

# Interpretation and Legislative Reform (Scotland) Bill

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## 1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 25	Schedule 1
Sections 26 and 27	Schedule 2
Sections 28 to 35	Schedule 3
Section 36	Schedule 4
Sections 37 to 57	Long Title

Amendments marked \* are new (including manuscript amendments) or have been altered.

### Section 1

#### Jackson Carlaw

- 2 In section 1, page 1, line 20, leave out subsection (3)

#### Bruce Crawford

- 4 In section 1, page 1, line 21, leave out from <any> to <passed> in line 22 and insert <an instrument of a type mentioned in subsection (4A) made under—
- (a) an Act of the Scottish Parliament (whenever passed), or
  - (b) an Act of the Scottish Parliament and an Act of Parliament (in each case, whenever passed).
- (4A) The types of instrument are—>

#### Bruce Crawford

- 5 In section 1, page 2, line 2, after <rules> insert <(including an act of sederunt, an act of adjournal and other rules of court)>

#### Bruce Crawford

- 6 In section 1, page 2, line 10, leave out from second <the> to end of line 11 and insert <subsection (4A).>

### Section 4

#### Bruce Crawford

- 7 In section 4, page 3, line 2, after <day> insert <after the day>

## Section 8

### Bruce Crawford

- 8 In section 8, page 4, line 2, leave out <This section> and insert <Subsection (2)>

### Bruce Crawford

- 9 In section 8, page 4, line 5, leave out subsection (3)

## Section 12

### Bruce Crawford

- 10 In section 12, page 5, line 18, leave out <that has been> and insert <, and  
( ) before the day on which—  
(i) the Act receives Royal Assent, or  
(ii) the Scottish instrument is made,  
the EU instrument is>

### Bruce Crawford

- 11 In section 12, page 5, line 21, at end insert <(whether or not that other EU instrument has come into force)>

## Section 14

### Bruce Crawford

- 12 In section 14, page 5, line 35, at end insert <(whether or not that other enactment has come into force)>

## Section 20

### Jackson Carlaw

- 3 Leave out section 20

## Section 25

### Helen Eadie

- 41 In section 25, page 8, line 16, after <listed> insert—  
<( ) in section 127(1) of the Scotland Act 1998 (c.46) are to be construed in accordance with that Act,>

## Schedule 1

### Bruce Crawford

- 13 In schedule 1, page 21, leave out line 9

### Helen Eadie

- 42 In schedule 1, page 21, leave out lines 40 and 41

### Helen Eadie

- 43 In schedule 1, page 22, leave out line 1

### Bruce Crawford

- 14 In schedule 1, page 22, line 20, leave out from <as> to end of line 21 and insert <within the meaning of the Medical Act 1983 (c.54) who holds a licence to practise under that Act,>

### Helen Eadie

- 44 In schedule 1, page 22, leave out lines 25 to 28

### Helen Eadie

- 45 In schedule 1, page 22, leave out lines 30 to 33

## Section 26

### Helen Eadie

- 46 In section 26, page 8, line 30, leave out <where subsection (3) applies,>

### Bruce Crawford

- 15 In section 26, page 8, line 30, leave out <by an electronic communication> and insert <using electronic communications>

### Helen Eadie

- 47 In section 26, page 8, line 31, at end insert <in accordance with regulations made by the Scottish Ministers under subsection (3)>

### Helen Eadie

- 48 In section 26, page 8, line 32, leave out subsection (3) and insert—
- <(3) The Scottish Ministers may, by regulations, make provision as to—
    - (a) how, and under what conditions, documents may be served by electronic communications for the purposes of subsection (2)(c),
    - (b) how the service and receipt of such documents may be proved, and

(c) when such documents may be presumed to have been received and how such presumption may be rebutted.

(3A) Before making regulations under subsection (3), the Scottish Ministers must consult any person or body whom they consider to be appropriate.

