

# **Delegated Powers and Law Reform Committee**

**20th Report, 2014 (Session 4)**

**Tribunals (Scotland) Bill as  
amended at stage 2**

©Parliamentary copyright. Scottish Parliamentary Corporate Body 2014.

Applications for reproduction should be made in writing to the Information Policy team, Office of the Queen's Printer for Scotland, Admail ADM4058, Edinburgh, EH1 1NG, or by e-mail to:  
[licensing@oqps.gov.uk](mailto:licensing@oqps.gov.uk).

OQPS administers the copyright on behalf of the Scottish Parliamentary Corporate Body.

Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by  
RR Donnelley.



The Scottish Parliament  
Pàrlamaid na h-Alba

# **Delegated Powers and Law Reform Committee**

**20th Report, 2014 (Session 4)**

**Tribunals (Scotland) Bill as  
amended at stage 2**

**Published by the Scottish Parliament on 5 March 2014**





The Scottish Parliament  
Pàrlamaid na h-Alba

## Delegated Powers and Law Reform Committee

### Remit and membership

#### Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
  - (a) any—
    - (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
    - (ii) [deleted]
    - (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
  - (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
  - (c) general questions relating to powers to make subordinate legislation;
  - (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
  - (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
  - (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
  - (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
  - (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

#### Membership:

Richard Baker  
Nigel Don (Convener)  
Mike MacKenzie  
Margaret McCulloch  
Stuart McMillan (Deputy Convener)  
John Scott  
Stewart Stevenson

**Committee Clerking Team:**

**Clerk to the Committee**

Euan Donald

**Assistant Clerk**

Elizabeth White

**Support Manager**

Daren Pratt



The Scottish Parliament  
Pàrlamaid na h-Alba

**Delegated Powers and Law Reform Committee**

**20th Report, 2014 (Session 4)**

**Tribunals (Scotland) Bill as amended at stage 2**

The Committee reports to the Parliament as follows—

1. At its meeting on 4 March 2014, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Tribunals (Scotland) Bill as amended at Stage 2 (“the Bill”)<sup>1</sup>. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.
2. The Bill creates a new structure for tribunals dealing with devolved matters. At present, a number of individual tribunals exist, each with an individual specialised remit which is conferred by statute. The Bill creates two new tribunals: a First-tier Tribunal for Scotland and an Upper Tribunal for Scotland. These would be collectively known as “the Scottish Tribunals”. It is intended that the functions of the existing devolved tribunals will transfer to these new tribunals. Schedule 1 to the Bill lists the tribunals whose functions may be transferred.
3. The Lord President of the Court of Session would be the Head of the Scottish Tribunals. A new office would also be created, the President of the Scottish Tribunals, responsible for the efficient disposal of business.
4. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill, in advance of Stage 3 of the Bill (“the SDPM”<sup>2</sup>).
5. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its [41<sup>st</sup> report of 2013](#).

---

<sup>1</sup> Tribunals (Scotland) Bill as amended at Stage 2 available at:  
[http://www.scottish.parliament.uk/S4\\_Bills/Tribunals%20\(Scotland\)%20Bill/b30as4-stage2-amend.pdf](http://www.scottish.parliament.uk/S4_Bills/Tribunals%20(Scotland)%20Bill/b30as4-stage2-amend.pdf)

<sup>2</sup> Tribunals (Scotland) Bill Supplementary Delegated Powers Memorandum available at:  
[http://www.scottish.parliament.uk/S4\\_Bills/Tribunals\\_SDPM\\_.pdf](http://www.scottish.parliament.uk/S4_Bills/Tribunals_SDPM_.pdf)

## DELEGATED POWERS PROVISIONS

6. The Committee considered each of the new or substantially amended delegated powers provisions in the Bill after Stage 2.

**7. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the new or substantially amended delegated powers provisions listed below and that it is content with the Parliamentary procedure to which they are subject:**

- Section 48(2) – Other appeal rights
- Section 62(1) – Scottish Tribunal Rules
- Section 68 – Practice directions
- Section 17(7B) – Authorisation of others
- Section 28A(2) – Accommodation of functions
- Section 28A(3) – Accommodation of functions
- Section 28B(1) – Redistribution of functions
- Section 32(2) – Conditions of membership etc.
- Section 37A(1) – Voting for decisions
- Section 37B(1) – Chairing members
- Schedule 7, paragraph 13A – Pensions etc.
- Section 61A(1) – Offences in relation to proceedings

8. However, insofar as the power at section 61A(1) is concerned, it should be noted that the Committee's contentment is only as a consequence of the Scottish Government's commitment to lodge an amendment at stage 3 amending this power.

