

SCOTLAND ACT 1998

EXPLANATORY NOTES

COMMENTARY

SECTION 16: Exceptions and relief from disqualification

Purpose and Effect

This section provides for certain persons to be exempt from certain of the disqualification provisions for the membership of the Parliament provided for in section 15. It also provides, in certain circumstances, for the Parliament to disregard a disqualification in relation to a particular person.

General

This section is one of four dealing with disqualification.

Details of Provisions

Subsection (1), as now amended, provides that a person is not disqualified from being a member of the Scottish Parliament merely because he is a peer or he is a Lord Spiritual. These persons would be disqualified by virtue of section 15(1)(b).

Section 16(1)(b), as enacted, provided that a person was not disqualified merely because he has been ordained or he is a minister of any religious denomination. However the [House of Commons \(Removal of Clergy Disqualification\) Act 2001 \(c.13\)](#) removed the disqualification of the clergy (except for Lords Spiritual) from the House of Commons. It ceased therefore to be necessary to refer in section 16(1)(b) to a person who was ordained or was a minister. Section 16(1)(b) was amended by paragraph 4 of Schedule 1 to the 2001 Act to refer simply to refer to a person who is a Lord Spiritual.

This provision would not have the effect of exempting from disqualification a Lord of Appeal in Ordinary because it is not simply by virtue of being a peer that he is disqualified - see section 15(1)(c).

Subsection (2) provides that a citizen of the European Union resident in the UK is not disqualified from membership because of section 3 of the Act of Settlement 1700 - see section 15(1)(b) above. This is based upon paragraph 5(3)(e) of Schedule 1 to the [European Parliamentary Elections Act 1978 \(c.10\)](#), as inserted by [S.I. 1994/342](#), which excepts citizens of the EU resident in the UK from disqualification for election as a UK representative to the European Parliament.

Subsections (3) and (4) provide that the Parliament may resolve to disregard any disqualification incurred by a person on any ground other than one falling within section 15(1)(b) (see above). To do so it must consider that the grounds for disqualification have been removed and that it is proper to disregard the disqualification. This makes similar provision to the [House of Commons Disqualification Act 1975 \(c.24\)](#), section 6(2).

Subsection (5) provides that any resolution of the Parliament to disregard a disqualification does not affect proceedings under Part III of the Representation of the

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

People Act 1983, as applied by an Order under section 12 (the power to make provisions about elections). These provisions were applied by article 85 and Schedule 6 to the Scottish Parliament (Elections etc.) Order 1999 ([S.I. 1999/787](#)).

Any such resolution will also not enable the Parliament to disregard a disqualification established by the Court of Session in proceedings under section 18 (judicial proceedings as to disqualification).