

REVENUE SCOTLAND AND TAX POWERS ACT 2014

EXPLANATORY NOTES

THE ACT

Part 4 – the Scottish Tax Tribunals

Chapter 1 – Introductory

Section 20 – Overview

33. This section provides an overview of Part 4 of the Act which provides for the establishment of the Tax Tribunals to hear appeals and exercise other functions in relation to devolved taxes.

Chapter 2 – Establishment and Leadership

Establishment

Section 21 – The First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland

34. This section provides for the establishment of the First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland, referred to as the First-tier Tribunal and the Upper Tribunal and collectively as the Tax Tribunals in this Act.

Leadership

Section 22 – President of the Tax Tribunals

35. This section provides for the leadership of the Tax Tribunals. The Tax Tribunals will be led by the President of the Tax Tribunals who will be appointed by the Scottish Ministers after consultation with the Lord President of the Court of Session (who in terms of section 2 of the Tribunals (Scotland) Act 2014 will be Head of the unified Scottish Tribunals). The section provides that the President of the Tax Tribunals is to be appointed on such terms and conditions as are determined by the Scottish Ministers.
36. [Schedule 2](#) makes additional provision relating to the President of the Tax Tribunals.

Section 23 – Functions of the President of the Tax Tribunals

37. This section provides that the President of the Tax Tribunals is the senior member of the Tax Tribunals and has the functions laid out in this Act.

Section 24 – Business arrangements

38. This section sets out the President's functions in relation to the business of the Tax Tribunals and responsibility for the welfare of the members of the Tax Tribunals.

Section 25 – Temporary President

39. This section provides for the Scottish Ministers to appoint a temporary president (after consulting with the Lord President). The temporary president will be appointed from the legal members of the Tax Tribunals or from persons eligible to be legal members. All functions of the President can be carried out by a Temporary President. As such, all references to the President in this Act apply to a Temporary President.

Chapter 3 — Membership

Membership of Tax Tribunals

Section 26 – Members

40. This section provides that the First-tier Tribunal's membership will be made up of ordinary and legal members. The Upper Tribunal will be made up of legal members and Court of Session judges. Schedule 2 provides further details about ordinary and legal members.

Judicial members

Section 27 – Judicial members

41. This section provides that a Court of Session judge may sit as a member of the Upper Tribunal if authorised to do so by the President of the Tax Tribunals. Such an authorisation would have to be approved by the Lord President and by the person involved.

Status and capacity

Section 28 – Status and capacity of members

42. This section provides for the members of the Tax Tribunals to have judicial status and capacity for the purpose of making a decision on any case before the Tax Tribunals.

Chapter 4 — Decision-Making and Composition

Decision-making and composition: general

Section 29 – Decisions in the First-tier Tribunal

43. This section sets out the composition of a panel hearing a case in the First-tier Tribunal and details the President's responsibility for selecting the size and composition of the panel and the individual members that are to sit on the panel. The President may choose himself or herself.

Section 30 – Decisions in the Upper Tribunal

44. This section sets out the President's responsibility for selecting the legal member or members who will make up the panel in the Upper Tribunal. The President may choose himself or herself.

Section 31 – Composition of the Tribunals

45. This section allows the Scottish Ministers, by affirmative regulations, to make provision regarding the composition of the Tax Tribunals and may differentiate between decision making on a case heard at first instance or on appeal.

Decision by two or more members

Section 32 – Voting for decisions

46. **Section 32** allows the Scottish Ministers, by affirmative regulations, to make provision regarding how decisions are voted for in panels of two or more members and how ties are resolved.

Section 33 – Chairing members

47. **Section 33** makes provision for chairing members where a decision is being taken by two or more members. Subsection (1) specifies that tribunal rules may make provision for determining who will be the chairing member in a case before the First-tier or Upper Tribunal. Subsection (2) makes further provision for what can be specified in tribunal rules in relation to chairing members.

Chapter 5 — Appeal of Decisions

Appeal from First-tier Tribunal

Section 34 – Appeal from the First-tier Tribunal

48. This section provides that most decisions of the First-tier Tribunal can be appealed to the Upper Tribunal by a party in the case on a point of law. The appeal needs either the permission of the First-tier Tribunal or the Upper Tribunal. Subsection (5) lists the provisions where decisions of the First-tier Tribunal are final and cannot be appealed.

Section 35 – Disposal of an appeal under section 34

49. This section provides for the Upper Tribunal's consideration of an appeal from the First-tier Tribunal. When reaching a decision the Upper Tribunal may uphold or quash the decision of the First-tier Tribunal, and if it quashes it, it may remake the decision or remit the case back to the First-tier Tribunal with any directions the Upper Tribunal sees fit.

