



Tribunals (Scotland) Act 2014

2014 asp 10

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,

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- (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).
- (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).

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- (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
 - (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).

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- (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)).