

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

SCOTLAND ACT 1998

EXPLANATORY NOTES

COMMENTARY

Part V: Miscellaneous and General

SECTION 84: Oaths

Purpose and Effect

This section requires all members of the Parliament to take the oath of allegiance provided by the Promissory Oaths Act 1868 or to make the corresponding affirmation. If they do not do so within 2 months of the day they are returned, or such longer period as the Parliament may allow, then they shall cease to be a member and their seat will become vacant. It also requires the members of the Scottish Executive to take the official oath under the 1868 Act and to take the oath of allegiance, unless they have already taken it as a member of the Parliament.

General

This section affects all members of the Scottish Parliament and members of the Scottish Executive (including junior Scottish Ministers). It parallels the arrangements in the UK Parliament. Significantly no payment of salary or allowances may be made under section 81 (Remuneration of members, etc.) to a member or Minister until the oath is taken. Nor may they participate in the proceedings of the Parliament until they have done so.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	29-Jan-98	572
CC	4-Mar-98	1079
CC	4-Mar-98	1095
CR	12-May-98	241
LC	6-Oct-98	348

Details of Provisions

Subsection (1) requires all members of the Parliament to take the oath of allegiance each time they are returned irrespective of the fact that they may have taken it when they were previously returned as a member or on another occasion (e.g. on being returned as a member of the House of Commons). Under section 5 of the Oaths Act 1978 a member may make an affirmation instead of swearing the oath.

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Subsection (2) requires members to take the oath at a meeting of the Parliament and prohibits them from taking part in any other proceedings (including proceedings in committees and sub-committees - see section 126) until they have done so.

Subsection (3) provides that, if a member has not taken the oath within two months after the date of being returned, he will cease to be a member of the Parliament and his seat will become vacant. The Parliament may extend the two month period, but can only do so before the 2 month period expires.

Subsection (4) requires the First Minister and the other Scottish Ministers including the Lord Advocate and the Solicitor General to take the official oath and the oath of allegiance on appointment. They may make a corresponding affirmation under the Oaths Act 1978. The official oath, as set out in section 3 of the Promissory Oaths Act 1868, is as follows:

“I do swear that I will well and truly serve Her Majesty Queen Elizabeth in the Office of so help me God.

This is the same oath as is sworn by Ministers in the UK Government.

Subsection (5) provides for members appointed as junior Scottish Ministers to take the oath of allegiance on appointment.

Subsection (6) dispenses with the need for the Scottish Ministers including the Lord Advocate, the Solicitor General and junior Scottish Ministers to take the oath of allegiance when appointed as members of the Executive if they have already taken it as elected members of the Parliament under subsection (1). The Lord Advocate and Solicitor General must take the oath of allegiance if they are not members of the Parliament.

Subsection (7) provides that the oath of allegiance referred to in the section is that provided by the Promissory Oaths Act 1868. This is the same as that used in the UK Parliament namely:

“I do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, her heirs and successors, according to law. So help me God.

Procedures for the taking of the oath of allegiance in the Parliament are contained in the Standing Orders of the Parliament.

See also the provisions in section 287(6) of the Criminal Procedure (Scotland) Act 1995 (as amended by [S.I. 1999/1042](#)) in relation to the taking of the oath of office by the Lord Advocate and Solicitor General.