

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

# SCOTLAND ACT 1998

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part II: the Scottish Administration**

#### SECTION 44: The Scottish Executive

##### **Purpose and Effect**

This section provides for the establishment of the Scottish Executive. In particular it provides for:

the composition of the Scottish Executive; and

the members of the Scottish Executive to be referred to collectively as the Scottish Ministers.

It also provides that a person may not hold Ministerial office in the UK Government and also be a member of the Scottish Executive.

##### **General**

Section 44 is the first section of Part II providing for the establishment of the Scottish Administration. The Scottish Administration (as defined in section 126(6)) comprises the First Minister and other members of the Scottish Executive, junior Scottish Ministers, holders of certain offices such as the Keeper of the Registers of Scotland, and the staff of the Scottish Administration.

Section 44 provides for the creation of the Scottish Executive. Sections 45 and 46 provide for the appointment of the First Minister. Section 47 provides for the appointment of Ministers, section 48 provides for the appointment of the Scottish Law Officers, and section 49 provides for the appointment of junior Scottish Ministers.

##### **Parliamentary Consideration**

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	10-Feb-98	160
CC	29-Jan-98	530
LC	14-Jul-98	230
LC	28-Jul-98	1450
LC	28-Jul-98	1458
LC	28-Jul-98	1464
LC	28-Jul-98	1470
LR	28-Oct-98	2026

<i>Stage</i>	<i>Date</i>	<i>Column</i>
L3	9-Nov-98	539

### **Details of Provisions**

Subsection (1) establishes the Scottish Executive and provides that its members are to be the First Minister, such Ministers as the First Minister may appoint under section 47, the Lord Advocate and the Solicitor General for Scotland.

Junior Scottish Ministers are not members of the Scottish Executive nor are the staff included in it. However, in practice, the name of the Scottish Executive is used to describe not only its statutory members but the whole organisation, including those members, junior Scottish Ministers and the staff.

Subsection (2) provides that the members of the Scottish Executive should be referred to collectively as the Scottish Ministers.

Subsection (3) provides that a person who holds a Ministerial office (which as defined means a Ministerial office in the UK Government) may not be appointed a member of the Scottish Executive and, if a member of the Scottish Executive is appointed to a Ministerial office, he has to cease to hold office as a member of the Scottish Executive. The effect is that a person cannot be a Minister in both the UK Government and in the Scottish Executive at the same time.

Subsection (4) provides that references in subsection (3) to:

- (a) members of the Scottish Executive are to include junior Scottish Ministers; and
- (b) “Ministerial office” is to have the same meaning as in section 2 of the House of Commons Disqualification Act 1975. Section 2 of that Act defines “ministerial office” by reference to the offices specified in Schedule 2 to the Act and refers to a ministerial office in the UK Government.