 to mean a Westminster Act, an instrument made under it, an ASP, a Scottish instrument, and a provision of any such Act or instrument.

## **Section 14: References to other legislative provisions**

33. This section is based on paragraph 15(2) of Schedule 1 to the Interpretation Orders. There is at present some doubt as to whether when an Act refers to an enactment, the reference is to that enactment as amended by subsequent enactments up to the date of the reference in the ASP or instrument or whether it also includes a reference to that enactment as amended by enactments after the date of the reference. This section resolves this issue and states that when an Act refers to an enactment, the reference is ambulatory, i.e. that it includes a reference to that enactment as amended by enactments after the date of the reference.

34. The expression “enactment” is defined in schedule 1 to mean a Westminster Act, an instrument made under it, an ASP, a Scottish instrument, and a provision of any such Act or instrument.

## **Sections 15 to 17: Effect of repeals**

### *Section 15*

35. This section makes provision as to some of the consequences where an ASP or Scottish instrument repeals an ASP or revokes a Scottish instrument and reflects in part paragraph 13(1)(e) of Schedule 1 to the Interpretation Order. It provides that any repeal does not affect anything done previously under the repealed legislation, and also that it does not revive any previously repealed or revoked enactments or rule of law.

36. The section does not deal with the case where an Act of Parliament is repealed (or an instrument made under an Act of Parliament is revoked) by an ASP or Scottish instrument because this is dealt with by section 23A of the 1978 Act. As mentioned in relation to section 1, the interpretation of an Act of Parliament and an instrument made under it, including the effect of its repeal, is a matter for the 1978 Act. It is open to the repealing ASP to make further or different provision.

### *Section 16*

37. This section makes provision as to the effect of repeal on existing rights, including enforcement of an existing right, where an ASP or Scottish instrument repeals another ASP or revokes a Scottish instrument. The section is intended to reflect part of paragraph 13(1)(e) of Schedule 1 to the Interpretation Order.

### *Section 17*

38. This section makes provision as to the effect on offences already committed and breaches of statutory provisions where an ASP or Scottish instrument repeals another ASP or instrument. The provision is intended to reflect part of paragraph 13(1)(d) of Schedule 1 to the Interpretation Order.

## **Section 18: Application of sections 15 to 17 to temporary Acts and instruments**

39. This section applies sections 15 to 17 to the expiry of a temporary ASP as if the temporary Act were repealed by an ASP, and to the expiry of a temporary Scottish instrument as

if the temporary instrument were revoked by an ASP. This section replicates the effect in paragraph 13(2) of Schedule 1 to the Interpretation Order.

### **Section 19: Effect of repeal and re-enactment**

40. This section replicates the effect of paragraph 14(2) of Schedule 1 to the Interpretation Order. The section deals with the case where an ASP or Scottish instrument repeals an ASP and re-enacts the repealed ASP, with or without modification. This provision could be used, for example, where the law is to be consolidated.

### **Section 20: Express provision necessary to bind the Crown**

41. This provision introduces a substantive change to the law. At present, the Crown is bound only by a statutory provision which makes express provision or by necessary implication. This section provides for a new default position - the Crown will be bound by an ASP or a Scottish instrument unless the provision expressly exempts it. This section also abolishes the common law rule that the Crown is bound by an ASP or Scottish instrument by necessary implication. The position as to which Westminster Acts and instruments made under them bind the Crown remains unaffected by this provision.

42. In view of this provision, section 1(2)(b) (the disapplication of the context of an Act or instrument requiring) is disapplied in relation to section 20 by virtue of section 1(3). This is because, if section 1(2)(b) were applied, it would undermine the effect of section 20(2), the effect of which is to abolish the common law rule that the Crown is bound by legislation by necessary implication.

### **Section 21: Forms**

43. Section 21 provides that when a form used differs from the form as prescribed in or under an ASP, then unless the difference in the form used materially affects the effect of the form or is misleading, then the form is not invalid. This will avoid situations where a form may be considered invalid because of a minor defect in it.

### **Section 22: Number**

44. This section replicates paragraph 3(c) of Schedule 1 to the Interpretation Order providing that words in the singular include the plural and vice versa.

### **Section 23: References to time of day**

45. This section replicates paragraph 6 of Schedule 1 to the Interpretation Order providing that references to the time of day in an ASP or SSI refer to Greenwich mean time. And that the provision is subject to section 3 of the Summer Time Act 1972 (c.6).

## **Section 24: Meaning of words and expressions used in instruments**

46. The section provides that, where a word or expression is used in a Scottish instrument, it has the same meaning as given in the ASP under which it was made. This replicates the provision in paragraph 8, Schedule 1 to the Interpretation Order.

## **Section 25: Definitions**

47. Subsection (1) introduces a schedule of defined words and expressions and provides that, if a word or expression that appears in the schedule is used in an ASP or Scottish instrument, it will have the meaning given in the schedule. The section replicates the effect of Article 6(2) of the Interpretation Order.

48. It is likely that over time the schedule will need to be updated to remove entries that are no longer frequently used and to add new entries where the frequency with which an expression is used merits it. Therefore, in subsection (2), the Scottish Ministers have been given a power to modify the schedule by order, which will be subject to the affirmative procedure.

## **Scotland Act definitions**

49. Some expressions which are defined for the purposes of the Scotland Act have been included as having the same meaning as in the Scotland Act – “member of the Scottish Executive”, “the Scottish Administration”, “the Scottish Ministers” and “Scottish public authority”.

