



# Tribunals (Scotland) Act 2014

## 2014 asp 10

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 11th March 2014 and received Royal Assent on 15th April 2014**

An Act of the Scottish Parliament to establish the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland; and for connected purposes.

### PART 1

#### THE SCOTTISH TRIBUNALS

#### CHAPTER 1

##### ESTABLISHMENT AND LEADERSHIP

*Establishment and headship etc.*

#### **1 Establishment of the Tribunals**

- (1) There are established two tribunals to be known as—
  - (a) the First-tier Tribunal for Scotland,
  - (b) the Upper Tribunal for Scotland.
- (2) The Tribunals mentioned in subsection (1) are referred to in this Act—
  - (a) respectively as—
    - (i) the First-tier Tribunal,
    - (ii) the Upper Tribunal,
  - (b) collectively as the Scottish Tribunals.
- (3) The constitution, operation and administration of the Scottish Tribunals are as provided for by or under this Act or another Act.
- (4) The jurisdiction, powers and other functions of the Scottish Tribunals are as conferred by or under this Act or another Act.

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## **2 Head of the Tribunals**

- (1) The Lord President is the Head of the Scottish Tribunals.
- (2) In that capacity, the Lord President has the functions exercisable by him or her by virtue of this Act.

## **3 Upholding independence**

- (1) The following persons must uphold the independence of the members of the Scottish Tribunals—
  - (a) the First Minister,
  - (b) the Lord Advocate,
  - (c) the Scottish Ministers,
  - (d) members of the Scottish Parliament,
  - (e) all other persons with responsibility for matters relating to—
    - (i) the members of the Scottish Tribunals, or
    - (ii) the administration of justice,where that responsibility is to be discharged only in or as regards Scotland.
- (2) In particular, the First Minister, the Lord Advocate and the Scottish Ministers—
  - (a) must not seek to influence particular decisions of the members of the Scottish Tribunals through any special access to the members, and
  - (b) must have regard to the need for the members to have the support necessary to enable them to carry out their functions.

### *President of the Tribunals*

## **4 Assignment to office**

- (1) There is established the office to be known as that of President of the Scottish Tribunals.
- (2) It is for the Lord President to assign a person to that office.
- (3) An assignment of a person to that office continues for as long as the Lord President considers appropriate.
- (4) The Lord President may nominate a Vice-President of the Upper Tribunal to act temporarily in that office—
  - (a) if a person assigned to that office is for the time being unable to act in it, or
  - (b) pending an assignment of a person to that office.
- (5) A person assigned to that office under subsection (2) or nominated to act in it under subsection (4) must be a judge of the Court of Session (but may not be a temporary judge).

## **5 Functions of office**

- (1) Under the headship of the Lord President, the President of Tribunals is the senior member of the Scottish Tribunals.

- (2) The President of Tribunals has the functions exercisable by him or her by virtue of this Act.
- (3) In this Act, a reference to the President of Tribunals is to the President of the Scottish Tribunals (and a reference to the office of President of Tribunals is to be read accordingly).

## CHAPTER 2

### OVERARCHING RESPONSIBILITIES

#### *Head of the Tribunals*

#### **6 Representation of interests**

The Lord President is responsible for—

- (a) representing the views of the membership of the Scottish Tribunals to—
  - (i) the Scottish Ministers, and
  - (ii) the Scottish Parliament,
- (b) laying before the Scottish Parliament written representations on matters that appear to the Lord President to be of importance in relation to the Scottish Tribunals (including as to the administration of justice).

#### **7 Business arrangements**

- (1) The Lord President is responsible for making and maintaining appropriate arrangements for securing the efficient disposal of business in the Scottish Tribunals.
- (2) The Lord President is responsible for ensuring that appropriate arrangements are made and maintained as to the welfare of the members of the Scottish Tribunals.

#### **8 Delegation of functions**

- (1) The Lord President may delegate to the President of Tribunals the exercise of any of the functions mentioned in subsection (2).
- (2) That is, the functions exercisable by the Lord President by virtue of—
  - (a) section 7(1) or (2),
  - (b) section 33(1) or (2), or
  - (c) section 34(1) or (2).

#### **9 Directions on functions**

- (1) The Lord President may give directions to the President of Tribunals as to the exercise of the functions exercisable by the President of Tribunals by virtue of this Act.
- (2) Directions under subsection (1) may—
  - (a) vary or revoke earlier such directions,
  - (b) relate to particular functions or functions generally.

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### *Regulations by Ministers*

#### **10 Authority under regulations**

- (1) Regulations under section 20(2) or 23(2) may—
  - (a) delegate to the Lord President authority to make arrangements of the kind to which that section relates,
  - (b) include provision relying on the effect of Tribunal Rules.
- (2) Regulations under section 38(1), 40(1) or 41(1) may—
  - (a) delegate to the President of Tribunals authority to determine the things to which that section relates,
  - (b) include provision relying on the effect of Tribunal Rules.
- (3) Delegation of authority under subsection (1) or (2) is subject to such provision about the exercise or sub-delegation of the authority as may be made in the regulations referred to in that subsection.

#### **11 Consultation on regulations**

- (1) Before making regulations under section 20(2) or 23(2), the Scottish Ministers must—
  - (a) obtain the Lord President’s approval,
  - (b) consult such other persons as they consider appropriate.
- (2) Before making regulations under section 38(1), 40(1) or 41(1), the Scottish Ministers must consult the President of Tribunals.

### *Guiding principle*

#### **12 Principle to be observed**

- (1) In exercising their regulation-making functions under this Act, the Scottish Ministers must have regard to the principle below.
- (2) In exercising their leadership functions under this Act, the Lord President and the President of Tribunals must have regard to the principle below.
- (3) The principle is the need for proceedings before the Scottish Tribunals—
  - (a) to be accessible and fair, and
  - (b) to be handled quickly and effectively.

## **PART 2**

### **ORGANISATIONAL ARRANGEMENTS**

#### **CHAPTER 1**

##### **MEMBERSHIP TYPES**

###### *Overview and main types*

#### **13 Overview of membership**

- (1) Each of the First-tier Tribunal and the Upper Tribunal is to consist of its ordinary, legal and judicial members.
- (2) Any type of member of the First-tier Tribunal or the Upper Tribunal is not, merely by reason of having that type of membership of the Tribunal, precluded from having any type of membership of the other Tribunal.
- (3) In this Act, the references to the members of the Scottish Tribunals are to—
  - (a) the ordinary and legal members of either or both of the Tribunals by virtue of sections 15 and 16, and
  - (b) the judicial members of either or both of the Tribunals by virtue of section 17 as read with section 19.

#### **14 Capacity of members**

- (1) Membership of the Scottish Tribunals as an ordinary or legal member of the Tribunals has the effect of granting such a member judicial status and capacity for the purpose for which this section makes provision.
- (2) For avoidance of doubt—
  - (a) a judicial member of the Scottish Tribunals has judicial status and capacity for the purpose for which this section makes provision by reason of holding judicial office,
  - (b) an extra judge derives judicial status and capacity in relation to the Upper Tribunal for the purpose for which this section makes provision from authorisation to act as mentioned in section 18(4).
- (3) This section makes provision—
  - (a) in the case of an ordinary, legal or judicial member of the Scottish Tribunals, for the purpose of holding the position of and acting as such a member,
  - (b) in the case of an extra judge of the Upper Tribunal, for the purpose of holding that position and acting as mentioned in section 18(4).

#### **15 First-tier members**

- (1) A person is an ordinary member of the First-tier Tribunal if the person is that type of member of the First-tier Tribunal through—
  - (a) transfer-in as such by virtue of section 29(b), or
  - (b) appointment as such by virtue of section 32(1).

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- (2) A person is a legal member of the First-tier Tribunal if the person is—
  - (a) that type of member of the First-tier Tribunal through—
    - (i) transfer-in as such by virtue of section 29(b), or
    - (ii) appointment as such by virtue of section 32(1), or
  - (b) however holding the position, a Chamber President or Deputy Chamber President in the First-tier Tribunal.
- (3) Despite subsection (2)(b), a person assigned as a Temporary Chamber President in the First-tier Tribunal, if a judicial member of the Tribunal, remains such a member of the Tribunal.

## **16 Upper members**

- (1) A person is an ordinary member of the Upper Tribunal if the person is that type of member of the Upper Tribunal through—
  - (a) transfer-in as such by virtue of section 29(b), or
  - (b) appointment as such by virtue of section 32(3).
- (2) A person is a legal member of the Upper Tribunal if the person is—
  - (a) that type of member of the Upper Tribunal through—
    - (i) transfer-in as such by virtue of section 29(b), or
    - (ii) appointment as such by virtue of section 32(3),
  - (b) however holding the position, a Chamber President in the First-tier Tribunal except a Temporary Chamber President, or
  - (c) however holding the position, a Vice-President of the Upper Tribunal.
- (3) Despite subsection (2)(c)—
  - (a) a person assigned as a Vice-President of the Upper Tribunal under section 25(1) or (2) remains a judicial member of the Tribunal,
  - (b) a person assigned as a Temporary Vice-President of the Upper Tribunal, if a judicial member of the Tribunal, remains such a member of the Tribunal.

*Judiciary eligible to sit*

## **17 Sheriffs and judges**

- (1) By reason of holding judicial office, a person is eligible to act as a member of the First-tier Tribunal if the person is a sheriff (including a part-time sheriff).
- (2) By reason of holding judicial office, a person is eligible to act as a member of the Upper Tribunal if the person is—
  - (a) apart from the Lord President and the President of Tribunals, a judge of the Court of Session (including a temporary judge),
  - (b) the Chairman of the Scottish Land Court, or
  - (c) a sheriff (except a part-time sheriff).
- (3) A sheriff may act as a member of—
  - (a) the First-tier Tribunal, or
  - (b) the Upper Tribunal,
 only if authorised to do so by the President of Tribunals.

- (4) A judge of the Court of Session or the Chairman of the Scottish Land Court may act as a member of the Upper Tribunal only if authorised to do so by the President of Tribunals (but see next instead for the Lord President and the President of Tribunals).
- (5) By reason of holding office within the Scottish Tribunals, each of the Lord President and the President of Tribunals is a member of the Upper Tribunal and needs no further authorisation to act as such.
- (6) An authorisation for the purpose of subsection (3)(a) or (b) or (4)—
  - (a) requires—
    - (i) the Lord President’s approval (including as to the person to be authorised), and
    - (ii) the agreement of the person concerned,
  - (b) in the case of a sheriff (apart from a sheriff principal), also requires the concurrence of the relevant sheriff principal.
- (7) An authorisation for the purpose of subsection (3)(a) or (b) or (4) remains in effect until such time as the President of Tribunals may determine (with the same approval, agreement and concurrence as is referred to in subsection (6)).

