

SCHEDULE 9
TRANSITIONAL AND CONSEQUENTIAL

PART 1

TRANSITIONAL AND OTHER MATTERS

Exercise of functions

- 1 (1) Sub-paragraph (2) applies for the purposes of—
- (a) the exercise of functions by a member of the Scottish Tribunals by virtue of this Act, and
 - (b) the operation of provisions in or under this Act to which such a member is subject.
- (2) Except where the context otherwise requires, it is immaterial whether a person who is, or who is acting as, such a member is in place by virtue of appointment, assignment, transfer-in or other means under this Act.

Rules of listed tribunals

- 2 (1) Sub-paragraph (2) applies where some or all of the functions of a listed tribunal have been, or are to be, transferred by regulations under section 28(2).
- (2) The Scottish Ministers may by regulations provide for the procedural rules of a listed tribunal that are in force immediately before the transfer to have effect for the purposes of either or both of the First-tier Tribunal and the Upper Tribunal.
- (3) Regulations under sub-paragraph (2) may provide for the procedural rules to which the regulations relate to have effect subject to such modifications as appear to the Scottish Ministers to be necessary or expedient with respect to the purposes mentioned in that sub-paragraph.
- (4) In this paragraph—
- “listed tribunal” is to be construed in accordance with Part 3 (see section 27(1)),
 - “procedural rules” means provision for the purposes of a listed tribunal (whether or not contained in an enactment and irrespective of whether called rules)—
- (a) regulating the practice or procedure to be followed in proceedings at a listed tribunal, or
 - (b) otherwise applying in relation to the exercise by a listed tribunal of its functions.
- 3 (1) Regulations under paragraph 2(2) may—
- (a) make different provision for different purposes,
 - (b) include supplemental, incidental, consequential, transitional, transitory or saving provision.
- (2) Regulations under paragraph 2(2) are subject to the negative procedure.

Status: This is the original version (as it was originally enacted).

Pre-SCJC rule-making

- 4 (1) Until the Scottish Civil Justice Council and the Court of Session are involved in the making of Tribunal Rules by virtue of the coming into force of paragraph 13(2) to (5)—
- (a) section 68(3) and (4) is of no effect,
 - (b) instead of that section, sub-paragraph (2) applies for the purpose of making rules—
 - (i) regulating the practice and procedure to be followed in proceedings at the Scottish Tribunals, or
 - (ii) containing provision of other sorts appropriate with respect to the Scottish Tribunals (including in relation to the exercise by them of their functions).
- (2) The function of making such rules is exercisable by the Scottish Ministers by setting them out in regulations.
- (3) Before making regulations under sub-paragraph (2), the Scottish Ministers must consult—
- (a) the President of Tribunals, and
 - (b) such other persons as they consider appropriate.
- 5 (1) Regulations under paragraph 4(2) may—
- (a) modify rules having effect as mentioned in paragraph 2(2) (by virtue of regulations made under that paragraph),
 - (b) do anything that may be done by Tribunal Rules by virtue of Chapter 2 of Part 7 (including the making of different provision for different purposes).
- (2) Regulations under paragraph 4(2) are subject to the negative procedure.

Adoption of inherited rules

- 6 (1) Sub-paragraph (2) applies to—
- (a) rules having effect as mentioned in paragraph 2(2) (by virtue of regulations made under that paragraph),
 - (b) rules set out in regulations made by virtue of paragraph 4(2).
- (2) Once the Scottish Civil Justice Council and the Court of Session are involved in the making of Tribunal Rules by virtue of the coming into force of paragraph 13(2) to (5)—
- (a) all rules to which this sub-paragraph applies are to be regarded as if made as Tribunal Rules under Chapter 2 of Part 7,
 - (b) all such rules have effect accordingly (and may therefore be revoked, amended or remade by Tribunal Rules under Chapter 2 of Part 7).

Chambers and divisions

- 7 (1) For as long as it appears to the Scottish Ministers that the acquisition of functions by the First-Tier Tribunal for the time being is such that there is justification for not organising it into a number of chambers as required by section 20(1), regulations under section 20(2)—
- (a) need not be made, or
 - (b) may provide for the Tribunal to have a single chamber only.

Status: This is the original version (as it was originally enacted).

- (2) For as long as it appears to the Scottish Ministers that the acquisition of functions by the Upper Tribunal for the time being is such that there is justification for not organising it into a number of divisions as required by section 23(1), regulations under section 23(2)—
- (a) need not be made, or
 - (b) may provide for the Tribunal to have a single division only.
- 8 (1) Sections 20(1) and (2) and 23(1) and (2) are subject to paragraph 7(1) and (2) (until it appears to the Scottish Ministers that the relevant justification no longer exists).
- (2) Any provision of this Act (apart from this schedule Part) that mentions a chamber or more than one chamber of the First-tier Tribunal is, for as long as by virtue of paragraph 7(1) the First-tier Tribunal has no chambers or a single chamber, to be read with such modifications as are necessary for the effective operation of the provision while the Tribunal is not organised into a number of chambers.
- (3) Any provision of this Act (apart from this schedule Part) that mentions a division or more than one division of the Upper Tribunal is, for as long as by virtue of paragraph 7(2) the Upper Tribunal has no divisions or a single division, to be read with such modifications as are necessary for the effective operation of the provision while the Tribunal is not organised into a number of divisions.
- 9 For the purposes of paragraph 7(1) and (2), the Scottish Ministers must have regard to the following matters so far as relevant for the time being—
- (a) the different subject-matters falling within the jurisdiction of the First-tier Tribunal or (as the case may be) the Upper Tribunal, and
 - (b) any other factors relevant in relation to the exercise of the functions of the First-tier Tribunal or (as the case may be) the Upper Tribunal.

Making appointments

- 10 (1) Until all of the functions of a listed tribunal have been transferred to the Scottish Tribunals by regulations under section 28(2)—
- (a) paragraph 3(1)(d) of schedule 1 to the 2008 Act has effect in relation to that tribunal as if the reference in that paragraph to a person holding the position of Chamber President or of Vice-President within the Scottish Tribunals includes the President of, or the holder of an equivalent office in, any listed tribunal,
 - (b) paragraph 16A(2) and (3) of schedule 1 to the 2008 Act has effect in relation to that tribunal as if the references in that paragraph to a member of the Scottish Tribunals includes a member of, or a person who exercises functions as, any listed tribunal.
- (2) In this paragraph—
- “the 2008 Act” means the Judiciary and Courts (Scotland) Act 2008 (see paragraph 12(4)(b) and (5)),
 - “listed tribunal” is to be construed in accordance with Part 3 (see section 27(1)).