



# Social Security Administration and Tribunal Membership (Scotland) Act 2020

2020 asp 18

## PART 2

### TRIBUNAL MEMBERSHIP

#### 15 Authorisation of judiciary to sit in Scottish Tribunals

(1) Section 18 of the Tribunals (Scotland) Act 2014 is modified as follows.

(2) For subsection (1), substitute—

“(1) If requested to do so by the President of Tribunals, the Scottish Ministers may issue a temporary authorisation—

- (a) for a person falling within subsection (1A) to assist in the disposal of the business of the First-tier Tribunal,
- (b) for a person falling within subsection (2) to assist in the disposal of the business of the Upper Tribunal.”.

(3) After subsection (1), insert—

“(1A) A person falls within this subsection if the person is—

- (a) a judge of a relevant UK court or tribunal,
- (b) a former judge of a relevant UK court or tribunal,
- (c) a judge of an overseas court or tribunal, or
- (d) a judge of an international court or tribunal.”.

(4) In subsection (2)—

- (a) the “or” at the end of paragraph (a)(iii) is repealed,
- (b) for paragraph (b), substitute—
  - “(b) a judge of a relevant UK court or tribunal,
  - (c) a former judge of a relevant UK court or tribunal,
  - (d) a judge of an overseas court or tribunal, or
  - (e) a judge of an international court or tribunal.”.

(5) In subsection (4), for “the Upper Tribunal” substitute “the Tribunal concerned”.

(6) For subsection (8), substitute—

“(8) In the case of a person mentioned in subsection (1A)(a), (c) or (d) or (2)(b), (d) or (e), subsections (1) and (5) are subject to such further arrangements as the Scottish Ministers may make with a governmental or other body responsible for the administration of the court or tribunal concerned, or its judiciary, for the purposes of those subsections.

(8A) In the case of a person mentioned in subsection (1A) or (2)(b), (c), (d) or (e), if the person has not previously taken the required oaths, the person must take them in the presence of the President of Tribunals before acting as mentioned in subsection (4).”.

(7) For subsection (10), substitute—

“(10) In this section—

“an international court or tribunal” means a court or tribunal which exercises jurisdiction, or performs functions of a judicial nature, in pursuance of—

- (a) an agreement to which the United Kingdom or Her Majesty’s Government in the United Kingdom is a party, or
- (b) a resolution of the Security Council or General Assembly of the United Nations,

“an overseas court or tribunal” means a court or tribunal established under the law of a country or territory outwith the United Kingdom,

“a relevant UK court or tribunal” means a court or tribunal established under the law of one or more parts of the United Kingdom, excluding a court or tribunal established under the law of Scotland only,

“the required oaths” means the oaths of allegiance and the judicial oath as set out in the Promissory Oaths Act 1868.”.

## 16 Consequential modifications

(1) The Tribunals (Scotland) Act 2014 is modified as follows.

(2) In section 14—

- (a) in subsection (2)(b), for “the Upper Tribunal” substitute “the First-tier Tribunal or the Upper Tribunal (as the case may be)”,
- (b) in subsection (3)(b), after the second “of” insert “the First-tier Tribunal or”.

(3) In section 19—

- (a) in subsection (3), after “member” insert “of the First-tier Tribunal or”,
- (b) for subsection (4), substitute—

“(4) In this Act—

- (a) a reference to an extra judge in relation to the First-tier Tribunal is to a person falling within section 18(1A) (as read with section 18(4)),
- (b) a reference to an extra judge in relation to the Upper Tribunal is to a person falling within section 18(2) (as read with section 18(4)).”.

- (4) In section 37(4), for the definition of “member” substitute—
- ““member”, in relation to a Tribunal chamber—
- (a) means an ordinary, legal or judicial member of the Tribunal who is assigned to the chamber,
  - (b) while assigned to the chamber, also includes an extra judge who is authorised to act as mentioned in section 18(4).”
- (5) After section 38(4), insert—
- “(4A) Regulations under subsection (1) may include provision about the involvement in decision-making of an extra judge who is authorised to act as mentioned in section 18(4).”
- (6) For section 41(2), substitute—
- “(2) For the purposes of subsection (1), an extra judge in relation to the First-tier Tribunal or the Upper Tribunal is to be treated as if a member of the Tribunal concerned (with section 42(1) so applying accordingly).”
- (7) In paragraph 9 of schedule 4—
- (a) after sub-paragraph (1), insert—
 

“(1A) An extra judge who is authorised to act as mentioned in section 18(4) is to be assigned to at least one of the chambers.”,
  - (b) in sub-paragraph (2), after “member” insert “or such an extra judge”,
  - (c) in sub-paragraph (3), for “such a member” substitute “a judicial member”.
- (8) In schedule 10, after the entry for “judicial member (Upper)” insert—

“extra judge (First-tier)	Section 19(4)”.
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