## **Section 26: Service of documents**

50. This section makes provision for the service of documents. It expands the current service by post provisions (paragraph 4 of Schedule 1 to the Interpretation Order) and sets down a default rule for service of documents. It would apply whenever an ASP or Scottish instrument authorised or required a document to be served on (or given or sent to etc.) a person. As the words in brackets in subsection (1) indicate, nothing turns on the verb used.

51. Subsection (2) proposes three ways in which a document can be served: personal delivery; post (registered or recorded); and, if agreed in advance with the recipient, by an “electronic communication” (such as email). When a document is served by post it is taken to have been received on the third day after the day it is sent; and where a document is served by electronic communication it is taken to have been received 24 hours after it is sent. These are rebuttable presumptions given the difficulties with postal service and problems which may arise with delivery by service providers/internet for email.

## **Tables**

52. The first table below provides a list of corresponding and omitted provision of the Interpretation Order as compared with the provisions in the Bill.

53. The second table lists the provisions in Parts 1 and 2 of the Bill with their corresponding provisions in the Interpretation Order and the 1978 Act.

**TABLE 1**

**TABLE OF CORRESPONDING AND OMITTED PROVISIONS OF THE INTERPRETATION ORDER**

The first column of the Table lists the provisions of the Interpretation Order.

The second column gives the corresponding provision of the Bill or (where a provision of the Order is not reproduced) states the reason for its omission.

<b>Provision of Interpretation Order</b>	<b>Provision of Bill or reason why omitted</b>
Article 1	omitted - unnecessary
Article 2(1)	schedule 1 (definition of “enactment” and sections 1 and 27 (application; and definition of “Scottish Statutory instrument”)  partially omitted (definition of “the Parliament”)
Article 2(2)	omitted - unnecessary
Article 3(1)	section 38(6)
Article 3(2)	section 38(8)
Article 3(3)	section 39(1) & (2)
Article 3(4)	section 40(1)
Article 4(1)	section 38
Article 4(2)	section 38(2)
Article 4(3)	section 38(3), (4) & (5)
Article 5(1)	partially omitted as unnecessary; section 9(3)
Article 5(2)	section 9(1)
Article 5(3)	section 9(2)
Article 5(4)	sections 10 and 11
Article 6(1)	omitted - unnecessary
Article 6(2)	section 25(1)
Article 6(3)	omitted - some definitions included in schedule 1
Article 7(1)	omitted – different drafting approach (specific provision made in Bill)
Article 7(2)	omitted – Bill does not apply to deeds, documents or other instruments
Article 8	omitted - unnecessary
Schedule 1 paragraph 1	omitted - unnecessary
Schedule 1 paragraph 2	sections 2 and 3

*This document relates to the Interpretation and Legislative Reform (Scotland) Bill (SP Bill 27)  
as introduced in the Scottish Parliament on 15 June 2009*

Schedule 1 paragraph 3	section 22 reproduces the provisions on number; gender provisions are omitted as unnecessary
Schedule 1 paragraph 4	section 26
Schedule 1 paragraph 5	omitted – infrequent use – specific provision can be made in Act or instrument as required
Schedule 1 paragraph 6	section 23
Schedule 1 paragraph 7	omitted as unnecessary – provision applies without need for specific provision
Schedule 1 paragraph 8	section 24
Schedule 1 paragraph 9(1)	section 7(1) and (2)
Schedule 1 paragraph 9(2)	section 7(3)
Schedule 1 paragraph 10	section 4
Schedule 1, paragraph 11	section 6
Schedule 1, paragraph 12	section 15(1) and (3)
Schedule 1, paragraph 13(1)	sections 15(1) and (2), 16 and 17
Schedule 1, paragraph 13(2)	section 18
Schedule 1, paragraph 14(1)	omitted - unnecessary
Schedule 1, paragraph 14(2)	section 19
Schedule 1, paragraph 15(1)	section 13
Schedule 1, paragraph 15(2)	section 14
Schedule 1, paragraph 16	section 12
Schedule 2 - “Act”	schedule 1
“civil partnership”	schedule 1
“commencement”	schedule 1
“the Communities” etc.	the corresponding expressions (“the EU” etc.) are in schedule 1
“Comptroller and Auditor General”	omitted – infrequent use
“Crown Estates Commissioners”	omitted – infrequent use
“Court of summary jurisdiction”	omitted – infrequent use
“Devolution issue”	omitted – infrequent use
“EEA agreement”	omitted – infrequent use
“EEA state”	omitted – infrequent use
“England”	omitted – infrequent use
“Government department”	omitted – infrequent use
“High Court”	schedule 1

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“Land”	schedule 1
“Lands Clauses Acts”	schedule 1
“Minister of the Crown”	omitted – infrequent use
“Month”	schedule 1
“Oath” and “affidavit”	schedule 1
“Ordnance map”	schedule 1
“Person”	schedule 1
“Police area” etc.	schedule 1
“The Privy Council”	schedule 1
“Registered”	schedule 1
“Registered medical practitioner”	schedule 1
“Rules of court”	schedule 1
“Scottish parliamentary election”	omitted – infrequent use
“Secretary of State”	schedule 1
“Sheriff”	schedule 1
“Standard scale”	schedule 1
“Statutory declaration”	schedule 1
“Statutory maximum”	schedule 1
“The Treasury”	omitted – infrequent use
“United Kingdom”	schedule 1
“Wales”	omitted – infrequent use
“Writing”	schedule 1

