

# **TRIBUNALS (SCOTLAND) BILL**

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## **EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)**

### **CONTENTS**

As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Tribunals (Scotland) Bill introduced in the Scottish Parliament on 8 May 2013:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 30–PM.

## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **THE BILL**

3. The Bill creates a new structure for tribunals dealing with devolved matters under the judicial leadership of the Lord President of the Court of Session as Head of the Scottish Tribunals.
4. The main features covered by the Bill are:
  - The creation of a First-tier Tribunal and an Upper Tribunal. The First-tier Tribunal will be divided into chambers, and the Upper Tribunal into divisions. The Bill creates a simplified framework to provide coherence across the tribunals system. The Bill allows the new structure to be capable of taking on new jurisdictions over time.
  - The First-tier Tribunal will deal with cases in the first instance to which a general right of appeal will lie to the Upper Tribunal. The Bill does, however, allow for the functions of a listed tribunal to be transferred to either or both Tribunals and it is envisaged that the Upper Tribunal may receive first-instance functions which are particularly complicated or controversial. The Upper Tribunal also has an express function, which is set out in section 41 of the Bill, to hear appeals from the First-tier Tribunal. It may also decide on petitions for judicial review which are transferred to it from the Court of Session under section 52.
  - The creation of a new office, the President of the Scottish Tribunals (“President of Tribunals”). The Lord President will be able to delegate some of the Lord President’s functions as Head of the Scottish Tribunals to the President of Tribunals.
  - The Bill enables the First-tier Tribunal and the Upper Tribunal to review their own decisions where, for example, simple administrative errors have occurred. This does not affect the rights of appeal available.
  - The Bill amends the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013, to provide the Scottish Civil Justice Council (“SCJC”) with the power to propose rules of procedure for devolved Scottish tribunals.
  - Each tribunal is to be composed of its members and the Bill provides a common system for appointing both legally qualified and lay members. The Bill also allows for the transfer-in of members of a listed tribunal at the point when its functions are transferred-in to the Scottish Tribunals. Members of the judiciary are also enabled to be assigned to act as tribunal members. Reflecting the primary functions of both

tribunals, a sheriff will be eligible to act as a member of both the First-tier Tribunal and the Upper Tribunal while a judge of the Court of Session will be eligible to act as a member of the Upper Tribunal.

## **OVERVIEW OF THE STRUCTURE OF THE BILL**

5. The Bill has 78 sections and 10 schedules. Section 76 contains definitions used in the Bill and schedule 10 is an index of expressions used in the Bill. The Bill is organised into 8 Parts and these explanatory notes are organised likewise. A brief overview of the structure of the Bill is set out below which is followed by a detailed description of the provisions of the Bill in the commentary on the sections. Terms are defined when first used but not otherwise. An explanation to accompany each schedule is contained within the section that introduces that schedule.

6. Part 1 makes provision for the establishment and leadership of the Scottish Tribunals.

7. Part 2 makes provision for the composition of the Scottish Tribunals and their internal structure.

8. Part 3 makes provision so that the functions and members of a tribunal listed in schedule 1 can be transferred-in to the Scottish Tribunals.

9. Part 4 contains more detail in relation to membership of the Scottish Tribunals. Schedules 3 to 6 deal with the appointment and assignment of members. Schedule 7 sets out the terms and conditions of membership including period in office, re-appointment, termination of appointment, disqualification from office, pensions and remuneration. Schedule 8 makes provision as to the training and fitness of members including the process for removing a member from office.

10. Part 5 makes provision as to the composition of the Scottish Tribunals when exercising their decision-making functions.

11. Part 6 enables both the First-tier Tribunal and Upper Tribunal to review their own decisions and to correct or set-aside those decisions. It also provides for a general right to appeal against a decision of the First-tier Tribunal to the Upper Tribunal and against a decision of the Upper Tribunal to the Court of Session. Chapter 2 of Part 6 also enables the Court of Session to remit an application for judicial review to the Upper Tribunal for determination.

