

## SCHEDULE 2

*(introduced by section 26(4))*

### THE SCOTTISH TAX TRIBUNALS

#### PART 1

##### APPOINTMENT OF MEMBERS

###### *President of the Tax Tribunals: eligibility for appointment*

- 1 (1) A person is eligible for appointment as President of the Tax Tribunals only if the person—
  - (a) has the qualifications, experience and training in relation to tax law and practice that the Scottish Ministers consider appropriate, and
  - (b) meets the criteria in either sub-paragraph (2) or (3).
- (2) A person meets the criteria in this sub-paragraph if the person is practising, and has practised for a period of not less than 10 years, as a solicitor or advocate in Scotland.
- (3) The person meets the criteria in this sub-paragraph if the person falls within a description specified by the Scottish Ministers by regulations.

###### *First-tier Tribunal: ordinary members*

- 2 (1) The Scottish Ministers must appoint persons as ordinary members of the First-tier Tribunal.
- (2) Before appointing a person as an ordinary member, the Scottish Ministers must consult the Lord President.
- (3) A person is eligible for appointment only if the person meets the criteria as to qualifications, experience and training that the Scottish Ministers prescribe by regulations.

###### *First-tier Tribunal: legal members*

- 3 (1) The Scottish Ministers must appoint persons as legal members of the First-tier Tribunal.
- (2) Before appointing a person as a legal member, the Scottish Ministers must consult the Lord President.
- (3) A person is eligible for appointment only if the person—
  - (a) has the qualifications, experience and training in relation to tax law and practice that the Scottish Ministers consider appropriate, and
  - (b) meets the criteria in either sub-paragraph (1) or (2) of paragraph 4.
- 4 (1) A person meets the criteria in this sub-paragraph if the person is practising, and has practised for a period of not less than 5 years, as a solicitor or advocate in Scotland.
- (2) The person meets the criteria in this sub-paragraph if the person falls within a description specified by the Scottish Ministers in regulations.

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*Upper Tribunal: legal members*

- 5 (1) The Scottish Ministers must appoint persons as legal members of the Upper Tribunal.
- (2) Before appointing a person as a legal member, the Scottish Ministers must consult the Lord President.
- (3) A person is eligible for appointment only if the person—
- (a) has the qualifications, experience and training in relation to tax law and practice that the Scottish Ministers consider appropriate, and
  - (b) meets the criteria in either sub-paragraph (1) or (2) of paragraph 6.
- 6 (1) A person meets the criteria in this sub-paragraph if the person is practising, and has practised for a period of not less than 10 years, as a solicitor or advocate in Scotland.
- (2) The person meets the criteria in this sub-paragraph if the person falls within a description specified by the Scottish Ministers in regulations.

*Disqualification from office*

- 7 A person is disqualified from appointment, and from holding a position, as President of the Tax Tribunals or as a member of the Tax Tribunals if the person is or becomes—
- (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the National Assembly for Wales,
  - (d) a member of the Northern Ireland Assembly,
  - (e) a member of the European Parliament,
  - (f) a Minister of the Crown,
  - (g) a member of the Scottish Government,
  - (h) a civil servant.

*Eligibility under regulations*

- 8 (1) Regulations under paragraph 4(2) may describe a person by reference to the matters mentioned in sub-paragraph (3), (4) or (8).
- (2) Regulations under paragraph 1(3) or 6(2) may describe a person by reference to the matters mentioned in sub-paragraph (5), (6) or (8).
- (3) The matter mentioned in this sub-paragraph (referred to in sub-paragraph (1)) is—
- (a) current practice as a solicitor or barrister in England and Wales or Northern Ireland, and
  - (b) engagement in practice as such for a period of not less than 5 years.
- (4) The matters mentioned in this sub-paragraph (also referred to in sub-paragraph (1)) are—
- (a) previous practice for a period of not less than 5 years as—
    - (i) a solicitor or advocate in Scotland, or
    - (ii) a solicitor or barrister in England, Wales or Northern Ireland, and
  - (b) subsequent engagement in any of the activities listed in sub-paragraph (7).
- (5) The matter mentioned in this sub-paragraph (referred to in sub-paragraph (2)) is—

