

TRIBUNALS (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 – Powers, Procedure and Administration

Practice and procedure

Tribunal Rules

Section 68 – Tribunal rules

217. Sections 68 to 73 make provision for the making of rules to regulate the practice and procedures to be adopted by the Scottish Tribunals which are to be known as Scottish Tribunal Rules (but are referred to in the Act as Tribunal Rules).
218. Subsections (3) and (4) of section 68 set out the process for making Tribunal Rules. Tribunal Rules are to be made by the Court of Session by act of sederunt and in accordance with Part 1 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013.
219. Paragraph 13 of schedule 9 amends Part 1 of the 2013 Act so that the SCJC has the function of reviewing the practice and procedure used in the Scottish Tribunals (section 2(1)(ba) of the 2013 Act) and the function of preparing and submitting draft Tribunal Rules to the Court of Session (section 2(1)(c)(ii) of the 2013 Act). Section 4(1) and (2) of the 2013 Act also sets out the role of the Court of Session in approving, approving with modification, or rejecting the rules proposed by the SCJC.
220. Sub-paragraphs (6) to (10) of paragraph 13 of schedule 9 amend the 2013 Act with the effect of increasing the membership of the SCJC so as to include members representing the Scottish Tribunals and providing for the SCJC to establish a committee in pursuance of its functions in relation to the Scottish Tribunals under section 13A of the 2013 Act. The Committee is to be chaired by one of the members of the SCJC representing the Scottish Tribunals, and its members are to be selected by the President of Tribunals.

Section 69 – Exercise of functions

221. Section 69 allows Tribunal Rules to make provision about how a function of the Tribunals is to be exercised and by whom, or allow a specified person to make a decision about those matters. It also allows Tribunal Rules to confer functions on the persons named in subsection (4). Such Rules may provide for something to require further authorisation, allow something to be done on a person's behalf, or allow a specified person to make a decision about those matters. They may rely on the effect of practice directions issued under section 74.

Section 70 – Extent of rule-making

222. The extent of the provision which may be made by Tribunal Rules is set out in section 70. In particular, the generality of the power to make provision regulating

the practice and procedure followed in the Scottish Tribunals is not limited by any other more specific provisions in the Act regarding the content of Tribunal Rules (subsection (4)). Tribunal Rules may also make equal or different provision in respect of the First-tier Tribunal and the Upper Tribunal (subsection (1)), particular provision for different chambers or divisions or different types of proceedings (subsection (2)) and, more generally, different provision for different purposes (subsection (3)).

Particular matters

Section 71 – Proceedings and steps

223. Sections 71 to 73 set out specific matters on which Tribunal Rules may make provision.
224. Section 71 allows Tribunal Rules to make provision for the purpose of proceedings in a case before the Tribunals, including as to the form and manner in which a case is to be brought before them, withdrawal of a case, whether or not two or more applications can be conjoined, time limits for making a referral of a matter to the Scottish Tribunals for decision or for taking steps as part of the proceedings, and circumstances in which the Tribunals may act of their own initiative.

Section 72 – Hearings in cases

225. Section 72 allows Tribunal Rules to make provision about hearings, including as to when matters can be dealt with without one, whether a hearing is to be held in private or public, appearance and representation at hearings, notice of hearings, whether two or more sets of proceedings can be taken concurrently, adjournment with a view to resolution, and the imposition of reporting restrictions.

Section 73 – Evidence and decisions

226. Section 73 allows Tribunals Rules to make provision about evidence given before the Scottish Tribunals, including as to the administering of oaths and presumptions to apply, and about their decisions (for example, how they are recorded and published).
227. Sections 11(1)(b) and (2)(b) (authority under regulations), 28(3) (transfer-in of functions), 43(3) (review of decisions), 59(2) (additional matters), 61(2) (venue for hearings), 62(1) (conduct of cases), 63(1) (enforcement of decisions) and 64(1) and (3) (award of expenses) also deal with matters on which Tribunal Rules may make provision.

Issue and directions

Section 74 – Practice directions

228. This section sets out the process for issuing directions as to the practice and procedure to be followed in the Scottish Tribunals. Directions by the President of Tribunals may make provision with regard to both the First-tier Tribunal and the Upper Tribunal (subsection (1)).
229. Directions by a Chamber President may only make provision in respect of the chamber over which the Chamber President presides (subsection (2)) and can only be issued with the approval of the President of Tribunals (subsection (4)).
230. Directions by a Vice-President may only make provision in respect of the division over which the Vice-President presides (subsection (3)) and can only be issued with the approval of the President of Tribunals (subsection (4)).

Section 75 – Publication and effect

231. Section 75 makes provision that the President of Scottish Tribunals must arrange for directions under section 74(1), (2) or (3) to be published in a manner they consider

appropriate. Subsection (2)(b) specifies that directions may make different provision for different purposes as well as vary and revoke earlier directions.

232. In the event of any conflict arising between Tribunal Rules and directions issued by the Lord President under section 9 or by the President of Tribunals, a Chamber President or a Vice-President under section 74. The effect of section 75 is, in the event of any conflict, to provide for Tribunal Rules to prevail over any directions, directions of the Lord President to prevail over directions of the President of Tribunals, a Chamber President or Vice-President and directions of the President of Tribunals to prevail over directions of a Chamber President or Vice-President.