12. Chapters 1 and 2 of Part 7 make provision in respect of the practice and procedure to be followed in proceedings before the Scottish Tribunals. Chapter 3 of Part 7 makes provision for the charging of fees by the Scottish Tribunals as well as the duty of the Scottish Ministers to ensure that the Scottish Tribunals are provided with the necessary property, services and personnel which are required for their proper operation, and reporting.

13. Part 8 contains general and ancillary provisions.

## **COMMENTARY ON SECTIONS**

### **PART 1 – THE SCOTTISH TRIBUNALS**

#### **Establishment and Leadership**

##### *Section 1 – Establishment of the Tribunals*

14. Section 1 establishes two new tribunals, the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland.

##### *Section 2 – Head of the Tribunals*

15. Section 2 designates the Lord President as the Head of the Scottish Tribunals. The Bill confers a number of functions on the Lord President in this capacity. See, for example, section 4(2) (assigning a person to the office of the President of the Scottish Tribunals), section 6 (representation of interests), section 7 (business arrangements), section 30 (assignment policy) and section 31 (training and review).

##### *Section 3 – Upholding independence*

16. Section 3 places a duty on the First Minister, the Lord Advocate, the Scottish Ministers, members of the Scottish Parliament and any other person having responsibility for matters relating to the Scottish Tribunals or the administration of justice to uphold the independence of the members of the Scottish Tribunals. It also imposes two particular duties on the First Minister, the Lord Advocate and the Scottish Ministers for the purpose of upholding that independence.

17. The first is a duty not to seek to influence the decisions of the Scottish Tribunals through special access to its members which would not be afforded to the general public.

18. The second is a duty to have regard to the need for members of the Scottish Tribunals to have the support necessary to enable them to carry out their functions.

##### *Sections 4 and 5 – President of the Tribunals*

19. Section 4 establishes the office of the President of the Scottish Tribunals. It is the responsibility of the Lord President to assign a judge of the Court of Session (other than a temporary judge) to the office who will be the senior member of the Scottish Tribunals. Once assigned to office, the President of Tribunals continues in that office for such time as the Lord President considers appropriate.

20. Where no person is assigned to act or the person assigned to act as the President of Tribunals is unable to act in that capacity, the Lord President may nominate a Vice-President of the Upper Tribunal to act temporarily as the President of Tribunals provided that that person is also a judge of the Court of Session (other than a temporary judge).

21. The Bill confers a number of functions directly on the President of Tribunals (see, for example, section 24(2) by which the President of Tribunals may assign a judicial member of the

Upper Tribunal as a Vice-President of that Tribunal) and also enables the Lord President to delegate a number of his or her functions to the President of Tribunals (see sections 8 and 9).

## **Overarching Responsibilities**

### *Section 6 – Representation of interests*

22. Under this section, the Lord President is responsible for representing the views of the members of the Scottish Tribunals to the Scottish Parliament and to the Scottish Ministers and for laying written representations before Parliament on matters of importance relating to the Scottish Tribunals. The Lord President is not authorised to delegate these specific duties under section 8.

### *Section 7 – Business arrangements*

23. Under section 7, the Lord President is responsible for making and maintaining appropriate arrangements to ensure the efficient disposal of business by the Scottish Tribunals and the welfare of their members. The Lord President may delegate the discharge of these responsibilities to the President of Tribunals (see section 8).

### *Section 8 – Delegation of functions*

24. Section 8 authorises the Lord President to delegate to the President of Tribunals the exercise of any of the functions listed in section 7(1) or (2) (business arrangements), section 30(1) and (2) (assignment policy) or section 31(1) or (2) (training and review). Section 8 should be read with section 9 which enables the Lord President to issue directions as to the exercise of any functions which are delegated under section 8.

