

# TRIBUNALS (SCOTLAND) ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1 – The Scottish Tribunals

##### Establishment and Leadership

##### *Section 1 – Establishment of the Tribunals*

6. [Section 1](#) establishes two new tribunals, the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland.

##### *Section 2 – Head of the Tribunals*

7. [Section 2](#) designates the Lord President as the Head of the Scottish Tribunals. The Act confers a number of functions on the Lord President in this capacity. See, for example, section 4(2) (assigning a person to the office of the President of the Scottish Tribunals), section 6 (representation of interests), section 7 (business arrangements), section 33(assignment policy) and section 34 (training and review).

##### *Section 3 – Upholding independence*

8. [Section 3](#) places a duty on the First Minister, the Lord Advocate, the Scottish Ministers, members of the Scottish Parliament and any other person having responsibility for matters relating to the Scottish Tribunals or the administration of justice to uphold the independence of the members of the Scottish Tribunals. It also imposes two particular duties on the First Minister, the Lord Advocate and the Scottish Ministers for the purpose of upholding that independence.
9. The first is a duty not to seek to influence the decisions of the Scottish Tribunals through special access to its members which would not be afforded to the general public.
10. The second is a duty to have regard to the need for members of the Scottish Tribunals to have the support necessary to enable them to carry out their functions.

##### *Sections 4 and 5 – President of the Tribunals*

11. [Section 4](#) establishes the office of the President of the Scottish Tribunals. It is the responsibility of the Lord President to assign a judge of the Court of Session (other than a temporary judge) to the office who will be the senior member of the Scottish Tribunals. Once assigned to office, the President of Tribunals continues in that office for such time as the Lord President considers appropriate.
12. Where no person is assigned to act or the person assigned to act as the President of Tribunals is unable to act in that capacity, the Lord President may nominate a Vice-President of the Upper Tribunal to act temporarily as the President of Tribunals provided that that person is also a judge of the Court of Session (other than a temporary judge).

13. The Act confers a number of functions directly on the President of Tribunals (see, for example, section 25(2) by which the President of Tribunals may assign a judicial member of the Upper Tribunal as a Vice-President of that Tribunal) and also enables the Lord President to delegate a number of his or her functions to the President of Tribunals (see sections 8 and 9).

## **Overarching Responsibilities**

### ***Section 6 – Representation of interests***

14. Under this section, the Lord President is responsible for representing the views of the members of the Scottish Tribunals to the Scottish Parliament and to the Scottish Ministers and for laying written representations before Parliament on matters of importance relating to the Scottish Tribunals. The Lord President is not authorised to delegate these specific duties under section 8.

### ***Section 7 – Business arrangements***

15. Under section 7, the Lord President is responsible for making and maintaining appropriate arrangements to ensure the efficient disposal of business by the Scottish Tribunals and the welfare of their members. The Lord President may delegate the discharge of these responsibilities to the President of Tribunals (see section 8).

### ***Section 8 – Delegation of functions***

16. **Section 8** authorises the Lord President to delegate to the President of Tribunals the exercise of any of the functions listed in section 7(1) or (2) (business arrangements), section 33(1) and (2) (assignment policy) or section 34(1) or (2) (training and review). Section 8 should be read with section 9 which enables the Lord President to issue directions as to the exercise of any functions which are delegated under section 8.

### ***Section 9 – Directions on functions***

17. This section enables the Lord President to issue directions as to the exercise of the functions of the President of Tribunals in relation to the Scottish Tribunals. This would include any functions conferred directly on the President of Tribunals by the Act or any functions which are delegated to the President of Tribunals by the Lord President under section 8.

### ***Section 10 – Authority under regulations***

18. **Section 10** makes provision as to the exercise of the regulation-making powers contained in section 20(2) (chambers in the First-tier Tribunal), section 23(2) (divisions of the Upper Tribunal), section 38(1) (composition of the First-tier Tribunal), section 40(1) (composition of the Upper Tribunal) and 41(1) (voting for decisions) by the Scottish Ministers. These are more fully explained in the explanatory notes relating to those sections.

### ***Section 11 – Consultation on regulations***

19. This section imposes a consultation requirement on the Scottish Ministers before the exercise of the regulation-making powers contained in sections 20(2), 23(2), 38(1), 40(1) and 41(1). These are more fully explained in the explanatory notes relating to those sections.

### ***Section 12 – Principle to be observed***

20. This section provides an overarching guiding principle for the Scottish Tribunals. Subsection (1) places a duty on the Scottish Ministers to have regard to this principle when exercising their regulation making functions. Subsection (2) places a duty on the

*These notes relate to the Tribunals (Scotland) Act 2014  
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Lord President and President of Scottish Tribunals that in exercising their leadership functions they must have regard to this principle. Subsection (3) contains the principle.