(3B) Any regulations under this section are subject to the affirmative procedure.>

**Bruce Crawford**

16 In section 26, page 8, line 32, leave out <agrees> and insert <authorised or required to serve the document and the person on whom it is to be served agree in writing>

**Bruce Crawford**

17 In section 26, page 9, line 4, leave out <on the third day after the day on which> and insert <48 hours after>

**Helen Eadie**

49 In section 26, page 9, line 6, leave out subsection (6)

**Bruce Crawford**

18 In section 26, page 9, line 7, leave out <24> and insert <48>

**Bruce Crawford**

19 In section 26, page 9, line 8, leave out subsection (7)

**Helen Eadie**

50 In section 26, page 9, leave out lines 9 and 10

**Section 28**

**Helen Eadie**

51 In section 28, page 10, line 13, leave out <28> and insert <40>

**Bruce Crawford**

20 In section 28, page 10, line 26, leave out <Scottish Ministers> and insert <responsible authority>

**Helen Eadie**

52 In section 28, page 10, line 26, at end insert—

<(6A) The Order in Council made under subsection (5) may, or the order made under subsection (6) must, contain provisions which will, so far as practicable, restore the position to what it was before the instrument was in force.

(6B) Where that Order in Council or order does not restore the position as mentioned in subsection (6A), the responsible authority must—

(a) explain to the Presiding Officer why it does not do so, and

- (b) lay any such explanation before the Parliament.
- (6C) The explanation is to be given in writing as soon as practicable after the instrument is laid before the Parliament.

**Helen Eadie**

**53** In section 28, page 10, line 30, leave out subsection (8) and insert—

- <( ) In calculating the period of 40 days mentioned in subsection (2) or (3), no account is to be taken—
  - (a) in the case of subsection (2), of any time during which the Scottish Parliament is dissolved or in recess for more than 16 days,
  - (b) in the case of subsection (3), of any time during which the Scottish Parliament is dissolved or in recess for more than four days.>

**Bruce Crawford**

**21** In section 28, page 10, line 32, at end insert—

- <( ) In subsection (6), “responsible authority”, in relation to a Scottish statutory instrument, means—
  - (a) the Scottish Ministers in a case where the instrument is made, confirmed or approved by the Scottish Ministers, the First Minister or the Lord Advocate, and
  - (b) in any other case, the person who made, confirmed or approved the instrument.
- ( ) An order under subsection (5) or (6) is to be made by Scottish statutory instrument.>

**Section 29**

**Helen Eadie**

**54** In section 29, page 11, line 1, leave out subsection (4)

**Section 30**

**Bruce Crawford**

**22** In section 30, page 11, line 7, at end insert—

- <(3) References in subsections (1) and (2) to devolved subordinate legislation do not include references to subordinate legislation made under an enactment mentioned in subsection (4).
- (4) Those enactments are—
  - (a) the Harbours Act 1964 (c.40),
  - (b) the Water (Scotland) Act 1980 (c.45),
  - (c) the Road Traffic Regulation Act 1984 (c.27),
  - (d) the Roads (Scotland) Act 1984 (c.54),
  - (e) section 1, 2 or 8 of the Salmon Act 1986 (c.62),
  - (f) the Natural Heritage (Scotland) Act 1991 (c.28),

- (g) section 33, 34 or 35 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (asp 15),
  - (h) article 53 of the Scotland Act 1998 (River Tweed) Order 2006 (S.I. 2006/2913),
  - (i) the Transport and Works (Scotland) Act 2007 (asp 8).
- (5) The Scottish Ministers may by order modify subsection (4).
- (6) An order under this section is subject to the affirmative procedure.>

### **Section 31**

**Helen Eadie**

**55\*** In section 31, page 11, line 11, leave out subsection (2) and insert—

- <( ) Where the Scottish statutory instrument containing the legislation is not laid before the Scottish Parliament, the instrument is of no effect.
- ( ) But failure to lay the instrument—
  - (a) in the case where section 28 applies, at least 40 days before the instrument comes into force, or
  - (b) in the case where section 30 applies, before the instrument comes into force,
 does not affect the validity of the instrument.>

**Helen Eadie**

**56** In section 31, page 11, line 13, leave out subsection (3) and insert—

- <(3) Where the instrument is laid before the Parliament but is not laid—
  - (a) in the case where section 28 applies, at least 40 days before the instrument comes into force, or
  - (b) in the case where section 30 applies, before the instrument comes into force,
 the responsible authority must comply with subsection (3A).
- (3A) The responsible authority must—
  - (a) explain to the Presiding Officer why it is necessary to bring the instrument into force—
    - (i) in the case where section 28 applies, before the expiry of the period of 40 days mentioned in subsection (2) of that section, or
    - (ii) in the case where section 30 applies, before being laid, and
  - (b) lay any such explanation before the Parliament.>

