

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

# **SCOTLAND ACT 1998**

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## **EXPLANATORY NOTES**

### **COMMENTARY**

#### **Part II: the Scottish Administration**

##### **SECTION 44: The Scottish Executive**

#### **Details of Provisions**

Subsection (1) establishes the Scottish Executive and provides that its members are to be the First Minister, such Ministers as the First Minister may appoint under section 47, the Lord Advocate and the Solicitor General for Scotland.

Junior Scottish Ministers are not members of the Scottish Executive nor are the staff included in it. However, in practice, the name of the Scottish Executive is used to describe not only its statutory members but the whole organisation, including those members, junior Scottish Ministers and the staff.

Subsection (2) provides that the members of the Scottish Executive should be referred to collectively as the Scottish Ministers.

Subsection (3) provides that a person who holds a Ministerial office (which as defined means a Ministerial office in the UK Government) may not be appointed a member of the Scottish Executive and, if a member of the Scottish Executive is appointed to a Ministerial office, he has to cease to hold office as a member of the Scottish Executive. The effect is that a person cannot be a Minister in both the UK Government and in the Scottish Executive at the same time.

Subsection (4) provides that references in subsection (3) to:

- (a) members of the Scottish Executive are to include junior Scottish Ministers; and
- (b) “Ministerial office” is to have the same meaning as in section 2 of the House of Commons Disqualification Act 1975. Section 2 of that Act defines “ministerial office” by reference to the offices specified in Schedule 2 to the Act and refers to a ministerial office in the UK Government.