

*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 51: The Civil Service**

#### **General**

Prior to devolution, the Secretary of State for Scotland had various different statutory powers to appoint staff in the Scottish Office, the courts and prisons and in the Department of the Registers of Scotland and the Scottish Record Office etc. The Lord Advocate appointed staff in his Department, in the Crown Office and in the Procurator Fiscal service. As the functions carried out by those departments and bodies were devolved, they became in effect part of the Scottish Administration. The Scottish Administration is defined in section 126(6)-(8) to include not only Ministers but also the holders of those non-ministerial offices (such as the Keeper of the Registers of Scotland etc.) and the staff of the Scottish Administration.

The existing powers of the Secretary of State and the Lord Advocate to appoint such staff were, so far as possible, replaced by section 51(1) which confers upon the Scottish Ministers the power to appoint staff of the Scottish Administration.

Section 51(2) makes it clear that the staff of the Scottish Administration and the holder of any non-ministerial office in the Scottish Administration are members of the Home Civil Service and section 51(3) ensures that the power to appoint such persons is subject to the Civil Service Order in Council.

Although the Scottish Ministers have therefore the power to appoint persons to be civil servants, the Civil Service itself is a reserved matter by virtue of paragraph 8 of Part I of Schedule 5. There is an exception from that reservation for various statutory provisions relating to the appointment of sheriff clerks, procurators fiscal etc. and officers of the High Court of Justiciary and the Court of Session.