**TABLE 2**

**TABLE SHOWING PROVISIONS OF PARTS 1 AND 2 OF BILL AND THEIR  
CORRESPONDING PROVISIONS IN THE INTERPRETATION ORDER AND THE  
1978 ACT**

<b>Section of Bill</b>	<b>Provision of Interpretation Order</b>	<b>Provision of 1978 Act</b>
1	Articles 4 and 5	sections 22 and 23
2	Schedule 1, paragraph 2	section 4
3	Schedule 1, paragraph 2	section 4
4	Schedule 1, paragraph 10	section 13
5	n/a	n/a
6	Schedule 1, paragraph 11	section 14
7	Schedule 1, paragraph 9	section 12
9	Article 5(3)	section 19
10	Article 5(4)	section 19
11	Article 5(4)	section 19
12	Schedule 1, paragraph 16	section 20A
13	Schedule 1, paragraph 15(1)	section 20(1)
14	Schedule 1, paragraph 15(2)	section 20(2)
15	Schedule 1, paragraphs 12, 13(1)	section 16(1)
16	Schedule 1, paragraph 13(1)	section 16(1)
17	Schedule 1, paragraph 13(1)	section 16(1)
18	Schedule 1, paragraph 13(2)	section 16(2)
19	Schedule 1, paragraph 14(2)	section 17
20	n/a	n/a
22	Schedule 1, paragraph 3	section 6(c)
23	Schedule 1, paragraph 6	section 9
24	Schedule 1, paragraph 8	section 11
25	Article 6(2)	section 5
26	Schedule 1, paragraph 4	section 7
38	Articles 3((1) and (2) and 4	n/a
39	Article 3(3)	n/a
40	Article 3(4)	n/a
Schedule 1 “Act”	Schedule 2	section 21, Schedule 1
“by virtue of”	Article 6(3)	n/a
“civil partnership”	Schedule 2	Schedule 1
“commencement”	Schedule 2	Schedule 1
“Constable”	n/a	n/a
“document”	Article 6(3)	n/a
“enactment”	Article 6(3)	Schedule 1
“The EU” etc.	Schedule 2	Schedule 1
“financial year”	Article 6(3)	Schedule 1
“functions”	Article 6(3)	n/a
“High Court”	Schedule 2	Schedule 1
“land”	Schedule 2	Schedule 1
“Lands Clauses	Schedule 2	Schedule 1

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Acts”		
“local authority”	n/a	n/a
“local authority area”	n/a	n/a
“member of the Scottish Executive”	Article 6(3)	n/a
“modify”	Article 6(3)	n/a
“month”	Schedule 2	Schedule 1
“oath” and “affidavit”	Schedule 2	Schedule 1
“ordnance map”	Schedule 2	Schedule 1
“person”	Schedule 2	Schedule 1
“police area”	Schedule 2	Schedule 1
“police authority”	Schedule 2	Schedule 1
“police force”	n/a	n/a
“registered”	Schedule 2	Schedule 1
“registered medical practitioner”	Schedule 2	Schedule 1
“rules of court”	Schedule 2	Schedule 1
“the Scottish Administration”	Article 6(3)	n/a
“the Scottish Ministers”	Article 6(3)	n/a
“Scottish public authority”	Article 6(3)	n/a
“Secretary of State”	Schedule 2	Schedule 1
“sheriff”	Schedule 2	Schedule 1
“standard scale”	Schedule 2	Schedule 1
“statutory declaration”	Schedule 2	Schedule 1
“statutory maximum”	Schedule 2	Schedule 1
“subordinate legislation”	Article 6(3)	section 21
“United Kingdom”	Schedule 2	Schedule 1
“writing”	Schedule 2	Schedule 1

## **PART 2: SCOTTISH STATUTORY INSTRUMENTS**

### **OVERALL PURPOSE**

54. The main purpose of Part 2 of the Bill is to make provision regarding the parliamentary scrutiny of “devolved subordinate legislation”. That expression is defined in section 37 of the Bill to mean subordinate legislation contained in a Scottish statutory instrument (“SSI”), but excluding special procedure orders (which are dealt with in Part 5) and so-called local instruments (which are and will continue not to be subject to formal parliamentary scrutiny). Part 2 replaces the provisions of the Scotland Act (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (S.I. 1999/1096) (“the SI Order”). That Order was largely based on the provisions of the Statutory Instruments Act 1946 (c.36) (“the 1946 Act”) which applies to statutory instruments (“SIs”).

## **PART 2**

### **Section 27: Definition of “Scottish statutory instrument”**

55. This section contains the definition of SSI. It provides that the document by which certain statutory functions are exercised will, by default, be an SSI. Subject to the exceptions in subsection (3), those functions are:

- any function of the Scottish Ministers, the First Minister or the Lord Advocate to make, confirm or approve an order, regulations or rules; and
- any function of Her Majesty to make an Order in Council by virtue of an ASP, an instrument made under an ASP or any other enactment provided the function is exercised within devolved competence (which has the meaning given in section 54 of the Scotland Act).

56. This provision ensures that those functions which are most commonly exercised by SSI will automatically be caught by the definition, without the enabling enactment having to provide that the function is to be exercised by SSI. In other cases it may be less obvious that the function should be exercisable by SSI, particularly where the instrument made in exercise of the function is not of a legislative nature. The Bill allows for this by providing that the document by which certain statutory functions are exercised will only be an SSI if so provided in the enabling (or any other) enactment. Those functions are:

- any function of the Scottish Ministers, the First Minister or the Lord Advocate to make, confirm or approve subordinate legislation other than orders, regulations and rules (such as directions, schemes, bye-laws and warrants); and
- any function of any other person of making, confirming or approving subordinate legislation.

