



# Tribunals (Scotland) Act 2014

## 2014 asp 10

### PART 6

#### REVIEW OR APPEAL OF DECISIONS

#### CHAPTER 1

#### TRIBUNAL DECISIONS

#### *Internal review*

#### **43 Review of decisions**

- (1) Each of the First-tier Tribunal and the Upper Tribunal may review a decision made by it in any matter in a case before it.
- (2) A decision is reviewable—
  - (a) at the Tribunal's own instance, or
  - (b) at the request of a party in the case.
- (3) But—
  - (a) there can be no review under this section of an excluded decision,
  - (b) Tribunal Rules may make provision—
    - (i) excluding other decisions from a review under this section,
    - (ii) otherwise restricting the availability of a review under this section (including by specifying grounds for a review).
- (4) The exercise of discretion whether a decision should be reviewed under this section cannot give rise to a review under this section or to an appeal under section 46 or 48.
- (5) A right of appeal under section 46 or 48 is not affected by the availability or otherwise of a review under this section.

#### **44 Actions on review**

- (1) In a review by the First-tier Tribunal or the Upper Tribunal under section 43, the Tribunal may—
  - (a) take no action,
  - (b) set the decision aside, or
  - (c) correct a minor or accidental error contained in the decision.
- (2) Where a decision is set aside by the First-tier Tribunal in a review, it may—
  - (a) re-decide the matter concerned,
  - (b) refer that matter to the Upper Tribunal, or
  - (c) make such other order as the First-tier Tribunal considers appropriate.
- (3) If a decision set aside by the First-tier Tribunal in a review is referred to the Upper Tribunal, the Upper Tribunal—
  - (a) may re-decide the matter concerned or make such other order as it considers appropriate,
  - (b) in re-deciding that matter, may do anything that the First-tier Tribunal could do if re-deciding it.
- (4) Where a decision is set aside by the Upper Tribunal in a review, it may—
  - (a) re-decide the matter concerned, or
  - (b) make such other order as it considers appropriate.
- (5) In re-deciding a matter under this section, the First-tier or Upper Tribunal may reach such findings in fact as it considers appropriate.

#### **45 Review once only**

- (1) A particular decision of the First-tier Tribunal or the Upper Tribunal may not be reviewed under section 43 more than once.
- (2) These are to be regarded as different decisions for the purpose of subsection (1)—
  - (a) a decision set aside under section 44(1)(b),
  - (b) a decision made by virtue of section 44(2)(a), (3)(a) or (4).
- (3) Nothing in this section prevents the taking, after a review in which the decision concerned is not set aside, of administrative steps by the First-tier or Upper Tribunal to correct a minor or accidental error made in disposing of the review.

#### *Appeal from First-tier Tribunal*

#### **46 Appeal from the Tribunal**

- (1) A decision of the First-tier Tribunal in any matter in a case before the Tribunal may be appealed to the Upper Tribunal.
- (2) An appeal under this section is to be made—
  - (a) by a party in the case,
  - (b) on a point of law only.
- (3) An appeal under this section requires the permission of—

- (a) the First-tier Tribunal, or
  - (b) if the First-tier Tribunal refuses its permission, the Upper Tribunal.
- (4) Such permission may be given in relation to an appeal under this section only if the First-tier Tribunal or (as the case may be) the Upper Tribunal is satisfied that there are arguable grounds for the appeal.
- (5) This section—
- (a) is subject to sections 43(4) and 55(2),
  - (b) does not apply in relation to an excluded decision.

#### **47 Disposal of an appeal**

- (1) In an appeal under section 46, the Upper Tribunal may uphold or quash the decision on the point of law in question.
- (2) If the Upper Tribunal quashes the decision, it may—
- (a) re-make the decision,
  - (b) remit the case to the First-tier Tribunal, or
  - (c) make such other order as the Upper Tribunal considers appropriate.
- (3) In re-making the decision, the Upper Tribunal may—
- (a) do anything that the First-tier Tribunal could do if re-making the decision,
  - (b) reach such findings in fact as the Upper Tribunal considers appropriate.
- (4) In remitting the case, the Upper Tribunal may give directions for the First-tier Tribunal's reconsideration of the case.
- (5) Such directions may relate to—
- (a) issues of law or fact (including the Upper Tribunal's opinion on any relevant point),
  - (b) procedural issues (including as to the members to be chosen to reconsider the case).

#### *Appeal from Upper Tribunal*

#### **48 Appeal from the Tribunal**

- (1) A decision of the Upper Tribunal in any matter in a case before the Tribunal may be appealed to the Court of Session.
- (2) An appeal under this section is to be made—
- (a) by a party in the case,
  - (b) on a point of law only.
- (3) An appeal under this section requires the permission of—
- (a) the Upper Tribunal, or
  - (b) if the Upper Tribunal refuses its permission, the Court of Session.
- (4) Such permission may be given in relation to an appeal under this section only if the Upper Tribunal or (as the case may be) the Court of Session is satisfied that there are arguable grounds for the appeal.

---

*Status: This is the original version (as it was originally enacted).*

---

- (5) This section—
- (a) is subject to sections 43(4) and 55(2),
  - (b) does not apply in relation to an excluded decision.

#### **49 Disposal of an appeal**

- (1) In an appeal under section 48, the Court of Session may uphold or quash the decision on the point of law in question.
- (2) If the Court quashes the decision, it may—
- (a) re-make the decision,
  - (b) remit the case to the Upper Tribunal, or
  - (c) make such other order as the Court considers appropriate.
- (3) In re-making the decision, the Court may—
- (a) do anything that the Upper Tribunal could do if re-making the decision,
  - (b) reach such findings in fact as the Court considers appropriate.
- (4) In remitting the case, the Court may give directions for the Upper Tribunal's reconsideration of the case.
- (5) Such directions may relate to—
- (a) issues of law or fact (including the Court's opinion on any relevant point),
  - (b) procedural issues (including as to the members to be chosen to reconsider the case).

