

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

SCOTLAND ACT 1998

EXPLANATORY NOTES

COMMENTARY

SECTION 5: Candidates

Purpose and Effect

This section indicates how persons may stand for election as members of the Scottish Parliament for constituencies or regions. It prohibits a person from being a candidate to be a constituency member in more than one constituency and provides that a person may only stand for election both as a constituency member and as a regional member when that constituency is in that region. This section allows registered political parties to submit lists of candidates to contest regional seats. It also allows individuals to stand for election as regional members.

General

The section forms part of a set covering the election of members to the Parliament. It is closely connected to section 6 which deals with votes for registered political parties and individual candidates standing for regional seats; sections 7 and 8 which deal with the allocation of regional seats; and sections 9 and 10 which are concerned with filling vacancies. Section 15 provides for the disqualification of persons from membership of the Parliament.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	28-Jan-98	412
CC	28-Jan-98	413
CR	12-May-98	225
LC	14-Jul-98	151
LC	14-Jul-98	153
LC	14-Jul-98	165
LC	14-Jul-98	188
LC	14-Jul-98	197
LR	22-Oct-98	1643
LR	22-Oct-98	1650
LR	22-Oct-98	1653
L3	9-Nov-98	509
L3	9-Nov-98	510

<i>Stage</i>	<i>Date</i>	<i>Column</i>
L3	9-Nov-98	513

Details of Provisions

Subsection (1) provides for candidates to stand for election as constituency members or as regional members. It does not prevent a person from standing for both a constituency and a regional seat, subject to the provisions of subsections (7) and (8), but any person so standing could only be returned for one of those seats.

Subsection (2) provides that a person may not be a candidate to be a constituency member for more than one constituency. This is different to the rules which apply as respects the UK Parliament where a person may stand in more than one constituency.

Subsection (3) provides that candidates for regional seats must either be included in a list submitted by a registered political party or be individual candidates.

Subsection (4) enables any registered political party to submit a list of candidates to the regional returning officer. (For mechanisms, see paragraph 6 of Schedule 2 to the Scottish Parliament (Elections etc.) Order 1999 ([S.I. 1999/787](#)) (“the Elections Order”). Subsection (9) defines what is meant by a registered political party.

In view of the provisions of sections 8(4) (the allocation of seats to regional members) and 10 (regional vacancies), the names on the list will require to be ranked in order and this ranking is done by the registered political party. This is called a “closed list” system.

Subsection (5) provides for a party’s list to have effect for the general election and for any vacancy occurring among the regional members after that election and before the next general election. Vacancies for regional members which arise during the life of the Parliament will be filled from that list. Section 10 makes provision in this regard.

Subsection (6) provides for a maximum of twelve names on a party’s list of candidates. A list may include a single name. Although a party cannot win more than 7 seats in a region, some candidates on the list may be returned as constituency members and thus left out of account in applying the rules for returning the regional members. Regional vacancies will be filled from the lists used at the previous general election. So it is helpful for a party to be able to have more persons on the list than can in fact be returned as regional members at the election.

Subsection (7) provides that a person cannot be nominated in a party’s list if he or she is standing for another party or as an individual, or in another region. This restriction applies regardless of whether the candidate is standing as a constituency candidate or a regional candidate.

Subsection (8) provides that a person may not be an individual candidate to be a regional member for a region if he is standing for a party or in another region (whether as a constituency candidate or as a list candidate).

The net effect of subsections (2), (7) and (8) is that the only circumstances in which a person can be a candidate in more than one capacity at an election are:

A candidate representing a party who stands for a constituency seat may also be included in that party’s regional list for the region in which the constituency lies.

A candidate who does not represent a political party who stands for a constituency seat may also be an individual candidate for the region in which the constituency lies.

Subsection (9), as originally enacted, provided that “registered political party” meant a party registered under the Registration of Political Parties Act 1998. It has since been amended, to provide that it means a party registered under Part II of the [Political Parties](#),

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[Elections and Referendums Act 2000 \(c.41\)](#) - see section 158 and paragraph 13(2) of Schedule 21, and [S.I. 2001/222](#), Article 2, Schedule 1, Part 1.