



# Scotland Act 1998

## 1998 CHAPTER 46

### PART I

#### THE SCOTTISH PARLIAMENT

##### *The Scottish Parliament*

#### **1 The Scottish Parliament.**

- (1) There shall be a Scottish Parliament.
- (2) One member of the Parliament shall be returned for each constituency (under the simple majority system) at an election held in the constituency.
- (3) Members of the Parliament for each region shall be returned at a general election under the additional member system of proportional representation provided for in this Part and vacancies among such members shall be filled in accordance with this Part.
- (4) The validity of any proceedings of the Parliament is not affected by any vacancy in its membership.
- (5) Schedule 1 (which makes provision for the constituencies and regions for the purposes of this Act and the number of regional members) shall have effect.

##### *General elections*

#### **2 Ordinary general elections.**

- (1) The day on which the poll at the first ordinary general election for membership of the Parliament shall be held, and the day, time and place for the meeting of the Parliament following that poll, shall be appointed by order made by the Secretary of State.
- (2) The poll at subsequent ordinary general elections shall be held on the first Thursday in May in the fourth calendar year following that in which the previous ordinary general

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election was held, unless the day of the poll is determined by a proclamation under subsection (5).

- (3) If the poll is to be held on the first Thursday in May, the Parliament—
  - (a) is dissolved by virtue of this section at the beginning of the minimum period which ends with that day, and
  - (b) shall meet within the period of seven days beginning immediately after the day of the poll.
- (4) In subsection (3), “the minimum period” means the period determined in accordance with an order under section 12(1).
- (5) If the Presiding Officer proposes a day for the holding of the poll which is not more than one month earlier, nor more than one month later, than the first Thursday in May, Her Majesty may by proclamation under the Scottish Seal—
  - (a) dissolve the Parliament,
  - (b) require the poll at the election to be held on the day proposed, and
  - (c) require the Parliament to meet within the period of seven days beginning immediately after the day of the poll.
- (6) In this Act “the Scottish Seal” means Her Majesty’s Seal appointed by the Treaty of Union to be kept and used in Scotland in place of the Great Seal of Scotland.

**Modifications etc. (not altering text)**

- C1** S. 2(2) modified (15.9.2011) by Fixed-term [Parliaments Act 2011 \(c. 14\)](#), **ss. 4(2), 7(2)** (with s. 6)
- C2** S. 2(5) excluded (11.3.1999) by [S.I. 1999/787](#), **arts. 1, 96**

### 3 Extraordinary general elections.

- (1) The Presiding Officer shall propose a day for the holding of a poll if—
  - (a) the Parliament resolves that it should be dissolved and, if the resolution is passed on a division, the number of members voting in favour of it is not less than two-thirds of the total number of seats for members of the Parliament, or
  - (b) any period during which the Parliament is required under section 46 to nominate one of its members for appointment as First Minister ends without such a nomination being made.
- (2) If the Presiding Officer makes such a proposal, Her Majesty may by proclamation under the Scottish Seal—
  - (a) dissolve the Parliament and require an extraordinary general election to be held,
  - (b) require the poll at the election to be held on the day proposed, and
  - (c) require the Parliament to meet within the period of seven days beginning immediately after the day of the poll.
- (3) If a poll is held under this section within the period of six months ending with the day on which the poll at the next ordinary general election would be held (disregarding section 2(5)), that ordinary general election shall not be held.
- (4) Subsection (3) does not affect the year in which the subsequent ordinary general election is to be held.

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#### **4 Calculating time for meeting of the Parliament.**

In calculating any period of days for the purposes of section 2(3)(b) or (5)(c) or section 3(2)(c), Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, a bank holiday in Scotland or a day appointed for public thanksgiving or mourning shall be disregarded.

#### **5 Candidates.**

- (1) At a general election, the candidates may stand for return as constituency members or regional members.
- (2) A person may not be a candidate to be a constituency member for more than one constituency.
- (3) The candidates to be regional members shall be those included in a list submitted under subsection (4) or individual candidates.
- (4) Any registered political party may submit to the regional returning officer a list of candidates to be regional members for a particular region (referred to in this Act, in relation to the region, as the party's "regional list").
- (5) A registered political party's regional list has effect in relation to the general election and any vacancy occurring among the regional members after that election and before the next general election.
- (6) Not more than twelve persons may be included in the list (but the list may include only one person).
- (7) A registered political party's regional list must not include a person—
  - (a) who is included in any other list submitted under subsection (4) for the region or any list submitted under that subsection for another region,
  - (b) who is an individual candidate to be a regional member for the region or another region,
  - (c) who is a candidate to be a constituency member for a constituency not included in the region, or
  - (d) who is a candidate to be a constituency member for a constituency included in the region but is not a candidate of that party.
- (8) A person may not be an individual candidate to be a regional member for a particular region if he is—
  - (a) included in a list submitted under subsection (4) for the region or another region,
  - (b) an individual candidate to be a regional member for another region,
  - (c) a candidate to be a constituency member for a constituency not included in the region, or
  - (d) a candidate of any registered political party to be a constituency member for a constituency included in the region.
- (9) In this Act, "registered political party" means a party registered under the <sup>MI</sup>Registration of Political Parties Act 1998.

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**Modifications etc. (not altering text)**

- C3 S. 5(2) extended (11.3.1999) by S.I. 1999/787, arts. 1, 6, **Sch. 2 Pt. II para. 9(4)(b)(iii)**  
 C4 S. 5(7) extended (11.3.1999) by S.I. 1999/787, arts. 1, 6, **Sch. 2 Pt. II para. 9(4)(b)(iv)**  
 C5 S. 5(8) extended (11.3.1999) by S.I. 1999/787, arts. 1, 6, **Sch. 2 Pt. II para. 9(4)(b)(v)**

**Marginal Citations**

- M1 1998 c. 48.

