

# TRIBUNALS (SCOTLAND) ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 4 – More About Membership Etc.

##### Fitness and removal

149. Paragraphs 11 to 22 provide for fitness assessment tribunals to be set up to investigate and report on whether a member of the Scottish Tribunals is unfit to hold the position by reason of inability, neglect of duty or misbehaviour.
150. The First Minister must constitute a tribunal when requested to do so by the Lord President (paragraph 13(1)). The First Minister may (but is not required to) constitute a tribunal in other circumstances if the First Minister thinks fit but only after consultation with the Lord President (paragraph 13(2)).
151. Paragraph 14 enables the Court of Session to make provision, by act of sederunt, with regard to the procedure to be adopted by a tribunal.
152. Paragraphs 15 and 16 provide for the composition and voting, and remuneration and expenses of the tribunal. Paragraph 15(2) provides for the members of a fitness assessment tribunal to be selected by the First Minister with the agreement of the Lord President. In selecting the members, the First Minister must ensure that the composition of the tribunal reflects the requirements set out in paragraph 15(1). Paragraph 16 enables the Scottish Ministers to pay remuneration and expenses to the members of a fitness assessment tribunal. Remuneration cannot, however, be paid to those members of a fitness assessment tribunal who are sheriffs or judges of the Court of Session.
153. Paragraphs 17 and 18 make provision with regard to the conduct of proceedings of a tribunal. Paragraph 17 enables a fitness assessment tribunal to require the attendance of persons to give evidence and the production of documents in the same fashion as a court of law in Scotland. Where these requirements are not fulfilled, paragraph 18 provides for the tribunal to make an application to the Court of Session. The Court of Session may make such order as it thinks fit to ensure compliance with the requirements of the tribunal or deal with the matter as if it were a contempt of the Court.
154. Paragraphs 19 to 21 set out the circumstances in which a member of the Scottish Tribunals can be suspended pending a decision of a tribunal. Paragraph 19 enables the Lord President to suspend a member of the Scottish Tribunals if the Lord President has made a request to the First Minister to constitute a fitness assessment tribunal to investigate whether that member is unfit to hold the position of member of the Scottish Tribunals. The Lord President may suspend the member at any time prior to the point that the fitness assessment tribunal submits its report to the First Minister and the Lord President under paragraph 22(2). Such a suspension will terminate on being revoked by the Lord President or, if not revoked, when the report is laid in the Scottish Parliament. Paragraph 20 enables the First Minister to suspend the member of the Scottish Tribunals where the fitness assessment tribunal has recommended that the member is suspended. The First Minister may suspend the member at any time prior to the tribunal's report

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

being laid in the Parliament. Such a suspension will terminate on being revoked by the First Minister or, if not revoked, when the report is laid in the Parliament. Paragraph 21 provides that any suspension under paragraph 19 or 20 does not affect any remuneration payable to the suspended member.

155. [Paragraph 22](#) makes provision for the form and content of a tribunal's report. The First Minister must lay the report before the Scottish Parliament.
156. [Paragraph 23](#) provides that the First Minister may remove a member of the Scottish Tribunals from his or her position if a fitness assessment tribunal has submitted a report concluding that the member is unfit to hold office by reason of inability, neglect of duty or misbehaviour.