

TRIBUNALS (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 – Powers, Procedure and Administration

Cases and proceedings

Section 61 – Venue for hearings

208. *Section 61* enables the Scottish Tribunals to be convened at any time and place in Scotland. Tribunal Rules may make further provision in this respect.

Section 62 – Conduct of cases

209. *Section 62* enables Tribunal Rules to make further provision in respect of the conduct of cases before the Scottish Tribunals. The Tribunal Rules may make provision so as to ensure that the Scottish Tribunals have the necessary powers, rights, privileges and authority regarding the citation attendance or examination of witnesses, the production of evidence, the preparation of reports and other matters relating to the conduct of a case.
210. Subsection (2) enables the Tribunal Rules to make provision by reference to the authority which is exercisable by a sheriff or the Court of Session.

Section 63 – Enforcement of decisions

211. This section enables Tribunal Rules to provide for the means by which an order of the Scottish Tribunals giving effect to a decision of the Tribunals is to be enforced.
212. Subsection (3) makes provision so that an order made by the Upper Tribunal under section 58 (judicial review cases) continues to have the same effect as an order made by the Court of Session on a petition for judicial review. Subsection (4), otherwise, enables the Tribunal Rules to make provision by reference to the means by which an order of a sheriff or the Court of Session is enforced.

Section 64 – Award of expenses

213. *Section 64* enables the Scottish Tribunals to award expenses only where this is provided for in Tribunal Rules. Where Tribunal Rules make provision for the award of expenses these may include provision as to the scales or rates of the expenses that are to be awarded; for the Tribunals to set-off the expenses against specified other sums; for interest to be paid at a rate to be specified in Tribunal Rules in the event of the expenses remaining unpaid; for wasted expenses to be disregarded (and to specify what constitutes wasted expenses); as well as such other factors that the Tribunals may take into account (subsections (3) and (4)).

Supplementary provisions

Section 65 – Additional powers

214. This section enables the Scottish Ministers, by regulations, to confer such additional powers on the Scottish Tribunals as are necessary or expedient for the proper exercise of their functions. Such regulations may provide for the application of rules of court made by the Court of Session by act of sederunt in relation to the Scottish Tribunals. In so doing, the regulations may make provision so that the process for making the act of sederunt should follow the procedure for making Tribunal Rules (see section 68(4)). The Lord President's approval is required before making any such regulations.

Section 66 – Application of enactments

215. The effect of this section is to enable the Scottish Ministers, by regulations, to modify the application of any enactment so far as they consider is necessary or expedient for the purposes of making or giving effect to Tribunal Rules. Such regulations may provide for the application of rules of court made by the Court of Session by act of sederunt in relation to the Scottish Tribunals. In so doing, the regulations may make provision so that the process for making the act of sederunt should follow the procedure for making Tribunal Rules (see section 68(4)). The Lord President's approval is required before making any such regulations.

Section 67 – Offences in relation to proceedings

216. **Section 67** allows the Scottish Ministers, by regulations, to create certain types of offences in relation to proceedings before the First-tier and Upper Tribunals. This allows offences to be created in connection with tribunals, for things like making false statements and concealing or destroying evidence. Section 67(1)(b) allows regulations to be made specifying circumstances in which a person cannot be compelled to give or produce evidence. Section 67(2) sets out the maximum penalties regulations may apply to any offences created.

Practice and procedure

Tribunal Rules

Section 68 – Tribunal rules

217. **Sections 68 to 73** make provision for the making of rules to regulate the practice and procedures to be adopted by the Scottish Tribunals which are to be known as Scottish Tribunal Rules (but are referred to in the Act as Tribunal Rules).
218. Subsections (3) and (4) of section 68 set out the process for making Tribunal Rules. Tribunal Rules are to be made by the Court of Session by act of sederunt and in accordance with Part 1 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013.
219. **Paragraph 13** of schedule 9 amends Part 1 of the 2013 Act so that the SCJC has the function of reviewing the practice and procedure used in the Scottish Tribunals (section 2(1)(ba) of the 2013 Act) and the function of preparing and submitting draft Tribunal Rules to the Court of Session (section 2(1)(c)(ii) of the 2013 Act). Section 4(1) and (2) of the 2013 Act also sets out the role of the Court of Session in approving, approving with modification, or rejecting the rules proposed by the SCJC.
220. Sub-paragraphs (6) to (10) of paragraph 13 of schedule 9 amend the 2013 Act with the effect of increasing the membership of the SCJC so as to include members representing the Scottish Tribunals and providing for the SCJC to establish a committee in pursuance of its functions in relation to the Scottish Tribunals under section 13A of the 2013 Act.

The Committee is to be chaired by one of the members of the SCJC representing the Scottish Tribunals, and its members are to be selected by the President of Tribunals.