**6 Poll for regional members.**

- (1) This section and sections 7 and 8 are about the return of regional members at a general election.
- (2) In each of the constituencies for the Parliament, a poll shall be held at which each person entitled to vote as elector may give a vote (referred to in this Act as a “regional vote”) for—
  - (a) a registered political party which has submitted a regional list, or
  - (b) an individual candidate to be a regional member for the region.
- (3) The right conferred on a person by subsection (2) is in addition to any right the person may have to vote in any poll for the return of a constituency member.

**7 Calculation of regional figures.**

- (1) The persons who are to be returned as constituency members for constituencies included in the region must be determined before the persons who are to be returned as the regional members for the region.
- (2) For each registered political party which has submitted a regional list, the regional figure for the purposes of section 8 is—
  - (a) the total number of regional votes given for the party in all the constituencies included in the region,  
divided by
  - (b) the aggregate of one plus the number of candidates of the party returned as constituency members for any of those constituencies.
- (3) Each time a seat is allocated to the party under section 8, that figure shall be recalculated by increasing (or further increasing) the aggregate in subsection (2)(b) by one.
- (4) For each individual candidate to be a regional member for the region, the regional figure for the purposes of section 8 is the total number of regional votes given for him in all the constituencies included in the region.

**Modifications etc. (not altering text)**

- C6 S. 7(1) applied (with modifications) (30.12.2010 with effect as mentioned in art. 1(2)(3) of the modifying S.I.) by **The Scottish Parliament (Elections etc.) Order 2010 (S.I. 2010/2999)**, arts. 1(1), 6(4), **Sch. 2 rule 76(3)**

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## **8 Allocation of seats to regional members.**

- (1) The first regional member seat shall be allocated to the registered political party or individual candidate with the highest regional figure.
- (2) The second and subsequent regional member seats shall be allocated to the registered political party or individual candidate with the highest regional figure, after any recalculation required by section 7(3) has been carried out.
- (3) An individual candidate already returned as a constituency or regional member shall be disregarded.
- (4) Seats for the region which are allocated to a registered political party shall be filled by the persons in the party's regional list in the order in which they appear in the list.
- (5) For the purposes of this section and section 10, a person in a registered political party's regional list who is returned as a member of the Parliament shall be treated as ceasing to be in the list (even if his return is void).
- (6) Once a party's regional list has been exhausted (by the return of persons included in it as constituency members or by the previous application of subsection (1) or (2)) the party shall be disregarded.
- (7) If (on the application of subsection (1) or any application of subsection (2)) the highest regional figure is the regional figure of two or more parties or individual candidates, the subsection shall apply to each of them.

### *Vacancies*

## **9 Constituency vacancies.**

- (1) Where the seat of a constituency member is vacant, an election shall be held to fill the vacancy (subject to subsection (4)).
- (2) The date of the poll shall be fixed by the Presiding Officer.
- (3) The date shall fall within the period of three months—
  - (a) beginning with the occurrence of the vacancy, or
  - (b) if the vacancy does not come to the notice of the Presiding Officer within the period of one month beginning with its occurrence, beginning when it does come to his notice.
- (4) The election shall not be held if the latest date for holding the poll would fall within the period of three months ending with the day on which the poll at the next ordinary general election would be held (disregarding section 2(5)).
- (5) For the purposes of this section, the date on which a vacancy is to be treated as occurring shall be determined under standing orders.
- (6) A person may not be a candidate at such an election if he is a member of the Parliament or a candidate in another election to fill a vacancy.

### **Modifications etc. (not altering text)**

C7 S. 9 applied (11.3.1999) by S.I. 1999/787, arts. 1, 86

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**C8** S. 9(6) extended (11.3.1999) by S.I. 1999/787, arts. 1, 6, **Sch. 2 Pt. II para. 9(4)(b)(iii)**

## **10 Regional vacancies.**

- (1) This section applies where the seat of a regional member is vacant.
- (2) If the regional member was returned as an individual candidate, or the vacancy is not filled in accordance with the following provisions, the seat shall remain vacant until the next general election.
- (3) If the regional member was returned (under section 8 or this section) from a registered political party's regional list, the regional returning officer shall notify the Presiding Officer of the name of the person who is to fill the vacancy.
- (4) He must be a person who—
  - (a) is included in that list, and
  - (b) is willing to serve as a regional member for the region.
- (5) Where more than one person satisfies the conditions in subsection (4), the regional returning officer shall notify the name of whichever of them was higher, or highest, in the list.
- (6) Where a person's name has been notified under subsection (3), this Act shall apply as if he had been declared to be returned as a regional member for the region on the day on which notification of his name was received by the Presiding Officer.
- (7) For the purposes of this section, the date on which a vacancy is to be treated as occurring shall be determined under standing orders.

### *Franchise and conduct of elections*

## **11 Electors.**

- (1) The persons entitled to vote as electors at an election for membership of the Parliament held in any constituency are those who on the day of the poll—
  - (a) would be entitled to vote as electors at a local government election in an electoral area falling wholly or partly within the constituency, and
  - (b) are registered in the register of local government electors at an address within the constituency.
- (2) A person is not entitled to vote as elector in any constituency—
  - (a) more than once at a poll for the return of a constituency member, or
  - (b) more than once at a poll for the return of regional members,
 or to vote as elector in more than one constituency at a general election.

## **12 Power to make provision about elections.**

- (1) The Secretary of State may by order make provision as to—
  - (a) the conduct of elections for membership of the Parliament,
  - (b) the questioning of such an election and the consequences of irregularities, and
  - (c) the return of members of the Parliament otherwise than at an election.

