

TRIBUNALS (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Organisational Arrangements

Structure of the Upper Tribunal

Section 23 – Divisions of the Tribunal

53. [Section 23](#) provides for the organisation of the Upper Tribunal into divisions and the allocation of the Tribunal's functions among those divisions. The divisions are to be organised according to the subject-matter of the Tribunal's functions as well as any other factors which are relevant to the exercise of the Tribunal's functions (for example, whether or not the function relates to a decision at first instance or an appeal from a decision of the First-tier Tribunal).
54. The organisation into divisions and the allocation of the Tribunal's functions are to be effected by regulations made by the Scottish Ministers (subsection (2)). By virtue of section 10(1), those regulations may make provision authorising the Lord President, or relying on Tribunal Rules (see commentary on section 68), to determine these matters. By virtue of section 11(1), the Scottish Ministers must consult the Lord President and such other persons as they consider appropriate before making regulations under section 23(2).
55. [Paragraph 7\(2\)](#) of schedule 9 makes transitional provision so that the Upper Tribunal need not be organised into divisions or may have only one division for such period until it has acquired sufficient functions so as to merit this.

Section 24 – Vice-Presidents

56. [Section 24\(1\)](#) and (2) provides that each division of the Upper Tribunal must have one or two Vice-Presidents to preside over it. Subsection (2) prohibits a Vice-President from presiding over more than one division at the same time.
57. [Section 24](#) is subject to section 25(1)(b) which enables the President of Tribunals to assign himself or herself as a Vice-President of one or more divisions of the Upper Tribunal.
58. [Section 25](#) sets out the procedure where the President of Tribunals or another judicial member of the Upper Tribunal may be assigned to act as a Vice-President. Section 25 sets out the procedure by which a person who is not a judicial member of the Upper Tribunal may be appointed to that position.

Section 25 – Assignment to post

59. [Section 25](#) provides for the assignment of a judicial member of the Upper Tribunal as a Vice-President.

*These notes relate to the Tribunals (Scotland) Act 2014
(asp 10) which received Royal Assent on 15 April 2014*

60. Subsection (1) enables the President of Tribunals to assign himself or herself as a Vice-President. As a Vice-President, the President of Tribunals may preside over more than one division of the Upper Tribunal.
61. Subsection (2) enables the President of Tribunals to assign any other judicial member of the Upper Tribunal (other than the Lord President) as a Vice-President to preside over a particular division. Such an assignment can only be made with the Lord President's approval and the assignee's agreement (subsection (4)).

Section 26 – Appointment to post

62. **Section 26(1)** enables the Scottish Ministers, following a request by the President of Tribunals and after consultation with the Lord President, to appoint a person as a Vice-President to preside over a particular division of the Upper Tribunal (subsections (1), (2) and (4)).
63. By virtue of section 16(2)(c) and (3) a person appointed as a Vice-President is a legal member of the Upper Tribunal. Section 26(3), therefore, makes provision so as to ensure that any person appointed to the position of Vice-President meets the eligibility criteria which would be required of a person to be appointed as a legal member of the Upper Tribunal. The effect of subsection (3) is to provide that a person will only be eligible to be appointed as a Vice-President if he or she is, or meets the eligibility criteria to be appointed as, a legal member of the Upper Tribunal. It excludes a person who is already appointed as Vice-President of the Upper Tribunal.
64. The eligibility criteria for appointment as a legal member of the Upper Tribunal are set out in Part 2 of schedule 5.