## **18 Authorisation of others**

- (1) If requested to do so by the President of Tribunals, the Scottish Ministers may issue a temporary authorisation for a person falling within subsection (2) to assist in the disposal of the business of the Upper Tribunal.
- (2) A person falls within this subsection if the person is—
  - (a) a former—
    - (i) judge of the Court of Session (including temporary judge),
    - (ii) Chairman of the Scottish Land Court, or
    - (iii) sheriff (except part-time sheriff), or
  - (b) a judge of a court or tribunal in a country or territory outwith Scotland (whether or not another part of the United Kingdom).
- (3) Any request for the purpose of subsection (1) may not be made without—
  - (a) the Lord President’s approval, and
  - (b) the agreement of the person concerned.
- (4) An authorisation under subsection (1) is for the person concerned to act as if a judicial member of the Upper Tribunal during the period for which it is issued.
- (5) The period mentioned in subsection (4)—
  - (a) requires the same approval and agreement as is referred to in subsection (3), and
  - (b) may be extended by the Scottish Ministers (with such approval and agreement).
- (6) The Scottish Ministers may make payments of sums with respect to any time spent by a person while acting as mentioned in subsection (4) by virtue of authorisation under subsection (1).
- (7) An authorisation under subsection (1) may not be issued if the person concerned—
  - (a) is aged 75 years or over, or

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- (b) has been removed from judicial office because of unfitness by reason of inability, neglect of duty or misbehaviour (or is for the time being suspended from such office in connection with an investigation into the question of such unfitness).
- (8) In the case of a person mentioned in subsection (2)(b)—
  - (a) subsections (1) and (5) are subject to such further arrangements as the Scottish Ministers may make with a governmental or other body in the person's country or territory for the purposes of those subsections,
  - (b) if the person has not previously taken the required oaths, the person must take them in the presence of the President of Tribunals before acting as mentioned in subsection (4).
- (9) In addition—
  - (a) the previous taking by a person of the required oaths counts (so far as necessary) as if it were the taking of them in connection with acting as mentioned in subsection (4),
  - (b) section 3 applies in relation to a person who is authorised to act as mentioned in subsection (4)—
    - (i) as it does in relation to the members of the Scottish Tribunals, and
    - (ii) during the period for which the relevant authorisation is issued.
- (10) In this section, “the required oaths” means the oath of allegiance and the judicial oath as set out in the Promissory Oaths Act 1868.

## **19 Judicial membership**

- (1) In this Act, a reference to a judicial member of the First-tier Tribunal is to a sheriff who is authorised for the purpose of section 17(3)(a).
- (2) In this Act, a reference to a judicial member of the Upper Tribunal is to—
  - (a) the Lord President or the President of Tribunals, or
  - (b) a person who is authorised for the purpose of section 17(3)(b) or (4).
- (3) A reference in this Act to a judicial member of the Upper Tribunal does not include an extra judge even where authorised to act as mentioned in section 18(4).
- (4) In this Act, a reference to an extra judge in relation to the Upper Tribunal is to a person falling within section 18(2) (as read with section 18(4)).

## **CHAPTER 2**

### INTERNAL STRUCTURE

#### *Structure of First-tier Tribunal*

## **20 Chambers in the Tribunal**

- (1) The First-tier Tribunal is to be organised into a number of chambers, having regard to—
  - (a) the different subject-matters falling within the Tribunal's jurisdiction, and



- (b) any other factors relevant in relation to the exercise of the Tribunal’s functions.
- (2) Accordingly, the Scottish Ministers may by regulations make provision for and in connection with—
  - (a) the organisation of the Tribunal as required by subsection (1),
  - (b) the allocation of the Tribunal’s functions between the chambers.

## **21 Chamber Presidents**

- (1) Each chamber of the First-tier Tribunal is to have—
  - (a) a single Chamber President to preside over the chamber, or
  - (b) two Chamber Presidents to preside over the chamber.
- (2) A Chamber President may not preside over more than one chamber of the Tribunal at the same time.
- (3) In this Act—
  - (a) a reference to a Chamber President in the First-tier Tribunal is to a Chamber President of a chamber of the Tribunal,
  - (b) where a chamber of the Tribunal has two Chamber Presidents, a reference to a Chamber President of such a chamber is to either or both of them (as the context requires).

## **22 Appointment to post**

- (1) It is for the Scottish Ministers to make an appointment of a Chamber President to that position.
- (2) Before making an appointment under subsection (1), the Scottish Ministers must consult the Lord President (including as to the person to be appointed).
- (3) A person is eligible for appointment under subsection (1) only if the person is—
  - (a) a legal member of the Upper Tribunal, or
  - (b) if not falling within paragraph (a), eligible to be appointed as such a member of the Tribunal (whether or not already any type of member of the First-tier or Upper Tribunal).
- (4) An appointment made under subsection (1) is for the Chamber President to preside over a particular chamber of the Tribunal.

### *Structure of Upper Tribunal*

## **23 Divisions of the Tribunal**

- (1) The Upper Tribunal is to be organised into a number of divisions, having regard to—
  - (a) the different subject-matters falling within the Tribunal’s jurisdiction, and
  - (b) any other factors relevant in relation to the exercise of the Tribunal’s functions.
- (2) Accordingly, the Scottish Ministers may by regulations make provision for and in connection with—
  - (a) the organisation of the Tribunal as required by subsection (1),
  - (b) the allocation of the Tribunal’s functions between the divisions.

## **24 Vice-Presidents**

- (1) Each division of the Upper Tribunal is to have—
  - (a) a single Vice-President to preside over the division, or
  - (b) two Vice-Presidents to preside over the division.
- (2) A Vice-President may not preside over more than one division of the Tribunal at the same time.
- (3) Subsections (1) and (2) are subject to section 25(1)(b).
- (4) In this Act—
  - (a) a reference to a Vice-President of the Upper Tribunal is to a Vice-President of a division of the Tribunal,
  - (b) where a division of the Tribunal has two Vice-Presidents, a reference to a Vice-President of such a division is to either or both of them (as the context requires).

## **25 Assignment to post**

- (1) The President of Tribunals may assign himself or herself—
  - (a) as a Vice-President of the Upper Tribunal,
  - (b) to preside over one or more than one division of the Tribunal.
- (2) Apart from the Lord President, any other judicial member of the Upper Tribunal may be assigned by the President of Tribunals—
  - (a) as a Vice-President of the Tribunal,
  - (b) to preside over a particular division of the Tribunal.
- (3) Assignment under subsection (1)—
  - (a) remains in effect until such time as the President of Tribunals may determine,
  - (b) does not affect the exercise by the President of Tribunals of the functions arising in that capacity.
- (4) Assignment under subsection (2)—
  - (a) requires—
    - (i) the Lord President's approval (including as to the judicial member to be assigned),
    - (ii) the assignee's agreement,
  - (b) remains in effect until such time as the President of Tribunals may determine (with such approval and agreement),
  - (c) does not affect the exercise by the assignee of any other functions as respects the Scottish Tribunals.

## **26 Appointment to post**

- (1) If requested to do so by the President of Tribunals, the Scottish Ministers may appoint a person as a Vice-President of the Upper Tribunal.
- (2) Before making an appointment under subsection (1), the Scottish Ministers must consult the Lord President (including as to the person to be appointed).
- (3) A person is eligible for appointment as a Vice-President only if the person is—

- (a) a legal member of the Upper Tribunal, or
  - (b) if not falling within paragraph (a), eligible to be appointed as such a member of the Tribunal (whether or not already any type of member of the First-tier or Upper Tribunal).
- (4) An appointment made under subsection (1) is for the Vice-President to preside over a particular division of the Tribunal.

### **PART 3**

#### **ACQUISITION OF FUNCTIONS**

##### *Transfer-in from listed tribunals*

#### **27      Listed tribunals**

- (1) For the purposes of this Part, the listed tribunals are the tribunals for the time being included in the list in Part 1 of schedule 1 as read in conjunction with the further specification in Part 2 of that schedule.
- (2) The Scottish Ministers may by regulations modify—
  - (a) the list in Part 1 of schedule 1,
  - (b) the further specification in Part 2 of that schedule.
- (3) A tribunal may be added to the list in Part 1 of schedule 1 only if it is established by or under an enactment (whenever passed or made).
- (4) For the purposes of this section, a reference to a tribunal includes any body, office-holder or individual having decision-making functions that are exercisable as follows (but only as far as having such or other functions that are so exercisable)—
  - (a) as, or in the manner of, a tribunal, and
  - (b) with respect to the determination or resolution of legal, administrative or other disputes between parties of any kind.
- (5) Despite that generality, a reference to a tribunal does not for the purposes of this section include—
  - (a) any of the Scottish courts referred to in section 2 of the Judiciary and Courts (Scotland) Act 2008 (see subsection (6) of that section),
  - (b) the Scottish Land Court,
  - (c) a tribunal—
    - (i) constituted under section 35 of the Judiciary and Courts (Scotland) Act 2008,
    - (ii) constituted under section 12A of the Sheriff Courts (Scotland) Act 1971, or
    - (iii) appointed under section 71(2) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, or
  - (d) a fitness assessment tribunal constituted under paragraph 13 of schedule 8.

**28 Transfer-in of functions**

- (1) The functions of each of the listed tribunals are to become the functions of the Scottish Tribunals at such time and in so far as the Scottish Ministers consider appropriate.
- (2) Accordingly, the Scottish Ministers may by regulations provide for some or all of the functions of a listed tribunal to be transferred from it—
  - (a) to the First-tier Tribunal only,
  - (b) to the Upper Tribunal only, or
  - (c) to the First-tier Tribunal and the Upper Tribunal.
- (3) If regulations under subsection (2) provide for any functions of a listed tribunal to be transferred as mentioned in paragraph (c) of that subsection, the regulations may also—
  - (a) give particular functions to one of the Tribunals (but not the other), or
  - (b) make provision of the sort allowed by subsection (5).
- (4) Where by virtue of regulations made under subsection (2) any functions of a listed tribunal have been transferred as mentioned in paragraph (a), (b) or (c) of that subsection, the Scottish Ministers may by regulations—
  - (a) provide for the functions, or particular functions, to be redistributed between the Tribunals by—
    - (i) transferring them from either of the Tribunals to the other,
    - (ii) taking them away from one of the Tribunals (but not the other), or
    - (iii) causing them to be exercisable by both of the Tribunals (instead of one only),
  - (b) if they are so redistributed by causing them to be exercisable by both of the Tribunals, also make provision of the sort allowed by subsection (5).
- (5) This subsection allows provision enabling the question as to which of the Tribunals is to exercise particular functions in a specific case or in specified circumstances to be determined, including as against any prescribed criteria—
  - (a) in accordance with Tribunal Rules, or
  - (b) by the President of Tribunals (whether or not by reference to Tribunal Rules).
- (6) Regulations under subsection (2) or (4) may include provision for the purposes of or in connection with, or for giving full effect to, a transfer or redistribution of any functions to which the regulations apply.
- (7) Provision included in such regulations by virtue of subsection (6) may modify any enactment concerning a listed tribunal.
- (8) A particular instrument containing regulations under subsection (2) may not relate to the functions of more than one of the listed tribunals.

**29 Transfer-in of members**

Schedule 2 contains provision for the transfer of certain persons from the listed tribunals into the Scottish Tribunals to hold—

- (a) particular named positions,
- (b) ordinary or legal membership generally.

*Conferral of functions by another Act*

**30 Accommodation of functions**

- (1) Subsections (2) and (3) apply where any functions are conferred on either or both of the Scottish Tribunals by or under an Act other than this Act.
- (2) The Scottish Ministers may by regulations modify this Act so that this Act specifies the relevant provisions of the other Act (whether in existing or new provisions of this Act).
- (3) The Scottish Ministers may by regulations modify this Act or the other Act so as to make the functions exercisable in accordance with or subject to (as far as not already so exercisable)—
  - (a) the whole of this Act, or
  - (b) particular provisions of this Act.

**31 Redistribution of functions**

- (1) Where any functions are conferred on either or both of the Scottish Tribunals by or under an Act other than this Act, the Scottish Ministers may by regulations—
  - (a) provide for the functions, or particular functions, to be redistributed between the Tribunals by—
    - (i) transferring them from either of the Tribunals to the other,
    - (ii) taking them away from one of the Tribunals (but not the other), or
    - (iii) causing them to be exercisable by both of the Tribunals (instead of one only),
  - (b) if they are so redistributed by causing them to be exercisable by both of the Tribunals, also make provision of the sort allowed by subsection (2).
- (2) This subsection allows provision enabling the question as to which of the Tribunals is to exercise particular functions in a specific case or in specified circumstances to be determined, including as against any prescribed criteria—
  - (a) in accordance with Tribunal Rules, or
  - (b) by the President of Tribunals (whether or not by reference to Tribunal Rules).
- (3) Regulations under subsection (1) may include provision for the purposes of or in connection with, or for giving full effect to, a redistribution of any functions to which the regulations apply.
- (4) Provision included in such regulations by virtue of subsection (3) may modify any enactment relating to the functions being redistributed by the regulations.
- (5) Subsection (1) is subject to any express provision in the other Act prohibiting or limiting the making of regulations under that subsection.

