



## Tribunals (Scotland) Bill

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Bill Number:	SP Bill 30
Introduced on:	8 May 2013
Introduced by:	Kenny MacAskill MSP
Passed:	11 March 2014
Royal Assent:	15 April 2014

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### Passage of the Bill

The Tribunals (Scotland) Bill was introduced in the Scottish Parliament on 8 May 2013 on behalf of the Scottish Government. The Justice Committee conducted Stage 1 scrutiny at meetings in May, June, September and October 2013. Following its appearance before the Justice Committee on 17 September 2013, the Scottish Government provided the committee with [further written information](#) on how the use of court judiciary in the First-tier Tribunal will work in practice.

The Finance Committee received six responses to its call for written evidence on the Bill's financial memorandum. These did not raise any substantial issues. The Finance Committee therefore decided not to undertake further scrutiny of the financial memorandum or to report to the Justice Committee on costs associated with the Bill.

The Justice Committee published its [Stage 1 report](#) on 14 October 2013 and the Stage 1 Debate took place on 7 November 2013.

The Justice Committee considered amendments to the Bill at Stage 2 on [4 February 2014](#). The [Stage 3 debate](#) took place on 11 March 2014. The Bill, as amended, received Royal Assent on 15 April 2014 to become the Tribunals (Scotland) Act 2014 (asp 10).

### Purpose and objectives of the Bill

The Bill's main policy objective was to create a new structure for devolved tribunals in Scotland. According to the Bill's Policy Memorandum, the aim was to make the current ad hoc system more coherent, to improve the quality of service for tribunal users and to create, "a structure that would reduce overlap,

eliminate duplication, ensure better deployment and allow for the wider sharing of available resources.” An additional objective was to provide for increased tribunal impartiality and independence from government. The Bill broadly follows the suggestions made in a 2011 report by the Scottish Committee of the Administrative Justice and Tribunals Council (“SCAJTC”) entitled “[Tribunal Reform in Scotland – A Vision for the Future](#).” A similar set of reforms had already been made in relation to tribunals which fall under the competence of the UK Government.

## **Provisions of the Bill**

The main changes made by the Bill were:

- The setting up of a new two-tier structure, involving a First-tier Tribunal for first instance decisions (i.e. the initial forum where an action is brought) and an Upper Tribunal which will primarily deal with appeals - collectively referred to as “the Scottish Tribunals”
- The granting of overall leadership of the new structure to the Lord President of the Court of Session and the setting up of an office known as the President of the Scottish Tribunals (a Court of Session judge) who will be responsible for day to day management of the system
- New rules on membership of the First-tier and Upper Tribunals and on: tribunal appointments, tenure, conduct, complaints and appeals
- The introduction of a new rule-making framework which gives the [Scottish Civil Justice Council](#) (SCJC) the power to propose procedural rules for certain devolved tribunals, (the “listed tribunals” in schedule 1 of the Bill). As a result of its on-going work in redrafting civil court rules, the SCJC would, however, not have sufficient capacity at the outset to draft the new tribunal rules. Therefore, in the interim rules would be drafted by the Scottish Ministers
- The creation of a statutory duty for various persons who are responsible for the administration of justice to uphold the independence of members of the Scottish Tribunals.

The aim was for the listed tribunals to be transferred to the new structure, with other tribunals potentially being transferred in at a later point in time. Tribunals with similar subject matters were to be grouped together in separate chambers within the structure.

## **Parliamentary consideration**

Provisions of the Bill which received particular attention during its parliamentary passage included:

- **Status and nature of tribunals** – Tribunals are often regarded as more informal and accessible, and potentially cheaper, than courts. Throughout the Bill’s passage, various arguments were made that the

Bill should guarantee that the specific nature of tribunals is preserved and that they should not become too similar to courts

- **Rule-making** – Issues were raised in relation to whether the Scottish Ministers would use expert advice when drafting new procedural rules in the interim period until the SCJC has sufficient capacity and also how rules would be made for the Upper Tribunal in this period
- **Tribunal fees and expenses** – The Bill allowed the procedural rules to include provision for the awarding of expenses. It also gave the Scottish Ministers the power to lay regulations which would allow tribunals to charge fees. Questions were raised on the scope of these powers and the degree to which they would be consulted on if introduced for specific tribunals
- **Salaried posts** – The Bill did not make provision for the appointment of full-time salaried judges in any of the tribunals envisaged by the Bill. A number of concerns were therefore raised regarding this perceived gap in the legislation.
- **The status of the Mental Health Tribunal** – Claims were made during the consultation leading up to the Bill that the Mental Health Tribunal should be given a special status in the new framework since it can deprive individuals of their liberty and impose treatment against their will. As a result, the Scottish Government made a commitment in the Policy Memorandum that the Mental Health Tribunal would initially be in a chamber on its own. Arguments were, however, made that the special status of the tribunal should be more permanent and should be enshrined in the Bill

The Scottish Government brought forward Stage 2 amendments in a number of areas, including: decision-making in the Scottish tribunals; the judicial status and capacity of tribunal members; appointments to tribunals (including allowing for permanent appointments); fitness to be a tribunal member; venues for tribunal hearings; and an obligation to consult stakeholders before introducing any tribunal fees.

In addition, the Scottish Government amended the Bill to include certain guiding principles which the Scottish Ministers and Lord President/President of the Scottish Tribunals must have regard to – namely, the principle that there is a need for proceedings before the Scottish Tribunals to be accessible and fair and to be handled quickly and effectively.

Opposition amendments to define the nature of a tribunal and to require the Mental Health Tribunal to be placed within a single mental health chamber were not agreed to.

The Scottish Government brought forward a number of predominately technical amendments at Stage 3, which were agreed to. An opposition amendment dealing with alternative dispute resolution was withdrawn. The opposition amendments which were disagreed to dealt with the role of the

SCJC and a proposal to change the parliamentary procedure for regulations on tribunal rules from the negative procedure to the affirmative procedure. The Bill, as amended, was passed.

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