

*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 II: the Scottish Administration SECTION 49: Junior Scottish Ministers

Details of Provisions

Subsections (1) and (2) provide that the First Minister may, with the approval of Her Majesty, appoint junior Scottish Ministers from among members of the Scottish Parliament to assist the Scottish Ministers in the exercise of their functions.

This terminology is intended to reflect the *Carltona* doctrine, by which civil servants are able to act for Ministers, so that junior Scottish Ministers are able to act for the Scottish Ministers. This is also reflected in the fact that, in practice, those appointed as junior Scottish Ministers are known as “deputy Minister”.

Subsection (3) provides that the First Minister shall not seek Her Majesty’s approval for any appointment under this section without obtaining the Parliament’s agreement. The Standing Orders of the Parliament make provision for the agreement of the Parliament to be sought, by motion, to the appointment of either an individual MSP to be a JSM or for a slate of 2 or more MSPs to be JSMs. A slate may be amended by the Parliament to delete the name of a particular member or members.

Subsection (4) provides that a junior Scottish Minister so appointed shall hold office at Her Majesty’s pleasure, may be removed from office by the First Minister, may resign at any time and must do so if the Scottish Parliament resolves that the Scottish Executive no longer enjoys the confidence of the Parliament. Subsection (4) further provides that a junior Scottish Minister shall cease to hold office immediately on resigning, and shall cease to hold office on ceasing to be a member of the Parliament other than on a dissolution.