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## **PART 4**

### **MORE ABOUT MEMBERSHIP ETC.**

#### *Appointment and assignment*

### **32 Scheduled provisions**

- (1) Schedule 3 contains provision for the First-tier Tribunal about eligibility for and appointment to—
  - (a) ordinary membership,
  - (b) legal membership.
- (2) Schedule 4 contains provision for the First-tier Tribunal relating to—
  - (a) appointment or assignment to—
    - (i) a Deputy position,
    - (ii) a Temporary position,
  - (b) assignment of ordinary, legal and judicial members.
- (3) Schedule 5 contains provision for the Upper Tribunal about eligibility for and appointment to—
  - (a) ordinary membership,
  - (b) legal membership.
- (4) Schedule 6 contains provision for the Upper Tribunal relating to—
  - (a) assignment to a Temporary position,
  - (b) assignment of ordinary, legal and judicial members.

### **33 Assignment policy**

- (1) The Lord President must publish a document recording the policy adopted in relation to the assignment of the ordinary, legal and judicial members within each of the First-tier Tribunal and the Upper Tribunal.
- (2) The Lord President must—
  - (a) keep the assignment policy under review,
  - (b) re-publish it if it is amended materially.
- (3) The assignment policy—
  - (a) must be in terms designed to secure that appropriate use is made of the knowledge and experience of the members of the Scottish Tribunals (including their expertise in a particular area of the law),
  - (b) may include—
    - (i) specific provision for each of the Tribunals,
    - (ii) different provision for different purposes in any other respects.

*Training, conditions and conduct*

**34 Training and review**

- (1) The Lord President is responsible for making and maintaining appropriate arrangements for the training and guidance—
  - (a) of the ordinary members, legal members and judicial members of the Scottish Tribunals,
  - (b) for the purpose of acting as mentioned in section 18(4), of any extra judges who are authorised to act as so mentioned.
- (2) The Lord President may make arrangements for the review of the ordinary members and legal members of the Scottish Tribunals.
- (3) Arrangements under subsection (1) or (2) may (in particular) require participation in activities for the purpose of training, guidance or review.
- (4) For the purpose of subsection (2), “review” includes ad hoc or continuing review of professional competency and development.

**35 Conditions of membership etc.**

- (1) Schedule 7 contains provision for the terms and conditions on which ordinary and legal members of the Scottish Tribunals hold their positions.
- (2) The Scottish Ministers may by regulations make provision enabling a relevant appointment or transfer to be made or have effect in such terms as to cause a person to hold permanently the type of membership or (as the case may be) particular position in question.
- (3) The Scottish Ministers must consult the President of Tribunals before—
  - (a) making regulations under subsection (2), or
  - (b) exercising in relation to a relevant appointment or transfer the discretion allowed by such regulations.
- (4) The operation of paragraphs 2 to 8 of schedule 7 is subject to provision made by regulations under subsection (2).
- (5) For the purposes of subsection (2)—
  - (a) a relevant appointment is appointment or reappointment by the Scottish Ministers—
    - (i) of a person as an ordinary or legal member of the Scottish Tribunals,
    - (ii) of a legal member of the First-tier Tribunal as a Chamber President or Deputy Chamber President in the Tribunal, or
    - (iii) of a legal member of the Upper Tribunal as a Vice-President of the Tribunal,
  - (b) a relevant transfer is transfer-in to the Scottish Tribunals—
    - (i) of a person as an ordinary or legal member of the Tribunals by virtue of section 29(b), or
    - (ii) of a person to a particular position within the Tribunals by virtue of section 29(a).

### **36 Conduct and fitness etc.**

Schedule 8 contains provision for and in connection with—

- (a) investigation of members' conduct and imposition of disciplinary measures,
- (b) assessment of members' fitness for position and removal from position.

## **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,
  - “member”, in relation to a Tribunal chamber, means ordinary, legal or judicial member of the Tribunal who is assigned to the chamber.

### **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.



- (5) In subsection (4), “relevant criteria” includes criteria as to qualifications, experience and training.

### *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,

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- (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.

*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.
- (2) Subsection (1) applies in relation to the Upper Tribunal as if an extra judge who is authorised to act as mentioned in section 18(4) were a member of the Tribunal (with section 42(1) so applying accordingly).

**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).

## **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.

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- (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.
- (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.

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- (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.
- (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).

## **PART 7**

### **POWERS, PROCEDURE AND ADMINISTRATION**

#### **CHAPTER 1**

##### **POWERS AND ENFORCEMENT**

###### *Cases and proceedings*

#### **61 Venue for hearings**

- (1) Each of the First-tier Tribunal and the Upper Tribunal may be convened at any time and place in Scotland to hear or decide a case or for any other purpose relating to its functions.
- (2) Subsection (1) is subject to any provision made by Tribunal Rules as to the question of when and where in Scotland the Scottish Tribunals are to be convened (and such Rules may allow the President of Tribunals to determine the question).

#### **62 Conduct of cases**

- (1) In relation to the things mentioned in subsection (3), each of the First-tier Tribunal and the Upper Tribunal has such powers, rights, privileges and other authority with respect to any case before it as are provided for in Tribunal Rules.
- (2) Rules making provision for the purpose of subsection (1) may (in particular) do so in relation to any kind of authority by reference to any authority of a relevant description exercisable by the sheriff or the Court of Session.
- (3) The things are—
  - (a) the citation, attendance or examination of witnesses,
  - (b) the recovery, production or inspection of relevant materials,
  - (c) the commissioning of reports of any relevant type,
  - (d) other procedural, evidential or similar measures.
- (4) In subsection (3)(b), “materials” means documents and other items.

#### **63 Enforcement of decisions**

- (1) A decision made by the First-tier Tribunal or the Upper Tribunal in any matter in a case before it is enforceable by the means provided for in Tribunal Rules.
- (2) Subsection (1) applies to a decision—
  - (a) on the merits of such a case,
  - (b) as to—

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- (i) payment of a sum of money, or
- (ii) expenses by virtue of section 64, or
- (c) otherwise affecting the rights, obligations or interests of a party in such a case.
- (3) Subsection (1) is subject to section 58(3) as respects a determination to which that section relates.
- (4) Rules making provision for the purpose of subsection (1) may (in particular) do so in relation to a relevant order by reference to the means of enforcing an order of the sheriff or the Court of Session.
- (5) In subsection (4), “relevant order” means order of either of the Tribunals giving effect to a decision to which subsection (1) applies.

## **64      Award of expenses**

- (1) In connection with proceedings in a case before the First-tier Tribunal or the Upper Tribunal, the Tribunal may award expenses so far as allowed in accordance with Tribunal Rules.
- (2) Where such expenses are awarded, the awarding Tribunal is to specify by and to whom they are to be paid (and to what extent).
- (3) Tribunal Rules may make provision—
  - (a) for scales or rates of awardable expenses,
  - (b) for—
    - (i) such expenses to be set-off against any relevant sums,
    - (ii) interest at the specified rate to be chargeable on such expenses where unpaid,
  - (c) stating the general or particular factors to be taken into account when exercising discretion as to such expenses,
  - (d) about such expenses in other respects.
- (4) Tribunal Rules may make provision—
  - (a) for disallowing any wasted expenses,
  - (b) for requiring a person who has given rise to such expenses to meet them.
- (5) Rules making provision as described in subsection (3) or (4) may also prescribe meanings for “relevant sums”, “specified rate” and “wasted expenses” as used in this section.

### *Supplementary provisions*

## **65      Additional powers**

- (1) The Scottish Ministers may by regulations confer on the First-tier Tribunal and the Upper Tribunal such additional powers as are necessary or expedient for the proper exercise of their functions.
- (2) Regulations under subsection (1) may include provision—
  - (a) relying on the effect of an act of sederunt made by the Court of Session,

- (b) causing Part 1 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 to apply to the making of a relevant act of sederunt as it does to the making of Tribunal Rules.
- (3) Before making regulations under subsection (1), the Scottish Ministers must obtain the Lord President's approval.

## **66 Application of enactments**

- (1) The Scottish Ministers may by regulations modify the application of any enactment so far as they consider to be necessary or expedient for the purposes of or in connection with the matters to which this subsection applies.
- (2) Regulations under subsection (1) may include provision—
  - (a) relying on the effect of an act of sederunt made by the Court of Session,
  - (b) causing Part 1 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 to apply to the making of a relevant act of sederunt as it does to the making of Tribunal Rules.
- (3) Subsection (1) applies to—
  - (a) the making of Tribunal Rules,
  - (b) the effect of—
    - (i) this Part, or
    - (ii) Tribunal Rules.
- (4) Before making regulations under subsection (1), the Scottish Ministers must obtain the Lord President's approval.

## **67 Offences in relation to proceedings**

- (1) The Scottish Ministers may by regulations make provision, in relation to proceedings before the First-tier Tribunal or the Upper Tribunal—
  - (a) for offences and penalties—
    - (i) for making a false statement in an application in a case,
    - (ii) for failure by a person to attend, or give evidence in, such proceedings when required to do so in accordance with Tribunal Rules,
    - (iii) for alteration, concealment or destruction by a person of, or failure by a person to produce, something that is required to be produced in such proceedings in accordance with Tribunal Rules,
  - (b) about the circumstances in which a person need not give evidence or produce something (for example, where a person could not be compelled to give evidence or produce something in proceedings in a case before the sheriff or in the Court of Session).
- (2) The maximum penalties that may be provided for in regulations under subsection (1) are—
  - (a) for an offence triable summarily only, imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both),
  - (b) for an offence triable either summarily or on indictment—
    - (i) on summary conviction, imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),

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- (ii) on conviction on indictment, imprisonment for a term not exceeding 2 years or a fine (or both).
- (3) Before making regulations under subsection (1), the Scottish Ministers must obtain the Lord President's approval.

## CHAPTER 2

### PRACTICE AND PROCEDURE

#### *Tribunal Rules*

#### **68 Tribunal Rules**

- (1) There are to be rules—
  - (a) regulating the practice and procedure to be followed in proceedings at—
    - (i) the First-tier Tribunal,
    - (ii) the Upper Tribunal, and
  - (b) containing provision of other sorts appropriate with respect to the Scottish Tribunals (including in relation to the exercise by them of their functions).
- (2) Rules of the kind mentioned in subsection (1) are to be known as Scottish Tribunal Rules (and in this Act they are referred to as Tribunal Rules).
- (3) Tribunal Rules are to be made by the Court of Session by act of sederunt.
- (4) Part 1 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 includes further provision about the making of Tribunal Rules.

#### **69 Exercise of functions**

- (1) Tribunal Rules may confer functions on the persons mentioned in subsection (5) or the other members of the Scottish Tribunals.
- (2) Tribunal Rules may, in relation to any functions exercisable by the persons mentioned in subsection (5) or the other members of the Scottish Tribunals—
  - (a) state—
    - (i) how a function is to be exercised,
    - (ii) who is to exercise a function,
  - (b) cause something to require further authorisation,
  - (c) permit something to be done on a person's behalf,
  - (d) allow a specified person to make a decision about any of those matters.
- (3) Tribunal Rules may make provision relying on the effect of directions issued, or to be issued, under section 74.
- (4) Neither Tribunal Rules nor directions under section 74 may make provision altering the operation of section 37(1) or 39(1).
- (5) For the purposes of subsections (1) and (2), the persons are—
  - (a) the Lord President,

- (b) the President of Tribunals,
- (c) in the First-tier Tribunal—
  - (i) a Chamber President,
  - (ii) a Deputy Chamber President,
- (d) a Vice-President of the Upper Tribunal.