### *Section 9 – Directions on functions*

25. This section enables the Lord President to issue directions as to the exercise of the functions of the President of Tribunals in relation to the Scottish Tribunals. This would include any functions conferred directly on the President of Tribunals by the Bill or any functions which are delegated to the President of Tribunals by the Lord President under section 8.

### *Section 10 – Authority under regulations*

26. Section 10 makes provision as to the exercise of the regulation-making powers contained in section 19(2) (chambers in the First-tier Tribunal), section 22(2) (divisions of the Upper Tribunal), section 35(1) (composition of the First-tier Tribunal) and section 37(1) (composition of the Upper Tribunal) by the Scottish Ministers. These are more fully explained in the explanatory notes relating to those sections.

### *Section 11 – Consultation on regulations*

27. This section imposes a consultation requirement on the Scottish Ministers before the exercise of the regulation-making powers contained in sections 19(2), 22(2), 35(1) and 37(1). These are more fully explained in the explanatory notes relating to those sections.

## **PART 2 – ORGANISATIONAL ARRANGEMENTS**

### **Membership types**

#### *Section 12 – Overview of membership*

28. Section 12 specifies the categories of member of the First-tier and Upper Tribunals. These are defined as ordinary members, legal members and judicial members. As can be seen from the more detailed provisions, judicial members will be those members of the courts judiciary who are authorised to act as members of the Scottish Tribunals (see section 16), legal members will be solicitors, advocates or persons possessing some other form of legal qualification (see Part 2 of schedule 3 and Part 2 of schedule 5) and ordinary members will comprise persons with such other qualifications, experience or training as are necessary for the Tribunals to exercise their functions (for example, doctors, surveyors, teachers or other lay persons) (see Part 1 of schedule 3 and Part 1 of schedule 5).

29. Subsection (2) provides that a member of one of the Scottish Tribunals (by virtue of being a member of that Tribunal) is not prevented from being a member of the other.

#### *Section 13 – Capacity of members*

30. The effect of section 13 is to clarify that all members of the Scottish Tribunals, when exercising the decision-making functions of the Tribunals are doing so with judicial status and capacity, regardless of the category of membership which they possess. Subsection (1) makes provision with respect to ordinary and legal members and subsection (2) clarifies that this does not affect the general status of judicial members (see section 16) and extra judges (see section 17).

#### *Section 14 – First-tier members*

31. Section 14 makes provision as to the membership of the First-tier Tribunal.

32. Under subsection (1), persons will become ordinary members of the First-tier Tribunal if they are transferred-in as ordinary members by virtue of section 28(b) or appointed as ordinary members by virtue of section 29(1). Similarly, subsection (2)(a) provides that persons will become legal members of the First-tier Tribunal if they are transferred-in as legal members by virtue of section 28(b) or are appointed as legal members by virtue of section 29(1).

33. Section 28(b) gives effect to paragraph 1 of schedule 2 which enables the Scottish Ministers, by regulations, to provide for a transferable person of a listed tribunal to transfer-in to the First-tier Tribunal as an ordinary or legal member. Further details are provided in the commentary on that section.

34. Section 29(1) gives effect to schedule 3 which enables the Scottish Ministers to appoint a person as an ordinary or legal member of the First-tier Tribunal. Further details are provided in the commentary on that section.

35. Subsections (2)(b) and (3) of section 14 provide that a person is also a legal member of the First-tier Tribunal if that person holds the position of Chamber President or Deputy Chamber

President. Where a legal member of the First-tier Tribunal is assigned as a Temporary Chamber President under paragraph 4 of schedule 4, that Temporary Chamber President will also be regarded as a legal member of the First-tier Tribunal but where a judicial member of the First-tier Tribunal is assigned as a Temporary Chamber President, that person will continue to be a judicial member.

