

TRIBUNALS (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Decision-Making and Composition

Decisions in First-tier Tribunal

Section 37 – Decisions in the Tribunal

157. *Section 37* makes provision as to the exercise of the First-tier Tribunal's function of deciding any matter in a case within its jurisdiction. This function is to be exercised by one or two or more members of the chamber to which the case is allocated. It is for regulations made under section 20(2)(b) (chambers in the Tribunal) to make provision for the allocation of the First-tier Tribunal's functions among the chambers.
158. The Chamber President has the responsibility for selecting the members but, in so doing, must comply with any relevant provision made by regulations under section 38 (composition of the Tribunal).
159. If the First-tier Tribunal is exercising a function in a case which has been remitted to it by the Upper Tribunal under section 47(2)(b) (disposal of an appeal by the Upper Tribunal), the Chamber President must also comply with any directions given by the Upper Tribunal under section 47(5)(b) as to the members to be chosen to reconsider the case.

Section 38 – Composition of the Tribunal

160. This section provides for the Scottish Ministers to make regulations providing for the composition of the First-tier Tribunal when convened to decide a case falling within its jurisdiction. Such regulations may provide for the determination of the number of members who are to hear a particular matter as well as the types of member (whether ordinary, legal or judicial) that those members must be.
161. Where the regulations provide for an ordinary member to be part of the convened Tribunal, the regulations may also make provision for determining the qualifications, experience and training that that member should possess (subsection (4)).
162. By virtue of section 11(2), regulations made under section 38 may make provision authorising the President of Tribunals, or relying on Tribunal Rules (see commentary on section 62), to determine these matters. By virtue of section 11(2), the Scottish Ministers must consult the President of Tribunals before making regulations under section 38.

Decisions in Upper Tribunal

Section 39– Decisions in the Tribunal

163. *Section 39* makes provision as to the exercise of the Upper Tribunal's function of deciding any matter in a case falling within its jurisdiction. This function is to be

exercised by one or two or more members of the division to which the case is allocated. It is for regulations made under section 23(2)(b) (Divisions of the Tribunal) to make provision for the allocation of the Upper Tribunal's functions among the divisions.

164. The Vice-President has the responsibility for selecting the members but, in so doing, the Vice-President must comply with any relevant provision made by regulations under section 40(1) (composition of the Tribunal).
165. The Vice-President must also comply with subsection (4) which enables the Lord President and the Tribunals President to exercise a right to be selected (provided that this complies with the provisions of any regulations made under section 40(1) (composition of the Tribunal)).
166. If the Upper Tribunal is exercising a function in a case which has been remitted to it by the Court of Session under section 49(2)(b) (disposal of an appeal by the Court of Session), the Vice-President must also comply with any directions given by the Court of Session under section 49(5)(b) as to the members to be chosen to reconsider the case.

Section 40 – Composition of the Tribunal

167. This section provides for the Scottish Ministers to make regulations providing for the composition of the Upper Tribunal when convened to decide a case falling within its jurisdiction. Such regulations may provide for the determination of the number of members who are to hear a particular matter as well as the types of member (whether ordinary, legal or judicial) that those members should be.
168. Such regulations may also make separate provision depending on whether the Upper Tribunal is exercising functions at first instance or on review or appeal (subsection (2)).
169. Where the regulations provide for a judicial member to be part of the convened Tribunal, the regulations may also make provision requiring the judicial member to be of a particular type (whether a sheriff, sheriff principal or judge of the Court of Session) as well as for the involvement of any extra judge who is authorised to act under section 18(5) (subsection (5)).
170. Where the regulations provide for an ordinary member to be part of the convened Tribunal, the regulations may also make provision for determining the qualifications, experience and training that that member should possess (subsection (6)).
171. By virtue of section 11(2), regulations made under section 40 may make provision authorising the President of Tribunals, or relying on Tribunal Rules (see commentary on section 62), to determine these matters. By virtue of section 12(2), the Scottish Ministers must consult the President of Tribunals before making regulations under section 40.

Voting where two or more members

Section 41 – Voting for Decisions

172. **Section 41** makes provision for voting for decisions. Subsection (1) allows the Scottish Ministers, by regulations, to make provision regarding how decisions are voted for in panels of two or more members and how ties are resolved.

Section 42 – Chairing Members

173. **Section 42** makes provision for chairing members where a decision is being taken by two or more members. Subsection (1) specifies that Tribunal Rules may make provision for determining who will be the chairing member in a case before the First-tier or Upper Tribunal. Subsection (2) makes further provision for what can be specified in Tribunal Rules in relation to chairing members.