

TRIBUNALS (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 – Review or Appeal of Decisions

Excluded decisions

Section 51 – Excluded decisions

195. Sections 51 to 54 make provision with respect to decisions of the Scottish Tribunals which may not be the subject of a review under section 43 or the subject of the general right of appeal contained in sections 46 and 48. By virtue of section 51, such decisions are known as “excluded decisions”.

Section 52 – Decisions on review

196. Section 52 provides that certain decisions and determinations in a review under section 43 are excluded decisions. The effect of section 52 is to exclude decisions which have already been set aside under a review under section 43 as well as any decision or determination made as part of such a review (other than any matter which has been re-decided) from being appealed or further reviewed.

Section 53 – Other appeal rights

197. Section 53 provides that any decision against which there is a right of appeal under any enactment other than the right to review contained in section 43 or the rights of appeal in sections 46 and 48 is an excluded decision. The effect of section 53 is to create a general rule excluding from the rights of review and appeal established by the Act, any decision for which another enactment makes express provision for a right of appeal. Subsection(2) enables the Scottish Ministers, by regulations, to make exceptions to that general rule.

Section 54 – Position on transfer-in

198. Section 54 provides that any decision made in the exercise of the functions of the First-tier Tribunal or Upper Tribunal which is specified by the Scottish Ministers in regulations made under subsection (1) is an excluded decision. Subsection (2) provides that a decision made in the exercise of the functions of the First-tier Tribunal or Upper Tribunal may only be specified in regulations if the functions were transferred-in from a listed tribunal by regulations made under subsection 28(2) and, immediately prior to the transfer of those functions, there was no statutory right of appeal against the decision.
199. The effect of section 54 is to enable the Scottish Ministers, by regulations, to exclude the rights of review and appeal established by the Act in relation to decision-making functions which have been transferred-in to the Scottish Tribunals from a listed tribunal from which there was previously no statutory right of appeal.