#### *Section 15 – Upper members*

36. Section 15 makes provision as to the membership of the Upper Tribunal.

37. Under subsection (1), persons will become ordinary members of the Upper Tribunal if they are transferred-in as ordinary members by virtue of section 28(b) or appointed as ordinary members by virtue of section 29(3). Similarly, subsection (2)(a) provides that persons will become legal members of the Upper Tribunal if they are transferred-in as legal members by virtue of section 28(b) or are appointed as legal members by virtue of section 29(3).

38. Section 28(b) gives effect to paragraph 1 of schedule 2 which enables the Scottish Ministers, by regulations, to provide for a transferable person of a listed tribunal to transfer-in to the Upper Tribunal as an ordinary or legal member. Further details are provided in the commentary on that section.

39. Section 29(3) gives effect to schedule 5 which enables the Scottish Ministers to appoint a person as an ordinary or legal member of the Upper Tribunal. Further details are provided in the commentary on that section.

40. The effect of subsection (2)(b) of section 15 is that a Chamber President of the First-tier Tribunal, by virtue of holding that position, will also be a legal member of the Upper Tribunal (without the requirement to be separately appointed as a legal member of the Upper Tribunal). This provision does not have the effect of making Deputy Chamber Presidents or Temporary Chamber Presidents of the First-tier Tribunal legal members of the Upper Tribunal.

41. Subsections (2)(c) and (3) of section 15 provide that a person is also a legal member of the Upper Tribunal if that person is transferred-in or appointed as a Vice-President of the Upper Tribunal. Where a member of the courts judiciary is assigned as a Vice-President or a Temporary Vice-President of the Upper Tribunal that person remains a judicial member of the Upper Tribunal rather than becoming a legal member.

#### **Judiciary eligible to sit**

##### *Section 16 – Sheriffs and judges*

42. Section 16 provides for the circumstances in which members of the courts judiciary can be assigned to act as members of the Scottish Tribunals. Such persons make up the judicial members of the Scottish Tribunals (see section 18).

43. By virtue of subsection (1), sheriffs principal, sheriffs and part-time sheriffs are eligible to act as members of the First-tier Tribunal. Such persons may only act as members of the First-tier Tribunal with the authorisation of the President of Tribunals (subsection (3)). Such

authorisation can only be given with the Lord President's approval and the agreement of the sheriff concerned (and, if that person is not a sheriff principal, the sheriff principal of the sheriffdom to which that sheriff is appointed) (subsection (6)).

44. By virtue of subsection (2), judges of the Court of Session (including temporary judges) together with the Chairman of the Scottish Land Court, sheriffs principal and sheriffs (but not part-time sheriffs) are eligible to act as members of the Upper Tribunal. Such persons may only act as members of the Upper Tribunal with the authorisation of the President of Tribunals (subsections (3) and (4)). Such authorisation can only be given with the Lord President's approval and the agreement of that person (subsection (6)). Where the person is a sheriff (but not a sheriff principal), the authorisation of the President of Tribunals can only be given with the agreement of the sheriff principal of the sheriffdom to which that sheriff is appointed.

45. Subsection (2) does not apply to the Lord President and the President of Tribunals. Subsection (5) makes express provision for both the Lord President and President of Tribunals to act as members of the Upper Tribunal without any requirement for authorisation.

46. Any authorisation given by the President of Tribunals for a member of the courts judiciary to act as a member of the Scottish Tribunals remains in effect until such time as the President of Tribunals determines (which again requires the consent of the Lord President and the agreement of the person acting as a member (subsection (6))). Where the person is a sheriff (but not a sheriff principal), the determination of the President of Tribunals can also only be made with the agreement of the sheriff principal of the sheriffdom to which that sheriff is appointed.

#### *Section 17 – Authorisation of others*

47. Section 17 enables the Scottish Ministers, on receiving a request from the President of Tribunals, to authorise a retired judge of the Court of Session or a judge of the UK Upper Tribunal (established by section 3(2) of the Tribunals, Courts and Enforcement Act 2007) to assist in the disposal of the business of the Upper Tribunal by temporarily acting as a judicial member of the Upper Tribunal. It does not enable such a person to act as a member of the First-tier Tribunal.

