

TRIBUNALS (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8 – Final Provisions

General and ancillary

Section 79 – Regulation-making

236. *Section 79* makes further provision with regard to the various regulation-making powers set out in the Act including details as to the parliamentary procedure to be adopted.

Section 80 – Ancillary regulations

237. *Section 80* allows the Scottish Ministers, by regulations, to make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider is necessary or expedient for the purposes or in connection with the Act.

Section 81 and schedule 9 – Transitional and consequential

238. *Section 81* introduces schedule 9 which makes transitional arrangements and consequential modifications to other enactments.

Transitional and other matters

239. *Part 1* of schedule 9 sets out the transitional arrangements for the transfer of functions from existing tribunals to the Scottish Tribunals. Where the functions of a listed tribunal are transferred to the Scottish Tribunals by regulations made under section 27(2), paragraph 2 enables the Scottish Ministers to make provision, by regulations, for the procedural rules of the listed tribunal to continue to apply (with such modification as the Scottish Ministers consider to be necessary or expedient) to the exercise of those functions by the Scottish Tribunals.
240. The effect of paragraph 4 is to enable the Scottish Ministers, by regulations, to make Tribunal Rules until such time as the provisions conferring responsibility on the SCJC and the Court of Session for the making of Tribunal Rules are commenced. The Scottish Ministers are to consult the Lord President, the President of Tribunals and such other persons as they consider appropriate before making any such regulations.
241. Once the provisions conferring responsibility on the SCJC and the Court of Session for the making of Tribunal Rules are commenced, paragraph 6 has effect so that all rules applying by virtue of regulations made under paragraphs 2 and 4 are to be regarded as Tribunal Rules.
242. *Paragraphs 7 to 9* of schedule 9 make provision so as to enable the First-tier Tribunal not to be organised into chambers and the Upper Tribunal not to be organised into divisions until such time as they have acquired sufficient functions from the listed tribunals.

243. **Paragraph 10** allows any President, or equivalent of one, of the listed tribunals to sit as a Board member of the Judicial Appointments Board for Scotland (JABS) during the transfer-in stage. It also allows for a member of any listed tribunal to sit on a recruitment panel where they would hold the relevant expertise in the subject matter.

Consequential modifications

244. **Paragraph 11** of schedule 9 amends the Judicial Pensions and Retirement Act 1993 so that the ordinary and legal members of the Scottish Tribunals are added to the list of offices set out in Schedule 5 to that Act. By virtue of the operation of section 26 of that Act, those members of the Scottish Tribunals are required to retire from office on reaching the age of 70. Subsections (4) to (6) of that provision, however, enable those members to continue in office on an annual rolling basis up until the age of 75 if the Scottish Ministers, after consultation with the President of Tribunals, consider it is desirable in the public interest to allow those persons to continue in office.
245. **Paragraph 12** amends the Judiciary and Courts (Scotland) Act 2008 to bring the ordinary and legal members of the Scottish Tribunals within the remit of JABS and to exclude them from holding office as the Judicial Complaints Reviewer.
246. Sub-paragraph (2) amends section 10 of that Act so that any persons appointed to the positions of Vice-President or ordinary or other legal member of the Upper Tribunal, or Chamber President, Deputy Chamber President or ordinary or other legal member of the First-tier Tribunal fall within the remit of JABS. By virtue of section 11 of the 2008 Act, an individual cannot be appointed to one of these positions unless recommended for appointment by JABS.
247. Sub-paragraph (3) amends section 30 of the 2008 Act so that the ordinary and legal members of the Scottish Tribunals are disqualified from being appointed as the Judicial Complaints Reviewer.
248. Sub-paragraph (4) amends the composition of JABS so as to include representation from the Scottish Tribunals and sub-paragraph (5) sets out the proceedings that are to apply in respect of an appointment to the Scottish Tribunals.
249. **Paragraph 13** amends the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013. These amendments are explained in the commentary on Tribunal Rules (section 62).

Interpretation, commencement and short title

Section 82 and schedule 10 – Interpretation

250. **Section 82** defines “Lord President” for the purposes of the Act, and introduces a list of expressions used in the Act in schedule 10.

Section 83 – Commencement

251. **Section 83** makes provision as to the commencement of the Act. Sections 76 to 78 come into force on the day after Royal Assent. All other provisions are to come into force on such day as the Scottish Ministers may, by order, appoint. Any such order may include transitional, transitory or saving provision.