## **70      Extent of rule-making**

- (1) Tribunal Rules may make—
  - (a) provision applying—
    - (i) equally to both of the First-tier Tribunal and the Upper Tribunal, or
    - (ii) specifically to one of them,
  - (b) particular provision for each of them about the same matter.
- (2) Tribunal Rules may make particular provision for different—
  - (a) chambers or divisions,
  - (b) types of proceedings.
- (3) Tribunal Rules may make different provision for different purposes in any other respects.
- (4) The generality of section 68(1) is not limited by—
  - (a) sections 71 to 73, or
  - (b) any other provisions of this Act about the content of Tribunal Rules.
- (5) As well as Chapter 1, see (for example) sections 28(5), 42(1), 43(3)(b) and 59(2).

### *Particular matters*

## **71      Proceedings and steps**

- (1) Tribunal Rules may make provision about proceedings in a case before the Scottish Tribunals.
- (2) Rules making provision as described in subsection (1) may (in particular)—
  - (a) provide for the form and manner in which a case is to be brought,
  - (b) allow for the withdrawal of a case (with or without restrictions on subsequent proceedings as respects the same matter),
  - (c) set time limits for—
    - (i) making applications,
    - (ii) taking particular steps,
  - (d) enable two or more applications to be conjoined in certain circumstances,
  - (e) specify circumstances in which the Tribunals may take particular steps of their own initiative.

## **72      Hearings in cases**

- (1) Tribunal Rules may make provision about hearings in a case before the Scottish Tribunals.

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- (2) Rules making provision as described in subsection (1) may (in particular)—
- (a) provide for certain matters to be dealt with—
    - (i) without a hearing,
    - (ii) at a private hearing,
    - (iii) at a public hearing,
  - (b) require notice to be given of a hearing (and for the timing of such notice),
  - (c) specify persons who may—
    - (i) appear on behalf of a party in a case,
    - (ii) attend a hearing in order to provide support to a party or witness in a case,
  - (d) specify circumstances in which particular persons may appear or be represented at a hearing,
  - (e) specify circumstances in which a hearing may go ahead—
    - (i) at the request of a party in a case despite no notice of it having been given to another party in the case,
    - (ii) in the absence of a particular member chosen to exercise the function of deciding any matter in a case,
  - (f) enable two or more sets of proceedings to be taken concurrently at a hearing in certain circumstances,
  - (g) allow for an adjournment of a hearing for the purpose of giving the parties in a case an opportunity to use a process of negotiation, mediation, arbitration or adjudication for resolving a dispute to which the case relates,
  - (h) allow for the imposition of reporting restrictions for particular reasons arising in a case.

## **73 Evidence and decisions**

- (1) Tribunal Rules may, in connection with proceedings before the Scottish Tribunals—
  - (a) make provision about the giving of evidence and the administering of oaths,
  - (b) modify the application of any other rules relating to either of those matters so far as they would otherwise apply to such proceedings.
- (2) Tribunal Rules may, in connection with proceedings before the Scottish Tribunals, provide for the payment of expenses and allowances to a person who—
  - (a) gives evidence,
  - (b) produces a document, or
  - (c) attends such proceedings (or is required to do so).
- (3) Tribunal Rules may, in connection with proceedings before the Scottish Tribunals, make provision by way of presumption (for example, as to the serving of something on somebody).
- (4) Tribunal Rules may make provision about decisions of the Scottish Tribunals, including as to—
  - (a) the manner in which such decisions are to be made,
  - (b) the incorporation in such decisions of findings in fact,
  - (c) the recording, issuing and publication of such decisions.

### *Issuing directions*

#### **74 Practice directions**

- (1) The President of Tribunals may issue directions as to the practice and procedure to be followed in proceedings at—
  - (a) the First-tier Tribunal,
  - (b) the Upper Tribunal.
- (2) A Chamber President in the First-tier Tribunal may issue directions as to the practice and procedure to be followed in proceedings in the chamber over which the Chamber President presides.
- (3) A Vice-President of the Upper Tribunal may issue directions as to the practice and procedure to be followed in proceedings in the division over which the Vice-President presides.
- (4) Directions under subsection (2) or (3) may not be issued without the approval of the President of Tribunals.

#### **75 Publication and effect**

- (1) The President of Tribunals must arrange for directions under section 74(1), (2) or (3) to be published in such manner as the President of Tribunals considers appropriate.
- (2) Directions under section 74(1), (2) or (3) may—
  - (a) vary or revoke earlier such directions,
  - (b) make different provision for different purposes (in the same respects as Tribunal Rules).
- (3) If (and to the extent that) any conflict arises between—
  - (a) directions issued under section 74(1), and
  - (b) directions issued under section 74(2) or (3),those issued under section 74(1) are to prevail.

## **CHAPTER 3**

### **FEES AND ADMINISTRATION**

#### **76 Tribunal fees**

- (1) The Scottish Ministers may by regulations make provision for the reasonable fees that are to be payable in respect of any matter that may be dealt with by the Scottish Tribunals.
- (2) Regulations under subsection (1) may provide for (in particular)—
  - (a) scales or rates of fees,
  - (b) in relation to fees—
    - (i) reduction in amount,
    - (ii) exemption or waiver.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult—

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- (a) the Lord President,
- (b) to such extent as they consider appropriate, persons having an interest in the operation and business of the Scottish Tribunals.

## **77      Administrative support**

- (1) The Scottish Ministers must ensure that the Scottish Tribunals are provided with such property, services and personnel as the Scottish Ministers consider to be reasonably required for—
  - (a) the proper operation of the Tribunals, and
  - (b) the discharge of the Lord President’s responsibility as to the efficient disposal of business in the Scottish Tribunals (see section 7(1)).
- (2) The Scottish Ministers must have regard to any representations made to them by the Lord President in relation to the fulfilment of the duty under subsection (1).
- (3) In fulfilling the duty under subsection (1), the Scottish Ministers may—
  - (a) fund or supply property, services and personnel for use by the Tribunals,
  - (b) appoint persons as members of staff of the Tribunals.
- (4) The Scottish Ministers may make arrangements as to—
  - (a) the payment of remuneration or expenses to or in respect of persons so appointed,
  - (b) the payment of pensions, allowances and gratuities to or in respect of persons so appointed,
  - (c) contributions or other payments towards provision for such pensions, allowances and gratuities.
- (5) The references in subsection (4) to pensions, allowances and gratuities include pensions, allowances and gratuities to be paid by way of compensation for loss of office.

## **78      Annual reporting**

- (1) The President of Tribunals is to prepare an annual report about the operation and business of the Scottish Tribunals.
- (2) An annual report is to be given to the Lord President at the end of each financial year.
- (3) An annual report—
  - (a) must explain how the Scottish Tribunals have exercised their functions during the financial year,
  - (b) may contain such other information as—
    - (i) the President of Tribunals considers appropriate, or
    - (ii) the Lord President requires to be covered.
- (4) The Lord President must—
  - (a) publish each annual report in a manner suitable for bringing it to the attention of persons having an interest in the operation and business of the Scottish Tribunals,
  - (b) before so publishing it, send a copy of the report to the Scottish Ministers.



## **PART 8**

### **FINAL PROVISIONS**

#### *General and ancillary*

#### **79 Regulation-making**

- (1) Regulations under the preceding Parts of this Act may—
  - (a) make different provision for different purposes,
  - (b) include supplemental, incidental, consequential, transitional, transitory or saving provision.
- (2) Regulations under the following provisions of those Parts are subject to the affirmative procedure—
  - (a) section 20(2) or 23(2),
  - (b) section 27(2) or 28(2),
  - (c) section 38(1), 40(1) or 41(1),
  - (d) section 65(1), 66(1) or 67(1).
- (3) Regulations under any other provisions of those Parts are subject to the negative procedure.

#### **80 Ancillary regulations**

- (1) The Scottish Ministers may by regulations make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with this Act.
- (2) Regulations under this section—
  - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act),
  - (b) otherwise, are subject to the negative procedure.

#### **81 Transitional and consequential**

For the purposes of or in connection with this Act, schedule 9 contains—

- (a) transitional and other provision,
- (b) modification of enactments.

#### *Interpretation, commencement and short title*

#### **82 Interpretation**

- (1) In this Act, “Lord President” means Lord President of the Court of Session.
- (2) Schedule 10 is an index of expressions used in this Act together with a note of some key provisions.

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### **83 Commencement**

- (1) Section 82, this section and section 84 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may include transitional, transitory or saving provision.

### **84 Short title**

The short title of this Act is the Tribunals (Scotland) Act 2014.

**SCHEDULE 1**  
*(introduced by section 27)*  
**LISTED TRIBUNALS**

**PART 1**

LIST OF TRIBUNALS

- |    |  |
|----|--|
| 1  | An Additional Support Needs Tribunal   |
| 2  | A Scottish Charity Appeals Panel   |
| 3  | The Crofting Commission  |
| 4  | An Education Appeal Committee  |
| 5  | In relation to certain Housing and other Acts—<br>(a) a private rented housing committee,<br>(b) a homeowner housing committee |
| 6  | The Lands Tribunal for Scotland  |
| 7  | The Mental Health Tribunal for Scotland  |
| 8  | In relation to the National Health Service—<br>(a) the NHS National Appeal Panel,<br>(b) the NHS Tribunal                      |
| 9  | A Parking Adjudicator  |
| 10 | A Police Appeals Tribunal  |
| 11 | A Valuation Appeal Committee.  |

**PART 2**

FURTHER SPECIFICATION

- |    |   |
|----|---|
| 12 | The operation of section 28(1) and (2) is informed by and subject to the further specification in paragraph 13 (and the entries above are to be construed accordingly).   |
| 13 | <p>(1) The entry in paragraph 1 relates to the functions exercisable by any of the Additional Support Needs Tribunals for Scotland by virtue of section 17(1A) of the Education (Additional Support for Learning) (Scotland) Act 2004.</p> <p>(2) The entry in paragraph 2 relates to the functions exercisable by a Scottish Charity Appeals Panel by virtue of section 75(1) of the Charities and Trustee Investment (Scotland) Act 2005.</p> <p>(3) The entry in paragraph 3 relates to the functions exercisable by the Crofting Commission by virtue of the Crofters (Scotland) Act 1993 or any other enactment, but only in so far as they are decision-making functions exercisable—</p> <p style="margin-left: 20px;">(a) in the manner of a tribunal, and</p> <p style="margin-left: 20px;">(b) with respect to the determination or resolution of disputes.</p> |

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- (4) The entry in paragraph 4 relates to the functions exercisable by an education appeal committee set up under section 28D(1) of the Education (Scotland) Act 1980.
- (5) In the entry in paragraph 5—
  - (a) paragraph (a) relates to the functions exercisable by a private rented housing committee by virtue of section 21(3) of the Housing (Scotland) Act 2006,
  - (b) paragraph (b) relates to the functions exercisable by a homeowner housing committee by virtue of section 16(1) of the Property Factors (Scotland) Act 2011.
- (6) The entry in paragraph 6 relates to the functions exercisable by the Lands Tribunal for Scotland by virtue of the Lands Tribunal Act 1949 or any other enactment.
- (7) The entry in paragraph 7 relates to the functions exercisable by the Mental Health Tribunal for Scotland by virtue of section 21(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003.
- (8) In the entry in paragraph 8—
  - (a) paragraph (a) relates to the functions exercisable by the NHS National Appeal Panel or its chair by virtue of paragraph 5(4) to (6) in Schedule 3 to the National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009 ([S.S.I. 2009/183](#)),
  - (b) paragraph (b) relates to the functions exercisable by the NHS Tribunal by virtue of sections 29 to 32E of the National Health Service (Scotland) Act 1978.
- (9) The entry in paragraph 9 relates to the functions exercisable by a parking adjudicator by virtue of sections 72(2) and 73(3) of the Road Traffic Act 1991.
- (10) The entry in paragraph 10 relates to the functions exercisable by a police appeals tribunal by virtue of section 56(3) of the Police and Fire Reform (Scotland) Act 2012.
- (11) The entry in paragraph 11 relates to the functions exercisable by a valuation appeal committee by virtue of section 29(1)(a) of the Local Government etc. (Scotland) Act 1994.

