

# TRIBUNALS (SCOTLAND) ACT 2014

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3 – Transfer-In From Listed Tribunals**

##### *Section 27 and schedule 1 – Listed tribunals*

65. [Section 27\(1\)](#) gives effect to schedule 1 which sets out a list of tribunals from which the functions and members can be transferred-in to the Scottish Tribunals by virtue of regulations made under sections 28 and 29.
66. [Part 1](#) of schedule 1 contains the list of tribunals. Part 2 of that schedule contains further elaboration to assist in identifying the tribunal and the functions which may be the subject of transfer. For example, in relation to the entry for a Scottish Charity Appeals Panel, paragraph 12(2) of schedule 1 provides that it is only the functions exercisable by virtue of section 75(1) of the Charities and Trustee Investment (Scotland) Act 2005 which may be transferred-in to the Scottish Tribunals. Similarly, the Crofting Commission exercises a number of executive functions under the Crofters (Scotland) Act 1993 which it is not intended to transfer-in to the Scottish Tribunals. In relation to the entry for the Crofting Commission, paragraph 12(3) of schedule 1 provides that it is only the Commission's functions in relation to the resolution of disputes which are exercisable in the manner of a tribunal that may be transferred-in to the Scottish Tribunals.
67. Subsection (2) allows the Scottish Ministers to modify the listed tribunals and further details of those tribunals as set out in schedule 1.
68. Subsection (3) provides that regulations can only add a tribunal to the list in Part 1 of schedule 1 if it is established by or under an enactment. Subsection (4) makes provision in order to clarify what is meant by the term tribunal for this purpose and to clarify that a body may be listed if, and to the extent that, it has decision-making functions which are exercisable in the manner of a tribunal. The effect of this is that a body can only be added to the list in schedule 1 if, and to the extent that, it has functions for the independent resolution of disputes in a similar fashion to those traditionally exercised by tribunals.
69. Subsection (5)(a) and (b) makes express provision to make it clear that the Scottish Land Court or any other Scottish court cannot be added to the list in schedule 1. Accordingly, the Act does not enable any functions of the Scottish Land Court or the other Scottish courts to be transferred-in to the Scottish Tribunals. Subsection (5)(c) also prevents the functions of the tribunals mentioned in that subsection from being transferred-in to the Scottish Tribunals.

##### *Section 28 – Transfer-in of functions*

70. [Section 28\(2\)](#) enables the Scottish Ministers, by regulations, to provide for some or all of the functions of a listed tribunal to be transferred to the Scottish Tribunals. The

regulations may provide for the functions to be transferred to the First-tier Tribunal, the Upper Tribunal or both Tribunals.

71. Where regulations made under subsection (2) provide for the functions of a listed tribunal to be transferred to both of the Scottish Tribunals, the regulations may make provision transferring certain functions to one Tribunal and certain functions to the other. They can also provide for a particular function to be transferred to both Tribunals but, where they do so, subsections (3) and (5) require the regulations to make provision so that it can be ascertained when the function is exercisable by the First-tier Tribunal and when it is exercisable by the Upper Tribunal. In doing this, the regulations can provide for this to be determined in Tribunal Rules (see commentary on section 68) or by the President of Tribunals.
72. Subsection (4) enables the Scottish Ministers, by regulations, to provide for a redistribution of any functions which have been transferred-in to the Scottish Tribunals between those Tribunals.
73. Subsection (6) provides that any regulations made under subsection (2) or (4) may make further provision in order to give full effect to the transfer or redistribution of functions. This includes the modification of any enactment which makes provision in relation to a listed tribunal (subsection (7)).
74. Regulations made under subsection (2) may only relate to one of the listed tribunals (subsection (8)). This will require separate regulations to be made in respect of each listed tribunal.

### ***Section 29 and schedule 2 – Transfer-in of members***

75. **Section 29** introduces schedule 2 which makes provision enabling the transfer of members of the listed tribunals to the Scottish Tribunals where some or all of their functions are, similarly, transferred.
76. **Paragraph 1** of schedule 2 enables the Scottish Ministers, by regulations, to make provision to transfer some or all of the transferable persons to a position or positions in the Scottish Tribunals.
77. In relation to a listed tribunal, a transferable person is a member (of the tribunal or any panel or other body from which the tribunal members are selected) or an authorised decision-maker of that tribunal, or a person who constitutes the tribunal (paragraph 1(2) of schedule 2).
78. **Paragraph 1(3)** of schedule 2 excludes from transfer, a sheriff or judge of the Court of Session or the President of the Lands Tribunal for Scotland (if he or she holds another judicial office) who may, otherwise, fall within the definition of transferable persons. Rather than transferring-in as a legal or ordinary member of the Scottish Tribunals, it is anticipated that such persons will be authorised to act as judicial members in accordance with sections 16 and 18.
79. **Paragraph 2** of schedule 2 enables regulations made under paragraph 1(1) of schedule 2 to make provision preserving, altering or replacing the terms and conditions on which a transferable person is transferred to the Scottish Tribunals.
80. **Paragraph 3** of schedule 2 sets out limitations on the regulation-making power contained in paragraph 1(1) of schedule 2. Such regulations may only be made where some or all of the functions of a listed tribunal have been or are to be transferred to the Scottish Tribunals (paragraph 3(1)). The regulations may not transfer a person to a position in the Scottish Tribunals for which he or she would not be eligible to be appointed (paragraph 3(2)). The regulations may also make provision in relation to members of only one listed tribunal at a time (paragraph 3(3)). Paragraph 4 of schedule 2 sets out the positions in the Scottish Tribunals to which a transferable person may be transferred.

## **Conferral of functions by another Act**

### ***Section 30 - Accommodation of functions***

81. [Section 30\(2\)](#) enables the Scottish Ministers, by regulations, to modify the Tribunals Act so that it specifies the relevant provisions of the Act conferring functions on the Scottish Tribunals. Subsection (3) allows the Scottish Ministers, by regulations, to modify the Tribunals Act or the Act conferring functions on the Scottish Tribunals to ensure that the jurisdiction can operate effectively in the tribunals structure.

### ***Section 31 – Redistribution of functions***

82. [Section 31](#) enables the Scottish Ministers, by regulations, to redistribute functions which have been conferred directly on the Scottish Tribunals by another Act. Subsection (1) provides that regulations can redistribute functions conferred directly on the Scottish Tribunals between tribunals or can make provision that the functions will be exercised by both tribunals. Subsection (2) allows the question of which tribunal is to exercise particular functions in a particular case or in a specified circumstance to be determined by tribunal rules or by the President of Tribunals (whether or not by reference to Tribunal Rules).