Appeal from Upper Tribunal

Section 36 – Appeal from the Upper Tribunal

50. This section provides for an appeal from the Upper Tribunal to the Court of Session. Such an appeal may only be made on a point of law and requires the permission of the Upper Tribunal or the Court of Session. Subsection (5) lists the provisions where decisions of the Upper Tribunal are final and cannot be appealed.

Section 37 – Disposal of an appeal under section 36

51. This section provides for the Court of Session's consideration of an appeal from the Upper Tribunal. When reaching a decision, the Court of Session may uphold or quash the decision of the Upper Tribunal, and if it quashes it, it may remake the decision or remit the case back to the Upper Tribunal with any directions the Court of Session sees fit.

Section 38 – Procedure on second appeal

52. This section makes provision for “second appeals” – appeals to the Court of Session from the Upper Tribunal, where the decision being appealed was itself a decision on an appeal from the First-tier Tribunal. The Tribunal or Court must not give permission for a second appeal unless the appeal raises an important point of principle or practice, or there is some other compelling reason for a second appeal to proceed. The Court of Session has the powers of either tribunal if remaking the decision appealed. The Court

may remit the case either to the Upper Tribunal or to the First-tier Tribunal. And where the Court remits the case to the Upper Tribunal, the Upper Tribunal may itself remit the case to the First-tier Tribunal. Where it does so, however, it must send to that tribunal any directions given by the Court of Session to the Upper Tribunal.

Further provision on permission to appeal

Section 39 – Process for permission

53. This section allows the Scottish Ministers, by regulations, to specify a time limit within which permission for an appeal must be sought. A refusal to give permission is not appealable under section 34 or 36.

Chapter 6 — Special Jurisdiction

Section 40 – Judicial review cases

54. This section provides for judicial review. The Court of Session may remit such a petition for judicial review to the Upper Tribunal if the Court of Session is content that the petition does not seek anything other than the exercise of the Court's judicial review function and the petition falls within a category specified by an act of sederunt made by the Court for the purposes of this subsection. The Court of Session also has to be satisfied that the matter in question falls within the functions and expertise of the tribunal.

Section 41 – Procedural steps where petition remitted

55. This section brings the Act into line with the corresponding provisions of the Courts Reform (Scotland) Act 2014 in respect of circumstances where the Court of Session remits a petition for judicial review to the Upper Tribunal. The effect in such cases is that the Upper Tribunal will have the same powers as the Court of Session would have had.

Section 42 – Decision on remittal

56. This section sets out that, when considering a petition remitted from the Court of Session, the Upper Tribunal, in determining the issues raised, has the same powers as the Court of Session and will apply the same principles that the Court of Session would when considering a petition for judicial review. An order made by the Upper Tribunal in these circumstances will have the same effect as if it was made by the Court of Session. This section does not limit the right of appeal from the Upper Tribunal to the Court of Session.

Section 43 – Additional matters

57. This section sets out that any step or order made by the Court of Session in a remitted case is to be treated as if it was made by the Upper Tribunal, further provisions on cases remitted from the Court of Session to the Upper Tribunal may be made in the tribunal rules.

Section 44 – Meaning of judicial review

58. This section defines what is meant by references to a petition to the Court of Session for a judicial review and to references to the exercise of the Court of Session's judicial review function.

Chapter 7 — Powers and Enforcement

Section 45 – Venue for hearings

59. This section provides that the Tax Tribunals may convene at any time or place in Scotland subject to any provision in tribunal rules, which may allow the President of the Tax Tribunals to determine the question.

Section 46 – Conduct of cases

60. This section provides that the Tax Tribunals' powers, authority, rights and privileges in relation to the following things (set out in subsection (3)) will be set out in tribunal rules and may reference any authority exercisable by a sheriff or the Court of Session:
- the attendance or examination of witnesses;
 - the recovery, production or inspection of relevant materials (documents and other items);
 - the commissioning of reports of any relevant type; and
 - other procedural, evidential or similar measures.

Section 47 – Enforcement of decisions

61. This section provides that a decision of the Tax Tribunals will be enforceable by provisions laid out in tribunal rules, and may reference the means of enforcing an order from a sheriff or the Court of Session.

Section 48 – Award of expenses

62. This section sets out that the Tax Tribunals may award expenses in accordance with tribunal rules.

Section 49 – Additional powers

63. This section provides that the Scottish Ministers may, by regulations, confer on the Tax Tribunals such additional powers as are necessary or expedient for the exercise of their functions.

