



# Tribunals (Scotland) Act 2014

## 2014 asp 10

### PART 7

#### POWERS, PROCEDURE AND ADMINISTRATION

#### CHAPTER 1

#### POWERS AND ENFORCEMENT

#### *Cases and proceedings*

#### **61 Venue for hearings**

- (1) Each of the First-tier Tribunal and the Upper Tribunal may be convened at any time and place in Scotland to hear or decide a case or for any other purpose relating to its functions.
- (2) Subsection (1) is subject to any provision made by Tribunal Rules as to the question of when and where in Scotland the Scottish Tribunals are to be convened (and such Rules may allow the President of Tribunals to determine the question).

#### **62 Conduct of cases**

- (1) In relation to the things mentioned in subsection (3), each of the First-tier Tribunal and the Upper Tribunal has such powers, rights, privileges and other authority with respect to any case before it as are provided for in Tribunal Rules.
- (2) Rules making provision for the purpose of subsection (1) may (in particular) do so in relation to any kind of authority by reference to any authority of a relevant description exercisable by the sheriff or the Court of Session.
- (3) The things are—
  - (a) the citation, attendance or examination of witnesses,
  - (b) the recovery, production or inspection of relevant materials,
  - (c) the commissioning of reports of any relevant type,

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(d) other procedural, evidential or similar measures.

(4) In subsection (3)(b), “materials” means documents and other items.

### **63 Enforcement of decisions**

(1) A decision made by the First-tier Tribunal or the Upper Tribunal in any matter in a case before it is enforceable by the means provided for in Tribunal Rules.

(2) Subsection (1) applies to a decision—

(a) on the merits of such a case,

(b) as to—

(i) payment of a sum of money, or

(ii) expenses by virtue of section 64, or

(c) otherwise affecting the rights, obligations or interests of a party in such a case.

(3) Subsection (1) is subject to section 58(3) as respects a determination to which that section relates.

(4) Rules making provision for the purpose of subsection (1) may (in particular) do so in relation to a relevant order by reference to the means of enforcing an order of the sheriff or the Court of Session.

(5) In subsection (4), “relevant order” means order of either of the Tribunals giving effect to a decision to which subsection (1) applies.

### **64 Award of expenses**

(1) In connection with proceedings in a case before the First-tier Tribunal or the Upper Tribunal, the Tribunal may award expenses so far as allowed in accordance with Tribunal Rules.

(2) Where such expenses are awarded, the awarding Tribunal is to specify by and to whom they are to be paid (and to what extent).

(3) Tribunal Rules may make provision—

(a) for scales or rates of awardable expenses,

(b) for—

(i) such expenses to be set-off against any relevant sums,

(ii) interest at the specified rate to be chargeable on such expenses where unpaid,

(c) stating the general or particular factors to be taken into account when exercising discretion as to such expenses,

(d) about such expenses in other respects.

(4) Tribunal Rules may make provision—

(a) for disallowing any wasted expenses,

(b) for requiring a person who has given rise to such expenses to meet them.

(5) Rules making provision as described in subsection (3) or (4) may also prescribe meanings for “relevant sums”, “specified rate” and “wasted expenses” as used in this section.

### *Supplementary provisions*

#### **65 Additional powers**

- (1) The Scottish Ministers may by regulations confer on the First-tier Tribunal and the Upper Tribunal such additional powers as are necessary or expedient for the proper exercise of their functions.
- (2) Regulations under subsection (1) may include provision—
  - (a) relying on the effect of an act of sederunt made by the Court of Session,
  - (b) causing Part 1 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 to apply to the making of a relevant act of sederunt as it does to the making of Tribunal Rules.
- (3) Before making regulations under subsection (1), the Scottish Ministers must obtain the Lord President's approval.

#### **66 Application of enactments**

- (1) The Scottish Ministers may by regulations modify the application of any enactment so far as they consider to be necessary or expedient for the purposes of or in connection with the matters to which this subsection applies.
- (2) Regulations under subsection (1) may include provision—
  - (a) relying on the effect of an act of sederunt made by the Court of Session,
  - (b) causing Part 1 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 to apply to the making of a relevant act of sederunt as it does to the making of Tribunal Rules.
- (3) Subsection (1) applies to—
  - (a) the making of Tribunal Rules,
  - (b) the effect of—
    - (i) this Part, or
    - (ii) Tribunal Rules.
- (4) Before making regulations under subsection (1), the Scottish Ministers must obtain the Lord President's approval.

#### **67 Offences in relation to proceedings**

- (1) The Scottish Ministers may by regulations make provision, in relation to proceedings before the First-tier Tribunal or the Upper Tribunal—
  - (a) for offences and penalties—
    - (i) for making a false statement in an application in a case,
    - (ii) for failure by a person to attend, or give evidence in, such proceedings when required to do so in accordance with Tribunal Rules,
    - (iii) for alteration, concealment or destruction by a person of, or failure by a person to produce, something that is required to be produced in such proceedings in accordance with Tribunal Rules,
  - (b) about the circumstances in which a person need not give evidence or produce something (for example, where a person could not be compelled to give

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evidence or produce something in proceedings in a case before the sheriff or in the Court of Session).