48. The President of Tribunals cannot make a request for such an authorisation without the approval of the Lord President and the agreement of the person concerned (subsection (3)). A judge of the UK Upper Tribunal also requires the consent of the Senior President of Tribunals appointed under the 2007 Act (subsection (4)).

49. Subsection (7) enables the Scottish Ministers to make payments in respect of any person authorised to act under section 17.

50. Subsection (8) provides that the requirement to uphold the independence of the Scottish Tribunals in section 3 applies to any persons authorised to act under section 17 as it does in relation to the other members of the Scottish Tribunals. It also makes provision so that any previous oath taken by such a person will continue to apply in the person's role in the Scottish Tribunals.

*Section 18 – Judicial membership*

51. Section 18 clarifies the people who are to be regarded as judicial members of the Scottish Tribunals. Any reference to a judicial member of the Upper Tribunal does not include a reference to a judge authorised to act as such under section 17.

**Structure of the First-tier Tribunal**

*Section 19 – Chambers in the Tribunal*

52. Section 19 provides for the organisation of the First-tier Tribunal into chambers and the allocation of the Tribunal's functions among those chambers. The chambers are to be organised according to the subject-matter of the Tribunal's functions as well as any other factors which are relevant to the exercise of the Tribunal's functions.

53. The organisation into chambers and the allocation of the Tribunal's functions are to be effected by regulations made by the Scottish Ministers (subsection (2)). By virtue of section 10(1), those regulations may make provision authorising the Lord President, or relying on Tribunal Rules (see commentary on section 62), to determine these matters. By virtue of section 11(1), the Scottish Ministers must consult the Lord President and such other persons as they consider appropriate before making regulations under section 19(2).

54. Paragraph 7(1) of schedule 9 makes transitional provision so that the First-tier Tribunal need not be organised into chambers or may have only one chamber for such period until it has acquired sufficient functions so as to merit this.

*Section 20 – Chamber Presidents*

55. Section 20 provides that each chamber of the First-tier Tribunal must have one or two Chamber Presidents to preside over it. Subsection (2) prohibits a Chamber President from presiding over more than one chamber at the same time.

*Section 21 – Appointment to post*

56. This section provides that the Scottish Ministers, after consultation with the Lord President, are to appoint a Chamber President to preside over a particular chamber (subsections (1), (2) and (4)).

57. By virtue of section 15(2)(b), a Chamber President of the First-tier Tribunal is also a legal member of the Upper Tribunal. Section 21(3), therefore, makes provision so as to ensure that any person appointed to the position of Chamber President also meets the eligibility criteria which would be required of a person to be appointed as a legal member of the Upper Tribunal. The effect of subsection (3) is to provide that a person will only be eligible to be appointed as a Chamber President if he or she is, or meets the eligibility criteria for being appointed as, a legal member of the Upper Tribunal.

58. The eligibility criteria for appointment as a legal member of the Upper Tribunal are set out in Part 2 of schedule 5.

## **Structure of the Upper Tribunal**

### *Section 22 – Divisions of the Tribunal*

59. Section 22 provides for the organisation of the Upper Tribunal into divisions and the allocation of the Tribunal's functions among those divisions. The divisions are to be organised according to the subject-matter of the Tribunal's functions as well as any other factors which are relevant to the exercise of the Tribunal's functions (for example, whether or not the function relates to a decision at first instance or an appeal from a decision of the First-tier Tribunal).

60. The organisation into divisions and the allocation of the Tribunal's functions are to be effected by regulations made by the Scottish Ministers (subsection (2)). By virtue of section 10(1), those regulations may make provision authorising the Lord President, or relying on Tribunal Rules (see commentary on section 62), to determine these matters. By virtue of section 11(1), the Scottish Ministers must consult the Lord President and such other persons as they consider appropriate before making regulations under section 22(2).