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- (2) The provision that may be made under subsection (1)(a) includes, in particular, provision—
- (a) about the registration of electors,
  - (b) for disregarding alterations in a register of electors,
  - (c) about the limitation of the election expenses of candidates and registered political parties,
  - (d) for the combination of polls at elections for membership of the Parliament with polls at other elections,
  - (e) for modifying the application of section 7(1) where the poll at an election for the return of a constituency member is abandoned (or notice of it is countermanded), and
  - (f) for modifying section 8(7) to ensure the allocation of the correct number of seats for the region.
- (3) The provision that may be made under subsection (1)(c) includes, in particular, provision modifying section 10(4) and (5).
- (4) An order under subsection (1) may—
- (a) apply, with or without modifications or exceptions, any provision made by or under the Representation of the People Acts or the <sup>M2</sup>European Parliamentary Elections Act 1978 or by any other enactment relating to parliamentary elections, European Parliamentary elections or local government elections,
  - (b) modify any form contained in, or in regulations or rules made under, the Representation of the People Acts so far as may be necessary to enable it to be used both for the original purpose and in relation to elections for membership of the Parliament, and
  - (c) so far as may be necessary in consequence of any provision made by this Act or an order under subsection (1), modify any provision made by any enactment relating to the registration of parliamentary electors or local government electors.
- (5) The return of a member of the Parliament at an election may be questioned only under Part III of the Representation of the <sup>M3</sup>People Act 1983 as applied by an order under subsection (1).
- (6) For the purposes of this Act, the regional returning officer for any region is the person designated as such in accordance with an order made by the Secretary of State under this subsection.

#### Marginal Citations

**M2** 1978 c. 10.

**M3** 1983 c. 2.

### *Duration of membership*

## **13 Term of office of members.**

The term of office of a member of the Parliament begins on the day on which the member is declared to be returned and ends with the dissolution of the Parliament.

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## 14 Resignation of members.

A member of the Parliament may at any time resign his seat by giving notice in writing to the Presiding Officer.

### *Disqualification*

## 15 Disqualification from membership of the Parliament.

- (1) A person is disqualified from being a member of the Parliament (subject to section 16) if—
- (a) he is disqualified from being a member of the House of Commons under paragraphs (a) to (e) of section 1(1) of the <sup>M4</sup>House of Commons Disqualification Act 1975 (judges, civil servants, members of the armed forces, members of police forces and members of foreign legislatures),
  - (b) he is disqualified otherwise than under that Act (either generally or in relation to a particular parliamentary constituency) from being a member of the House of Commons or from sitting and voting in it,
  - (c) he is a Lord of Appeal in Ordinary, or
  - (d) he is an office-holder of a description specified in an Order in Council made by Her Majesty under this subsection.
- (2) An office-holder of a description specified in an Order in Council made by Her Majesty under this subsection is disqualified from being a member of the Parliament for any constituency or region of a description specified in the Order in relation to the office-holder.
- (3) In this section “office-holder” includes employee or other post-holder.

#### **Modifications etc. (not altering text)**

- C9** S. 15 extended (11.3.1999) by S.I. 1999/787, arts. 1, 6, **Sch. 2 Pt. II para. 9(4)(b)(i)**  
S. 15 applied (S.) (1.4.2000) by S.I. 2000/47, art. 5, **Sch. Pt. II**

#### **Marginal Citations**

- M4** 1975 c. 24.

## 16 Exceptions and relief from disqualification.

- (1) A person is not disqualified from being a member of the Parliament merely because—
- (a) he is a peer (whether of the United Kingdom, Great Britain, England or Scotland), or
  - (b) he has been ordained or is a minister of any religious denomination.
- (2) A citizen of the European Union who is resident in the United Kingdom is not disqualified from being a member of the Parliament merely because of section 3 of the <sup>M5</sup>Act of Settlement (disqualification of persons born outside the United Kingdom other than Commonwealth citizens and citizens of the Republic of Ireland).
- (3) Subsection (4) applies where a person was, or is alleged to have been, disqualified from being a member of the Parliament (either generally or in relation to a particular constituency or region) on any ground other than one falling within section 15(1)(b).



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- (4) The Parliament may resolve to disregard any disqualification incurred by that person on the ground in question if it considers that—
  - (a) the ground has been removed, and
  - (b) it is proper to disregard any disqualification so incurred.
- (5) A resolution under this section shall not—
  - (a) affect any proceedings under Part III of the Representation of the <sup>M6</sup>People Act 1983 as applied by an order under section 12, or
  - (b) enable the Parliament to disregard any disqualification which has been established in such proceedings or in proceedings under section 18.

**Modifications etc. (not altering text)**

**C10** S. 16 extended (11.3.1999) by S.I. 1999/787, arts. 1, 6, **Sch. 2 Pt. II para. 9(4)(b)(i)**

**Marginal Citations**

**M5** 1700 c. 2.

**M6** 1983 c. 2.

**17 Effect of disqualification.**

- (1) If a person who is disqualified from being a member of the Parliament or from being a member for a particular constituency or region is returned as a member of the Parliament or (as the case may be) as a member for the constituency or region, his return shall be void and his seat vacant.
- (2) If a member of the Parliament becomes disqualified from being a member of the Parliament or from being a member for the particular constituency or region for which he is sitting, he shall cease to be a member of the Parliament (so that his seat is vacant).
- (3) Subsections (1) and (2) have effect subject to any resolution of the Parliament under section 16.
- (4) Subsection (2) also has effect subject to section 141 of the <sup>M7</sup>Mental Health Act 1983 (mental illness) and section 427 of the <sup>M8</sup>Insolvency Act 1986 (sequestration etc); and where, in consequence of either of those sections, the seat of a disqualified member of the Parliament is not vacant he shall not cease to be a member of the Parliament until his seat becomes vacant but—
  - (a) he shall not participate in any proceedings of the Parliament, and
  - (b) any of his other rights and privileges as a member of the Parliament may be withdrawn by a resolution of the Parliament.
- (5) The validity of any proceedings of the Parliament is not affected by the disqualification of any person from being a member of the Parliament or from being a member for the constituency or region for which he purports to sit.