### **Section 28: Instruments subject to the negative procedure**

57. Section 28 defines what is meant when an enactment provides that devolved subordinate legislation is subject to the negative procedure.

58. Under the negative procedure the legislation is made (i.e. signed by or on behalf of the responsible authority) and is then subject to annulment by resolution of the Parliament. The main features of the procedure are that:

- section 28(2) requires the SSI to be laid before the Parliament as soon as practicable after being made and not less than 28 days before the legislation is due to come into force. This replicates article 10(2) of the SI Order except that the existing period of 21 days has been extended to 28 days and there is an express requirement to lay the instrument as soon as possible after it is made;
- section 28(3) provides that the Parliament may, within the period of 40 days beginning with the date on which it is laid, resolve that the instrument be annulled;
- section 31(2) provides that failure to comply with these requirements does not invalidate the instrument;
- section 28(8) provides that, in calculating the period of 28 or 40 days, no account is to be taken of any time during which the Parliament is dissolved or in recess for more than 4 days.

59. Subsections (4) to (6) explain the effect of the Parliament making an annulment resolution.

60. Subsection (4) provides that, in so far as the instrument is not in force on the date of the annulment resolution, the instrument is not to come into force. But, in so far as the instrument is in force on that date, nothing further is to be done under, or in reliance upon, the instrument after that date.

61. Following an annulment resolution, subsection (5) requires the Scottish Ministers to revoke the instrument or, if it is an Order in Council, subsection (6) provides that Her Majesty may revoke it.

62. Subsection (7) provides that neither the resolution, nor the instrument's consequent revocation, affect the validity of anything previously done under the instrument or the making of a new SSI.

### **Section 29: Instruments subject to the affirmative procedure**

63. Section 29 defines what is meant when an enactment provides that devolved subordinate legislation is subject to the affirmative procedure.

64. Section 29(2) provides that devolved subordinate legislation subject to the affirmative procedure is not to be made unless a draft of the SSI containing it is laid before, and approved by resolution of, the Parliament.

65. Section 29(3) provides that a SSI is not properly made and has no effect if the statutory pre-condition that a draft of it be laid before and approved by a resolution of the Parliament is not complied with. This provision replicates the position at common law.

66. Section 29(4) ensures that section 32(3) applies to instruments subject to the affirmative procedure. That means, provided a draft of it was approved by a resolution of the Parliament, an instrument will not be invalid only because the draft was not laid properly in accordance with the requirements of the Parliament's standing orders.

### **Section 30: Other instruments laid before the Parliament**

67. Section 30 makes default provision for what is to happen in relation to all devolved subordinate legislation which is not subject to either the negative or the affirmative procedure.

68. It requires the SSI to be laid before the Parliament. That is to happen as soon as practicable after the SSI is made and before it is due to come into force.

### **Section 31: Failure to lay instruments in accordance with section 28(2) or 30(2)**

69. Section 31 makes provision about the consequences of failure to lay a SSI in accordance with the laying requirements in section 28(2) (which provides for the negative procedure) or section 30(2) (which provides for simple laying).

70. It makes clear that failure to comply with the laying requirements does not affect the validity of an instrument as a matter of law (subsection (2)). Rather it is a matter for which the responsible authority is answerable to the Parliament. Subsections (3) and (4) provide that, if the instrument is made without complying with the relevant laying requirement, the responsible authority must explain why in writing to the Presiding Officer as soon as practicable. This replicates the terms Article 10(3) of the SI Order.

### **Section 32: Laying of Scottish statutory instruments before the Scottish Parliament**

71. Section 32 defines what laying a SSI or draft SSI before the Parliament entails where an enactment authorises or requires laying. It provides that, unless a contrary intention appears, laying a SSI or draft SSI means taking such steps as the Parliament's standing orders specify.

72. Subsection (3) provides that failure to lay a SSI or draft SSI in accordance with the enactment which authorises or requires it does not affect the instrument's validity.

### **Section 33: Combination of powers**

73. Section 33 makes provision for the combining, in a single instrument, of enabling powers subject to different scrutiny procedures. It provides a foundation in law for making instruments using a combination of powers some of which are subject to the negative procedure (in terms of section 28) and others to no procedure aside from laying (in terms of section 30). It provides that where powers are so combined the negative procedure applies to all provisions made in exercise of those powers.

### **Section 34: Power to change procedure to which subordinate legislation is subject**

74. Section 34 allows the procedure for making, confirming or approving devolved subordinate legislation to be changed by order, subject to the affirmative procedure. Such an

order may only be made to give effect to a resolution of the Parliament calling for a procedure to be changed.

75. An order under section 34 may, in particular, allow functions subject to the negative procedure to be made subject to the affirmative procedure and vice-versa and for functions subject to no procedure aside from laying to be subject to either negative or affirmative procedure.

### **Section 35: Procedures prescribed in pre-commencement enactments**

76. This section introduces schedule 3 which modifies procedures prescribed in pre-commencement enactments to bring them into line with sections 28 to 32.

### **Section 36: Statutory instruments subject to procedure in the Scottish Parliament**

77. This section introduces schedule 4 which makes provision in respect of SIs which are subject to procedure before the Parliament, to bring the pre-commencement enactments by virtue of which they are made into line with sections 28 to 32.