**Helen Eadie**

**57** In section 31, page 11, line 18, leave out subsection (5)

**Helen Eadie**

**58** In section 31, page 11, line 23, leave out <subsection (3)> and insert <subsections (3) and (3A)>

## Section 32

### Helen Eadie

- 59 In section 32, page 11, line 38, leave out subsection (3)

## Section 33

### Bruce Crawford

- 23 In section 33, page 12, line 3, leave out subsections (1) to (3) and insert—

- <(1) This section applies where—
- (a) a power of a person to make devolved subordinate legislation is subject to the affirmative procedure,
  - (b) a power of a person to make devolved subordinate legislation is subject to the negative procedure,
  - (c) section 30 applies to a power of a person to make devolved subordinate legislation, or
  - (d) a power of a person to make devolved subordinate legislation does not fall within any of paragraphs (a) to (c).
- (2) If the person considers that it is desirable to exercise two or more of the powers together, the powers may be exercised together and by the same Scottish statutory instrument.
- (3) If the powers exercised together include a power of the type mentioned in paragraph (a) of subsection (1), the devolved subordinate legislation contained in the instrument is subject to the affirmative procedure.
- (3A) If the powers exercised together do not include a power of the type mentioned in paragraph (a) of subsection (1) but include a power of the type mentioned in paragraph (b) of that subsection, the devolved subordinate legislation contained in the instrument is subject to the negative procedure.
- (3B) If the powers exercised together do not include a power of the type mentioned in paragraph (a) or (b) of subsection (1), section 30 applies to the devolved subordinate legislation contained in the instrument.>

### Bruce Crawford

- 24 In section 33, page 12, line 12, leave out from <do> to end of line 13 and insert <continue to apply only in relation to the exercise of that power.>

## Section 34

### Bruce Crawford

- 25 In section 34, page 12, line 26, leave out from <which> to <procedure> and insert <to which section 30 applies>

**Bruce Crawford**

- 26 In section 34, page 12, line 28, leave out <one of those procedures> and insert <the negative or the affirmative procedure>

**Schedule 4**

**Bruce Crawford**

- 27 In schedule 4, page 27, line 16, at end insert—

*<Other instruments laid before the Parliament*

- (1) This paragraph applies where, in relation to subordinate legislation which is to be made by statutory instrument—
  - (a) a pre-commencement enactment provides, or has the effect of providing, that the legislation, or the statutory instrument containing it, must be laid before the Scottish Parliament, and
  - (a) paragraphs 2 and 3 do not apply.
- (2) Section 30 applies in relation to the subordinate legislation as it applies in relation to devolved subordinate legislation which is not subject to the negative procedure or the affirmative procedure, but as if the reference in it to a Scottish statutory instrument were a reference to a statutory instrument.>

**Section 37**

**Bruce Crawford**

- 28 In section 37, page 13, line 5, leave out from <and> to <Act> in line 6

**Section 42**

**Bruce Crawford**

- 29 In section 42, page 14, line 32, leave out <may> and insert <must>

**Bruce Crawford**

- 30 In section 42, page 14, line 33, at end insert—

<(1A) The regulations must include provision requiring instruments to be published on a website or by other electronic means.>

**Bruce Crawford**

- 31 In section 42, page 14, line 34, leave out <for> and insert <about>

**Bruce Crawford**

- 32 In section 42, page 14, line 36, after <published> insert <(in addition to that mentioned in subsection (1A))>

**Bruce Crawford**

- 33 In section 42, page 15, leave out lines 1 and 2

**Bruce Crawford**

- 34 In section 42, page 15, line 6, leave out first <the>

**After section 42**

**Bruce Crawford**

- 35 After section 42, insert—

**<Preservation of Scottish statutory instruments**

- (1) The responsible authority must ensure that the Keeper of the Records of Scotland receives each Scottish statutory instrument that is signed by or on behalf of the responsible authority.
- (2) The Keeper must ensure that Scottish statutory instruments received by virtue of subsection (1) are preserved.>

