

## SCHEDULE 2 THE SCOTTISH TAX TRIBUNALS

### PART 1

#### APPOINTMENT OF MEMBERS

##### *President of the Tax Tribunals: eligibility for appointment*

- 1 (1) A person is eligible for appointment as President of the Tax Tribunals only if the person—
- (a) has the qualifications, experience and training in relation to tax law and practice that the Scottish Ministers consider appropriate, and
  - (b) meets the criteria in either sub-paragraph (2) or (3).
- (2) A person meets the criteria in this sub-paragraph if the person is practising, and has practised for a period of not less than 10 years, as a solicitor or advocate in Scotland.
- (3) The person meets the criteria in this sub-paragraph if the person falls within a description specified by the Scottish Ministers by regulations.

##### *First-tier Tribunal: ordinary members*

- 2 (1) The Scottish Ministers must appoint persons as ordinary members of the First-tier Tribunal.
- (2) Before appointing a person as an ordinary member, the Scottish Ministers must consult the Lord President.
- (3) A person is eligible for appointment only if the person meets the criteria as to qualifications, experience and training that the Scottish Ministers prescribe by regulations.

##### *First-tier Tribunal: legal members*

- 3 (1) The Scottish Ministers must appoint persons as legal members of the First-tier Tribunal.
- (2) Before appointing a person as a legal member, the Scottish Ministers must consult the Lord President.
- (3) A person is eligible for appointment only if the person—
- (a) has the qualifications, experience and training in relation to tax law and practice that the Scottish Ministers consider appropriate, and
  - (b) meets the criteria in either sub-paragraph (1) or (2) of paragraph 4.
- 4 (1) A person meets the criteria in this sub-paragraph if the person is practising, and has practised for a period of not less than 5 years, as a solicitor or advocate in Scotland.
- (2) The person meets the criteria in this sub-paragraph if the person falls within a description specified by the Scottish Ministers in regulations.

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*Upper Tribunal: legal members*

- 5 (1) The Scottish Ministers must appoint persons as legal members of the Upper Tribunal.
- (2) Before appointing a person as a legal member, the Scottish Ministers must consult the Lord President.
- (3) A person is eligible for appointment only if the person—
- (a) has the qualifications, experience and training in relation to tax law and practice that the Scottish Ministers consider appropriate, and
  - (b) meets the criteria in either sub-paragraph (1) or (2) of paragraph 6.
- 6 (1) A person meets the criteria in this sub-paragraph if the person is practising, and has practised for a period of not less than 10 years, as a solicitor or advocate in Scotland.
- (2) The person meets the criteria in this sub-paragraph if the person falls within a description specified by the Scottish Ministers in regulations.

*Disqualification from office*

- 7 A person is disqualified from appointment, and from holding a position, as President of the Tax Tribunals or as a member of the Tax Tribunals if the person is or becomes—
- (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the National Assembly for Wales,
  - (d) a member of the Northern Ireland Assembly,
  - (e) a member of the European Parliament,
  - (f) a Minister of the Crown,
  - (g) a member of the Scottish Government,
  - (h) a civil servant.

*Eligibility under regulations*

- 8 (1) Regulations under paragraph 4(2) may describe a person by reference to the matters mentioned in sub-paragraph (3), (4) or (8).
- (2) Regulations under paragraph 1(3) or 6(2) may describe a person by reference to the matters mentioned in sub-paragraph (5), (6) or (8).
- (3) The matter mentioned in this sub-paragraph (referred to in sub-paragraph (1)) is—
- (a) current practice as a solicitor or barrister in England and Wales or Northern Ireland, and
  - (b) engagement in practice as such for a period of not less than 5 years.
- (4) The matters mentioned in this sub-paragraph (also referred to in sub-paragraph (1)) are—
- (a) previous practice for a period of not less than 5 years as—
    - (i) a solicitor or advocate in Scotland, or
    - (ii) a solicitor or barrister in England, Wales or Northern Ireland, and
  - (b) subsequent engagement in any of the activities listed in sub-paragraph (7).
- (5) The matter mentioned in this sub-paragraph (referred to in sub-paragraph (2)) is—

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- (a) current practice as a solicitor or barrister in England and Wales or Northern Ireland, and
    - (b) engagement in practice as such for a period of not less than 10 years.
  - (6) The matters mentioned in this sub-paragraph (also referred to in sub-paragraph (2)) are—
    - (a) previous practice for a period of not less than 10 years as—
      - (i) a solicitor or advocate in Scotland, or
      - (ii) a solicitor or barrister in England, Wales or Northern Ireland, and
    - (b) subsequent engagement in any of the activities listed in sub-paragraph (7).
  - (7) The activities referred to in sub-paragraph (4)(b) and (6)(b) are—
    - (a) exercising judicial functions in any court or tribunal,
    - (b) practice or employment as a lawyer of any kind,
    - (c) whether or not in the course of practice or employment as a lawyer—
      - (i) advising on the application of the law,
      - (ii) drafting documents intended to affect rights or obligations under the law,
      - (iii) assisting persons involved in a legal or other process for the resolution of disputes as to the law,
      - (iv) acting as a mediator or arbitrator for the purpose of resolving disputes that are (or could be) the matter of legal proceedings,
    - (d) teaching or researching law at or for an educational institution.
  - (8) The matters mentioned in this sub-paragraph (also referred to in sub-paragraphs (1) and (2)) are suitability attributable to experience in law through current or previous engagement in—
    - (a) any of the activities listed in sub-paragraph (7), or
    - (b) an activity that is of a broadly similar nature to any of the activities listed in that sub-paragraph.
- 9 (1) The Scottish Ministers may by regulations make provision—
- (a) as regards the calculation of the 5-year period mentioned in paragraph 4(1) or 8(3) or (4)(a) (for example, by reference to recent or continuous time),
  - (b) as regards the calculation of the 10-year period mentioned in paragraph 1(2), 6(1) or 8(5) or (6)(a) (for example, by reference to recent or continuous time),
  - (c) to which paragraph 8(4)(a) or 8(6)(a) is subject (for example, by reference to debarment from practice),
  - (d) for the purpose of paragraph 8(8), about—
    - (i) the criteria for suitability (for example, by reference to equivalence to past or present practice as a solicitor),
    - (ii) the nature of experience required (for example, by reference to engagement for a particular period of time (within the United Kingdom or elsewhere)).
- (2) The Scottish Ministers may by regulations modify the list in paragraph 8(7).