

# **TRIBUNALS (SCOTLAND) ACT 2014**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 6 – Review or Appeal of Decisions**

##### **Appeal from First-tier Tribunal**

##### *Section 46 – Appeal from the Tribunal*

180. *Section 46* makes provision for a general right to appeal a decision of the First-tier Tribunal to the Upper Tribunal. Such an appeal can only be made by a party in the case on a point of law and with the permission of the First-tier Tribunal or (if refused by the First-tier Tribunal) the Upper Tribunal.
181. The general right to appeal a decision of the First-tier Tribunal to the Upper Tribunal under section 46 is not universal and does not apply to excluded decisions (see sections 51 to 54) or a decision of the First-tier Tribunal to review or not to review one of its own decisions (see section 43(4)). Section 55 (process for permission) also prevents a decision of the First-tier Tribunal to refuse permission to appeal to the Upper Tribunal from being appealed to the Upper Tribunal (a separate application can, however, be made to the Upper Tribunal under section 41(3)(b) should the First-tier Tribunal refuse permission to appeal).
182. Permission to appeal to the Upper Tribunal under section 46 is only to be granted if the Tribunal whose permission is sought is satisfied that there are arguable grounds for the appeal (section 46(4)).

##### *Section 47 – Disposal of an appeal*

183. *Section 47* provides that, in determining an appeal made under section 46, the Upper Tribunal may uphold or quash the decision of the First-tier Tribunal on a point of law. Where the Upper Tribunal quashes the decision of the First-tier Tribunal it may re-make the decision, remit the case back to the First-tier Tribunal to be re-decided or make such other order as the Court considers is appropriate.
184. Where the Upper Tribunal elects to re-make a decision, subsection (3) enables the Upper Tribunal to make findings in fact and, otherwise, to do anything that could have been done by the First-tier Tribunal if it was re-making the decision.
185. Where the Upper Tribunal elects to remit the case to the First-tier Tribunal, it may direct the First-tier Tribunal as to issues of fact, law and procedure (subsections (4) and (5)).