## **PART 3: PUBLICATION OF ACTS AND INSTRUMENTS**

### **OVERALL PURPOSE**

78. Part 3 of the Bill makes provision about the numbering, printing and publication of ASPs and SSIs.

## **PART 3**

### **Section 38: Official prints of ASPs**

79. This section restates and replaces articles 3(1) and (2) and 4 of the Interpretation Order.

80. Section 38(1) makes provision about the numbering of ASPs. They are to be numbered consecutively in each calendar year according to the date on which they received Royal Assent with the prefix “asp” before the number – for example 2008 asp 8. Section 38(6) and (8) makes provision for the Clerk of the Parliament to write this number on a copy of the ASP and for that copy to be known as “the official print” of the Act

### **Section 39: Publication of official prints of Acts of the Scottish Parliament**

81. This section restates and replaces paragraphs (3) and (4) of article 3 of the Interpretation Order.

82. It makes provision for the printing and publication of the certified copy of an ASP. The Clerk of the Parliament is required to certify a copy of the official print of each ASP and send it to the Queen’s Printer for Scotland (“QPS”) who is required to ensure that it is printed and made available for sale.

#### **Section 40: Preservation of official prints of Acts of the Scottish Parliament**

83. This section requires the Clerk of the Parliament to send the official print of each ASP to the Keeper of the Records of Scotland who is required to preserve it.

84. This section replicates article 3(4). The express duty imposed on the Keeper by subsection (2) to preserve the official print is new; it has hitherto been implied.

#### **Section 41: Queen's Printer for Scotland to publish instruments**

85. Section 41(1) requires the responsible authority, as soon as possible after a SSI is made, to send a certified copy of it to the QPS. Section 41(2) requires the QPS to publish copies of it in accordance with regulations made under section 42.

86. The manner of publication is left for the Scottish Ministers to specify in regulations under section 42(2)(b).

87. Section 41(3) provides that, in criminal proceedings for an offence consisting of a contravention of a SSI, it is a defence to prove that, at the date of the alleged contravention, the SSI had not been published by the QPS. Section 41(4) qualifies this by providing that this defence is not available if it is proved that reasonable steps had been taken by the responsible authority to bring the SSI to the notice of the public, persons likely to be affected by it or the person charged. It is made clear that this does not affect any rule of law relating to the time at which the SSI comes into force.

#### **Section 42: Publication, numbering and citation: regulations**

88. This section enables the Scottish Ministers, by regulations subject to the affirmative procedure, to make provision for, or in connection with, the publication, numbering and citation of SSIs.

89. This is intended to enable provision to be made which is similar to the kind of detailed provisions in articles 5 to 9 of the SI Order. It also enables the regulations to make provision for charging for the provision of copies of the SSIs or of the lists or annual editions of them.

#### **Section 43: Publication in the Gazettes**

90. This section makes provision as to what is meant when any enactment requires any SSI to be published or notified in the London, Edinburgh or Belfast Gazette. It provides that this requirement is complied with if a notice is published in the Gazette stating that the SSI has been made and providing information as to how copies of it may be obtained.

#### **Section 44: No duty to print Scottish statutory instruments**

91. This section amends section 92(4) of the Scotland Act 1998 to remove the duty on the QPS to print copies of SSIs.

### **Section 45: Queen’s Printer: delegation of functions**

92. Section 45 provides for the delegation of any function of the QPS under section 41 or conferred by regulations under section 42. The QPS will remain responsible for carrying out such functions and anything done by the delegate is to be treated as if done by the QPS. This provision will enable the QPS, for example, to contract out the printing and selling of SSIs as she does at present.

### **Section 46: Interpretation of Part 3**

93. This section provides for the interpretation of expressions used in Part 3.

## **PART 4: PRE-CONSOLIDATION MODIFICATION OF ENACTMENTS**

### **OVERALL PURPOSE**

94. Rule 9.18 of the Parliament’s standing orders provides for an expedited Bill procedure for those Bills which consolidate existing enactments (“Consolidation Bills”). Rule 9.18A extends rule 9.18 to cover Bills which codify existing statute and common law (“Codification Bills”). In the course of consolidating existing legislation it may be desirable to make modifications to it. The purpose of Part 4 is to enable the Scottish Ministers, by order, to amend enactments in advance of their re-enactment in a consolidation or codification Bill.

## **PART 4**

### **Section 47: Pre-Consolidation Modification of Enactments**

95. Section 47(1) gives the Scottish Ministers the power, by order subject to the affirmative procedure, to “make such modifications of enactments relating to a particular subject as in their opinion facilitate, or are otherwise desirable in connection with, the consolidation of the law on the subject”. In terms of the Parliament’s standing orders, consolidation and codification Bills can incorporate amendments to the law recommended by the Scottish Law Commission or jointly by the Law Commission and the Scottish Law Commission. Law Commission amendments are only recommended where they are considered “necessary” for the consolidation or codification. The power to make amendments under section 47(1) is less restrictive, but the focus of the power is still on producing a satisfactory consolidation. It will not allow substantive policy changes to be made for their own sake.

96. Section 47(2) provides that no such order can be made unless a Bill, or a group of Bills consolidating the law on the subject has been either introduced in the Scottish Parliament or presented to either House of Parliament. This ensures that the subject committee and other committees (e.g. the Subordinate Legislation Committee) scrutinising the order have before them the proposed consolidated legislation in order to see the changes in the context of the consolidation that they are intended to facilitate and so can judge better whether the power is being properly used. The provision refers to “a group of Bills” because it is possible that a consolidation may proceed by way of more than one Bill. This was the case with the criminal procedure consolidation in the 1990s where there were 4 Bills which together consolidated the law. Paragraph (b) will enable the power to be used in connection with a consolidation Bill at Westminster. The power could, of course, only be used to make modifications that would be

within the legislative competence of the Parliament. Section 47(3) provides for the order to take effect immediately before the consolidated Act, or group of Acts, come into force.