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- (a) current practice as a solicitor or barrister in England and Wales or Northern Ireland, and
    - (b) engagement in practice as such for a period of not less than 10 years.
  - (6) The matters mentioned in this sub-paragraph (also referred to in sub-paragraph (2)) are—
    - (a) previous practice for a period of not less than 10 years as—
      - (i) a solicitor or advocate in Scotland, or
      - (ii) a solicitor or barrister in England, Wales or Northern Ireland, and
    - (b) subsequent engagement in any of the activities listed in sub-paragraph (7).
  - (7) The activities referred to in sub-paragraph (4)(b) and (6)(b) are—
    - (a) exercising judicial functions in any court or tribunal,
    - (b) practice or employment as a lawyer of any kind,
    - (c) whether or not in the course of practice or employment as a lawyer—
      - (i) advising on the application of the law,
      - (ii) drafting documents intended to affect rights or obligations under the law,
      - (iii) assisting persons involved in a legal or other process for the resolution of disputes as to the law,
      - (iv) acting as a mediator or arbitrator for the purpose of resolving disputes that are (or could be) the matter of legal proceedings,
    - (d) teaching or researching law at or for an educational institution.
  - (8) The matters mentioned in this sub-paragraph (also referred to in sub-paragraphs (1) and (2)) are suitability attributable to experience in law through current or previous engagement in—
    - (a) any of the activities listed in sub-paragraph (7), or
    - (b) an activity that is of a broadly similar nature to any of the activities listed in that sub-paragraph.
- 9 (1) The Scottish Ministers may by regulations make provision—
- (a) as regards the calculation of the 5-year period mentioned in paragraph 4(1) or 8(3) or (4)(a) (for example, by reference to recent or continuous time),
  - (b) as regards the calculation of the 10-year period mentioned in paragraph 1(2), 6(1) or 8(5) or (6)(a) (for example, by reference to recent or continuous time),
  - (c) to which paragraph 8(4)(a) or 8(6)(a) is subject (for example, by reference to debarment from practice),
  - (d) for the purpose of paragraph 8(8), about—
    - (i) the criteria for suitability (for example, by reference to equivalence to past or present practice as a solicitor),
    - (ii) the nature of experience required (for example, by reference to engagement for a particular period of time (within the United Kingdom or elsewhere)).
- (2) The Scottish Ministers may by regulations modify the list in paragraph 8(7).

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## PART 2

### CONDITIONS OF MEMBERSHIP ETC.

#### *Application of this Part*

- 10 (1) This Part of this schedule applies in relation to the positions of ordinary member and legal member of the Tax Tribunals (but not the position of judicial member of the tribunals).
- (2) The following paragraphs of this Part also apply in relation to the position of President of the Tax Tribunals—
- (a) paragraph 16 (with the modification that the reference in paragraph 16(c) to the President of the Tax Tribunals is to be read as a reference to the Scottish Ministers),
  - (b) paragraph 17.

#### *Initial period of office*

- 11 A person who is appointed to a position as a member of the Tax Tribunals holds the position for the period of 5 years beginning with the date of the appointment.

#### *Reappointment*

- 12 (1) Unless sub-paragraph (3) applies, a member of the Tax Tribunals is to be reappointed as such at the end of each period for which the position is held.
- (2) Reappointment under sub-paragraph (1) is to the position for the period of 5 years beginning with the date of the reappointment.
- (3) This sub-paragraph applies if—
- (a) the member has declined to be reappointed,
  - (b) the member is ineligible for reappointment,
  - (c) the President of the Tax Tribunals has recommended to the Scottish Ministers that the member should not be reappointed.
- (4) In sub-paragraph (1) the reference to the period for which a position is held is to—
- (a) the period for which the position is held in accordance with paragraph 11, or
  - (b) any further period for which the position is held by virtue of reappointment in accordance with sub-paragraphs (1) and (2).
- 13 For the purpose of paragraph 12(3)(b), a member is ineligible for reappointment only if the member would not be eligible for appointment to the position in accordance with the relevant provisions of Part 1 of this schedule were the member being appointed to the position for the first time.
- 14 For the purpose of paragraph 12(3)(c), the President of the Tax Tribunals may recommend to the Scottish Ministers that a member should not be reappointed only if satisfied that—
- (a) the member has failed to comply with—
    - (i) any of the relevant terms and conditions of membership, or
    - (ii) any other requirement imposed on the member by or under this Act,
 or

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- (b) the tribunal concerned no longer requires—
  - (i) a member with the qualifications, experience and training of that member, or
  - (ii) the same number of members for the efficient disposal of its business.

