

*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

Purpose and Effect

This section makes provision as respects the staff of the Scottish Administration. In particular it provides that:

the Scottish Ministers may appoint persons to be members of the staff of the Scottish Administration;

the staff of, and the holders of any non-ministerial office in, the Scottish Administration are members of the Home Civil Service and, accordingly, their appointment is subject to the provisions of the Civil Service Order in Council; and

responsibility for the management of such staff will ultimately remain with the Minister for the Civil Service (i.e. the Prime Minister) but provision is made enabling responsibility for the day to day management of such staff to be delegated to the Scottish Ministers in the same way as happens for government departments in the UK Government.

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.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CR	19-May-98	754
LC	28-Jul-98	1458
LR	28-Oct-98	2037

Details of Provisions

Subsection (1) gives the Scottish Ministers the power to appoint persons to be members of the staff of the Scottish Administration. The staff of the Scottish Administration include the staff of the Lord Advocate, such as in the Crown Office or in the Procurator Fiscal service. It also includes the staff of the various non-ministerial offices who are part of the Scottish Administration, such as the Keeper of the Registers of Scotland.

Subsection (2) provides for service as the holder of any office in the Scottish Administration which is not a ministerial office or a member of the staff of the Scottish Administration to be service in the Home Civil Service. This ensures that all these persons are civil servants in the Home Civil Service and there is no separate civil service created as in the case of Northern Ireland.

Offices in the Scottish Administration which are not ministerial offices are defined by section 126(8) and include the Registrar General of Births, Deaths and Marriages for Scotland, the Keeper of the Registers of Scotland and the Keeper of the Records of Scotland. It also includes the offices specified in the Scottish Administration (Offices) Order 1999 ([S.I. 1999/1127](#)).

Subsection (3) makes the power of the Scottish Ministers to appoint staff under subsection (1) and other statutory powers to appoint such persons (e.g. that of the Registrar General of Births, Deaths and Marriages for Scotland) subject to any provisions made in relation to the Home Civil Service by or under any Order in Council.

This provision ensures, in particular, that, subject to any delegation permitted under subsection (4), the standards of entry to the Home Civil Service and the management of the service, including the terms and conditions of service, are similar throughout the UK.

The first part of subsection (4) makes it clear that any civil service management function shall be exercisable by the Minister for the Civil Service (i.e. the Prime Minister) in relation to the staff of the Scottish Administration as it is exercisable in relation to other members of the Home Civil Service.

The second part of subsection (4) makes it clear that the power which the Minister for the Civil Service has under section 1 of the Civil Service (Management Functions) Act 1992 to delegate any civil service management function also applies to any civil service management function in relation to the staff of the Scottish Administration.

Subsection (5) provides that salary and allowances payable to or in respect of the persons mentioned in subsection (2) shall be payable out of the Scottish Consolidated Fund. This includes the contributions to any pension scheme.

Subsection (6) provides that section 1(2) and (3) of the Superannuation Act 1972 shall have effect as if references to a Minister of the Crown (other than the Minister for the Civil Service) included the Scottish Ministers. This allows functions relating to civil service pensions to be delegated to the Scottish Ministers.

Subsection (7) requires the Scottish Ministers to make payments to the Minister for the Civil Service of such amounts as he may determine in respect of the pensions etc. payable to persons who are or have been in service as mentioned in subsection (2) and in respect of any expenses to be incurred in administering those pensions etc.

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Subsection (8) provides that any amounts required for payments by virtue of subsection (7) shall be charged on the Scottish Consolidated Fund.

Subsection (9) provides definitions of the terms “civil service management function” and “the Home Civil Service”.