

*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 10: Regional vacancies

Purpose and Effect

This section makes provision for filling regional member vacancies. If a seat is vacated by a member allocated from a registered political party list the vacancy will be filled by the next person on the list willing to serve. This will be notified to the Presiding Officer by the Regional Returning Officer. If the vacancy cannot be filled in that way (because, for example, the list is exhausted) or if the seat was previously filled by an independent individual member, the seat will remain vacant until the next general election.

General

This section follows on from those dealing with general elections and the return of regional members. The section forms a set with section 9 which deals with constituency vacancies.

Parliamentary Consideration

| <i>Stage</i> | <i>Date</i> | <i>Column</i> |
|--------------|-------------|---------------|
| CC | 28-Jan-98 | 413 |
| CR | 12-May-98 | 229 |
| LC | 14-Jul-98 | 212 |
| LR | 22-Oct-98 | 1661 |
| L3 | 9-Nov-98 | 514 |
| L3 | 9-Nov-98 | 516 |

Details of Provisions

Subsection (1) states that the section applies where a regional member seat is vacant.

Subsection (2) provides that if the vacancy arises where the former member concerned was returned at the general election as an individual, or the seat cannot be filled in accordance with the following provisions, for instance because the registered political party's list is exhausted or there is no-one left on the list willing to serve as a regional member or acceptable to the party, then the seat will remain vacant until the next general election.

Subsection (3) provides that, if the vacancy arises where the former member was returned from a registered political party's list, the regional returning officer shall notify the Presiding Officer of the name of the person who is to fill the vacancy.

Subsections (4) and (5) can be modified by an order under section 12 by virtue of section 12(3). They were modified by Article 88 of the Scottish Parliament (Elections etc.) Order 1999 (S.I. 1999/787) (“the Elections Order”) with effect from 11 March 1999.

Subsection (4), as modified by the Elections Order, provides that the Regional Returning Officer shall ascertain the person who is highest on the party’s list and take such steps as he considers reasonable to contact that person and obtain a written statement that he is willing to serve and a certificate signed by or on behalf of the party’s nominating officer, stating that he may be returned as a regional member from that list.

Subsection (4A), inserted by the Elections Order, provides that if the Regional Returning Officer, after a period that he considers reasonable, considers his attempts to contact that person to be unsuccessful or he has not received the statement and certificate, he may proceed to contact the next person on the list and so on. This subsection also allows the regional returning officer to approach subsequent persons on the list where the first choice is unwilling to serve or the party does not provide the certificate. The procedure is repeated until the vacancy is filled or the list is exhausted.

Subsection (5), as modified by the Elections Order, provides that where the statement and certificate required are provided by a person, the Regional Returning Officer will notify that person’s name to the Presiding Officer.

Subsection (5A), inserted by the Elections Order, deals with the case where a person previously contacted provides the required statement and certificate only after the Regional Returning Officer has contacted the next or a subsequent person on the list. It provides that such a statement and certificate is to have no effect unless and until the next person who has been contacted has not provided the required statement or certificate or indicates that he is not willing to serve.

Subsection (6) provides that, where the Regional Returning Officer has, under section (3), notified the Presiding Officer of the name of the person from a party list to fill the vacancy, that person shall be regarded as having been returned as a regional member on the day on which the notification was received by the Presiding Officer.

Subsection (7) provides for standing orders to determine the date on which a vacancy is to be treated as occurring. The Standing Orders of the Parliament provide that this date is to be determined by the Presiding Officer and notified to the Parliament.

However, unlike the three month limitation imposed on the filling of constituency vacancies in section 9(3), regional vacancies may be filled at any time (as long as the vacancy is created by a person who was returned from a party list).