

*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 18: Judicial proceedings as to disqualification

Purpose and Effect

This section provides for a procedure before the Court of Session for establishing whether a member of the Parliament is disqualified or has been disqualified from membership. It is similar to the procedure before the Judicial Committee of the Privy Council provided in relation to disqualification from membership of the House of Commons by section 7 of the House of Commons Disqualification Act 1975. It provides a simpler and less restrictive alternative procedure to the procedure by way of election petition under Part III of the [Representation of the People Act 1983 \(c.2\)](#) as applied to the Scottish Parliament by virtue of Schedule 6 to the Scottish Parliament (Elections etc.) Order 1999 ([S.I. 1999/787](#)).

General

This section is the fourth dealing with disqualification.

Details of Provisions

Subsection (1) provides for a person, who claims that a member of the Parliament is or has, since his election, been disqualified, to be able to apply to the Court of Session for a declarator to that effect (i.e. a court order which establishes and declares that to be the case).

Subsection (2) provides for an application under subsection (1) to be made whether the grounds of disqualification on which it is based are alleged to have existed at the time of the election or to have arisen sometime after the election.

Subsection (3) provides that the Court may not make a declarator on grounds which existed at the time of the election if an election petition is pending or has been tried in which the disqualification on these grounds is or was an issue. This is necessary in order to avoid a conflict between an application under this section and an election petition. It also provides that the Court shall not make a declarator if a resolution has already been passed by the Parliament under section 16 to the effect that a disqualification shall be disregarded. This is necessary in order to avoid a conflict with a resolution of the Parliament.

Subsection (4) provides for the person in respect of whom the application is made, i.e. the member of the Scottish Parliament, to defend the application rather than some other person e.g. a returning officer.

Subsection (5) empowers the Court of Session to require any person who applies to the court for such a declarator to give caution (security) of up to £5000 for the expenses of the application. Provision is also made for the Scottish Ministers to vary the maximum amount by order, which, by virtue of Schedule 7, is subject to negative resolution

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

procedure in the Scottish Parliament. This is intended to deter frivolous or vexatious applications, and is the same maximum sum which an election court may order in relation to an election petition.

Subsection (6) provides that the Court of Session's decision on an application is final.

Subsection (7) defines "disqualification" for the purpose of this section as meaning disqualification from membership of the Parliament as a whole or disqualification from membership for the particular constituency or region for which the member purports to sit.