**Modifications etc. (not altering text)**

**C11** S. 17 extended (11.3.1999) by S.I. 1997/787, arts. 1, 6, **Sch. 2 Pt. II para. 9(4)(b)(i)**

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#### Marginal Citations

**M7** 1983 c. 20.

**M8** 1986 c. 45.

### 18 Judicial proceedings as to disqualification.

- (1) Any person who claims that a person purporting to be a member of the Parliament is disqualified or has been disqualified at any time since being returned may apply to the Court of Session for a declarator to that effect.
- (2) An application in respect of any person may be made whether the grounds on which it is made are alleged to have subsisted when the person was returned or to have arisen subsequently.
- (3) No declarator shall be made—
  - (a) on grounds which subsisted when the person was returned, if an election petition is pending or has been tried in which the disqualification on those grounds of the person concerned is or was in issue, or
  - (b) on any ground, if a resolution under section 16 requires that any disqualification incurred on that ground by the person concerned is to be disregarded.
- (4) The person in respect of whom an application is made shall be the defender.
- (5) The applicant shall give such caution for the expenses of the proceedings as the Court of Session may direct; but any such caution shall not exceed £5,000 or such other sum as the Scottish Ministers may by order specify.
- (6) The decision of the court on an application under this section shall be final.
- (7) In this section “disqualified” means disqualified from being a member of the Parliament or from being a member for the constituency or region for which the person concerned purports to sit.

#### Modifications etc. (not altering text)

**C12** S. 18 extended (11.3.1999) by S.I. 1999/787, arts. 1, 6, Sch. 2 Pt. II para. 9(4)(b)(i)

#### *Presiding Officer and administration*

VALID FROM 06/05/1999

### 19 Presiding Officer.

- (1) The Parliament shall, at its first meeting following a general election, elect from among its members a Presiding Officer and two deputies.
- (2) A person elected Presiding Officer or deputy shall hold office until the conclusion of the next election for Presiding Officer under subsection (1) unless he previously resigns, ceases to be a member of the Parliament otherwise than by virtue of a dissolution or is removed from office by resolution of the Parliament.

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- (3) If the Presiding Officer or a deputy ceases to hold office before the Parliament is dissolved, the Parliament shall elect another from among its members to fill his place.
- (4) The Presiding Officer's functions may be exercised by a deputy if the office of Presiding Officer is vacant or the Presiding Officer is for any reason unable to act.
- (5) The Presiding Officer may (subject to standing orders) authorise any deputy to exercise functions on his behalf.
- (6) Standing orders may include provision as to the participation (including voting) of the Presiding Officer and deputies in the proceedings of the Parliament.
- (7) The validity of any act of the Presiding Officer or a deputy is not affected by any defect in his election.

VALID FROM 06/05/1999

## **20 Clerk of the Parliament.**

- (1) There shall be a Clerk of the Parliament.
- (2) The Clerk shall be appointed by the Scottish Parliamentary Corporate Body (established under section 21).
- (3) The Clerk's functions may be exercised by any Assistant Clerk if the office of Clerk is vacant or the Clerk is for any reason unable to act.
- (4) The Clerk may authorise any Assistant Clerk or other member of the staff of the Parliament to exercise functions on his behalf.

### **Modifications etc. (not altering text)**

**C13** S. 20(3) amended (6.5.1999)(temp.) by S.I. 1999/1098, art. 2(3)

VALID FROM 25/01/1999

## **21 Scottish Parliamentary Corporate Body.**

- (1) There shall be a body corporate to be known as "The Scottish Parliamentary Corporate Body" (referred to in this Act as the Parliamentary corporation) to perform the functions conferred on the corporation by virtue of this Act or any other enactment.
- (2) The members of the corporation shall be—
  - (a) the Presiding Officer, and
  - (b) four members of the Parliament appointed in accordance with standing orders.
- (3) The corporation shall provide the Parliament, or ensure that the Parliament is provided, with the property, staff and services required for the Parliament's purposes.

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- (4) The Parliament may give special or general directions to the corporation for the purpose of or in connection with the exercise of the corporation's functions.
- (5) Any property or liabilities acquired or incurred in relation to matters within the general responsibility of the corporation to which (apart from this subsection) the Parliament would be entitled or subject shall be treated for all purposes as property or (as the case may be) liabilities of the corporation.
- (6) Any expenses of the corporation shall be payable out of the Scottish Consolidated Fund.
- (7) Any sums received by the corporation shall be paid into that Fund, subject to any provision made by or under an Act of the Scottish Parliament for the disposal of or accounting for such sums.
- (8) Schedule 2 (which makes further provision about the corporation) shall have effect.

#### **Modifications etc. (not altering text)**

- C14** S. 21(6) restricted (6.5.1999) by [S.I. 1999/1082, art. B2, Sch. 1 para. 8](#)  
S. 21(6) restricted (6.5.1999) by [S.I. 1999/1082, art. R1, Sch. 6 para. 14\(2\)](#)
- C15** S. 21(7) modified (6.5.1999) (temp.) by [S.I. 1999/441, arts. 1\(5\), 6](#)

#### **Commencement Information**

- II** S. 21 wholly in force at 6.5.1999: S. 21 not in force at Royal Assent, see s. 130; S. 21(1)-(7) in force at 6.5.1999 by [S.I. 1998/3178, art. 2\(2\)](#); s. 21(8) in force for certain purposes at 25.1.1999 and for all remaining purposes at 6.5.1998 by [S.I. 1998/3178, art. 2\(2\)](#)

VALID FROM 06/05/1999

#### *Proceedings etc.*

#### **22 Standing orders.**

- (1) The proceedings of the Parliament shall be regulated by standing orders.
- (2) Schedule 3 (which makes provision as to how certain matters are to be dealt with by standing orders) shall have effect.

