



# Tribunals (Scotland) Act 2014

## 2014 asp 10

### PART 5

#### DECISION-MAKING AND COMPOSITION

##### *Decisions in First-tier Tribunal*

#### 37 Decisions in the Tribunal

- (1) The First-tier 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 chamber to which the case is allocated.
- (2) The member or members are to be chosen by the Chamber President of the chamber (who may choose himself or herself).
- (3) The Chamber President's discretion in choosing the member or members is subject to—
  - (a) any relevant provisions in regulations made under section 38(1),
  - (b) any relevant directions given by virtue of section 47(5)(b).
- (4) In this section—
  - “Tribunal chamber” means chamber of the Tribunal,
  - [<sup>F1</sup>“member”, in relation to a Tribunal chamber—
    - (a) means an ordinary, legal or judicial member of the Tribunal who is assigned to the chamber,
    - (b) while assigned to the chamber, also includes an extra judge who is authorised to act as mentioned in section 18(4).]

#### Textual Amendments

- F1** Words in s. 37(4) substituted (13.5.2022) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), ss. **16(4)**, 18(2)(3); S.S.I. 2022/146, reg. 2

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*Changes to legislation: There are currently no known outstanding effects for the Tribunals (Scotland) Act 2014, PART 5. (See end of Document for details)*

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#### **Commencement Information**

**I1** [S. 37](#) in force at 1.4.2015 by [S.S.I. 2015/116](#), [art. 2](#)

### **38 Composition of the Tribunal**

- (1) The Scottish Ministers may by regulations make provision for determining the composition of the First-tier Tribunal when convened to decide any matter in a case before the Tribunal.
- (2) 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.
- (3) 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.
- (4) 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.
- [<sup>F2</sup>(4A) Regulations under subsection (1) may include provision about the involvement in decision-making of an extra judge who is authorised to act as mentioned in section 18(4).]
- (5) In subsection (4), “relevant criteria” includes criteria as to qualifications, experience and training.

#### **Textual Amendments**

**F2** [S. 38\(4A\)](#) inserted (13.5.2022) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), [ss. 16\(5\)](#), [18\(2\)\(3\)](#); [S.S.I. 2022/146](#), [reg. 2](#)

#### **Commencement Information**

**I2** [S. 38](#) in force at 1.4.2015 by [S.S.I. 2015/116](#), [art. 2](#)

### *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—

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- (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).

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**Commencement Information**

**I3** [S. 39](#) in force at 1.4.2015 by [S.S.I. 2015/116](#), [art. 2](#)

## **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.

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*Changes to legislation: There are currently no known outstanding effects for the Tribunals (Scotland) Act 2014, PART 5. (See end of Document for details)*

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- (7) In subsection (6), “relevant criteria” includes criteria as to qualifications, experience and training.

**Commencement Information**

**I4** [S. 40](#) in force at 1.4.2015 by [S.S.I. 2015/116](#), [art. 2](#)

*Voting where two or more members*

**41 Voting for decisions**

- (1) The Scottish Ministers may by regulations make provision for the purposes of sections 37(1) and 39(1) in so far as a matter in a case before the First-tier Tribunal or the Upper Tribunal is to be decided by two or more members of the Tribunal, including—
- (a) for a decision to be made unanimously or by majority,
  - (b) where a decision is to be made by majority, for the chairing member to have a casting vote in the event of a tie.

[<sup>F3</sup>(2) For the purposes of subsection (1), an extra judge in relation to the First-tier Tribunal or the Upper Tribunal is to be treated as if a member of the Tribunal concerned (with section 42(1) so applying accordingly).]

**Textual Amendments**

**F3** [S. 41\(2\)](#) substituted (13.5.2022) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), [ss. 16\(6\)](#), 18(2)(3); [S.S.I. 2022/146](#), [reg. 2](#)

**Commencement Information**

**I5** [S. 41](#) in force at 1.4.2015 by [S.S.I. 2015/116](#), [art. 2](#)

**42 Chairing members**

- (1) Tribunal Rules may make provision for determining the question as to who is to be the chairing member where a matter in a case before the First-tier Tribunal or the Upper Tribunal is to be decided by two or more members of the Tribunal.
- (2) Rules making provision as described in subsection (1) may (in particular)—
- (a) allow the President of Tribunals to determine the question,
  - (b) specify criteria as against which the question is to be determined (including by reference to type of member or particular expertise).

**Commencement Information**

**I6** [S. 42](#) in force at 1.4.2015 by [S.S.I. 2015/116](#), [art. 2](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Tribunals (Scotland) Act 2014, PART 5.