

TRIBUNALS (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – More About Membership Etc.

Appointment and assignment

Schedule 5 – Appointment to Upper Tribunal

Schedule Part 1 – Ordinary members

105. [Section 32\(3\)](#) introduces schedule 5 which makes provision as to the eligibility and appointment of ordinary and legal members of the Upper Tribunal.
106. [Paragraphs 1 and 2](#) of schedule 5 provide that it is for the Scottish Ministers to appoint a person as an ordinary member of the Upper Tribunal. A person may only be appointed as such, if the person has the qualifications, experience and training which are prescribed by the Scottish Ministers in regulations made under paragraph 1(2). The effect of this provision will be to allow the Scottish Ministers to prescribe a wide range of criteria by which a person will qualify to be appointed as an ordinary member. Regulations made under section 40(1) providing for the composition of the Upper Tribunal when convened to exercise its decision-making functions may also make reference to these criteria. See the commentary on that section.

Schedule Part 2 – Legal members

107. [Paragraphs 3 to 7](#) of schedule 5 make provision as to the eligibility and appointment of legal members of the Upper Tribunal other than Vice-Presidents (about whom section 24 makes provision) or a person who is a legal member of the Upper Tribunal by virtue of being a Chamber President in the First-tier Tribunal by virtue of section 16(2) (b).
108. It is for the Scottish Ministers to appoint a person as a legal member of the Upper Tribunal (paragraph 4(1)).
109. A person may be appointed as a legal member if he or she is practising as a solicitor or advocate in Scotland and has been practising for a period of not less than 7 years (paragraphs 4(2) and 5(1)).
110. A person may also be appointed as a legal member if he or she falls within a description specified by the Scottish Ministers in regulations made under paragraph 5(2) of schedule 5 (paragraphs 4(2) and 5(2)).
111. [Paragraph 6\(3\)](#) enables regulations made under paragraph 5(2) of schedule 5 to make provision in relation to persons previously practising as solicitors, advocates or barristers who have engaged in another law-related activity. Paragraph 6(4) enables regulations to make provision in relation to persons engaged in the activities listed in paragraph 6(5) through which they have acquired a suitable experience in law. The

*These notes relate to the Tribunals (Scotland) Act 2014
(asp 10) which received Royal Assent on 15 April 2014*

activities listed in paragraph 6(5) include the exercise of judicial functions, practice as a lawyer, teaching or researching law at an educational institution and certain other legal activities such as advising on the application of the law, drafting legal documents and assisting in the resolution of disputes.

112. [Paragraph 7](#) also enables the Scottish Ministers to make more particular provision as regards the eligibility criteria to be appointed as a legal member of the Upper Tribunal including the calculation of the 7 year qualification period and modifying the list of activities set out in paragraph 6(5).