#### *Appointment to position of President*

- 15 (1) Sub-paragraph (2) applies where a legal member of the First-tier Tribunal or of the Upper Tribunal becomes by appointment President of the Tax Tribunals.
- (2) The appointment mentioned in sub-paragraph (1) supersedes the earlier appointment as a legal member.

#### *Termination of appointment*

- 16 A member of the Tax Tribunals ceases to hold the position to which the member was appointed if the member—
- (a) becomes disqualified from holding the position (see paragraph 7),
  - (b) is removed from the position under paragraph 41, or
  - (c) resigns the position by giving notice in writing to the President of the Tax Tribunals.

#### *Pensions etc.*

- 17 (1) The Scottish Ministers may make arrangements as to—
- (a) the payment of pensions, allowances and gratuities to or in respect of members of the Tax Tribunals or former members,
  - (b) contributions or other payment towards provision for such pensions, allowances and gratuities.
- (2) Under sub-paragraph (1), such arrangements may (in particular)—
- (a) include provision relating to payment of compensation for loss of office,
  - (b) make different provision for different types of member or other different purposes.

#### *Oaths*

- 18 (1) Each of the members of the Tax Tribunals must take the required oaths in the presence of the President of the Tax Tribunals.
- (2) In this paragraph, “the required oaths” means the oath of allegiance and the judicial oath as set out in the Promissory Oaths Act 1868 (c.72).

#### *Other conditions*

- 19 (1) Other than as provided for elsewhere in this Act or under it, the Scottish Ministers may determine the terms and conditions on which the members of the Tax Tribunals hold their positions.
- (2) Under sub-paragraph (1), a determination may (in particular)—

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- (a) include provision for sums to be payable by way of remuneration, allowances and expenses,
- (b) make different provision for different types of member or other different purposes.

### PART 3

#### CONDUCT AND DISCIPLINE

##### *Application of this Part*

- 20 (1) This Part of this schedule applies in relation to the positions of ordinary member and legal member of the Tax Tribunals (but not the position of judicial member of the tribunals).
- (2) Paragraphs 21 to 23 also apply to the position of the President of the Tax Tribunals.

##### *Conduct Rules*

- 21 The Scottish Ministers are responsible for making and maintaining appropriate arrangements for the things for which rules under paragraph 22(1) may make provision.
- 22 (1) The Scottish Ministers may make rules for the purposes of or in connection with—
- (a) the investigation and determination of any matter concerning the conduct of members of the Tax Tribunals,
  - (b) the review of any such determination.
- (2) Rules under sub-paragraph (1) may include provision about (in particular)—
- (a) the circumstances in which an investigation must or may be undertaken,
  - (b) the making of a complaint by any person,
  - (c) the steps that are to be taken by a person making a complaint before it is to be investigated,
  - (d) the carrying out of an investigation (including any steps to be taken by the member whom it concerns or by any other person),
  - (e) the time limits for taking steps and procedures for extending such time limits,
  - (f) the person by whom an investigation (or part of an investigation) is to be carried out,
  - (g) the matters to be determined by the person carrying out an investigation (or part of an investigation), the President of the Tax Tribunals or any other person,
  - (h) the making of recommendations by the person carrying out an investigation (or part of one),
  - (i) the obtaining of information relating to a complaint,
  - (j) the keeping of a record of an investigation,
  - (k) the confidentiality of communications or proceedings,
  - (l) the publication of information or its supply to any person.
- 23 Rules under paragraph 22(1)—
- (a) may make different provision for different purposes,

- (b) are to be published in such manner as the Scottish Ministers may determine.