#### **23 Power to call for witnesses and documents.**

- (1) The Parliament may require any person—
  - (a) to attend its proceedings for the purpose of giving evidence, or
  - (b) to produce documents in his custody or under his control,
 concerning any subject for which any member of the Scottish Executive has general responsibility.
- (2) Subject to subsection (3), the Parliament may impose such a requirement on a person outside Scotland only in connection with the discharge by him of—
  - (a) functions of the Scottish Administration, or

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- (b) functions of a Scottish public authority or cross-border public authority, or Border rivers functions (within the meaning of section 111(4)), which concern a subject for which any member of the Scottish Executive has general responsibility.
- (3) In relation to the exercise of functions of a Minister of the Crown, the Parliament may not impose such a requirement on—
- (a) him (whether or not he continues to be a Minister of the Crown), or
- (b) a person who is or has been in Crown employment, within the meaning of section 191(3) of the <sup>M9</sup>Employment Rights Act 1996,
- unless the exercise concerns a subject for which any member of the Scottish Executive has general responsibility.
- (4) But the Parliament may not impose such a requirement in pursuance of subsection (3) in connection with the exercise of functions which are exercisable—
- (a) by the Scottish Ministers as well as by a Minister of the Crown, or
- (b) by a Minister of the Crown only with the agreement of, or after consultation with, the Scottish Ministers.
- (5) Subsection (4)(b) does not prevent the Parliament imposing such a requirement in connection with the exercise of functions which do not relate to reserved matters.
- (6) Where all the functions of a body relate to reserved matters, the Parliament may not impose such a requirement on any person in connection with the discharge by him of those functions.
- (7) The Parliament may not impose such a requirement on—
- (a) a judge of any court, or
- (b) a member of any tribunal in connection with the discharge by him of his functions as such.
- (8) Such a requirement may be imposed by a committee or sub-committee of the Parliament only if the committee or sub-committee is expressly authorised to do so (whether by standing orders or otherwise).
- (9) A person is not obliged under this section to answer any question or produce any document which he would be entitled to refuse to answer or produce in proceedings in a court in Scotland.
- (10) A procurator fiscal is not obliged under this section to answer any question or produce any document concerning the operation of the system of criminal prosecution in any particular case if the Lord Advocate—
- (a) considers that answering the question or producing the document might prejudice criminal proceedings in that case or would otherwise be contrary to the public interest, and
- (b) has authorised the procurator fiscal to decline to answer the question or produce the document on that ground.

**Modifications etc. (not altering text)**

**C16** S. 23(2)(b) extended (1.4.2000) by 1999 c. 28, s. 35(1)(a) (with s. 38); S.I. 2000/1066, art. 2

**C17** S. 23(2)(b) modified (1.12.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), s. 25(4), Sch. 7 para. 2; S.I. 2002/2202, art. 2(2)

*Status: Point in time view as at 19/11/1998. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Scotland Act 1998, Part I. (See end of Document for details)*

- C18** S. 23(2)(b) modified (27.7.2004) by Energy Act 2004 (c. 20), ss. 2(10), 198(2), **Sch. 1 para. 17(a)**; S.I. 2004/1973, **art. 2**
- C19** S. 23(2)(b) modified by Private Security Industry Act 2001 (c. 12), s. 2A (as inserted (E.W.S) (30.6.2006 for S. and 6.7.2006 for E.W.) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 171(1), 178(6), **Sch. 15 para. 3**; S.S.I. 2006/381, **art. 2**)
- C20** S. 23(2)(b) extended (26.11.2008) by Climate Change Act 2008 (c. 27), ss. 32(2), 100(1), **Sch. 1 para. 27(2)(a)**

#### Commencement Information

- I2** S. 23 wholly in force; s. 23 not in force at Royal Assent see s. 130; s. 23 in force for certain purposes at 6.5.1999 and for all remaining purposes at 1.7.1999 by S.I. 1998/3178, **arts. 2(2), 3**

#### Marginal Citations

- M9** 1996 c. 18.

### 24 Witnesses and documents: notice.

- (1) A requirement under section 23 shall be imposed by the Clerk giving the person in question notice in writing specifying—
- (a) the time and place at which the person is to attend and the particular subjects concerning which he is required to give evidence, or
  - (b) the documents, or types of documents, which he is to produce, the date by which he is to produce them and the particular subjects concerning which they are required.
- (2) Such notice shall be given—
- (a) in the case of an individual, by sending it, by registered post or the recorded delivery service, addressed to him at his usual or last known address or, where he has given an address for service, at that address,
  - (b) in any other case, by sending it, by registered post or the recorded delivery service, addressed to the person at the person's registered or principal office.

### 25 Witnesses and documents: offences.

- (1) Any person to whom a notice under section 24(1) has been given who—
- (a) refuses or fails to attend proceedings as required by the notice,
  - (b) refuses or fails, when attending proceedings as required by the notice, to answer any question concerning the subjects specified in the notice,
  - (c) deliberately alters, suppresses, conceals or destroys any document which he is required to produce by the notice, or
  - (d) refuses or fails to produce any such document,
- is guilty of an offence.
- (2) Subsection (1) is subject to sections 23(9) and (10) and 27(3).
- (3) It is a defence for a person charged with an offence under subsection (1)(a), (b) or (d) to prove that he had a reasonable excuse for the refusal or failure.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding three months.

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- (5) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) any person who was purporting to act in any such capacity,
- he, as well as the body corporate, is guilty of that offence and liable to be proceeded against accordingly.

## **26 Witnesses and documents: general.**

- (1) The Presiding Officer or such other person as may be authorised by standing orders may—
- (a) administer an oath to any person giving evidence in proceedings of the Parliament, and
  - (b) require him to take the oath.
- (2) Any person who refuses to take an oath when required to do so under subsection (1) (b) is guilty of an offence.
- (3) Subsection (4) of section 25 applies to an offence under subsection (2) as it applies to an offence under that section.
- (4) Standing orders may provide for the payment of allowances and expenses to persons—
- (a) attending proceedings of the Parliament to give evidence, or
  - (b) producing documents which they have been required or requested to produce,
- whether or not in pursuance of a notice under section 24(1).
- (5) For the purposes of sections 23 to 25 and this section, a person shall be taken to comply with a requirement to produce a document if he produces a copy of, or an extract of the relevant part of, the document.