61. Paragraph 7(2) of schedule 9 makes transitional provision so that the Upper Tribunal need not be organised into divisions or may have only one division for such period until it has acquired sufficient functions so as to merit this.

### *Section 23 – Vice-Presidents*

62. Section 23(1) and (2) provides that each division of the Upper Tribunal must have one or two Vice-Presidents to preside over it. Subsection (2) prohibits a Vice-President from presiding over more than one division at the same time.

63. Section 23 is subject to section 24(1)(b) which enables the President of Tribunals to assign himself or herself as a Vice-President of one or more divisions of the Upper Tribunal.

64. Section 24 sets out the procedure where the President of Tribunals or another judicial member of the Upper Tribunal may be assigned to act as a Vice-President. Section 25 sets out the procedure by which a person who is not a judicial member of the Upper Tribunal may be appointed to that position.

### *Section 24 – Assignment to post*

65. Section 24 provides for the assignment of a judicial member of the Upper Tribunal as a Vice-President.

66. Subsection (1) enables the President of Tribunals to assign himself or herself as a Vice-President. As a Vice-President, the President of Tribunals may preside over more than one division of the Upper Tribunal.

67. Subsection (2) enables the President of Tribunals to assign any other judicial member of the Upper Tribunal (other than the Lord President) as a Vice-President to preside over a particular division. Such an assignment can only be made with the Lord President's approval and the assignee's agreement (subsection (4)).

*Section 25 – Appointment to post*

68. Section 25(1) enables the Scottish Ministers, following a request by the President of Tribunals and after consultation with the Lord President, to appoint a person as a Vice-President to preside over a particular division of the Upper Tribunal (subsections (1), (2) and (4)).

69. By virtue of section 15(2)(c) and (3) a person appointed as a Vice-President is a legal member of the Upper Tribunal. Section 25(3), therefore, makes provision so as to ensure that any person appointed to the position of Vice-President meets the eligibility criteria which would be required of a person to be appointed as a legal member of the Upper Tribunal. The effect of subsection (3) is to provide that a person will only be eligible to be appointed as a Vice-President if he or she is, or meets the eligibility criteria to be appointed as, a legal member of the Upper Tribunal. It excludes a person who is already appointed as Vice-President of the Upper Tribunal.

70. The eligibility criteria for appointment as a legal member of the Upper Tribunal are set out in Part 2 of schedule 5.

### **PART 3 – TRANSFER-IN FROM LISTED TRIBUNALS**

*Section 26 and schedule 1 – Listed tribunals*

71. Section 26(1) gives effect to schedule 1 which sets out a list of tribunals from which the functions and members can be transferred-in to the Scottish Tribunals by virtue of regulations made under sections 27 and 28.

72. Part 1 of schedule 1 contains the list of tribunals. Part 2 of that schedule contains further elaboration to assist in identifying the tribunal and the functions which may be the subject of transfer. For example, in relation to the entry for a Scottish Charity Appeals Panel, paragraph 12(2) of schedule 1 provides that it is only the functions exercisable by virtue of section 75(1) of the Charities and Trustee Investment (Scotland) Act 2005 which may be transferred-in to the Scottish Tribunals. Similarly, the Crofting Commission exercises a number of executive functions under the Crofters (Scotland) Act 1993 which it is not intended to transfer-in to the Scottish Tribunals. In relation to the entry for the Crofting Commission, paragraph 12(3) of schedule 1 provides that it is only the Commission's functions in relation to the resolution of disputes which are exercisable in the manner of a tribunal that may be transferred-in to the Scottish Tribunals.

73. Subsection (2) allows the Scottish Ministers to modify the listed tribunals and further details of those tribunals as set out in schedule 1.

