

TRIBUNALS (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Organisational Arrangements

Membership types

Section 13 – Overview of membership

21. **Section 13** specifies the categories of member of the First-tier and Upper Tribunals. These are defined as ordinary members, legal members and judicial members. As can be seen from the more detailed provisions, judicial members will be those members of the courts judiciary who are authorised to act as members of the Scottish Tribunals (see section 17), legal members will be solicitors, advocates or persons possessing some other form of legal qualification (see Part 2 of schedule 3 and Part 2 of schedule 5) and ordinary members will comprise persons with such other qualifications, experience or training as are necessary for the Tribunals to exercise their functions (for example, doctors, surveyors, teachers or other lay persons) (see Part 1 of schedule 3 and Part 1 of schedule 5).
22. Subsection (2) provides that a member of one of the Scottish Tribunals (by virtue of being a member of that Tribunal) is not prevented from being a member of the other.

Section 14 – Capacity of members

23. The effect of section 14 is to clarify that all members of the Scottish Tribunals, when exercising the decision-making functions of the Tribunals are doing so with judicial status and capacity, regardless of the category of membership which they possess. Subsection (1) makes provision with respect to ordinary and legal members and subsection (2) clarifies that this does not affect the general status of judicial members (see section 17) and extra judges (see section 18).

Section 15 – First-tier members

24. **Section 15** makes provision as to the membership of the First-tier Tribunal.
25. Under subsection (1), persons will become ordinary members of the First-tier Tribunal if they are transferred-in as ordinary members by virtue of section 29(b) or appointed as ordinary members by virtue of section 32(1). Similarly, subsection (2)(a) provides that persons will become legal members of the First-tier Tribunal if they are transferred-in as legal members by virtue of section 29(b) or are appointed as legal members by virtue of section 32(1).
26. **Section 29(b)** gives effect to paragraph 1 of schedule 2 which enables the Scottish Ministers, by regulations, to provide for a transferable person of a listed tribunal to transfer-in to the First-tier Tribunal as an ordinary or legal member. Further details are provided in the commentary on that section.

27. [Section 32\(1\)](#) gives effect to schedule 3 which enables the Scottish Ministers to appoint a person as an ordinary or legal member of the First-tier Tribunal. Further details are provided in the commentary on that section.
28. Subsections (2)(b) and (3) of section 15 provide that a person is also a legal member of the First-tier Tribunal if that person holds the position of Chamber President or Deputy Chamber President. Where a legal member of the First-tier Tribunal is assigned as a Temporary Chamber President under paragraph 4 of schedule 4, that Temporary Chamber President will also be regarded as a legal member of the First-tier Tribunal but where a judicial member of the First-tier Tribunal is assigned as a Temporary Chamber President, that person will continue to be a judicial member.

Section 16 – Upper members

29. [Section 16](#) makes provision as to the membership of the Upper Tribunal.
30. Under subsection (1), persons will become ordinary members of the Upper Tribunal if they are transferred-in as ordinary members by virtue of section 29(b) or appointed as ordinary members by virtue of section 32(3). Similarly, subsection (2)(a) provides that persons will become legal members of the Upper Tribunal if they are transferred-in as legal members by virtue of section 29(b) or are appointed as legal members by virtue of section 32(3).
31. [Section 29\(b\)](#) gives effect to paragraph 1 of schedule 2 which enables the Scottish Ministers, by regulations, to provide for a transferable person of a listed tribunal to transfer-in to the Upper Tribunal as an ordinary or legal member. Further details are provided in the commentary on that section.
32. [Section 32\(3\)](#) gives effect to schedule 5 which enables the Scottish Ministers to appoint a person as an ordinary or legal member of the Upper Tribunal. Further details are provided in the commentary on that section.
33. The effect of subsection (2)(b) of section 16 is that a Chamber President of the First-tier Tribunal, by virtue of holding that position, will also be a legal member of the Upper Tribunal (without the requirement to be separately appointed as a legal member of the Upper Tribunal). This provision does not have the effect of making Deputy Chamber Presidents or Temporary Chamber Presidents of the First-tier Tribunal legal members of the Upper Tribunal.
34. Subsections (2)(c) and (3) of section 16 provide that a person is also a legal member of the Upper Tribunal if that person is transferred-in or appointed as a Vice-President of the Upper Tribunal. Where a member of the courts judiciary is assigned as a Vice-President or a Temporary Vice-President of the Upper Tribunal that person remains a judicial member of the Upper Tribunal rather than becoming a legal member.