## SCHEDULE 2

*(introduced by section 29)*

### TRANSFER-IN OF MEMBERS

- 1 (1) The Scottish Ministers may by regulations provide for some or all of the transferable persons to become the holders of any of the particular or other positions within the Scottish Tribunals specified in paragraph 4(1) or (2).
- (2) In sub-paragraph (1), the transferable persons are the persons who—
  - (a) are members—
    - (i) of any of the listed tribunals, or
    - (ii) of any panel or other body from which the members of any of the listed tribunals are drawn,
  - (b) are authorised decision-makers for any of the listed tribunals, or
  - (c) by reason of holding particular offices, constitute any of the listed tribunals.

- (3) But sub-paragraph (2) does not apply in relation to—
  - (a) any—
    - (i) judges of the Court of Session, or
    - (ii) sheriffs, or
  - (b) if appointed by reason of holding judicial office, the President of the Lands Tribunal for Scotland.
- 2 Subject to the relevant provisions of schedule 7, regulations under paragraph 1(1) may contain provision for the terms and conditions under which the persons concerned are to hold those positions, including by—
  - (a) preserving or altering the terms and conditions under which they are members of a listed tribunal, or
  - (b) replacing those terms and conditions with new ones.
- 3 (1) Regulations under paragraph 1(1) may be made only where some or all functions of the tribunal have been, or are to be, transferred by regulations under section 28(2) (whenever made).
- (2) Regulations under paragraph 1(1) must not cause any of the persons concerned to become the holder of any particular or other position to which the person would not be eligible for appointment under the relevant provisions of schedules 3 to 6.
- (3) A particular instrument containing regulations under paragraph 1(1) may not relate to the members of more than one of the listed tribunals.
- 4 (1) In relation to the First-tier Tribunal—
  - (a) the particular positions are—
    - (i) Chamber President in the Tribunal,
    - (ii) Deputy Chamber President in the Tribunal,
  - (b) the other positions are—
    - (i) ordinary member of the Tribunal,
    - (ii) legal member of the Tribunal (apart from Chamber President (or Deputy)).
- (2) In relation to the Upper Tribunal—
  - (a) the particular position is Vice-President of the Tribunal,
  - (b) the other positions are—
    - (i) ordinary member of the Tribunal,
    - (ii) legal member of the Tribunal (apart from Vice-President).

## SCHEDULE 3

*(introduced by section 32)*

### APPOINTMENT TO FIRST-TIER TRIBUNAL

#### PART 1

##### ORDINARY MEMBERS

###### *Appointment and eligibility*

- 1 (1) It is for the Scottish Ministers to appoint a person as an ordinary member of the First-tier Tribunal.
- (2) A person is eligible for such appointment only if the person meets such relevant criteria as are prescribed by the Scottish Ministers in regulations.
- 2 In paragraph 1(2), “relevant criteria” includes criteria as to qualifications, experience and training.

#### PART 2

##### LEGAL MEMBERS

###### *Application of Part*

- 3 (1) This schedule Part applies in relation to appointment of the legal members of the First-tier Tribunal other than—
  - (a) a Chamber President in the Tribunal, or
  - (b) a Deputy Chamber President in the Tribunal.
- (2) The references in this schedule Part to a legal member of the First-tier Tribunal are to be read accordingly.

###### *Appointment and eligibility*

- 4 (1) It is for the Scottish Ministers to appoint a person as a legal member of the First-tier Tribunal.
- (2) A person is eligible for such appointment only if qualifying under paragraph 5(1) or (2).
- 5 (1) A person qualifies under 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) A person qualifies under this sub-paragraph if the person falls within a description specified by the Scottish Ministers by regulations.

###### *Eligibility under regulations*

- 6 (1) Regulations under paragraph 5(2) may specify a description of a person by reference to the matters mentioned in sub-paragraph (2), (3) or (4).
- (2) That 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 5 years.
  - (3) That is—
    - (a) previous engagement in 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 and Wales or Northern Ireland, and
    - (b) subsequent engagement in any of the activities listed in sub-paragraph (5).
  - (4) That is, suitability attributable to experience in law through current or previous engagement in—
    - (a) any of the activities listed in sub-paragraph (5),
    - (b) an activity that is of a broadly similar nature to any of the activities listed in that sub-paragraph.
  - (5) The activities 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.
- 7 (1) The Scottish Ministers may by regulations make provision—
- (a) as regards the calculation of the 5-year period mentioned in paragraph 5(1) or 6(2)(b) or (3)(a) (for example, by reference to recent or continuous time),
  - (b) to which paragraph 6(3)(a) is subject (for example, by reference to debarment from practice),
  - (c) for the purpose of paragraph 6(4), 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 6(5).

**SCHEDULE 4***(introduced by section 32)***POSITIONS IN FIRST-TIER TRIBUNAL****PART 1****DEPUTY OR TEMPORARY PRESIDENT***Deputy President*

- 1 If requested to do so by the President of Tribunals, the Scottish Ministers may appoint a person as a Deputy Chamber President of a particular chamber in the First-tier Tribunal.
- 2 (1) A person is eligible for appointment as a Deputy Chamber President only if the person is—  
(a) a legal member of the First-tier Tribunal (other than a Chamber President), or  
(b) if not falling within paragraph (a), eligible to be appointed as such a member (whether or not already any type of member of the First-tier or Upper Tribunal).
- (2) Before requesting that a person be appointed as a Deputy Chamber President, the President of Tribunals must consult the Chamber President of the chamber concerned.
- (3) If the Scottish Ministers decide not to make an appointment as a Deputy Chamber President, they must give the President of Tribunals written reasons.
- 3 (1) The functions of a Chamber President are exercisable by a Deputy Chamber President to such extent and in such manner as the Chamber President may direct.
- (2) Except where the context otherwise requires, a reference in or under this Act to a Chamber President excludes a Deputy Chamber President.

*Temporary President*

- 4 If there is a temporary vacancy in the presidency of a particular chamber, the President of Tribunals may assign a person as a Temporary Chamber President during the vacancy.
- 5 (1) A person is eligible to be assigned as a Temporary Chamber President only if the person is a legal or judicial member of the First-tier Tribunal (other than a Chamber President).
- (2) The functions of a Chamber President are exercisable by a Temporary Chamber President.
- (3) Except where the context otherwise requires, a reference in or under this Act to a Chamber President includes a Temporary Chamber President.



## PART 2

### ASSIGNMENT INTERNALLY

#### *Assignment by the President of Tribunals*

- 6 (1) The President of Tribunals has the function of assigning the members of the First-tier Tribunal among the chambers (including re-assignment or ending assignment).
- (2) The President of Tribunals is to assign those members among the chambers in accordance with paragraphs 7 to 9.

#### *Assignment of Chamber Presidents*

- 7 (1) A Chamber President of a chamber—
- (a) is to be assigned to that chamber,
  - (b) may be assigned to act as a legal member also in another chamber.
- (2) A Deputy Chamber President of a chamber—
- (a) is to be assigned to that chamber,
  - (b) may be assigned to act as a legal member also in another chamber,
  - (c) is to act as such under the direction of the Chamber President of any chamber to which assigned.
- (3) Assignment under sub-paragraph (1)(b) or (2)(b) is to act otherwise than as a Chamber President or Deputy Chamber President in the other chamber.
- (4) Assignment under sub-paragraph (1)(b) or (2)(b) requires—
- (a) the concurrence of the Chamber President of the other chamber, and
  - (b) the agreement of the member concerned.

#### *Assignment of other members*

- 8 (1) This paragraph applies in relation to an ordinary member or legal member by virtue of—
- (a) appointment as such, or
  - (b) transfer-in as such.
- (2) Each member to whom this paragraph applies—
- (a) is to be assigned to at least one of the chambers,
  - (b) may be assigned to different chambers at different times.
- (3) Any such member may be assigned to a particular chamber only with—
- (a) the concurrence of its Chamber President, and
  - (b) the agreement of the member concerned.
- (4) The assignment of any such member to a particular chamber may be ended only with the concurrence of its Chamber President.
- (5) This paragraph does not apply to a legal member to whom paragraph 7(1) or (2) relates.

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### *Assignment of judicial members*

- 9 (1) A judicial member is to be assigned to at least one of the chambers.
- (2) A judicial member—
  - (a) may be assigned to different chambers at different times,
  - (b) may be assigned to a particular chamber only with—
    - (i) the concurrence of its Chamber President, and
    - (ii) the agreement of the assignee concerned.
- (3) The assignment of such a member to a particular chamber may be ended only with the concurrence of its Chamber President.

## SCHEDULE 5

*(introduced by section 32)*

### APPOINTMENT TO UPPER TRIBUNAL

#### PART 1

##### ORDINARY MEMBERS

### *Appointment and eligibility*

- 1 (1) It is for the Scottish Ministers to appoint a person as an ordinary member of the Upper Tribunal.
- (2) A person is eligible for such appointment only if the person meets such relevant criteria as are prescribed by the Scottish Ministers in regulations.
- 2 In paragraph 1(2), “relevant criteria” includes criteria as to qualifications, experience and training.

#### PART 2

##### LEGAL MEMBERS

### *Application of Part*

- 3 (1) This schedule Part applies in relation to appointment of the legal members of the Upper Tribunal other than—
  - (a) a Vice-President of the Tribunal,
  - (b) a legal member of the Tribunal by reason of being a Chamber President in the First-tier Tribunal.
- (2) The references in this schedule Part to a legal member of the Upper Tribunal are to be read accordingly.

*Appointment and eligibility*

- 4 (1) It is for the Scottish Ministers to appoint a person as a legal member of the Upper Tribunal.
- (2) A person is eligible for such appointment only if qualifying under paragraph 5(1) or (2).
- 5 (1) A person qualifies under this sub-paragraph if the person is practising, and has practised for a period of not less than 7 years, as a solicitor or advocate in Scotland.
- (2) A person qualifies under this sub-paragraph if the person falls within a description specified by the Scottish Ministers by regulations.

*Eligibility under regulations*

- 6 (1) Regulations under paragraph 5(2) may specify a description of a person by reference to the matters mentioned in sub-paragraph (2), (3) or (4).
- (2) That 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 7 years.
- (3) That is—
- (a) previous engagement in practice for a period of not less than 7 years, as—
- (i) a solicitor or advocate in Scotland, or
- (ii) a solicitor or barrister in England and Wales or Northern Ireland, and
- (b) subsequent engagement in any of the activities listed in sub-paragraph (5).
- (4) That is, suitability attributable to experience in law through current or previous engagement in—
- (a) any of the activities listed in sub-paragraph (5),
- (b) an activity that is of a broadly similar nature to any of the activities listed in that sub-paragraph.
- (5) The activities 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.
- 7 (1) The Scottish Ministers may by regulations make provision—
- (a) as regards the calculation of the 7-year period mentioned in paragraph 5(1) or 6(2)(b) or (3)(a) (for example, by reference to recent or continuous time),

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- (b) to which paragraph 6(3)(a) is subject (for example, by reference to debarment from practice),
  - (c) for the purpose of paragraph 6(4), 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 6(5).

## SCHEDULE 6

*(introduced by section 32)*

### POSITIONS IN UPPER TRIBUNAL

#### PART 1

##### TEMPORARY VICE-PRESIDENT

##### *Temporary Vice-President*

- 1 If there is a temporary shortage in the number of Vice-Presidents of the Upper Tribunal or a temporary vacancy in the position, the President of Tribunals may assign a person as a Temporary Vice-President of a particular division during the shortage or vacancy.
- 2
  - (1) A person is eligible for assignment as a Temporary Vice-President only if the person is a legal member of the Upper Tribunal (other than a Vice-President).
  - (2) The functions of a Vice-President are exercisable by a Temporary Vice-President.
  - (3) Except where the context otherwise requires, a reference in or under this Act to a Vice-President includes a Temporary Vice-President.