VALID FROM 20/05/1999

## **27 Participation of the Scottish Law Officers.**

- (1) If the Lord Advocate or the Solicitor General for Scotland is not a member of the Parliament—
- (a) he may participate in the proceedings of the Parliament to the extent permitted by standing orders, but may not vote, and
  - (b) standing orders may in other respects provide that they are to apply to him as if he were such a member.
- (2) Subsection (1) is without prejudice to section 39.
- (3) The Lord Advocate or the Solicitor General for Scotland may, in any proceedings of the Parliament, decline to answer any question or produce any document relating to the operation of the system of criminal prosecution in any particular case if he considers that answering the question or producing the document—

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*Changes to legislation: There are currently no known outstanding effects  
for the Scotland Act 1998, Part I. (See end of Document for details)*

- (a) might prejudice criminal proceedings in that case, or
- (b) would otherwise be contrary to the public interest.

VALID FROM 06/05/1999

### *Legislation*

VALID FROM 01/07/1999

#### **28 Acts of the Scottish Parliament.**

- (1) Subject to section 29, the Parliament may make laws, to be known as Acts of the Scottish Parliament.
- (2) Proposed Acts of the Scottish Parliament shall be known as Bills; and a Bill shall become an Act of the Scottish Parliament when it has been passed by the Parliament and has received Royal Assent.
- (3) A Bill receives Royal Assent at the beginning of the day on which Letters Patent under the Scottish Seal signed with Her Majesty's own hand signifying Her Assent are recorded in the Register of the Great Seal.
- (4) The date of Royal Assent shall be written on the Act of the Scottish Parliament by the Clerk, and shall form part of the Act.
- (5) The validity of an Act of the Scottish Parliament is not affected by any invalidity in the proceedings of the Parliament leading to its enactment.
- (6) Every Act of the Scottish Parliament shall be judicially noticed.
- (7) This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland.

VALID FROM 01/07/1999

#### **29 Legislative competence.**

- (1) An Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament.
- (2) A provision is outside that competence so far as any of the following paragraphs apply—
  - (a) it would form part of the law of a country or territory other than Scotland, or confer or remove functions exercisable otherwise than in or as regards Scotland,
  - (b) it relates to reserved matters,
  - (c) it is in breach of the restrictions in Schedule 4,



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- (d) it is incompatible with any of the Convention rights or with Community law,
  - (e) it would remove the Lord Advocate from his position as head of the systems of criminal prosecution and investigation of deaths in Scotland.
- (3) For the purposes of this section, the question whether a provision of an Act of the Scottish Parliament relates to a reserved matter is to be determined, subject to subsection (4), by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.
- (4) A provision which—
- (a) would otherwise not relate to reserved matters, but
  - (b) makes modifications of Scots private law, or Scots criminal law, as it applies to reserved matters,
- is to be treated as relating to reserved matters unless the purpose of the provision is to make the law in question apply consistently to reserved matters and otherwise.

### **30 Legislative competence: supplementary.**

- (1) Schedule 5 (which defines reserved matters) shall have effect.
- (2) Her Majesty may by Order in Council make any modifications of Schedule 4 or 5 which She considers necessary or expedient.
- (3) Her Majesty may by Order in Council specify functions which are to be treated, for such purposes of this Act as may be specified, as being, or as not being, functions which are exercisable in or as regards Scotland.
- (4) An Order in Council under this section may also make such modifications of—
  - (a) any enactment or prerogative instrument (including any enactment comprised in or made under this Act), or
  - (b) any other instrument or document,as Her Majesty considers necessary or expedient in connection with other provision made by the Order.

VALID FROM 01/07/1999

### **31 Scrutiny of Bills before introduction.**

- (1) A member of the Scottish Executive in charge of a Bill shall, on or before introduction of the Bill in the Parliament, state that in his view the provisions of the Bill would be within the legislative competence of the Parliament.
- (2) The Presiding Officer shall, on or before the introduction of a Bill in the Parliament, decide whether or not in his view the provisions of the Bill would be within the legislative competence of the Parliament and state his decision.
- (3) The form of any statement, and the manner in which it is to be made, shall be determined under standing orders, and standing orders may provide for any statement to be published.

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*Changes to legislation: There are currently no known outstanding effects for the Scotland Act 1998, Part I. (See end of Document for details)*

VALID FROM 01/07/1999

### **32 Submission of Bills for Royal Assent.**

- (1) It is for the Presiding Officer to submit Bills for Royal Assent.
- (2) The Presiding Officer shall not submit a Bill for Royal Assent at any time when—
  - (a) the Advocate General, the Lord Advocate or the Attorney General is entitled to make a reference in relation to the Bill under section 33,
  - (b) any such reference has been made but has not been decided or otherwise disposed of by the Judicial Committee, or
  - (c) an order may be made in relation to the Bill under section 35.
- (3) The Presiding Officer shall not submit a Bill in its unamended form for Royal Assent if—
  - (a) the Judicial Committee have decided that the Bill or any provision of it would not be within the legislative competence of the Parliament, or
  - (b) a reference made in relation to the Bill under section 33 has been withdrawn following a request for withdrawal of the reference under section 34(2)(b).
- (4) In this Act—
 

“Advocate General” means the Advocate General for Scotland,  
“Judicial Committee” means the Judicial Committee of the Privy Council.