*Reprimand etc.*

- 24 (1) Where the condition in sub-paragraph (2) is met in relation to a member of the Tax Tribunals, the President of the Tax Tribunals may, for disciplinary purposes, give the member—
- (a) formal advice,
  - (b) a formal warning, or
  - (c) a reprimand.
- (2) The condition is that—
- (a) an investigation has been carried out with respect to the member in accordance with rules made under paragraph 22(1), and
  - (b) the person carrying out the investigation has recommended that the President exercise the power conferred by sub-paragraph (1).
- 25 Paragraph 24 does not limit what the President of the Tax Tribunals may do—
- (a) informally,
  - (b) for other purposes, or
  - (c) where no advice or warning is given in a particular case.

*Suspension of membership*

- 26 (1) If the President of the Tax Tribunals considers that it is necessary for the purpose of maintaining public confidence in the Tax Tribunals, the President may suspend a member of the tribunals.
- (2) Suspension under sub-paragraph (1)—
- (a) is for such period as the President may specify when suspending the member,
  - (b) may be revoked or extended subsequently by the President.
- 27 Suspension under paragraph 26(1) does not affect any remuneration payable to, or in respect of, the member concerned during the period of suspension.

*Judicial Complaints Reviewer*

- 28 (1) The Judicial Complaints Reviewer has the functions mentioned in sub-paragraph (2).
- (2) The functions are—
- (a) on the request of a relevant person, to review the handling of an investigation carried out in accordance with rules made under paragraph 22(1) to consider whether the investigation has been carried out in accordance with the rules,
  - (b) in any case where the Reviewer considers that such an investigation has not been carried out in accordance with such rules, to refer the case to the Scottish Ministers,
  - (c) as directed by the Scottish Ministers, to prepare and publish reports on the investigations carried out in pursuance of such rules, and
  - (d) to make written representations to the Scottish Ministers about procedures for handling the investigation of matters concerning the conduct of members of the Tax Tribunals.

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- (3) The Scottish Ministers are to have regard to any written representations made under sub-paragraph (2)(d).
  - (4) In sub-paragraph (2)(a) “relevant person” means—
    - (a) the person whose complaint led to the carrying out of the investigation, or
    - (b) the member of the Tax Tribunals with respect to whom the investigation has been carried out.
- 29 (1) Sub-paragraph (2) applies where a case is referred to the Scottish Ministers by the Judicial Complaints Reviewer under paragraph 28(2)(b).
- (2) The Scottish Ministers may—
- (a) vary or revoke wholly or partly the determination made in the case to which the investigation relates,
  - (b) cause a fresh investigation to be carried out,
  - (c) confirm the determination in the case, or
  - (d) deal with the referral in such other way as the Scottish Ministers consider appropriate.

## PART 4

### FITNESS AND REMOVAL

#### *Application of this Part*

- 30 (1) This Part of this schedule applies in relation to the positions of ordinary member and legal member of the Tax Tribunals (but not the position of judicial member of the tribunals).
- (2) This Part also applies to the position of the President of the Tax Tribunals subject to the modifications mentioned in paragraph 42.

#### *Constitution and procedure*

- 31 (1) The Scottish Ministers must constitute a fitness assessment tribunal when requested to do so by the President of the Tax Tribunals.
- (2) The Scottish Ministers may constitute a fitness assessment tribunal—
- (a) in such other circumstances as they think fit, and
  - (b) following consultation with the President.
- (3) The function of a fitness assessment tribunal is to investigate and report on whether a member of the Tax Tribunals is unfit to hold the position of member of the tribunals.
- 32 (1) The Scottish Ministers may make rules as to the procedure to be followed in proceedings at a fitness assessment tribunal.
- (2) Rules under sub-paragraph (1) are to be published in such manner as the Scottish Ministers may determine.

#### *Composition and remuneration*

- 33 (1) A fitness assessment tribunal is to consist of—

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- (a) one person who is, or has been—
    - (i) a judge of the Court of Session (except a temporary judge), or
    - (ii) a sheriff (except a part-time sheriff),
  - (b) one person who is—
    - (i) where the member under investigation is an ordinary member, another ordinary member,
    - (ii) where the member under investigation is a legal member, another legal member, and
  - (c) one person who does not fall (and has never fallen) within a category of person referred to in paragraph (a) or (b).
- (2) The selection of persons to be members of the fitness assessment tribunal is to be made by the Scottish Ministers with the agreement of the Lord President.
- 34 (1) The Scottish Ministers—
- (a) must pay such expenses as they consider are reasonably required to be incurred to enable a fitness assessment tribunal to carry out its functions,
  - (b) may pay such remuneration to, and expenses of, any member of such a tribunal as they think fit.
- (2) Sub-paragraph (1)(b) does not apply in relation to such a member if the member is a sheriff or a judge of the Court of Session.