#### PART 2

##### ASSIGNMENT INTERNALLY

##### *Assignment of and by the President of Tribunals*

- 3
  - (1) The President of Tribunals has the function of assigning the members of the Upper Tribunal among the divisions (including re-assignment or ending assignment).
  - (2) The President of Tribunals is to assign those members among the divisions in accordance with paragraphs 4 to 7.

##### *Assignment of Vice-Presidents etc.*

- 4
  - (1) A Vice-President of a division—

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- (a) is to be assigned to that division,
    - (b) may be assigned to act—
      - (i) in the case of a judicial member assigned as a Vice-President, as a judicial member also in another division,
      - (ii) in any other case, as a legal member also in another division.
  - (2) Assignment under sub-paragraph (1)(b) is to act otherwise than as a Vice-President of the other division.
  - (3) Assignment under sub-paragraph (1)(b) requires—
    - (a) the concurrence of the Vice-President of the other division, and
    - (b) the agreement of the member concerned.
- 5 (1) This paragraph applies in relation to a legal member by reason of being a Chamber President in the First-tier Tribunal.
- (2) Each member to whom this paragraph applies may be assigned to—
    - (a) one or more of the divisions, and
    - (b) different divisions at different times.
  - (3) Any such member may be assigned to a particular division only with—
    - (a) the concurrence of its Vice-President, and
    - (b) the agreement of the member concerned.
  - (4) The assignment of any such member to a particular division may be ended only with the concurrence of its Vice-President.

*Assignment of other members*

- 6 (1) This paragraph applies in relation to an ordinary member or legal member by virtue of—
  - (a) appointment as such, or
  - (b) transfer-in as such.
- (2) Each member to whom this paragraph applies—
    - (a) is to be assigned to at least one of the divisions,
    - (b) may be assigned to different divisions at different times.
  - (3) Any such member may be assigned to a particular division only with—
    - (a) the concurrence of its Vice-President, and
    - (b) the agreement of the member concerned.
  - (4) The assignment of any such member to a particular division may be ended only with the concurrence of its Vice-President.
  - (5) This paragraph does not apply to a legal member to whom paragraph 4 or 5 relates.

*Assignment of judicial members etc.*

- 7 (1) A judicial member is to be assigned to at least one of the divisions.
- (2) An extra judge who is authorised to act as mentioned in section 18(4) is to be assigned to at least one of the divisions.

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- (3) A judicial member or such an extra judge—
  - (a) may be assigned to different divisions at different times,
  - (b) may be assigned to a particular division only with—
    - (i) the concurrence of its Vice-President, and
    - (ii) the agreement of the assignee concerned.
- (4) The assignment of a judicial member to a particular division may be ended only with the concurrence of its Vice-President.
- (5) Concurrence under sub-paragraph (3)(b)(i) or (4) is not required in relation to the assignment of the Lord President or the President of Tribunals.
- (6) This paragraph does not apply to a judicial member to whom paragraph 4 relates.

## SCHEDULE 7

*(introduced by section 35)*

### CONDITIONS OF MEMBERSHIP ETC.

#### *Application of schedule*

- 1 (1) This schedule applies in relation to the positions of ordinary member and legal member of the Scottish Tribunals (but not the position of judicial member of the Tribunals).
- (2) The references in this schedule to—
  - (a) a position in the Scottish Tribunals, or
  - (b) a member of the Scottish Tribunals,
 are to be read accordingly.

#### *Initial period of office*

- 2 (1) A person who is appointed to a position in the Scottish Tribunals holds the position for the period of 5 years beginning with the date of the appointment.
- (2) A person who is transferred-in to a position in the Scottish Tribunals holds the position for the period mentioned in sub-paragraph (3).
- (3) That period is the first-ending of either—
  - (a) the period for which the member would have continued to hold office in the listed tribunal in question if the transfer to the Scottish Tribunals had not taken place, or
  - (b) the period of 5 years beginning with the date on which the person becomes a member of the Scottish Tribunals.
- 3 (1) Sub-paragraph (2) applies where a person—
  - (a) holds a position in the Scottish Tribunals, and
  - (b) is appointed to hold another such position in addition.
- (2) The person holds the position mentioned in sub-paragraph (1)(b) for a period which expires on the same date as does the period for which the person holds the position mentioned in sub-paragraph (1)(a).

*Automatic reappointment*

- 4 (1) Unless sub-paragraph (3) applies, a member of the Scottish Tribunals is to be reappointed as such at the end of each period for which the position is held.
- (2) Reappointment under sub-paragraph (1) is to the position for the period of 5 years beginning with the date of the reappointment.
- (3) This sub-paragraph applies if—
- (a) the member has declined to be reappointed,
  - (b) the member is ineligible for reappointment,
  - (c) the President of Tribunals has recommended to the Scottish Ministers that the member should not be reappointed.
- (4) In sub-paragraph (1), the reference to the period for which a position is held is to—
- (a) the period for which the position is held in accordance with paragraph 2 or 3, or
  - (b) any further period for which the position is held by virtue of reappointment in accordance with sub-paragraphs (1) and (2).
- (5) A reference in this paragraph to reappointment includes appointment at the end of a period for which a position is held by virtue of paragraph 2(2) as well as reappointment at the end of a period for which a position is held by virtue of any relevant appointment (or reappointment).
- 5 For the purpose of paragraph 4(3)(b), a member is ineligible for reappointment only if the member would not be eligible for appointment to the position in accordance with the relevant provisions of schedule 3 or (as the case may be) schedule 5 were the member being appointed to the position for the first time.
- 6 For the purpose of paragraph 4(3)(c), the President of Tribunals may recommend to the Scottish Ministers that a member should not be reappointed only if satisfied that—
- (a) the member has failed to comply with—
    - (i) any of the relevant terms and conditions of membership, or
    - (ii) any other requirement imposed on the member by or under this Act, or
  - (b) the Tribunal concerned no longer requires—
    - (i) a member with the qualifications, experience and training of that member, or
    - (ii) the same number of members for the efficient disposal of its business.
- 7 Reappointment by virtue of paragraph 4 is not subject to any process of appointment arising in relation to a position within the Scottish Tribunals by virtue of section 10(2A) of the Judiciary and Courts (Scotland) Act 2008.

*Extension in senior post*

- 8 (1) Sub-paragraphs (2) and (3) apply where—
- (a) a legal member of the First-tier Tribunal becomes by appointment a Chamber President or Deputy Chamber President in the Tribunal, or
  - (b) a legal member of the Upper Tribunal becomes by appointment a Vice-President of the Tribunal.

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- (2) Despite paragraphs 2 and 3, the period for which the legal member holds that position does not end until the expiry of 5 years beginning with the date of the appointment mentioned in the relevant limb of sub-paragraph (1).
- (3) In all other respects also, the appointment mentioned in the relevant limb of sub-paragraph (1) supersedes the earlier appointment or (as the case may be) transfer-in as a legal member.

### *Termination of appointment*

- 9 A member of the Scottish Tribunals ceases to hold the position of member of the Tribunals if the member—
  - (a) becomes disqualified from holding the position,
  - (b) is removed from the position under paragraph 23 of schedule 8,
  - (c) resigns the position by giving notice in writing to the Lord President, or
  - (d) vacates the position in accordance with section 26 of the Judicial Pensions and Retirement Act 1993.
- 10 (1) Nothing in paragraphs 2 to 8 affects the operation of section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 in relation to a member of the Scottish Tribunals.
- (2) Accordingly, such a member's continuation in office by virtue of that section may have the effect of extending the period for which the member is appointed or (as the case may be) reappointed by virtue of those paragraphs.

### *Required oaths*

- 11 (1) Each of the members of the Scottish Tribunals must take the required oaths in accordance with this paragraph.
- (2) A Vice-President of the Upper Tribunal is to take them in the presence of the President of Tribunals.
- (3) A Chamber President in the First-tier Tribunal is to take them in the presence of the President of Tribunals.
- (4) A Deputy Chamber President in the First-tier Tribunal is to take them in the presence of either the President of Tribunals or a Chamber President in the First-tier Tribunal.
- (5) An ordinary or legal member of the Upper Tribunal by virtue of appointment or transfer-in as such is to take them in the presence of either the President of Tribunals or a Vice-President of the Upper Tribunal.
- (6) An ordinary or legal member of the First-tier Tribunal by virtue of appointment or transfer-in as such is to take them in the presence of either the President of Tribunals or a Chamber President in the First-tier Tribunal.
- (7) If a member of the Scottish Tribunals has previously taken the required oaths in the circumstances mentioned in sub-paragraph (8), the previous taking of the oaths counts as if it were the taking of them in accordance with this paragraph.
- (8) The circumstances are—
  - (a) in the case of a member who is transferred-in as such, in connection with the office from which the person is transferred-in,



- (b) in the case of a member whose position changes within the Scottish Tribunals, in connection with appointment or transfer-in to the previous position.
- (9) In this paragraph, “the required oaths” means the oath of allegiance and the judicial oath as set out in the Promissory Oaths Act 1868.

*Pensions etc.*

- 12 (1) The Scottish Ministers may make arrangements as to—
  - (a) the payment of pensions, allowances and gratuities to or in respect of the members, or former members, of the Scottish Tribunals,
  - (b) contributions or other payments towards provision for such pensions, allowances and gratuities.
- (2) Under sub-paragraph (1), such arrangements may (in particular)—
  - (a) include provision relating to payment of compensation for loss of office,
  - (b) make different provision for different types of member, different positions or other different purposes.

*Other conditions*

- 13 (1) Other than as provided for elsewhere in this Act or under it, the Scottish Ministers may determine the terms and conditions on which the members of the Scottish Tribunals hold their positions.
- (2) Under sub-paragraph (1), a determination may (in particular)—
  - (a) include provision for sums to be payable by way of remuneration, allowances and expenses,
  - (b) make different provision for different types of member, different positions or other different purposes.

**SCHEDULE 8**

*(introduced by section 36)*

**CONDUCT AND FITNESS ETC.**

**PART 1**

**CONDUCT AND DISCIPLINE**

*Application of Part*

- 1 (1) This schedule Part applies in relation to the ordinary members and legal members of the Scottish Tribunals (but not the judicial members of the Tribunals).
- (2) The references in this schedule Part to a member of the Scottish Tribunals are to be read accordingly.

### *Conduct rules*

- 2 The Lord President is responsible for making and maintaining appropriate arrangements for the things for which rules under paragraph 3(1) may make provision.
- 3 (1) The Lord President may make rules for the purposes of or in connection with—
  - (a) the investigation and determination of any matter concerning the conduct of members of the Scottish Tribunals,
  - (b) the review of any such determination.
- (2) Rules under sub-paragraph (1) may include provision about (in particular)—
  - (a) the circumstances in which an investigation must or may be undertaken,
  - (b) the making of a complaint by any person,
  - (c) the steps that are to be taken by a person making a complaint before it is to be investigated,
  - (d) the carrying out of an investigation (including any steps to be taken by the member whom it concerns or by any other person),
  - (e) the time limits for taking steps and procedures for extending such time limits,
  - (f) the person by whom an investigation (or part of an investigation) is to be carried out,
  - (g) the matters to be determined by the person carrying out an investigation (or part of an investigation), the Lord President or any other person,
  - (h) the making of recommendations by the person carrying out an investigation (or part of one),
  - (i) the obtaining of information relating to a complaint,
  - (j) the keeping of a record of an investigation,
  - (k) the confidentiality of communications or proceedings,
  - (l) the publication of information or its supply to any person.
- 4 Rules under paragraph 3(1)—
  - (a) may make different provision for different purposes,
  - (b) are to be published in such manner as the Lord President may determine.

