

## SCHEDULE 2 THE SCOTTISH TAX TRIBUNALS

### PART 4

#### FITNESS AND REMOVAL

##### *Application of this Part*

- 30 (1) This Part of this schedule applies in relation to the positions of ordinary member and legal member of the Tax Tribunals (but not the position of judicial member of the tribunals).
- (2) This Part also applies to the position of the President of the Tax Tribunals subject to the modifications mentioned in paragraph 42.

##### *Constitution and procedure*

- 31 (1) The Scottish Ministers must constitute a fitness assessment tribunal when requested to do so by the President of the Tax Tribunals.
- (2) The Scottish Ministers may constitute a fitness assessment tribunal—
- (a) in such other circumstances as they think fit, and
  - (b) following consultation with the President.
- (3) The function of a fitness assessment tribunal is to investigate and report on whether a member of the Tax Tribunals is unfit to hold the position of member of the tribunals.
- 32 (1) The Scottish Ministers may make rules as to the procedure to be followed in proceedings at a fitness assessment tribunal.
- (2) Rules under sub-paragraph (1) are to be published in such manner as the Scottish Ministers may determine.

##### *Composition and remuneration*

- 33 (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,
    - (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 referred to in paragraph (a) or (b).
- (2) The selection of persons to be members of the fitness assessment tribunal is to be made by the Scottish Ministers with the agreement of the Lord President.
- 34 (1) The Scottish Ministers—

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- (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 fitness assessment tribunal*

- 35 (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.
- 36 (1) Sub-paragraph (2) applies where a person on whom a requirement has been imposed under paragraph 35(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*

- 37 (1) Sub-paragraph (2) applies if the President of the Tax Tribunals requests the Scottish Ministers to constitute a fitness assessment tribunal to investigate whether a member of the Tax Tribunals is unfit to hold the position of member of the tribunals.
- (2) The President may suspend the member from the position at any time before the fitness assessment tribunal submits its report as required by paragraph 40(2).
- (3) Suspension under sub-paragraph (2) lasts until (whichever is earlier)—
- (a) the President revokes it, or
  - (b) the report is laid as required by paragraph 40(3).
- 38 (1) Sub-paragraph (2) applies if a fitness assessment tribunal—
- (a) recommends that a member of the Tax Tribunals who is subject to its investigation should be suspended from the position as member of the tribunals,
  - (b) does so in writing at any time before the fitness assessment tribunal submits its report as required by paragraph 40(2).
- (2) The Scottish Ministers may suspend the member from the position at any time before laying the report as required by paragraph 40(3).

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- (3) Suspension under sub-paragraph (2) lasts until (whichever is earlier)—
    - (a) the Scottish Ministers revoke it, or
    - (b) the report is laid as required by paragraph 40(3).
- 39 Suspension under paragraph 37(2) or 38(2) does not affect any remuneration payable to, or in respect of, the member concerned during the period of suspension.

#### *Report and removal*

- 40 (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 fitness assessment tribunal to—
  - (a) the Scottish Ministers, and
  - (b) the President of the Tax Tribunals.
- (3) The Scottish Ministers must lay before the Scottish Parliament each report submitted under sub-paragraph (2).
- 41 (1) If the relevant condition is met, the Scottish Ministers may remove a member of the Tax 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 40(2) concluding that the member is unfit to hold the position of member of the Tax Tribunals.

#### *Application of this Part to the President of the Tax Tribunals*

- 42 (1) This Part of this schedule applies in relation to the President of the Tax Tribunals with the following modifications.
- (2) In paragraph 31, sub-paragraphs (1) and (2)(b) do not apply.
- (3) Paragraph 33 is to apply in relation to a fitness assessment tribunal constituted to investigate and report on whether the President is unfit to hold that position as it applies to a legal member of the Tax Tribunals.
- (4) In paragraph 37—
  - (a) sub-paragraph (1) does not apply,
  - (b) the references in sub-paragraphs (2) and (3)(a) to the President are to be read as references to the Scottish Ministers.
- (5) Paragraph 40(2)(b) does not apply.

#### *Interpretation*

- 43 In this Part of this schedule, the references to unfitness to hold the position of member of the Tax Tribunals are to unfitness by reason of inability, neglect of duty or misbehaviour.