97. Section 47(5) defines consolidation as including the restatement of the common law on any subject. This would then enable this provision to apply to codification Bills.

## **PART 5: ORDERS SUBJECT TO SPECIAL PARLIAMENTARY PROCEDURE**

### **OVERALL PURPOSE**

98. The main purpose of Part 5 of the Bill is to make provision for special parliamentary procedure (“SPP”) for the purposes of section 94(2)(b) of the Scotland Act. These provisions replace the provisions of the Scotland Act 1998 (Transitory and Transitional Provisions) (Orders subject to Special Parliamentary Procedure) Order 1999 (SI 1999/1593) (“the SPP Order”).

## **PART 5**

### **Sections 48 to 53**

99. This Part simply replicates the effect of the SPP Order. It provides that where special parliamentary procedure is required then the following procedure is to apply :

- the special procedure order is to be advertised in the Edinburgh Gazette;
- the order, if objected to, (other than frivolous objections or objections as to compensation) requires to be confirmed by an ASP. The relevant Bill (in absence of any special provision in the Parliament’s Standing Orders concerning the procedures for such a Bill) is to be treated as a Private Bill; and
- the order, if there are no objections to it, (other than detailed above) is to come into force 40 days after being laid, unless the Parliament resolves that the order be annulled.

## **PART 6: LAYING OF DOCUMENTS OTHER THAN SSIS**

100. Section 54 makes provision as to what is meant when an enactment requires or authorises a document other than a SSI, or a draft SSI, to be laid before the Parliament. It makes similar provision to section 32 (which defines what laying a SSI or draft SSI before the Parliament entails).

## **PART 7: MISCELLANEOUS AND GENERAL**

### **Section 55: Meaning of “enactment” in Acts of Parliament and instruments made under them**

101. Section 55 amends the definition of “enactment” in Schedule 1 to the Interpretation Act 1978. The existing definition applies to all Westminster legislation, unless a contrary definition is specified or implied in a particular piece of legislation.

102. As amended, references to “enactment” will include Acts of the Scottish Parliament and Scottish statutory instruments where the references occur in Westminster primary or secondary legislation made before 1 July 1999 or after the coming into force of this provision.

103. For Westminster primary or secondary legislation made in the intervening period the existing definition (i.e. that the term does not include Acts of the Scottish Parliament and Scottish statutory instruments) will remain.

104. The new definition will impact on references to “enactment” that occur in devolved areas of Westminster legislation.

### **Section 56: Consequential revocation of transitional orders**

105. Section 56 makes provision for the revocation of the transitional orders.

### **SCHEDULE 1: DEFINITION OF WORDS AND EXPRESSIONS**

106. The schedule supplies definitions of commonly-used words and expressions. Additional words and expressions have been added where they are thought to be used sufficiently frequently in ASPs and Scottish instruments – and so pass the “frequent use” test.

### **SCHEDULE 2: SCOTTISH STATUTORY INSTRUMENTS: TRANSITIONAL AND CONSEQUENTIAL PROVISION**

107. Section 27 will create a free-standing definition of “SSI”. Up till now, an instrument has been classified as an SSI (by virtue of article 4 of the SI Order) only if it is also a SI (within the meaning of section 1 of the Statutory Instruments Act 1946 (c.36)). As section 56 of the Bill will revoke the Interpretation Order it is necessary to adapt enactments passed or made before Part 2 comes into force to bring them into line with the new approach taken to the definition of a SSI in the Bill. This schedule achieves that.

108. A pre-commencement enactment is defined as meaning an enactment passed or made before Part 2 comes into force. For this purpose, an ASP is taken to have been passed on the date on which the Bill for it was passed by the Parliament – that is before it is enacted by receiving Royal Assent. The reason for this is because there is a pragmatic need to catch such ASPs at the earliest possible time when they can no longer be amended by the Parliament because they are likely to refer to the old SI procedures and therefore require the modifications made by this schedule.

109. Paragraph 2 applies where there is a function of the Scottish Ministers, the First Minister or the Lord Advocate to make, confirm or approve orders, regulations or rules under a pre-commencement enactment. It provides that any provision which provides for the function to be exercisable by SI to cease to have effect. However, if there is no such provision, then the function is not to be exercisable by SSI. This brings these provisions into line with section 27(2)(a).

110. Paragraph 3 applies where there is a function of Her Majesty to make an Order in Council under a pre-commencement enactment so far as the function is exercisable within devolved

competence. It provides that section 1 of the 1946 Act ceases to apply to such a function. That section provides that such an Order in Council is exercisable as a SI. This brings these provisions into line with section 27(2)(c).

111. Paragraph 4 applies in relation to other functions to make subordinate legislation under a pre-commencement enactment which correspond to section 27(2)(b) and (d). It provides that any provision which provides for the function to be exercisable by SI should have effect as if it provided for the function to be exercisable by SSI.