Section 69 – Exercise of functions

221. **Section 69** allows Tribunal Rules to make provision about how a function of the Tribunals is to be exercised and by whom, or allow a specified person to make a decision about those matters. It also allows Tribunal Rules to confer functions on the persons named in subsection (4). Such Rules may provide for something to require further authorisation, allow something to be done on a person's behalf, or allow a specified person to make a decision about those matters. They may rely on the effect of practice directions issued under section 74.

Section 70 – Extent of rule-making

222. The extent of the provision which may be made by Tribunal Rules is set out in section 70. In particular, the generality of the power to make provision regulating the practice and procedure followed in the Scottish Tribunals is not limited by any other more specific provisions in the Act regarding the content of Tribunal Rules (subsection (4)). Tribunal Rules may also make equal or different provision in respect of the First-tier Tribunal and the Upper Tribunal (subsection (1)), particular provision for different chambers or divisions or different types of proceedings (subsection (2)) and, more generally, different provision for different purposes (subsection (3)).

Particular matters

Section 71 – Proceedings and steps

223. **Sections 71 to 73** set out specific matters on which Tribunal Rules may make provision.
224. **Section 71** allows Tribunal Rules to make provision for the purpose of proceedings in a case before the Tribunals, including as to the form and manner in which a case is to be brought before them, withdrawal of a case, whether or not two or more applications can be conjoined, time limits for making a referral of a matter to the Scottish Tribunals for decision or for taking steps as part of the proceedings, and circumstances in which the Tribunals may act of their own initiative.

Section 72 – Hearings in cases

225. **Section 72** allows Tribunal Rules to make provision about hearings, including as to when matters can be dealt with without one, whether a hearing is to be held in private or public, appearance and representation at hearings, notice of hearings, whether two or more sets of proceedings can be taken concurrently, adjournment with a view to resolution, and the imposition of reporting restrictions.

Section 73 – Evidence and decisions

226. **Section 73** allows Tribunals Rules to make provision about evidence given before the Scottish Tribunals, including as to the administering of oaths and presumptions to apply, and about their decisions (for example, how they are recorded and published).
227. **Sections 11(1)(b)** and **(2)(b)** (authority under regulations), **28(3)** (transfer-in of functions), **43(3)** (review of decisions), **59(2)** (additional matters), **61(2)** (venue for hearings), **62(1)** (conduct of cases), **63(1)** (enforcement of decisions) and **64(1)** and **(3)** (award of expenses) also deal with matters on which Tribunal Rules may make provision.

Issue and directions

Section 74 – Practice directions

228. This section sets out the process for issuing directions as to the practice and procedure to be followed in the Scottish Tribunals. Directions by the President of Tribunals may make provision with regard to both the First-tier Tribunal and the Upper Tribunal (subsection (1)).
229. Directions by a Chamber President may only make provision in respect of the chamber over which the Chamber President presides (subsection (2)) and can only be issued with the approval of the President of Tribunals (subsection (4)).
230. Directions by a Vice-President may only make provision in respect of the division over which the Vice-President presides (subsection (3)) and can only be issued with the approval of the President of Tribunals (subsection (4)).

Section 75 – Publication and effect

231. **Section 75** makes provision that the President of Scottish Tribunals must arrange for directions under section 74(1), (2) or (3) to be published in a manner they consider appropriate. Subsection (2)(b) specifies that directions may make different provision for different purposes as well as vary and revoke earlier directions.
232. In the event of any conflict arising between Tribunal Rules and directions issued by the Lord President under section 9 or by the President of Tribunals, a Chamber President or a Vice-President under section 74. The effect of section 75 is, in the event of any conflict, to provide for Tribunal Rules to prevail over any directions, directions of the Lord President to prevail over directions of the President of Tribunals, a Chamber President or Vice-President and directions of the President of Tribunals to prevail over directions of a Chamber President or Vice-President.

Fees and administration

Section 76 – Tribunal fees

233. This section allows the Scottish Ministers by regulations to make provision for the Scottish Tribunals to charge reasonable fees in respect of any matter dealt with by the Scottish Tribunals. The Scottish Ministers are required to consult the Lord President and, to such an extent as they consider appropriate, persons having an interest in the operation of the business of the Scottish Tribunals before exercising this power.

Section 77 – Administrative support

234. **Section 77** places a duty on the Scottish Ministers to provide property, services and personnel to the Scottish Tribunals so as to ensure their proper operation and the discharge of the Lord President's responsibility for the efficient disposal of business in the Tribunals. The Scottish Ministers are obliged to have regard to any representations made to them by the Lord President in this respect (subsection (2)).

Section 78 – Annual reporting

235. **Section 78** places a duty on the President of Tribunals to prepare an annual report for the Lord President on the operation and business of the Scottish Tribunals which must explain how the Tribunals have exercised their functions during the financial year (and may contain other information). The report is to be sent to the Scottish Ministers as well as published.