- (2) The maximum penalties that may be provided for in regulations under subsection (1) are—
- (a) for an offence triable summarily only, imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both),
  - (b) for an offence triable either summarily or on indictment—
    - (i) on summary conviction, imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
    - (ii) on conviction on indictment, imprisonment for a term not exceeding 2 years or a fine (or both).
- (3) Before making regulations under subsection (1), the Scottish Ministers must obtain the Lord President’s approval.

## CHAPTER 2

### PRACTICE AND PROCEDURE

#### *Tribunal Rules*

#### **68 Tribunal Rules**

- (1) There are to be rules—
- (a) regulating the practice and procedure to be followed in proceedings at—
    - (i) the First-tier Tribunal,
    - (ii) the Upper Tribunal, and
  - (b) containing provision of other sorts appropriate with respect to the Scottish Tribunals (including in relation to the exercise by them of their functions).
- (2) Rules of the kind mentioned in subsection (1) are to be known as Scottish Tribunal Rules (and in this Act they are referred to as Tribunal Rules).
- (3) Tribunal Rules are to be made by the Court of Session by act of sederunt.
- (4) Part 1 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 includes further provision about the making of Tribunal Rules.

#### **69 Exercise of functions**

- (1) Tribunal Rules may confer functions on the persons mentioned in subsection (5) or the other members of the Scottish Tribunals.
- (2) Tribunal Rules may, in relation to any functions exercisable by the persons mentioned in subsection (5) or the other members of the Scottish Tribunals—
- (a) state—
    - (i) how a function is to be exercised,
    - (ii) who is to exercise a function,
  - (b) cause something to require further authorisation,
  - (c) permit something to be done on a person’s behalf,

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- (d) allow a specified person to make a decision about any of those matters.
- (3) Tribunal Rules may make provision relying on the effect of directions issued, or to be issued, under section 74.
- (4) Neither Tribunal Rules nor directions under section 74 may make provision altering the operation of section 37(1) or 39(1).
- (5) For the purposes of subsections (1) and (2), the persons are—
  - (a) the Lord President,
  - (b) the President of Tribunals,
  - (c) in the First-tier Tribunal—
    - (i) a Chamber President,
    - (ii) a Deputy Chamber President,
  - (d) a Vice-President of the Upper Tribunal.

## **70      Extent of rule-making**

- (1) Tribunal Rules may make—
  - (a) provision applying—
    - (i) equally to both of the First-tier Tribunal and the Upper Tribunal, or
    - (ii) specifically to one of them,
  - (b) particular provision for each of them about the same matter.
- (2) Tribunal Rules may make particular provision for different—
  - (a) chambers or divisions,
  - (b) types of proceedings.
- (3) Tribunal Rules may make different provision for different purposes in any other respects.
- (4) The generality of section 68(1) is not limited by—
  - (a) sections 71 to 73, or
  - (b) any other provisions of this Act about the content of Tribunal Rules.
- (5) As well as Chapter 1, see (for example) sections 28(5), 42(1), 43(3)(b) and 59(2).

### *Particular matters*

## **71      Proceedings and steps**

- (1) Tribunal Rules may make provision about proceedings in a case before the Scottish Tribunals.
- (2) Rules making provision as described in subsection (1) may (in particular)—
  - (a) provide for the form and manner in which a case is to be brought,
  - (b) allow for the withdrawal of a case (with or without restrictions on subsequent proceedings as respects the same matter),
  - (c) set time limits for—
    - (i) making applications,
    - (ii) taking particular steps,

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- (d) enable two or more applications to be conjoined in certain circumstances,
- (e) specify circumstances in which the Tribunals may take particular steps of their own initiative.

## **72      Hearings in cases**

- (1) Tribunal Rules may make provision about hearings in a case before the Scottish Tribunals.
- (2) Rules making provision as described in subsection (1) may (in particular)—
  - (a) provide for certain matters to be dealt with—
    - (i) without a hearing,
    - (ii) at a private hearing,
    - (iii) at a public hearing,
  - (b) require notice to be given of a hearing (and for the timing of such notice),
  - (c) specify persons who may—
    - (i) appear on behalf of a party in a case,
    - (ii) attend a hearing in order to provide support to a party or witness in a case,
  - (d) specify circumstances in which particular persons may appear or be represented at a hearing,
  - (e) specify circumstances in which a hearing may go ahead—
    - (i) at the request of a party in a case despite no notice of it having been given to another party in the case,
    - (ii) in the absence of a particular member chosen to exercise the function of deciding any matter in a case,
  - (f) enable two or more sets of proceedings to be taken concurrently at a hearing in certain circumstances,
  - (g) allow for an adjournment of a hearing for the purpose of giving the parties in a case an opportunity to use a process of negotiation, mediation, arbitration or adjudication for resolving a dispute to which the case relates,
  - (h) allow for the imposition of reporting restrictions for particular reasons arising in a case.