### *Reprimand etc.*

- 5 (1) Where the condition in sub-paragraph (2) is met in relation to a member of the Scottish Tribunals, the Lord President may, for disciplinary purposes, give the member—
  - (a) formal advice,
  - (b) a formal warning, or
  - (c) a reprimand.
- (2) The condition is that—
  - (a) an investigation has been carried out with respect to the member in accordance with rules made under paragraph 3(1), and
  - (b) the person carrying out the investigation has recommended that the Lord President exercise the power conferred by sub-paragraph (1).
- 6 Paragraph 5 does not limit what the Lord President may do—
  - (a) informally,
  - (b) for other purposes, or

- (c) where no advice or warning is given in a particular case.

*Suspension of membership*

- 7 (1) If the Lord President considers that it is necessary for the purpose of maintaining public confidence in the Scottish Tribunals, the Lord President may suspend a member of the Tribunals.
- (2) Suspension under sub-paragraph (1)—
- (a) is for such period as the Lord President may specify when suspending the member,
- (b) may be revoked or extended subsequently by the Lord President.
- 8 Suspension under paragraph 7(1) does not affect any remuneration payable to, or in respect of, the member concerned during the period of suspension.

*Judicial Complaints Reviewer*

- 9 (1) The Judicial Complaints Reviewer has the functions mentioned in sub-paragraph (2).
- (2) The functions are—
- (a) on the request of a relevant person, to review the handling of an investigation carried out in accordance with rules made under paragraph 3(1) to consider whether the investigation has been carried out in accordance with the rules,
- (b) in any case where the Reviewer considers that such an investigation has not been carried out in accordance with such rules, to refer the case to the Lord President,
- (c) as directed by the Scottish Ministers, to prepare and publish reports on the investigations carried out in pursuance of such rules,
- (d) to make written representations to the Lord President about procedures for handling the investigation of matters concerning the conduct of members of the Scottish Tribunals.
- (3) The Lord President is to have regard to any written representations made under sub-paragraph (2)(d).
- (4) In sub-paragraph (2)(a), “relevant person” means—
- (a) person whose complaint led to the carrying out of the investigation, or
- (b) member of the Scottish Tribunals with respect to whom the investigation has been carried out.
- 10 (1) Sub-paragraph (2) applies where a case is referred to the Lord President by virtue of paragraph 9(2)(b).
- (2) The Lord President may—
- (a) vary or revoke (wholly or partly) the determination made in the case to which the investigation relates,
- (b) cause a fresh investigation to be carried out,
- (c) confirm the determination in the case, or
- (d) deal with the referral in such other way as the Lord President considers appropriate.

## PART 2

### FITNESS AND REMOVAL

#### *Application of Part*

- 11 (1) This schedule Part applies in relation to the ordinary members and legal members of the Scottish Tribunals (but not the judicial members of the Tribunals).
- (2) The references in this schedule Part to a member of or position in the Scottish Tribunals are to be read accordingly.
- 12 In this schedule Part, the references to unfitness to hold the position of member of the Scottish Tribunals are to unfitness by reason of inability, neglect of duty or misbehaviour.

#### *Constitution and procedure*

- 13 (1) The First Minister must constitute a fitness assessment tribunal when requested to do so by the Lord President.
- (2) The First Minister may constitute a fitness assessment tribunal—
- (a) in such other circumstances as the First Minister thinks fit, and
  - (b) following consultation with the Lord President.
- (3) The function of a fitness assessment tribunal is to investigate and report on whether a member of the Scottish Tribunals is unfit to hold the position of member of the Tribunals.
- 14 The Court of Session may by act of sederunt make provision as to the procedure to be followed in proceedings at a fitness assessment tribunal.

#### *Composition and remuneration*

- 15 (1) A fitness assessment tribunal is to consist of—
- (a) one person who is, or has been—
    - (i) a judge of the Court of Session (except a temporary judge), or
    - (ii) a sheriff (except a part-time sheriff),
  - (b) one person who is—
    - (i) where the member under investigation is an ordinary member, another ordinary member, or
    - (ii) where the member under investigation is a legal member, another legal member, and
  - (c) one person who does not fall (and has never fallen) within a category of person who may be a member of the tribunal by virtue of sub-paragraph (a) or (b).
- (2) The selection of persons to be members of the tribunal is to be made by the First Minister with the agreement of the Lord President.
- 16 (1) The Scottish Ministers—
- (a) must pay such expenses as they consider are reasonably required to be incurred to enable a fitness assessment tribunal to carry out its functions,

(b) may pay such remuneration to, and expenses of, any member of such a tribunal as they think fit.

(2) Sub-paragraph (1)(b) does not apply in relation to such a member if the member is a sheriff or a judge of the Court of Session.

#### *Proceedings before tribunal*

- 17 (1) A fitness assessment tribunal may require any person—
- (a) to attend its proceedings for the purpose of giving evidence,
  - (b) to produce documents in the person's custody or under the person's control.
- (2) A person on whom such a requirement is imposed is not obliged to answer any question or produce any document which the person would be entitled to refuse to answer or produce in a court of law in Scotland.
- 18 (1) Sub-paragraph (2) applies where a person on whom a requirement has been imposed under paragraph 17(1)—
- (a) refuses or fails, without reasonable excuse—
    - (i) to comply with the requirement,
    - (ii) while attending the tribunal proceedings to give evidence, to answer any question,
  - (b) deliberately alters, conceals or destroys any document which the person is required to produce.
- (2) The Court of Session may, on an application made to it by the tribunal—
- (a) make such order for enforcing compliance or otherwise as it thinks fit, or
  - (b) deal with the matter as if it were a contempt of the Court.

#### *Suspension during investigation*

- 19 (1) Sub-paragraph (2) applies if the Lord President requests the First Minister to constitute a fitness assessment tribunal to investigate whether a member of the Scottish Tribunals is unfit to hold the position of member of the Tribunals.
- (2) The Lord President may suspend the member from the position at any time before the tribunal submits its report as required by paragraph 22(2).
- (3) Suspension under sub-paragraph (2) lasts until (whichever is earlier)—
- (a) the Lord President revokes it, or
  - (b) the report is laid as required by paragraph 22(3).
- 20 (1) Sub-paragraph (2) applies if a fitness assessment tribunal—
- (a) recommends that a member of the Scottish Tribunals who is subject to its investigation should be suspended from the position as member of the Tribunals, and
  - (b) does so in writing at any time before the tribunal submits its report as required by paragraph 22(2).
- (2) The First Minister may suspend the member from the position at any time before laying the report as required by paragraph 22(3).
- (3) Suspension under sub-paragraph (2) lasts until (whichever is earlier)—
- (a) the First Minister revokes it, or

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- (b) the report is laid as required by paragraph 22(3).
- 21 Suspension under paragraph 19(2) or 20(2) does not affect any remuneration payable to, or in respect of, the member concerned during the period of suspension.

#### *Report and removal*

- 22 (1) A report by a fitness assessment tribunal must—
  - (a) be in writing, and
  - (b) contain reasons for its conclusions.
- (2) As soon as reasonably practicable after it is completed, such a report must be submitted by the tribunal to—
  - (a) the First Minister, and
  - (b) the Lord President.
- (3) The First Minister must lay before the Scottish Parliament each report submitted under sub-paragraph (2).
- 23 (1) If the relevant condition is met, the First Minister may remove a member of the Scottish Tribunals from the position of member of the Tribunals.
- (2) The relevant condition is that a fitness assessment tribunal has submitted a report under paragraph 22(2) concluding that the member is unfit to hold the position of member of the Scottish Tribunals.

## SCHEDULE 9

*(introduced by section 81)*

### TRANSITIONAL AND CONSEQUENTIAL

## PART 1

### TRANSITIONAL AND OTHER MATTERS

#### *Exercise of functions*

- 1 (1) Sub-paragraph (2) applies for the purposes of—
  - (a) the exercise of functions by a member of the Scottish Tribunals by virtue of this Act, and
  - (b) the operation of provisions in or under this Act to which such a member is subject.
- (2) Except where the context otherwise requires, it is immaterial whether a person who is, or who is acting as, such a member is in place by virtue of appointment, assignment, transfer-in or other means under this Act.

#### *Rules of listed tribunals*

- 2 (1) Sub-paragraph (2) applies where some or all of the functions of a listed tribunal have been, or are to be, transferred by regulations under section 28(2).

- (2) The Scottish Ministers may by regulations provide for the procedural rules of a listed tribunal that are in force immediately before the transfer to have effect for the purposes of either or both of the First-tier Tribunal and the Upper Tribunal.
  - (3) Regulations under sub-paragraph (2) may provide for the procedural rules to which the regulations relate to have effect subject to such modifications as appear to the Scottish Ministers to be necessary or expedient with respect to the purposes mentioned in that sub-paragraph.
  - (4) In this paragraph—
    - “listed tribunal” is to be construed in accordance with Part 3 (see section 27(1)),
    - “procedural rules” means provision for the purposes of a listed tribunal (whether or not contained in an enactment and irrespective of whether called rules)—
      - (a) regulating the practice or procedure to be followed in proceedings at a listed tribunal, or
      - (b) otherwise applying in relation to the exercise by a listed tribunal of its functions.
- 3 (1) Regulations under paragraph 2(2) may—
- (a) make different provision for different purposes,
  - (b) include supplemental, incidental, consequential, transitional, transitory or saving provision.
- (2) Regulations under paragraph 2(2) are subject to the negative procedure.

*Pre-SCJC rule-making*

- 4 (1) Until the Scottish Civil Justice Council and the Court of Session are involved in the making of Tribunal Rules by virtue of the coming into force of paragraph 13(2) to (5)—
- (a) section 68(3) and (4) is of no effect,
  - (b) instead of that section, sub-paragraph (2) applies for the purpose of making rules—
    - (i) regulating the practice and procedure to be followed in proceedings at the Scottish Tribunals, or
    - (ii) containing provision of other sorts appropriate with respect to the Scottish Tribunals (including in relation to the exercise by them of their functions).
- (2) The function of making such rules is exercisable by the Scottish Ministers by setting them out in regulations.
- (3) Before making regulations under sub-paragraph (2), the Scottish Ministers must consult—
- (a) the President of Tribunals, and
  - (b) such other persons as they consider appropriate.
- 5 (1) Regulations under paragraph 4(2) may—
- (a) modify rules having effect as mentioned in paragraph 2(2) (by virtue of regulations made under that paragraph),

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- (b) do anything that may be done by Tribunal Rules by virtue of Chapter 2 of Part 7 (including the making of different provision for different purposes).

(2) Regulations under paragraph 4(2) are subject to the negative procedure.

#### *Adoption of inherited rules*

- 6 (1) Sub-paragraph (2) applies to—
- (a) rules having effect as mentioned in paragraph 2(2) (by virtue of regulations made under that paragraph),
  - (b) rules set out in regulations made by virtue of paragraph 4(2).
- (2) Once the Scottish Civil Justice Council and the Court of Session are involved in the making of Tribunal Rules by virtue of the coming into force of paragraph 13(2) to (5)—
- (a) all rules to which this sub-paragraph applies are to be regarded as if made as Tribunal Rules under Chapter 2 of Part 7,
  - (b) all such rules have effect accordingly (and may therefore be revoked, amended or remade by Tribunal Rules under Chapter 2 of Part 7).