112. Paragraph 5 makes similar exceptions to those made by section 27.

### **SCHEDULE 3: SCOTTISH STATUTORY INSTRUMENTS: PROCEDURES PRESCRIBED IN PRE-COMMENCEMENT ENACTMENTS**

113. This schedule modifies the existing procedures for scrutinising SSIs in pre-commencement enactments in order to bring them into line with the provisions in sections 28 to 32 providing for negative procedure, affirmative procedure and the default procedure of simply laying the SSI before Parliament. It provides that the negative procedure will apply where the pre-commencement enactment provides that:

- the instrument, having been made, is subject to annulment in pursuance of a resolution of the Parliament (paragraph 2);
- a draft of the instrument must be laid before the Parliament and it cannot be made if the Parliament so resolves within 40 days (paragraph 3); or
- the instrument, having been made, cannot come into force until it has been laid before the Parliament for a specified period and the Parliament may, by resolution, annul it (paragraph 4).

114. It provides that the affirmative procedure will apply where the pre-commencement enactment provides that:

- a draft of the instrument must be laid before the Parliament and it cannot be made until the Parliament has resolved that it can (paragraph 5); or
- the instrument, having been made, cannot come into force unless and until is laid before the Parliament and approved by resolution (paragraph 6).

115. It provides that the default procedure, which requires the instrument simply to be laid before the Parliament, will apply where the pre-commencement enactment provides that:

- the instrument, having been made, cannot come into force unless it has been laid before the Parliament for a specified period (paragraph 7); or
- the instrument does not need to be laid before the Parliament at all (paragraph 8).

116. To the extent that pre-commencement enabling enactments provide for any other parliamentary scrutiny procedures they will continue unaltered.

**SCHEDULE 4: APPLICATION OF PART 2 TO STATUTORY INSTRUMENTS LAID  
BEFORE THE PARLIAMENT**

117. Some SIs and draft SIs are subject to scrutiny by the Parliament. For example, the Scotland Act provides for this in the case of Orders in Council subject to the procedures referred to as Types A, F and H in Schedule 7.

118. As a consequence of the new statutory framework for the Parliament's scrutiny procedures provided for in sections 28 to 32, it is necessary to adapt references in pre-commencement enactments to the Parliament's scrutiny of SIs and draft SIs to refer to the new procedural labels. Pre-commencement enactments are defined in paragraph 1 of Schedule 4 to mean enactments passed or made before Part 2 comes into force.

119. Schedule 4 accordingly provides that, where any pre-commencement enactment provides for:

- an SI to be subject to annulment in pursuance of a resolution of the Parliament, section 28 should apply to it as it applies in relation to a SSI which is subject to the negative procedure;
- a draft of an SI to be laid before, and approved by resolution of the Parliament, section 29 should apply to it as it applies in relation to a SSI which is subject to the affirmative procedure.

120. Schedule 4 also applies the provisions of section 32 (which defines what it means for an instrument to be laid before the Parliament) to such SIs and draft SIs.

## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

121. The provisions in the Interpretation and Legislative Reform (Scotland) Bill are of highly technical nature. The Bill broadly restates the existing law contained in the three statutory instruments listed in paragraph 125 below and contains only one new measure that will make it easier to manage the process of consolidating legislation. Any departure from the existing position is highlighted where appropriate.

122. It has four main purposes. Specifically it deals with:

- the publication, interpretation and operation of Acts of the Scottish Parliament (“ASPs”) and instruments made under them;
- the making of subordinate legislation in the form of a Scottish statutory instrument (“SSI”) and the procedures which apply in the Scottish Parliament and its publication;
- the special procedure which applies to orders that are subject to special parliamentary procedure; and
- giving the Scottish Ministers a power, by order, to make certain amendments to enactments in order to facilitate their consolidation.

123. Up until now, the first three of these matters have been regulated by three transitional orders made by the UK Government under the Scotland Act 1998, namely:

- the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379) (“the Interpretation Order”);
- the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (S.I. 1999/1096) (“the SI Order”); and
- the Scotland Act 1998 (Transitory and Transitional Provisions) (Orders subject to Special Parliamentary Procedure) Order 1999 (S.I. 1999/1593) (“the SPP Order”).

124. The provisions in the Bill do not give rise to any new costs or savings, since apart from the new measure concerning consolidation, it broadly restates existing law with amendments, where appropriate, to clarify and modernise the legal position.

### **Interpretation**

125. Part 1 deals with how ASPs and instruments made under are them to be interpreted. Most of the provisions are based on, and largely replicate the effect of, the Interpretation Order. Some relatively minor changes are proposed to clarify the wording and modernise its effect. Certain provisions are omitted on the basis that they would apply anyway and so are unnecessary.

126. Broadly speaking these provisions in the Bill deal with two matters, how future ASPs and any Scottish instruments made under them are to be interpreted, and with the numbering and publication of ASPs and SSIs.

127. The purposes of the interpretation provisions are to provide firstly, standard definitions of commonly used words and terms for use in legislation and secondly, standard sets of provisions, such as commencement or implied duties and powers, for use in legislation to assist the operation of ASPs and Scottish instruments made under them. This helps not only to promote consistency within the statute book but also to shorten legislation through the avoidance of repetition.

128. There are 2 major changes of substance. The first is the new provision stating that the Crown is bound by an ASP or an instrument unless it is expressly exempted. As a result, the common law rule is abolished under which the Crown may be bound by necessary implication (section 20). The second is an expansion of the current provision on service by post. The proposed new provision sets out default rules for 3 different types of service, including by electronic communications (section 26).

129. The Part applies to future ASPs and instruments only (section 1).

130. The Interpretation Order is revoked but with savings for existing ASPs and instruments (section 56).

### **Scottish Statutory Instruments**

131. Part 2 deals with the making of subordinate legislation in the form of an SSI and the procedures to which it is subject in the Parliament. Most of the provisions are based on, and replicate the effect of, the SI Order. The provisions provide a list of instruments which fall to be defined as Scottish statutory instruments. They also streamline the current parliamentary scrutiny procedures for SSIs by providing for only three procedures – negative, affirmative and simple laying procedures. The Bill also provides a procedure for those Westminster statutory instruments that require scrutiny in the Scottish Parliament.

