



# Tribunals (Scotland) Act 2014

## 2014 asp 10

### PART 5

#### DECISION-MAKING AND COMPOSITION

##### *Decisions in Upper Tribunal*

#### **39 Decisions in the Tribunal**

- (1) The Upper Tribunal's function of deciding any matter in a case before the Tribunal is to be exercised by one, or two or more, of the members of the Tribunal division to which the case is allocated.
- (2) The member or members are to be chosen by the Vice-President of the division (who may choose himself or herself).
- (3) The Vice-President's discretion in choosing the member or members is subject to—
  - (a) subsection (4),
  - (b) any relevant provisions in regulations made under section 40(1),
  - (c) any relevant directions given by virtue of section 49(5)(b).
- (4) Each of the Lord President and the President of Tribunals has the right to be chosen and may exercise that right as he or she considers appropriate (but this is also subject to any relevant provisions in regulations made under section 40(1)).
- (5) In this section—
  - “Tribunal division” means division of the Tribunal,
  - “member”, in relation to a Tribunal division—
    - (a) means ordinary, legal or judicial member of the Tribunal who is assigned to the division,
    - (b) while assigned to the division, also includes an extra judge who is authorised to act as mentioned in section 18(4).

#### **40      Composition of the Tribunal**

- (1) The Scottish Ministers may by regulations make provision for determining the composition of the Upper Tribunal when convened to decide any matter in a case before the Tribunal.
- (2) Regulations under subsection (1) may treat separately the Tribunal’s decision-making functions—
  - (a) at first instance,
  - (b) on review or appeal.
- (3) Where regulations under subsection (1) provide for a matter to be decided by a single member of the Tribunal, the regulations must include provision for determining whether the single member is to be an ordinary, legal or judicial member of the Tribunal.
- (4) Where regulations under subsection (1) provide for a matter to be decided by two or more members of the Tribunal, the regulations must include provision for determining how many (if any) of those members are to be—
  - (a) an ordinary member,
  - (b) a legal member,
  - (c) a judicial member.
- (5) Regulations under subsection (1) may include provision about the involvement in decision-making of—
  - (a) a judicial member of a particular description,
  - (b) an extra judge who is authorised to act as mentioned in section 18(4).
- (6) Regulations under subsection (1) may include provision for determining what relevant criteria are to be met by an ordinary member of the Tribunal for the member’s involvement in decision-making in particular types of case.
- (7) In subsection (6), “relevant criteria” includes criteria as to qualifications, experience and training.