#### *Chambers and divisions*

- 7 (1) For as long as it appears to the Scottish Ministers that the acquisition of functions by the First-Tier Tribunal for the time being is such that there is justification for not organising it into a number of chambers as required by section 20(1), regulations under section 20(2)—
- (a) need not be made, or
  - (b) may provide for the Tribunal to have a single chamber only.
- (2) For as long as it appears to the Scottish Ministers that the acquisition of functions by the Upper Tribunal for the time being is such that there is justification for not organising it into a number of divisions as required by section 23(1), regulations under section 23(2)—
- (a) need not be made, or
  - (b) may provide for the Tribunal to have a single division only.
- 8 (1) Sections 20(1) and (2) and 23(1) and (2) are subject to paragraph 7(1) and (2) (until it appears to the Scottish Ministers that the relevant justification no longer exists).
- (2) Any provision of this Act (apart from this schedule Part) that mentions a chamber or more than one chamber of the First-tier Tribunal is, for as long as by virtue of paragraph 7(1) the First-tier Tribunal has no chambers or a single chamber, to be read with such modifications as are necessary for the effective operation of the provision while the Tribunal is not organised into a number of chambers.
- (3) Any provision of this Act (apart from this schedule Part) that mentions a division or more than one division of the Upper Tribunal is, for as long as by virtue of paragraph 7(2) the Upper Tribunal has no divisions or a single division, to be read with such modifications as are necessary for the effective operation of the provision while the Tribunal is not organised into a number of divisions.
- 9 For the purposes of paragraph 7(1) and (2), the Scottish Ministers must have regard to the following matters so far as relevant for the time being—



- (a) the different subject-matters falling within the jurisdiction of the First-tier Tribunal or (as the case may be) the Upper Tribunal, and
- (b) any other factors relevant in relation to the exercise of the functions of the First-tier Tribunal or (as the case may be) the Upper Tribunal.

### *Making appointments*

- 10 (1) Until all of the functions of a listed tribunal have been transferred to the Scottish Tribunals by regulations under section 28(2)—
- (a) paragraph 3(1)(d) of schedule 1 to the 2008 Act has effect in relation to that tribunal as if the reference in that paragraph to a person holding the position of Chamber President or of Vice-President within the Scottish Tribunals includes the President of, or the holder of an equivalent office in, any listed tribunal,
  - (b) paragraph 16A(2) and (3) of schedule 1 to the 2008 Act has effect in relation to that tribunal as if the references in that paragraph to a member of the Scottish Tribunals includes a member of, or a person who exercises functions as, any listed tribunal.
- (2) In this paragraph—
- “the 2008 Act” means the Judiciary and Courts (Scotland) Act 2008 (see paragraph 12(4)(b) and (5)),
  - “listed tribunal” is to be construed in accordance with Part 3 (see section 27(1)).

## **PART 2**

### **CONSEQUENTIAL MODIFICATIONS**

### *Judicial Pensions and Retirement Act 1993*

- 11 (1) The Judicial Pensions and Retirement Act 1993 is amended as follows.
- (2) In section 26 (retirement date for certain judicial officers)—
- (a) in subsection (12), in the definition of “the appropriate person”, after paragraph (e) there is inserted—
    - “(f) the Scottish Ministers, in the case of a relevant member of the Scottish Tribunals;”,
  - (b) after subsection (15) there is inserted—
    - “(16) The Scottish Ministers must consult the President of Tribunals before exercising any function arising by virtue of subsection (12) (f) in relation to a relevant member of the Scottish Tribunals.
    - (17) In paragraph (f) of the definition of “the appropriate person” in subsection (12), and in subsection (16), a reference to a relevant member of the Scottish Tribunals is to an ordinary or legal member of either or both of the Tribunals by virtue of section 15 or 16 of the Tribunals (Scotland) Act 2014.”.
- (3) In section 30 (interpretation), after subsection (1) there is inserted—

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“(1A) For the purposes of section 26(12)(f), (16) and (17), and the related entry in Schedule 5, “Scottish Tribunals” or “President of Tribunals” is to be construed in accordance with the Tribunals (Scotland) Act 2014.”.

(4) In Schedule 5 (relevant offices in relation to retirement provisions), at the end there is inserted—

“Ordinary or legal member of either or both of the Scottish Tribunals by virtue of section 15 or 16 of the Tribunals (Scotland) Act 2014.”.

*Judiciary and Courts (Scotland) Act 2008*

12 (1) The Judiciary and Courts (Scotland) Act 2008 is amended as follows.

(2) In section 10 (judicial offices within the Board’s remit)—

- (a) in subsection (1), the word “and” immediately preceding paragraph (g) is repealed,
- (b) before paragraph (g) of that subsection there is inserted—
  - “(fa) the positions within the Scottish Tribunals mentioned in subsection (2A), and”,
- (c) after subsection (2) there is inserted—

“(2A) The positions within the Scottish Tribunals are—

- (a) Vice-President of the Upper Tribunal, if to be appointed under section 26(1) of the Tribunals (Scotland) Act 2014,
- (b) Chamber President in the First-tier Tribunal, if to be appointed under section 22(1) of that Act,
- (c) Deputy Chamber President in the First-tier Tribunal, if to be appointed under the relevant provisions of schedule 4 to that Act,
- (d) ordinary member or legal member of the First-tier Tribunal or the Upper Tribunal, if to be appointed under the relevant provisions of schedule 3 or (as the case may be) schedule 5 to that Act.”.

(3) In section 30 (Judicial Complaints Reviewer), in subsection (5), after paragraph (h) there is inserted—

- “(i) an ordinary or legal member of either or both of the Scottish Tribunals by virtue of section 15 or 16 of the Tribunals (Scotland) Act 2014.”.

(4) In paragraph 3 of schedule 1—

- (a) in sub-paragraph (1), the word “and” immediately preceding paragraph (c) is repealed,
- (b) after paragraph (c) of sub-paragraph (1) there is inserted “, and
  - (d) one person holding the position of Chamber President or of Vice-President within the Scottish Tribunals.”,
- (c) after sub-paragraph (5) there is inserted—

“(6) For the purposes of sub-paragraph (1)(d)—

“Scottish Tribunals” is to be construed in accordance with the Tribunals (Scotland) Act 2014,

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“Chamber President” means Chamber President in the First-tier Tribunal as referred to in that Act and “Vice-President” means Vice-President of the Upper Tribunal as referred to in that Act.”.

(5) After paragraph 16 of schedule 1 there is inserted—

*“Proceedings relating to the Scottish Tribunals*

- 16A (1) Sub-paragraph (2) applies where the Board is exercising any function under this Act in connection with a position mentioned in section 10(2A).
- (2) At least one member of the Scottish Tribunals is to take part in any proceedings relating to the function (whether or not also a member of the Board).
- (3) It is for the President of Tribunals to select a member of the Scottish Tribunals to take part as mentioned in sub-paragraph (2).
- (4) Before making a selection under sub-paragraph (3), the President of Tribunals must consult the Chairing Member.
- (5) Sub-paragraph (6) applies where a person taking part as mentioned in sub-paragraph (2) is not a member of the Board.
- (6) The person is to be treated as if a member of the Board for the purposes of—
- (a) sections 11 to 15 and 17, and
  - (b) paragraphs 5, 12 and 13 of this schedule.
- (7) The Board may not make a determination under paragraph 15 which is inconsistent with this paragraph.
- (8) In this paragraph, “President of Tribunals” is to be construed in accordance with the Tribunals (Scotland) Act 2014 and the references to a member of the Scottish Tribunals are to be construed in accordance with section 13(3) of that Act.”.

*Scottish Civil Justice Council and Criminal Legal Assistance Act 2013*

- 13 (1) The Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 is amended as follows.
- (2) In subsection (1) of section 2 (functions of the Council)—
- (a) after paragraph (b) there is inserted—

“(ba) to review the practice and procedure followed in proceedings in the Scottish Tribunals,”,
  - (b) in paragraph (c)—
    - (i) the words “draft civil procedure rules” become sub-paragraph (i),
    - (ii) after that sub-paragraph (as so numbered) there is inserted—

“(ii) draft tribunal procedure rules,”.
- (3) In subsection (3) of section 2, after paragraph (c) there is inserted—

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

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“(ca) practice and procedure should, where appropriate, be similar in both of the Scottish Tribunals (and in different chambers or divisions within them),”.

(4) After subsection (6) of section 2 there is inserted—

“(7) For the purposes of this Part, “draft tribunal procedure rules” are draft rules prepared with a view to the making by the Court of Session by act of sederunt of Tribunal Rules with respect to the Scottish Tribunals.”.

(5) In section 4 (Court of Session to consider rules)—

- (a) in subsection (1), after the words “draft civil procedure rules” there is inserted “or draft tribunal procedure rules”,
- (b) in subsection (2), after the words “draft civil procedure rules” there is inserted “or draft tribunal procedure rules”.

(6) In section 6 (composition of the Council), in subsection (1)—

- (a) for the word “20” there is substituted “22”,
- (b) after paragraph (a) there is inserted—
  - “(aa) the President of Tribunals,”,
- (c) after paragraph (e) there is inserted—
  - “(ea) from the membership of the Scottish Tribunals, 1 Chamber President or 1 Vice-President (“Tribunal representative member”),”.

(7) In section 8 (tenure)—

- (a) in subsection (1), after the words “Lord President,” there is inserted “the President of Tribunals,”,
- (b) after subsection (3) there is inserted—

“(3A) A Tribunal representative member holds office for a period of 3 years unless, prior to the expiry of that period, the Lord President replaces the representative with another Tribunal representative member or requires the member to leave office.”.

(8) The title of section 13 becomes “**Committees generally**”.

(9) After section 13 there is inserted—

### *“Tribunals*

#### **13A Tribunals committee**

- (1) The Council must establish a particular committee under section 13(1) in connection with the exercise by it of the functions arising by virtue of section 2(1)(ba) and (c)(ii).
- (2) The committee is to be chaired by the President of Tribunals or the Tribunal representative member.
- (3) The other members of the committee are to be selected by the President of Tribunals.

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

- (4) In selecting those members of the committee, the President of Tribunals is to have particular regard to the need to ensure that its membership includes persons with knowledge of how the Scottish Tribunals exercise their functions.
- (5) The Council may not make a determination under section 12(3)(b) which is inconsistent with subsections (2) to (4).”.
- (10) In section 16 (interpretation of Part 1)—
  - (a) the existing text becomes subsection (1),
  - (b) in that subsection (as so numbered), after the entry relating to draft civil procedure rules there is inserted—
 

“draft tribunal procedure rules” has the meaning given in section 2(7),”,
  - (c) after that subsection (as so numbered) there is inserted—
 

“(2) In this Part—

“Scottish Tribunals”, “President of Tribunals” and “Tribunal Rules” are to be construed in accordance with the Tribunals (Scotland) Act 2014,

“Chamber President” means Chamber President in the First-tier Tribunal as referred to in that Act and “Vice-President” means Vice-President of the Upper Tribunal as referred to in that Act (with “chamber” and “division” in relation to the Scottish Tribunals to be construed in accordance with that Act).”.

## SCHEDULE 10

*(introduced by section 82)*

### INDEX OF EXPRESSIONS

Expressions used	Relevant provisions
Lord President	Section 82(1)
Head of the Scottish Tribunals	Section 2(1)
President of Tribunals	Section 5(3)
First-tier Tribunal and Upper Tribunal	Section 1(1)
the Scottish Tribunals	Section 1(2)
Chamber President of the First-tier Tribunal (including appointment to position)	Sections 21 and 22
Vice-President of the Upper Tribunal (including assignment or appointment to position)	Sections 24 to 26
chamber of a Tribunal (First-tier)	Section 20(1)
division of a Tribunal (Upper)	Section 23(1)
members of the Scottish Tribunals	Section 13(3)

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

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Expressions used	Relevant provisions
ordinary member (First-tier)	Section 15(1)
ordinary member (Upper)	Section 16(1)
legal member (First-tier)	Section 15(2)
legal member (Upper)	Section 16(2)
judicial member (First-tier)	Section 19(1)
judicial member (Upper)	Section 19(2)
extra judge (Upper)	Section 19(4)
appointment and assignment (various positions)	Section 32(1) to (4)
transfer-in to membership (various positions)	Section 29(a) and (b)
listed tribunals	Section 27(1)
Tribunal rules	Section 68(2)