Section 50 – Offences in relation to proceedings

64. **Section 50** allows the Scottish Ministers, by affirmative regulations, to create certain types of offences in relation to proceedings before the First-tier and Upper Tribunals. This allows offences to be created in connection with tribunals for things like making false statements and concealing or destroying evidence. **Section 50(1)(b)** allows regulations to be made specifying circumstances in which a person cannot be compelled to give or produce evidence. **Section 50(2)** sets out the maximum penalties regulations may apply to any offences created.

Chapter 8 — Practice and Procedure

Tribunal rules: general

Section 51 – Tribunal rules

65. This section provides for rules regulating the practice and procedure for both tiers of the Scottish Tax Tribunals to be established (subsection (1)), to be known as Scottish Tax Tribunal Rules (subsection (2)). Tribunal rules are to be contained in negative regulations made by the Scottish Ministers, as prescribed in subsection (3). Before making regulations the Scottish Ministers must consult the President of the Scottish

Tribunals referred to in section 4 of the Tribunals (Scotland) Act 2014 and such other persons as they consider appropriate.

Section 52 – Exercise of functions

66. This section provides that tribunal rules may state, in relation to functions exercised by members of the Tax Tribunals, how and by whom a function is to be exercised. They may provide for something to require further authorisation, permit something to be done on a person's behalf and allow specified persons to make certain decisions.

Section 53 – Extent of rule-making

67. This section provides that tribunal rules may apply to both tribunals or specifically to one or other tribunal. They may make particular provision for different types of proceedings or purposes.

Particular matters

Section 54 – Proceedings and steps

68. This section sets out that tribunal rules may make provision for proceedings of a case before the tax tribunal. In particular, they may detail how a case is to be brought, allow for the withdrawal of a case, set time limits for applications and taking particular steps, allow for two or more cases to be conjoined and specify when the tribunals may act on their own initiative.

Section 55 – Hearings in cases

69. This section sets out that tribunal rules may provide for when matters can be dealt with without a hearing, in a private hearing or at a public hearing. They will also detail when notice of a hearing has to be given, who may appear on behalf of a party in a case and who may attend to provide support to a party in a case or as a witness in a case. Tribunal rules will also detail when particular persons may appear or be represented at a hearing, and specify when a hearing may go ahead without notice in the absence of a particular member. Tribunal rules may also allow two or more sets of proceedings to be taken concurrently and may also cover when a case may be adjourned to allow the parties to try and resolve the dispute by alternative dispute resolution methods. The tribunal rules will also set out when reporting restrictions may be imposed.

Section 56 – Evidence and decisions

70. This section sets out that tribunal rules will cover giving evidence and administering oaths. Tribunal rules will also provide for the payment of expenses to persons giving evidence in certain circumstances. Rules might also, for example, state that a document which had been posted to a person would be presumed to have been duly served on that person, unless the contrary was proved. Tribunal rules may also make provisions relating to decisions of the Tax Tribunals, including how decisions are made, the incorporation of findings of fact, the recording of, issuing of and publication of such decisions.

Issuing directions

Section 57 – Practice directions

71. This section sets out that the President of the Tax Tribunals may issue directions relating to practice and procedure in both the First-tier and Upper Tribunal. Directions may include guidance and instruction on decision making, may revoke earlier directions and may make different provision for different purposes. Such directions may be published in a way the President thinks appropriate.

Chapter 9 — Administration

Section 58 – Administrative support

72. This section sets out the Scottish Ministers’ duty to provide the property, services and personnel the Tribunals require to carry out their function. The Scottish Ministers must have regard to any representations from the President of the Tax Tribunals on matters concerning administrative support.

Section 59 – Guidance

73. This section sets out that the President of the Tax Tribunals may issue such guidance relating to the administration of the Tax Tribunals as the President of the Tax Tribunals thinks fit. Such guidance will be published unless the President thinks that publication would prejudice the effective conduct of the Tax Tribunals’ functions. Members of the tax tribunals and officials supporting them must have regard to any guidance.

Section 60 – Annual reporting

74. This section provides that the President must produce an annual report and provides details of what the annual report must cover. The report must be given to the Scottish Ministers at the end of each financial year. The Scottish Ministers have a duty to lay a copy of the report before the Parliament prior to publishing it.

Chapter 10 — Interpretation

Section 61 – Interpretation

75. This section defines various expressions used in this Part, including “judicial member” and the “Lord President”.