

TRIBUNALS (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 – Review or Appeal of Decisions

Appeal from Upper Tribunal

Section 48 – Appeal from the Tribunal

186. **Section 48** makes provision for a general right to appeal a decision of the Upper Tribunal to the Court of Session. Such an appeal can only be made by a party in the case on a point of law and with the permission of the Upper Tribunal or (if refused by the Upper Tribunal) the Court of Session.
187. The general right to appeal a decision of the Upper Tribunal to the Court of Session under section 48 is not universal and does not apply to excluded decisions (see sections 51 to 54) or a decision of the Upper 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 Upper Tribunal to refuse permission to appeal to the Court of Session from being appealed to the Court of Session (a separate application can, however, be made to the Court of Session under section 48(3)(b) should the Upper Tribunal refuse permission to appeal).
188. Permission to appeal to the Court of Session under section 48 is only to be granted if the Upper Tribunal or Court of Session is satisfied that there are arguable grounds for the appeal (section 48(4)) except in relation to permission to make a second appeal (see commentary on section 50).

Section 49 – Disposal of an appeal

189. **Section 49** provides that, in determining an appeal made under section 48, the Court of Session may uphold or quash the decision of the Upper Tribunal in question on a point of law. Where the Court of Session quashes the decision of the Upper Tribunal it may re-make the decision, remit the case back to the Upper Tribunal to be re-decided or make such other order as the Court considers appropriate.
190. Where the Court of Session elects to re-make a decision, subsection (3) enables the Court of Session to make findings in fact and, otherwise, to do anything that could have been done by the Upper Tribunal if it was re-making the decision.
191. Where the Court of Session elects to remit the case to the Upper Tribunal, it may direct the Upper Tribunal as to issues of fact, law and procedure (subsection (4) and (5)).

Section 50 – Procedure on second appeal

192. **Section 50** makes provision in relation to a ‘second appeal’ which is an appeal to the Court of Session under section 48 against a decision of the Upper Tribunal on an

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

appeal from a decision of the First-tier Tribunal under section 46 (see the definition in subsection (7)).

193. The effect of subsections (1), (3) and (4) is to prevent the Upper Tribunal and the Court of Session from giving permission to make a second appeal unless the Tribunal or Court (as appropriate) is satisfied that the appeal would raise an important issue of principle or practice or there is another compelling reason for allowing the appeal to proceed.
194. The effect of subsections (2), (5) and (6) is to enable the Court of Session, where it quashes the decision of the Upper Tribunal in relation to a second appeal, to do anything in re-making the decision that could have been done by the First-tier Tribunal or the Upper Tribunal if either of them was re-making the decision. It also enables the Court of Session to remit the case back to either the Upper Tribunal or the First-tier Tribunal with directions as to issues of fact, law and procedure. In addition, if the Court of Session remits the case to the Upper Tribunal, the Upper Tribunal itself may remit the case to the First-tier Tribunal with the directions from the Court of Session.