

TRIBUNALS (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – More About Membership Etc.

Conduct and discipline

143. [Paragraph 2](#) confers responsibility for making and maintaining appropriate arrangements for the investigation and determination of any matter concerning the conduct of the members of the Scottish Tribunals and the review of any such determination on the Lord President. The Lord President may make provision to this effect through Conduct Rules (paragraph 3). Paragraph 3(2) sets out a non-exhaustive list of the matters that may be covered by the Conduct Rules, which are required to be published under paragraph 4.
144. [Paragraph 5](#) enables the Lord President to administer one of three types of disciplinary sanction where an investigation has been carried out and the investigator has recommended a disciplinary sanction. The disciplinary sanctions are set out in subparagraph (1) and are, in ascending order of severity: formal advice, a formal warning and a reprimand. This is a discretionary power and paragraph 6 makes it clear that this does not restrict what the Lord President may do informally.
145. [Paragraph 7](#) provides for the suspension of a member of the Scottish Tribunals where the Lord President considers it necessary for the purpose of maintaining public confidence in the Scottish Tribunals. Such suspension does not affect any remuneration payable to, or in respect of the suspended member. An example of a situation where this might be used is when an allegation of a serious nature is made against a member of the Scottish Tribunals. This power is separate from the suspension provisions in paragraph 19 of schedule 8 which applies during an investigation by a fitness assessment tribunal.
146. [Paragraph 9](#) confers the following functions on the Judicial Complaints Reviewer (established under section 30 of the Judiciary and Courts (Scotland) Act 2008): on the request of the person who had made the complaint which was the subject of an investigation or the member whose conduct has been investigated, to review the handling of an investigation in terms of procedure; where the procedure has not been followed, to refer such a case to the Lord President; to prepare and publish reports on investigations; and to make written representations to the Lord President about such procedures (to which the Lord President must have regard). The functions of the Judicial Complaints Reviewer only relate to the procedure adopted in an investigation and not the merits of the findings of the investigation.
147. Where the Reviewer refers a case to the Lord President under paragraph 9(2)(b), the Lord President may vary or revoke the determination (or part of it); cause a fresh investigation to be carried out; confirm the determination; or deal with the referral in such other way as the Lord President considers to be appropriate (paragraph 10).
148. Section 32 of the 2008 Act requires the Reviewer to comply with any guidance issued by the Scottish Ministers on the functions of the Reviewer set out in the Act.