132. There are 2 major changes of substance. Firstly, the provisions will apply to existing as well as future enactments, therefore, schedules 2 and 3 modify existing enactments in order to bring them into line with the new definition of what constitutes a SSI and the 3 procedures (negative, affirmative and simple laying procedures). Secondly, this part also provides a mechanism for Parliament to resolve that a change should be made to the procedure to which any SSI is subject (i.e. upgrade from negative to affirmative or vice versa) and for Scottish Ministers to give effect to that resolution (section 34).

133. The SI Order is revoked (section 56).

## **Numbering and Publication of Acts of the Scottish Parliament and Scottish Statutory Instruments**

134. Part 3 makes provision as to how ASPs and SSIs are to be numbered and published. The provisions in the Bill in relation to the numbering and publication of ASPs regulate how ASPs are to be numbered. The Bill removes the need for the Queen's Printer for Scotland (QPS) to print every SSI. Otherwise, no changes of substance are proposed to the existing position. Section 40(2) of the Bill replicates the general duty placed on the Keeper of the Records of Scotland by section 37(1) of the Public Records (Scotland) Act 1937 to preserve and make available public records. In relation to publication, numbering and citation of future SSIs, they will be numbered, published and made available in accordance with regulations by Scottish Ministers (including arrangements for making available printed versions of instruments on request). The Scottish Government currently meets the QPS's production costs in relation to ASPs and Scottish subordinate legislation, the costs for the latest year available (2007-08) were £80,000.

## **Pre-Commencement Modification of Enactments**

135. Part 4 gives a new power to the Scottish Ministers to make, by order subject to affirmative procedure, pre-consolidation amendments to enactments which are to be consolidated but only for the purposes of facilitating their consolidation. This is a new power which would enable Scottish Ministers to make, by order, pre-consolidation amendments to either a Bill or group of Bills for consolidation or codification purposes. These powers are not to be used to make substantive policy changes for their own sake, but rather would be focus to ensure the production of a satisfactory consolidation. The use of this new power would, in certain instances, streamline the present consolidation process.

## **Special Parliamentary Procedure**

136. Part 5 makes provision for the special parliamentary procedure (SPP) to which orders subject to SPP are to be subject in the Scottish Parliament. The requirements in this part of the Bill restate, in their entirety, the provisions in the SPP Order in relation to the procedures to be followed for orders that are subject to special parliamentary procedure.

137. The SPP Order is revoked (section 56).

## **Laying Documents before the Scottish Parliament**

138. Part 6 makes provision as to what is meant when an enactment requires or authorise a document other than a SSI (or draft SSI) to be laid before the Parliament. The provisions provide that, unless the contrary intention appears, a reference to laying a document (or draft) before the Parliament is to be construed as taking such steps as may be provided in the Parliaments Standing Orders for such a process. The provisions also provide that failure to take such steps does not invalidate the document. These are similar provisions to those in the SI Order.

## **COSTS ON THE SCOTTISH ADMINISTRATION**

### **Interpretation Provisions – Part 1**

139. There will be no new material costs or savings to the Scottish Administration with the enactment of the interpretation provisions.

### **Scottish Statutory Instruments – Part 2**

140. There will be no new material costs or savings to the Scottish Administration with the enactment of the Scottish statutory instruments provisions in the Bill.

### **Numbering and Publication of Acts of the Scottish Parliament and Scottish Statutory Instruments – Part 3**

141. There will be no new material or savings to the Scottish Administration with the enactment of the provisions in relation to the numbering and publication of Acts of the Scottish Parliament and Scottish statutory instruments.

### **Pre-Consolidation Modifications of Enactments – Part 4**

142. There will be no new material costs or savings to the Scottish Administration with the enactment of the provisions in relation to the pre-consolidation modifications of enactments.

### **Orders Subject to Special Parliamentary Procedures – Part 5**

143. There will be no new material costs or savings to the Scottish Administration with the enactment of the provisions in relation to orders subject to Special Parliamentary Procedure.

### **Laying of Documents before the Scottish Parliament – Part 6**

144. There will be no new material costs or savings to the Scottish Administration with the enactment of the provisions in relation to the laying of documents before the Scottish Parliament.

## **COSTS ON LOCAL AUTHORITIES**

145. There will be no new material costs or savings to Scottish local authorities with the enactment of the provisions in the Bill.

## **COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

146. There will be no new material costs or savings to other bodies, individuals or business in Scotland with the enactment of the provisions in the Bill.

*These documents relate to the Interpretation and Legislative Reform (Scotland) Bill (SP Bill 27)  
as introduced in the Scottish Parliament on 15 June 2009*

## **SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE**

On 15 June 2009, the First Minister (Rt Hon Alex Salmond MSP) made the following statement:

“In my view, the provisions of the Interpretation and Legislative Reform (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

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## **PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE**

On 12 June 2009, the Presiding Officer (Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Interpretation and Legislative Reform (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

*These documents relate to the Interpretation and Legislative Reform (Scotland) Bill (SP Bill 27)  
as introduced in the Scottish Parliament on 15 June 2009*

# **INTERPRETATION AND LEGISLATIVE REFORM (SCOTLAND) BILL**

## **EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)**

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