VALID FROM 01/07/1999

### **33 Scrutiny of Bills by the Judicial Committee.**

- (1) The Advocate General, the Lord Advocate or the Attorney General may refer the question of whether a Bill or any provision of a Bill would be within the legislative competence of the Parliament to the Judicial Committee for decision.
- (2) Subject to subsection (3), he may make a reference in relation to a Bill at any time during—
  - (a) the period of four weeks beginning with the passing of the Bill, and
  - (b) any period of four weeks beginning with any subsequent approval of the Bill in accordance with standing orders made by virtue of section 36(5).
- (3) He shall not make a reference in relation to a Bill if he has notified the Presiding Officer that he does not intend to make a reference in relation to the Bill, unless the Bill has been approved as mentioned in subsection (2)(b) since the notification.

VALID FROM 01/07/1999

### **34 ECJ references.**

- (1) This section applies where—

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*Changes to legislation: There are currently no known outstanding effects for the Scotland Act 1998, Part 1. (See end of Document for details)*

- (a) a reference has been made in relation to a Bill under section 33,
  - (b) a reference for a preliminary ruling has been made by the Judicial Committee in connection with that reference, and
  - (c) neither of those references has been decided or otherwise disposed of.
- (2) If the Parliament resolves that it wishes to reconsider the Bill—
- (a) the Presiding Officer shall notify the Advocate General, the Lord Advocate and the Attorney General of that fact, and
  - (b) the person who made the reference in relation to the Bill under section 33 shall request the withdrawal of the reference.
- (3) In this section “a reference for a preliminary ruling” means a reference of a question to the European Court under Article 177 of the Treaty establishing the European Community, Article 41 of the Treaty establishing the European Coal and Steel Community or Article 150 of the Treaty establishing the European Atomic Energy Community.

VALID FROM 01/07/1999

### **35 Power to intervene in certain cases.**

- (1) If a Bill contains provisions—
- (a) which the Secretary of State has reasonable grounds to believe would be incompatible with any international obligations or the interests of defence or national security, or
  - (b) which make modifications of the law as it applies to reserved matters and which the Secretary of State has reasonable grounds to believe would have an adverse effect on the operation of the law as it applies to reserved matters,
- he may make an order prohibiting the Presiding Officer from submitting the Bill for Royal Assent.
- (2) The order must identify the Bill and the provisions in question and state the reasons for making the order.
- (3) The order may be made at any time during—
- (a) the period of four weeks beginning with the passing of the Bill,
  - (b) any period of four weeks beginning with any subsequent approval of the Bill in accordance with standing orders made by virtue of section 36(5),
  - (c) if a reference is made in relation to the Bill under section 33, the period of four weeks beginning with the reference being decided or otherwise disposed of by the Judicial Committee.
- (4) The Secretary of State shall not make an order in relation to a Bill if he has notified the Presiding Officer that he does not intend to do so, unless the Bill has been approved as mentioned in subsection (3)(b) since the notification.
- (5) An order in force under this section at a time when such approval is given shall cease to have effect.

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*Changes to legislation: There are currently no known outstanding effects for the Scotland Act 1998, Part I. (See end of Document for details)*

VALID FROM 01/07/1999

### 36 Stages of Bills.

- (1) Standing orders shall include provision—
  - (a) for general debate on a Bill with an opportunity for members to vote on its general principles,
  - (b) for the consideration of, and an opportunity for members to vote on, the details of a Bill, and
  - (c) for a final stage at which a Bill can be passed or rejected.
- (2) Subsection (1) does not prevent standing orders making provision to enable the Parliament to expedite proceedings in relation to a particular Bill.
- (3) Standing orders may make provision different from that required by subsection (1) for the procedure applicable to Bills of any of the following kinds—
  - (a) Bills which restate the law,
  - (b) Bills which repeal spent enactments,
  - (c) private Bills.
- (4) Standing orders shall provide for an opportunity for the reconsideration of a Bill after its passing if (and only if)—
  - (a) the Judicial Committee decide that the Bill or any provision of it would not be within the legislative competence of the Parliament,
  - (b) a reference made in relation to the Bill under section 33 is withdrawn following a request for withdrawal of the reference under section 34(2)(b), or
  - (c) an order is made in relation to the Bill under section 35.
- (5) Standing orders shall, in particular, ensure that any Bill amended on reconsideration is subject to a final stage at which it can be approved or rejected.
- (6) References in subsection (4), sections 28(2) and 38(1)(a) and paragraph 7 of Schedule 3 to the passing of a Bill shall, in the case of a Bill which has been amended on reconsideration, be read as references to the approval of the Bill.

VALID FROM 25/01/1999

#### *Other provisions*

### 37 Acts of Union.

The <sup>M10</sup>Union with Scotland Act 1706 and the <sup>M11</sup>Union with England Act 1707 have effect subject to this Act.

#### Marginal Citations

M10 1706 c. 11.

**Status:** Point in time view as at 19/11/1998. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Scotland Act 1998, Part 1. (See end of Document for details)

M11 1707 c. 7(S).

### 38 Letters Patent and proclamations.

- (1) The Keeper of the Registers of Scotland shall record in the Register of the Great Seal—
  - (a) all Letters Patent signed with Her Majesty’s own hand signifying Her Assent to a Bill passed by the Parliament, and
  - (b) all royal proclamations under sections 2(5) and 3(2),  
which have passed under the Scottish Seal.
- (2) On recording such Letters Patent he shall intimate the date of recording to the Clerk.
- (3) Her Majesty may by Order in Council make provision as to—
  - (a) the form and manner of preparation, and
  - (b) the publication,  
of such Letters Patent and proclamations.
- (4) If the First Minister so directs, impressions with the same device as the Scottish Seal shall be taken in such manner, of such size and on such material as is specified in the direction.
- (5) Each such impression—
  - (a) shall be known as a Wafer Scottish Seal, and
  - (b) shall be kept in accordance with directions of the First Minister.
- (6) If a Wafer Scottish Seal has been applied to Letters Patent or a proclamation mentioned in subsection (1), the document has the same validity as if it had passed under the Scottish Seal.