## **73      Evidence and decisions**

- (1) Tribunal Rules may, in connection with proceedings before the Scottish Tribunals—
  - (a) make provision about the giving of evidence and the administering of oaths,
  - (b) modify the application of any other rules relating to either of those matters so far as they would otherwise apply to such proceedings.
- (2) Tribunal Rules may, in connection with proceedings before the Scottish Tribunals, provide for the payment of expenses and allowances to a person who—
  - (a) gives evidence,
  - (b) produces a document, or
  - (c) attends such proceedings (or is required to do so).
- (3) Tribunal Rules may, in connection with proceedings before the Scottish Tribunals, make provision by way of presumption (for example, as to the serving of something on somebody).

- (4) Tribunal Rules may make provision about decisions of the Scottish Tribunals, including as to—
- (a) the manner in which such decisions are to be made,
  - (b) the incorporation in such decisions of findings in fact,
  - (c) the recording, issuing and publication of such decisions.

#### *Issuing directions*

### **74 Practice directions**

- (1) The President of Tribunals may issue directions as to the practice and procedure to be followed in proceedings at—
- (a) the First-tier Tribunal,
  - (b) the Upper Tribunal.
- (2) A Chamber President in the First-tier Tribunal may issue directions as to the practice and procedure to be followed in proceedings in the chamber over which the Chamber President presides.
- (3) A Vice-President of the Upper Tribunal may issue directions as to the practice and procedure to be followed in proceedings in the division over which the Vice-President presides.
- (4) Directions under subsection (2) or (3) may not be issued without the approval of the President of Tribunals.

### **75 Publication and effect**

- (1) The President of Tribunals must arrange for directions under section 74(1), (2) or (3) to be published in such manner as the President of Tribunals considers appropriate.
- (2) Directions under section 74(1), (2) or (3) may—
- (a) vary or revoke earlier such directions,
  - (b) make different provision for different purposes (in the same respects as Tribunal Rules).
- (3) If (and to the extent that) any conflict arises between—
- (a) directions issued under section 74(1), and
  - (b) directions issued under section 74(2) or (3),
- those issued under section 74(1) are to prevail.

## **CHAPTER 3**

### **FEES AND ADMINISTRATION**

### **76 Tribunal fees**

- (1) The Scottish Ministers may by regulations make provision for the reasonable fees that are to be payable in respect of any matter that may be dealt with by the Scottish Tribunals.

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- (2) Regulations under subsection (1) may provide for (in particular)—
  - (a) scales or rates of fees,
  - (b) in relation to fees—
    - (i) reduction in amount,
    - (ii) exemption or waiver.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult—
  - (a) the Lord President,
  - (b) to such extent as they consider appropriate, persons having an interest in the operation and business of the Scottish Tribunals.

## **77 Administrative support**

- (1) The Scottish Ministers must ensure that the Scottish Tribunals are provided with such property, services and personnel as the Scottish Ministers consider to be reasonably required for—
  - (a) the proper operation of the Tribunals, and
  - (b) the discharge of the Lord President’s responsibility as to the efficient disposal of business in the Scottish Tribunals (see section 7(1)).
- (2) The Scottish Ministers must have regard to any representations made to them by the Lord President in relation to the fulfilment of the duty under subsection (1).
- (3) In fulfilling the duty under subsection (1), the Scottish Ministers may—
  - (a) fund or supply property, services and personnel for use by the Tribunals,
  - (b) appoint persons as members of staff of the Tribunals.
- (4) The Scottish Ministers may make arrangements as to—
  - (a) the payment of remuneration or expenses to or in respect of persons so appointed,
  - (b) the payment of pensions, allowances and gratuities to or in respect of persons so appointed,
  - (c) contributions or other payments towards provision for such pensions, allowances and gratuities.
- (5) The references in subsection (4) to pensions, allowances and gratuities include pensions, allowances and gratuities to be paid by way of compensation for loss of office.

## **78 Annual reporting**

- (1) The President of Tribunals is to prepare an annual report about the operation and business of the Scottish Tribunals.
- (2) An annual report is to be given to the Lord President at the end of each financial year.
- (3) An annual report—
  - (a) must explain how the Scottish Tribunals have exercised their functions during the financial year,
  - (b) may contain such other information as—
    - (i) the President of Tribunals considers appropriate, or



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- (ii) the Lord President requires to be covered.
- (4) The Lord President must—
- (a) publish each annual report in a manner suitable for bringing it to the attention of persons having an interest in the operation and business of the Scottish Tribunals,
  - (b) before so publishing it, send a copy of the report to the Scottish Ministers.