

TRIBUNALS (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Organisational Arrangements

Judiciary eligible to sit

Section 17 – Sheriffs and judges

35. *Section 17* provides for the circumstances in which members of the courts judiciary can be assigned to act as members of the Scottish Tribunals. Such persons make up the judicial members of the Scottish Tribunals (see section 19).
36. By virtue of subsection (1), sheriffs principal, sheriffs and part-time sheriffs are eligible to act as members of the First-tier Tribunal. Such persons may only act as members of the First-tier Tribunal with the authorisation of the President of Tribunals (subsection (3)). Such authorisation can only be given with the Lord President's approval and the agreement of the sheriff concerned (and, if that person is not a sheriff principal, the sheriff principal of the sheriffdom to which that sheriff is appointed) (subsection (6)).
37. By virtue of subsection (2), judges of the Court of Session (including temporary judges) together with the Chairman of the Scottish Land Court, sheriffs principal and sheriffs (but not part-time sheriffs) are eligible to act as members of the Upper Tribunal. Such persons may only act as members of the Upper Tribunal with the authorisation of the President of Tribunals (subsections (3) and (4)). Such authorisation can only be given with the Lord President's approval and the agreement of that person (subsection (6)). Where the person is a sheriff (but not a sheriff principal), the authorisation of the President of Tribunals can only be given with the agreement of the sheriff principal of the sheriffdom to which that sheriff is appointed.
38. Subsection (2) does not apply to the Lord President and the President of Tribunals. Subsection (5) makes express provision for both the Lord President and President of Tribunals to act as members of the Upper Tribunal without any requirement for authorisation.
39. Any authorisation given by the President of Tribunals for a member of the courts judiciary to act as a member of the Scottish Tribunals remains in effect until such time as the President of Tribunals determines (which again requires the consent of the Lord President and the agreement of the person acting as a member (subsection (6))). Where the person is a sheriff (but not a sheriff principal), the determination of the President of Tribunals can also only be made with the agreement of the sheriff principal of the sheriffdom to which that sheriff is appointed.