#### Commencement Information

- I3** S. 38 wholly in force at 6.5.1999; s. 38 not in force at Royal Assent see s. 130; s. 38(3) in force at 25.1.1999 by S.I. 1998/3178, art. 2(2), Sch. 1; s. 32(1)(2)(4)-(6) in force at 6.5.1999 by S.I. 1998/3178, art. 2(2), Sch. 3

VALID FROM 01/07/1999

### 39 Members’ interests.

- (1) Provision shall be made for a register of interests of members of the Parliament and for the register to be published and made available for public inspection.
- (2) Provision shall be made—
  - (a) requiring members of the Parliament to register in that register financial interests (including benefits in kind), as defined for the purposes of this paragraph,
  - (b) requiring that any member of the Parliament who has a financial interest (including benefits in kind), as defined for the purposes of this paragraph,

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in any matter declares that interest before taking part in any proceedings of the Parliament relating to that matter.

- (3) Provision made in pursuance of subsection (2) shall include any provision which the Parliament considers appropriate for preventing or restricting the participation in proceedings of the Parliament of a member with an interest defined for the purposes of subsection (2)(a) or (b) in a matter to which the proceedings relate.
- (4) Provision shall be made prohibiting a member of the Parliament from—
- (a) advocating or initiating any cause or matter on behalf of any person, by any means specified in the provision, in consideration of any payment or benefit in kind of a description so specified, or
  - (b) urging, in consideration of any such payment or benefit in kind, any other member of the Parliament to advocate or initiate any cause or matter on behalf of any person by any such means.
- (5) Provision made in pursuance of subsections (2) to (4) shall include any provision which the Parliament considers appropriate for excluding from proceedings of the Parliament any member who fails to comply with, or contravenes, any provision made in pursuance of those subsections.
- (6) Any member of the Parliament who—
- (a) takes part in any proceedings of the Parliament without having complied with, or in contravention of, any provision made in pursuance of subsection (2) or (3), or
  - (b) contravenes any provision made in pursuance of subsection (4),
- is guilty of an offence.
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) In this section—
- (a) “provision” means provision made by or under an Act of the Scottish Parliament,
  - (b) references to members of the Parliament include references to the Lord Advocate and the Solicitor General for Scotland, whether or not they are such members.

#### **Modifications etc. (not altering text)**

- C21** S. 39(2)(b) modified (S.) by [Interests of Members of the Scottish Parliament Act 2006 \(asp 12\)](#), [s. 12\(3\)](#) (the modification coming into force on the day after the date of the first dissolution of the Parliament following the date of Royal Assent in accordance with s. 21(4) of the modifying Act, which first dissolution began at midnight on 2.4.2007)
- C22** S. 39(6)(a) modified (S.) by [Interests of Members of the Scottish Parliament Act 2006 \(asp 12\)](#), [s. 17\(1\)](#) (the modification coming into force on the day after the date of the first dissolution of the Parliament following the date of Royal Assent in accordance with s. 21(4) of the modifying Act, which first dissolution began at midnight on 2.4.2007)
- C23** S. 39(6)(b) modified (S.) by [Interests of Members of the Scottish Parliament Act 2006 \(asp 12\)](#), [s. 17\(2\)](#) (the modification coming into force on the day after the date of the first dissolution of the Parliament following the date of Royal Assent in accordance with s. 21(4) of the modifying Act, which first dissolution began at midnight on 2.4.2007)

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*Changes to legislation:* There are currently no known outstanding effects for the Scotland Act 1998, Part 1. (See end of Document for details)

VALID FROM 06/05/1999

*Legal issues*

**40 Proceedings by or against the Parliament etc.**

- (1) Proceedings by or against the Parliament shall be instituted by or (as the case may be) against the Parliamentary corporation on behalf of the Parliament.
- (2) Proceedings by or against—
  - (a) the Presiding Officer or a deputy, or
  - (b) any member of the staff of the Parliament,shall be instituted by or (as the case may be) against the corporation on his behalf.
- (3) In any proceedings against the Parliament, the court shall not make an order for suspension, interdict, reduction or specific performance (or other like order) but may instead make a declarator.
- (4) In any proceedings against—
  - (a) any member of the Parliament,
  - (b) the Presiding Officer or a deputy,
  - (c) any member of the staff of the Parliament, or
  - (d) the Parliamentary corporation,the court shall not make an order for suspension, interdict, reduction or specific performance (or other like order) if the effect of doing so would be to give any relief against the Parliament which could not have been given in proceedings against the Parliament.
- (5) References in this section to an order include an interim order.

**41 Defamatory statements.**

- (1) For the purposes of the law of defamation—
  - (a) any statement made in proceedings of the Parliament, and
  - (b) the publication under the authority of the Parliament of any statement,shall be absolutely privileged.
- (2) In subsection (1), “statement” has the same meaning as in the <sup>M12</sup>Defamation Act 1996.

**Marginal Citations**

M12 1996 c. 31.

**42 Contempt of court.**

- (1) The strict liability rule shall not apply in relation to any publication—
  - (a) made in proceedings of the Parliament in relation to a Bill or subordinate legislation, or

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*Changes to legislation: There are currently no known outstanding effects for the Scotland Act 1998, Part I. (See end of Document for details)*

(b) to the extent that it consists of a fair and accurate report of such proceedings made in good faith.

(2) In subsection (1), “the strict liability rule” and “publication” have the same meanings as in the <sup>M13</sup>Contempt of Court Act 1981.

**Marginal Citations**

**M13** 1981 c. 49.

**43 Corrupt practices.**

The Parliament shall be a public body for the purposes of the Prevention of Corruption Acts 1889 to 1916.



**Status:**

Point in time view as at 19/11/1998. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Scotland Act 1998, Part I.