**Section 44**

**Bruce Crawford**

- 36 In section 44, page 15, line 25, leave out from <92(4)> to <functions> in line 26 and insert <92(1)(a) of the Scotland Act 1998 (c.46) (functions of Queen’s Printer for Scotland)>

**Section 47**

**Bruce Crawford**

- 37 Leave out section 47

**After section 54**

**Helen Eadie**

- 60 After section 54, insert—

**<PART**

**IMPLEMENTATION OF REPORTS OF THE SCOTTISH LAW COMMISSION**

**Reports on implementation of Scottish Law Commission proposals**

- (1) As soon as practicable after the end of each calendar year, the Scottish Ministers must prepare an annual report on—
  - (a) Scottish Law Commission proposals implemented (in whole or in part) during the year, and
  - (b) Scottish Law Commission proposals not implemented (in whole or in part) as at the end of the year, including—

- (i) plans for implementation of any of those proposals,
  - (ii) any decision not to implement any of those proposals (in whole or in part) taken during the year and the reasons for the decision.
- (2) The Scottish Ministers must lay the report before the Scottish Parliament.
- (3) If a decision not to implement a Scottish Law Commission proposal (in whole or in part) is taken in a particular calendar year, subsection (1)(b) does not require a report for a subsequent calendar year to deal with the proposal so far as it is covered by that decision.
- (4) “Scottish Law Commission proposal” means—
  - (a) a proposal formulated by the Scottish Law Commission (or by that Commission and the Law Commission acting jointly) as mentioned in section 3(1)(c) of the Law Commissions Act 1965 (c.22) which relates (in whole or in part) to matters within the legislative competence of the Scottish Parliament,
  - (b) a proposal for consolidation or statute law revision for which a draft Bill has been prepared by the Scottish Law Commission (or by that Commission and the Law Commission acting jointly) as mentioned in section 3(1)(d) of the Law Commissions Act 1965 (c.22) which relates (in whole or in part) to matters within the legislative competence of the Scottish Parliament.>

**Helen Eadie**

**61** After section 54 insert—

**<Protocol about the Scottish Law Commission’s work**

- (1) The Scottish Ministers and the Scottish Law Commission may agree for the purposes of this section a statement (“a protocol”) about the Scottish Law Commission’s work.
- (2) The protocol may include (among other things) provision about—
  - (a) principles and methods to be applied in deciding the work to be carried out by the Scottish Law Commission and in the carrying out of that work,
  - (b) the assistance and information that the Scottish Ministers and the Scottish Law Commission are to provide to each other,
  - (c) the way in which the Scottish Ministers are to respond to the Scottish Law Commission’s proposals for reform, consolidation or statute law reform.
- (3) The Scottish Ministers and the Scottish Law Commission must from time to time review the protocol and may agree to revise it.
- (4) The Scottish Ministers must lay the protocol (and any revision of it) before the Scottish Parliament.
- (5) The Scottish Ministers and the Scottish Law Commission must have regard to the protocol.>

**Helen Eadie**

**62** After section 54, insert—

**<Consolidation Bills**

- (1) In preparing a draft Bill for the consolidation of enactments relating to a particular subject, the Scottish Law Commission may make recommendations for the amendment of those enactments which facilitate, or are otherwise desirable in connection with, the consolidation of the law on the subject and may include those amendments in the draft Bill.
- (2) In this section “consolidation”, in relation to the law on a particular subject, includes the restatement of the common law in relation to the subject.>

### **Section 55**

#### **Bruce Crawford**

- 38** Leave out section 55

### **After section 56**

#### **Bruce Crawford**

- 39** After section 56, insert—

**<Orders**

The power to make an order under any provision of this Act (other than section 28) includes power to make such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.>

#### **Bruce Crawford**

- 40** After section 56, insert—

**<Ancillary provision**

- (1) The Scottish Ministers may by order make such supplementary, incidental or consequential provision as they consider appropriate for the purpose of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) The Scottish Ministers may by order make such provision as they consider necessary or expedient for transitional, transitory or saving purposes in connection with the coming into force of any provision of this Act.
- (3) An order under subsection (1) or (2) may modify any enactment.
- (4) An order under subsection (1) is subject to the affirmative procedure.
- (5) An order under subsection (2) is subject to the negative procedure.>



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