

*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 8: Allocation of seats to regional members

Purpose and Effect

This section sets out the process for determining the allocation of seats to regional members for each region following calculation of the “regional figure” in section 7 for registered political parties and individual candidates. It provides that candidates on party lists shall be returned in the order they appear on the list but that where any such candidates have already been returned as constituency or regional members they shall be disregarded. Provision is also made for individual candidates to be disregarded if and when they are returned and for parties to be similarly disregarded when their list is exhausted.

General

This section is one of three dealing with the return of regional members. It is closely linked to section 6, which deals with polls for regional members, and section 7, which deals with calculation of regional figures.

Parliamentary Consideration

| <i>Stage</i> | <i>Date</i> | <i>Column</i> |
|--------------|-------------|---------------|
| CC | 28-Jan-98 | 413 |
| CR | 12-May-98 | 225 |
| CR | 12-May-98 | 229 |

Details of Provisions

Subsection (1) provides that the first regional member seat within a region is allocated to the registered political party or individual with the highest regional figure, as determined by section 7. This will not necessarily be the party with the highest total of regional votes since account must be taken of the number of seats already won in the constituency ballots. A worked example is given below.

Subsection (2) provides that the second and subsequent seats for the region are allocated to the party or individual candidate with the highest regional figure calculated in accordance with section 7(3). When a party gains a seat, its regional figure is recalculated to ensure that the corrective aspect of the system continues to apply.

Subsection (3) provides that an individual candidate who has been returned as a constituency member or as a regional member should be disregarded from further calculations.

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Subsection (4) provides for regional member seats allocated to parties to be filled by candidates in the order in which they appear in the party list.

Subsection (5) provides that, for the purposes of this section and section 10 (regional vacancies) any person in a party's list who is returned as a member of Parliament shall be treated as ceasing to be in the list, even if the return is void.

Subsection (6) provides that, if a party's regional list has been used up because of the allocation of regional seats and election of constituency members included on the list, the party will be excluded from further calculations.

Subsection (7) deals with a situation where two or more parties or individual candidates have the same regional figure and effectively provides that in that event a seat shall be allocated to each party or, as the case may be, individual. Section 12(2)(f) enables an order under section 12 to modify section 8(7) "to ensure the allocation of the correct number of seats for the region". Rule 63 in Schedule 2 of the Scottish Parliament (Elections etc.) Order 1999 (S.I. 1999/787) ("the Elections Order") amends subsection (7) to deal with the situation where the application of section 8 (7) would require the return of too many candidates. As modified, subsection (7) provides that where the application of subsection (7) would result in the return of too many candidates for the region, subsection (8) will apply.

Subsection (8), inserted by Rule 63 in Schedule 2 of the Elections Order, provides that in the situation where subsection (7)(b) applies, then 1 vote will be added to the regional votes given for the relevant party or candidate and the regional figure recalculated.

Subsection (9), also inserted by the Elections Order, provides that where the operation of section (8) would still result in too many seats being allocated, the regional returning officer shall decide between the parties or candidates concerned by lot.

Allocation of Seats in the North East of Scotland Region

An example based on votes cast in the North-East Scotland Region on 6 May 1999 is shown in the table below.

| North-East Scotland Region | Labour | Lib Dem | SNP | Con | Green | Result |
|-----------------------------------|---------------|----------------|------------|------------|--------------|---------------|
| Party Vote | 72666 | 49843 | 92329 | 52149 | 8067 | |
| Constituency MSPs | 4 | 3 | 2 | 0 | 0 | |
| 1st Additional Member | ÷5=14533 | ÷4=12461 | ÷3=30776 | ÷1=52149 | ÷1=8067 | Con win |
| 2nd Additional Member | ÷5=14533 | ÷4=12461 | ÷3=30776 | ÷2=26075 | ÷1=8067 | SNP win |
| 3rd Additional Member | ÷5=14533 | ÷4=12461 | ÷4=23082 | ÷2=26075 | ÷1=8067 | Con win |
| 4th Additional Member | ÷5=14533 | ÷4=12461 | ÷4=23082 | ÷3=17383 | ÷1=8067 | SNP win |
| 5th Additional Member | ÷5=14533 | ÷4=12461 | ÷5=18466 | ÷3=17383 | ÷1=8067 | SNP win |
| 6th Additional Member | ÷5=14533 | ÷4=12461 | ÷6=15388 | ÷3=17383 | ÷1=8067 | Con win |
| 7th Additional Member | ÷5=14533 | ÷4=12461 | ÷6=15388 | ÷4=13037 | ÷1=8067 | SNP win |

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| North-East Scotland Region | Labour | Lib Dem | SNP | Con | Green | Result |
|---------------------------------------|---------------|----------------|------------|------------|--------------|---------------|
| No of Additional Members | 0 | 0 | 4 | 3 | 0 | |
| Total No of MSPs | 4 | 3 | 6 | 3 | 0 | |

The table does not include smaller parties or an individual candidate (who received 2303 votes).

- The number of votes cast for each party list is divided by the number of constituency MSPs gained plus one. For example, the Labour party gained 4 constituency MSPs so the party list vote is divided by 5.
- After that calculation is done, the party with the highest regional figure gains the first regional seat. In this case that is quite clearly the Conservative Party who had a high vote but no constituency MSPs.
- For the second to seventh regional seats the same calculations are carried out but seats gained are included, e.g. when competing for the second regional seat the Conservative Party vote is divided by 2.
- The final regional seat was secured by 15,388 “votes” or 5.4 per cent of the total vote. An independent candidate would have had to secure a similar level of support in order to gain a seat.