9. The power in new section 61A(1) allows the Scottish Ministers to create offences and penalties in connection with proceedings before the Scottish Tribunals. Provision may be made making it an offence to give a false statement in an application in a case, to fail to attend or to give evidence before a Tribunal, or to alter, conceal or destroy, or fail to produce, something that is required to be produced in tribunal proceedings in accordance with Tribunal Rules. The power does not specify any maximum as regards the penalties which Ministers may impose when exercising their power to create offences of this kind. The Supplementary Delegated Powers Memorandum provides no explanation as to why Ministers require the power to set the maximum penalty rather than have that specified on the face of the Bill.

10. The Committee takes the view that it is for the Parliament to determine what the maximum penalty for an offence should be and that this is not a matter which should be delegated to Ministers. The Committee notes in this regard that the Government has agreed to bring forward an amendment at stage 3 which will clearly set out in the Bill the maximum penalties that can be imposed. The proposed maxima are: on summary conviction, imprisonment up to 12 months or a fine not exceeding the statutory maximum or both; and on conviction on indictment, imprisonment for a term not exceeding 2 years or a fine or both.

**11. The Committee therefore welcomes the Scottish Government's commitment to bring forward an amendment at stage 3 which will set the maximum penalties which may be imposed in relation to offences created by section 61(A) of the Bill.**

12. There was only one power which the Committee agreed to draw to the Parliament's attention. The Committee's comments on that power are detailed below.

### **Section 70(1) – Tribunal fees**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations</b>
<b>Parliamentary procedure:</b>	<b>negative</b>

13. Section 70(1) allows the Scottish Ministers, by regulations, to make provision for the Scottish Tribunals to charge reasonable fees in respect of any matter with which they deal. Ministers must consult the Lord President before making the regulations. The power has been amended at stage 2 to impose a new consultation requirement, to the effect that before making the regulations, the Scottish Ministers must consult "to such extent as they consider appropriate, persons having an interest in the operation and business of the Scottish Tribunals".<sup>3</sup>

14. In its report at stage 1, the Justice Committee recommended that where it is proposed through regulations under section 70(1) that a tribunal be given the power to charge expenses and fees where it did not have such a power previously, consultation should be carried out with users and stakeholders of the tribunal concerned.

15. The Committee observes that the amendment made at stage 2 is more limited than this in two respects. First, the duty to consult only exists to the extent that Ministers consider it appropriate and second, the persons who have to be consulted are "persons having an interest in the operation and business of the Scottish Tribunals". That may not necessarily include individual users of a particular tribunal.

16. Accordingly, while the amended power in section 70(1) could be used to require consultation in the manner recommended by the lead Committee, the provision as drafted does not require it to be used in this way. The Committee

---

<sup>3</sup> Tribunals (Scotland) Bill [as amended at stage 2] , Section 70(3)(b)

recognises that the current administration has stated clearly that it does not intend to use the power in section 70(1) to introduce new fees for tribunals, meaning that the issue of consultation on such a proposal is unlikely to arise under this administration. However, that commitment would not of course be binding on future administrations.

17. The Committee considers that whether or not it is appropriate for the power in section 70(1) to be subject to the limited consultation requirement added by amendment at stage 2 appears to be a matter of policy, which the Parliament as a whole will wish to be satisfied about.

**18. The Committee therefore draws the power in section 70(1), as amended at stage 2, to the attention of the Parliament.**



Members who would like a printed copy of this *Numbered Report* to be forwarded to them should give notice at the Document Supply Centre.

PRICES AND SUBSCRIPTION RATE

OFFICIAL REPORT daily editions

*Single copies: £5.00*

*Meetings of the Parliament annual subscription: £350.00*

WRITTEN ANSWERS TO PARLIAMENT QUESTIONS weekly compilation

*Single copies: £3.75*

*Annual subscriptions: £150.00*

Printed and published in Edinburgh by RR Donnelley and available from:

**Blackwell's Bookshop**

**53 South Bridge  
Edinburgh EH1 1YS  
0131 622 8222**

**Blackwell's Bookshops:**

243-244 High Holborn  
London WC1 7DZ  
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh

And through other good booksellers

**Blackwell's Scottish Parliament Documentation**

**Helpline** may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

**Telephone orders and inquiries**

**0131 622 8283 or  
0131 622 8258**

**Fax orders**

**0131 557 8149**

**E-mail orders, subscriptions and standing orders**  
**[business.edinburgh@blackwell.co.uk](mailto:business.edinburgh@blackwell.co.uk)**

**Scottish Parliament**

**All documents are available on the Scottish Parliament website at:**

**[www.Scottish.Parliament.uk](http://www.Scottish.Parliament.uk)**

For more information on the Parliament, or if you have an inquiry about information in languages other than English or in alternative formats (for example, Braille, large print or audio), please contact:

**Public Information Service**

The Scottish Parliament  
Edinburgh EH9 1SP

**Telephone: 0131 348 5000**

**Fòn: 0131 348 5395**(Gàidhlig)

**Textphone users** may contact us on  
**0800 092 7100.**

We also welcome calls using the RNID  
Typetalk service.

**Fax: 0131 248 5601**

**E-mail: [sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk)**

We welcome written correspondence  
in any language.