#### **50 Procedure on second appeal**

- (1) Section 48(4) is subject to subsections (3) and (4) as regards a second appeal.
- (2) Section 49 is subject to subsections (5) and (6) as regards a second appeal.
- (3) For the purpose of subsection (1), the Upper Tribunal or (as the case may be) the Court of Session may not give its permission to the making of a second appeal unless also satisfied that subsection (4) applies.
- (4) This subsection applies where, in relation to the matter in question—
- (a) a second appeal would raise an important point of principle or practice, or
  - (b) there is some other compelling reason for allowing a second appeal to proceed.
- (5) For the purpose of subsection (2), subsections (2)(b) and (3)(a) of section 49 have effect in relation to a second appeal as if the references in them to the Upper Tribunal include (as alternatives) references to the First-tier Tribunal.
- (6) Where, in exercising the choice arising by virtue of subsection (5) (and instead of re-making the decision in question), the Court of Session remits the case to the Upper Tribunal rather than the First-tier Tribunal—
- (a) the Upper Tribunal, instead of reconsidering the case itself, may remit the case to the First-tier Tribunal,
  - (b) if the Upper Tribunal does so, it must send to the First-tier Tribunal any directions accompanying the Court's remittal of the case to the Upper Tribunal.

- (7) In this section, “second appeal” means appeal under section 48 against a decision in an appeal under section 46.

#### *Excluded decisions*

### **51 Excluded decisions**

A decision falling within any of sections 52 to 54 is an excluded decision for the purposes of—

- (a) a review under section 43,
- (b) an appeal under section 46 or 48.

### **52 Decisions on review**

(1) Falling within this section is—

- (a) a decision set aside in a review under section 43 (see section 44(1)(b)),
- (b) a decision in such a review, except a decision of the kind mentioned in subsection (2).

(2) That is, a decision made by virtue of section 44(2)(a), (3)(a) or (4) (and accordingly a decision so made is not an excluded decision).

### **53 Other appeal rights**

(1) Falling within this section is a decision against which there is a right of appeal under an enactment apart from this Act.

(2) The Scottish Ministers may by regulations make provision—

- (a) to which subsection (1) is subject (for example, by specifying an exception to what falls within this section),
- (b) for a right of appeal under an enactment apart from this Act to cease to be exercisable in relation to a decision no longer falling within this section.

### **54 Position on transfer-in**

(1) Where any functions are transferred to the First-tier Tribunal or Upper Tribunal by virtue of regulations made under section 28(2), a decision made in the exercise of the functions falls within this section if it is specified in regulations made by the Scottish Ministers under this subsection.

(2) Regulations under subsection (1) may specify a decision only if, immediately before the transfer of the functions in the exercise of which it is made, there is no right of appeal against the decision.

#### *Miscellaneous procedure*

### **55 Process for permission**

(1) The Scottish Ministers may by regulations specify a time limit within which the permission required by section 46(3) or 48(3) must be sought.

---

*Status: This is the original version (as it was originally enacted).*

---

- (2) A refusal to give the permission required by section 46(3) or 48(3) is not—
  - (a) reviewable under section 43, or
  - (b) appealable under section 46 or 48.

## **56 Participation of non-parties**

- (1) Subsection (2) applies for the purposes of—
  - (a) a review under section 43,
  - (b) an appeal under section 46 or 48.
- (2) The Scottish Ministers may by regulations make provision extending any reference to a party in a case so that it also includes a person falling within a specified description.

## **CHAPTER 2**

### SPECIAL JURISDICTION

## **57 Judicial review cases**

- (1) Subsection (2) applies where a petition is made to the Court of Session for judicial review.
- (2) The Court may by order remit the petition to the Upper Tribunal if—
  - (a) both of Conditions A and B are met, and
  - (b) having regard to the functions and expertise of the Tribunal in relation to the subject-matter of the petition, the Court considers that it is appropriate to do so.
- (3) Condition A is that the petition does not seek anything other than the exercise of the Court's judicial review function.
- (4) Condition B is that the petition falls within a category specified by an act of sederunt made by the Court for the purpose of this subsection.

## **58 Decision on remittal**

- (1) The Upper Tribunal is to determine the issues raised in each petition remitted to it under section 57.
- (2) In relation to a petition so remitted, the Upper Tribunal—
  - (a) has the same powers as the Court of Session has on a petition to it for judicial review,
  - (b) is to apply the same principles as the Court applies in the exercise of its judicial review function.
- (3) An order made by the Upper Tribunal on a petition so remitted has the same effect as an order made by the Court of Session on a petition for judicial review (and the order is therefore enforceable accordingly).
- (4) Subsection (3) does not limit the operation of section 48 in connection with a determination under subsection (1).

## **59 Additional matters**

- (1) Where a petition is remitted to the Upper Tribunal under section 57, any order made or step taken by the Court of Session in relation to the petition is to be treated as if made or taken by the Tribunal (except the order by which the petition is so remitted (or an associated step)).
- (2) Tribunal Rules may make further provision with respect to the exercise by the Upper Tribunal of its functions under this Chapter.

## **60 Meaning of judicial review**

In this Chapter—

- (a) a reference to a petition to the Court of Session for judicial review is to an application to the supervisory jurisdiction of the Court,
- (b) a reference to the exercise of the Court of Session's judicial review function is to the exercise of the Court's supervisory jurisdiction (and includes the making of any order in connection with or in consequence of the exercise of that function).