#### *Proceedings before fitness assessment tribunal*

- 35 (1) A fitness assessment tribunal may require any person—
- (a) to attend its proceedings for the purpose of giving evidence,
  - (b) to produce documents in the person's custody or under the person's control.
- (2) A person on whom such a requirement is imposed is not obliged to answer any question or produce any document which the person would be entitled to refuse to answer or produce in a court of law in Scotland.
- 36 (1) Sub-paragraph (2) applies where a person on whom a requirement has been imposed under paragraph 35(1)—
- (a) refuses or fails, without reasonable excuse—
    - (i) to comply with the requirement,
    - (ii) while attending the tribunal proceedings to give evidence, to answer any question,
  - (b) deliberately alters, conceals or destroys any document which the person is required to produce.
- (2) The Court of Session may, on an application made to it by the tribunal—
- (a) make such order for enforcing compliance or otherwise as it thinks fit, or
  - (b) deal with the matter as if it were a contempt of the Court.

#### *Suspension during investigation*

- 37 (1) Sub-paragraph (2) applies if the President of the Tax Tribunals requests the Scottish Ministers to constitute a fitness assessment tribunal to investigate whether a member of the Tax Tribunals is unfit to hold the position of member of the tribunals.

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- (2) The President may suspend the member from the position at any time before the fitness assessment tribunal submits its report as required by paragraph 40(2).
- (3) Suspension under sub-paragraph (2) lasts until (whichever is earlier)—
  - (a) the President revokes it, or
  - (b) the report is laid as required by paragraph 40(3).
- 38 (1) Sub-paragraph (2) applies if a fitness assessment tribunal—
  - (a) recommends that a member of the Tax Tribunals who is subject to its investigation should be suspended from the position as member of the tribunals,
  - (b) does so in writing at any time before the fitness assessment tribunal submits its report as required by paragraph 40(2).
- (2) The Scottish Ministers may suspend the member from the position at any time before laying the report as required by paragraph 40(3).
- (3) Suspension under sub-paragraph (2) lasts until (whichever is earlier)—
  - (a) the Scottish Ministers revoke it, or
  - (b) the report is laid as required by paragraph 40(3).
- 39 Suspension under paragraph 37(2) or 38(2) does not affect any remuneration payable to, or in respect of, the member concerned during the period of suspension.

#### *Report and removal*

- 40 (1) A report by a fitness assessment tribunal must—
  - (a) be in writing, and
  - (b) contain reasons for its conclusions.
- (2) As soon as reasonably practicable after it is completed, such a report must be submitted by the fitness assessment tribunal to—
  - (a) the Scottish Ministers, and
  - (b) the President of the Tax Tribunals.
- (3) The Scottish Ministers must lay before the Scottish Parliament each report submitted under sub-paragraph (2).
- 41 (1) If the relevant condition is met, the Scottish Ministers may remove a member of the Tax Tribunals from the position of member of the tribunals.
- (2) The relevant condition is that a fitness assessment tribunal has submitted a report under paragraph 40(2) concluding that the member is unfit to hold the position of member of the Tax Tribunals.

#### *Application of this Part to the President of the Tax Tribunals*

- 42 (1) This Part of this schedule applies in relation to the President of the Tax Tribunals with the following modifications.
- (2) In paragraph 31, sub-paragraphs (1) and (2)(b) do not apply.
- (3) Paragraph 33 is to apply in relation to a fitness assessment tribunal constituted to investigate and report on whether the President is unfit to hold that position as it applies to a legal member of the Tax Tribunals.

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- (4) In paragraph 37—
  - (a) sub-paragraph (1) does not apply,
  - (b) the references in sub-paragraphs (2) and (3)(a) to the President are to be read as references to the Scottish Ministers.
- (5) Paragraph 40(2)(b) does not apply.

#### *Interpretation*

- 43 In this Part of this schedule, the references to unfitness to hold the position of member of the Tax Tribunals are to unfitness by reason of inability, neglect of duty or misbehaviour.