

SOCIAL SECURITY ADMINISTRATION AND TRIBUNAL MEMBERSHIP (SCOTLAND) ACT 2020

EXPLANATORY NOTES

OVERVIEW

Part 2: Tribunal Membership

Section 15: Authorisation of judiciary to sit in Scottish Tribunals

88. Part 2 of the Act modifies the Tribunals (Scotland) Act 2014 (“the 2014 Act”).
89. The 2014 Act created a new structure for devolved tribunals in Scotland and established the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland, known collectively as the Scottish Tribunals. The Scottish Tribunals are responsible for hearing appeals against determinations made by Social Security Scotland.
90. The roll-out of new and newly devolved social security benefits will significantly increase the business of the Social Security Chamber of the First-tier Tribunal and, in turn, the Upper Tribunal (to which there is a further right of appeal). The amendments to section 18 (Authorisation of others) of the 2014 Act enable the resource and expertise of a wider group of existing judicial office holders, sitting in other courts or tribunals, to be quickly accessed in order to increase the capacity of both of the Scottish Tribunals. This will assist in ensuring the efficient and effective disposal of this increased business.
91. Section 15 of the Act modifies section 18 of the 2014 Act. Section 18 enables the Scottish Ministers, on receiving a request from the President of Tribunals, to authorise certain current and former judges of other courts and tribunals to assist in the disposal of the business of the Upper Tribunal. The judicial offices eligible for temporary authorisation include: a former judge of the Court of Session, a former Chairman of the Land Court, a former sheriff (excluding a part-time sheriff) or a current judge of a court or tribunal in a country or territory outwith Scotland.
92. Section 15(2) substitutes section 18(1) of the 2014 Act so as to enable persons to be temporarily authorised to act as a member of the First-tier Tribunal, as well as the Upper Tribunal. The mechanism mirrors that in place for the Upper Tribunal.
93. Section 15(3) inserts a new section 18(1A) which provides that the judicial offices eligible to sit in the First-tier Tribunal are a former or current judge of a court or tribunal in another part or parts of the UK, a current judge of an overseas court or tribunal and a current judge of an international court or tribunal.
94. Section 15(4) modifies section 18 by broadening out the list of those judicial offices eligible for temporary authorisation to sit in the Upper Tribunal so that it includes a former or current judge of a court or tribunal in another part or parts of the UK, a current

These notes relate to the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18) which received Royal Assent on 10 November 2020

judge of an overseas court or tribunal and a current judge of an international court or tribunal.

95. Section 15(6) replaces section 18(8) to enable the Scottish Ministers to make further arrangements as necessary when authorising certain judges. It also inserts a new subsection (8A) which ensures that there is a duty upon judges to take the judicial oath if they have not already done so.
96. Section 15(7) updates section 18(10) to provide relevant definitions.

Section 16: Consequential modifications

97. Section 16 of the Act sets out further consequential amendments to the 2014 Act.
98. These are minor amendments, consequential on changes made to section 18 of the 2014 Act. They revise references throughout the 2014 Act to an “extra judge”, which currently indicate that this position exists in the Upper Tribunal only. The amendments reflect that, under the new and amended provisions, the position of “extra judge” will now exist in both the First-tier Tribunal and Upper Tribunal. These changes are required to allow for the improved flexibility to use judiciary from outside Scotland provided for in section 15.