74. Subsection (3) provides that regulations can only add a tribunal to the list in Part 1 of schedule 1 if it is established by or under an enactment. Subsection (4) makes provision in order to clarify what is meant by the term tribunal for this purpose and to clarify that a body may be listed if, and to the extent that, it has decision-making functions which are exercisable in the manner of a tribunal. The effect of this is that a body can only be added to the list in schedule 1 if, and to the extent that, it has functions for the independent resolution of disputes in a similar fashion to those traditionally exercised by tribunals.

75. Subsection (5)(a) and (b) makes express provision to make it clear that the Scottish Land Court or any other Scottish court cannot be added to the list in schedule 1. Accordingly, the Bill does not enable any functions of the Scottish Land Court or the other Scottish courts to be transferred-in to the Scottish Tribunals. Subsection (5)(c) also prevents the functions of the tribunals mentioned in that subsection from being transferred-in to the Scottish Tribunals.

*Section 27 – Transfer-in of functions*

76. Section 27(2) enables the Scottish Ministers, by regulations, to provide for some or all of the functions of a listed tribunal to be transferred to the Scottish Tribunals. The regulations may provide for the functions to be transferred to the First-tier Tribunal, the Upper Tribunal or both Tribunals.

77. Where regulations made under subsection (2) provide for the functions of a listed tribunal to be transferred to both of the Scottish Tribunals, the regulations may make provision transferring certain functions to one Tribunal and certain functions to the other. They can also provide for a particular function to be transferred to both Tribunals but, where they do so, subsections (3) and (5) require the regulations to make provision so that it can be ascertained when the function is exercisable by the First-tier Tribunal and when it is exercisable by the Upper Tribunal. In doing this, the regulations can provide for this to be determined in Tribunal Rules (see commentary on section 62) or by the President of Tribunals.

78. Subsection (4) enables the Scottish Ministers, by regulations, to provide for a redistribution of any functions which have been transferred-in to the Scottish Tribunals between those Tribunals.

79. Subsection (6) provides that any regulations made under subsection (2) or (4) may make further provision in order to give full effect to the transfer or redistribution of functions. This includes the modification of any enactment which makes provision in relation to a listed tribunal (subsection (7)).

80. Regulations made under subsection (2) may only relate to one of the listed tribunals (subsection (8)). This will require separate regulations to be made in respect of each listed tribunal.

*Section 28 and schedule 2 – Transfer-in of members*

81. Section 28 introduces schedule 2 which makes provision enabling the transfer of members of the listed tribunals to the Scottish Tribunals where some or all of their functions are, similarly, transferred.

82. Paragraph 1 of schedule 2 enables the Scottish Ministers, by regulations, to make provision to transfer some or all of the transferable persons to a position or positions in the Scottish Tribunals.

83. In relation to a listed tribunal, a transferable person is a member (of the tribunal or any panel or other body from which the tribunal members are selected) or an authorised decision-maker of that tribunal, or a person who constitutes the tribunal (paragraph 1(2) of schedule 2).

84. Paragraph 1(3) of schedule 2 excludes from transfer, a sheriff or judge of the Court of Session or the President of the Lands Tribunal for Scotland (if he or she holds another judicial office) who may, otherwise, fall within the definition of transferable persons. Rather than transferring-in as a legal or ordinary member of the Scottish Tribunals, it is anticipated that such persons will be authorised to act as judicial members in accordance with sections 16 and 18.

85. Paragraph 2 of schedule 2 enables regulations made under paragraph 1(1) of schedule 2 to make provision preserving, altering or replacing the terms and conditions on which a transferable person is transferred to the Scottish Tribunals.

86. Paragraph 3 of schedule 2 sets out limitations on the regulation-making power contained in paragraph 1(1) of schedule 2. Such regulations may only be made where some or all of the functions of a listed tribunal have been or are to be transferred to the Scottish Tribunals (paragraph 3(1)). The regulations may not transfer a person to a position in the Scottish Tribunals for which he or she would not be eligible to be appointed (paragraph 3(2)). The regulations may also make provision in relation to members of only one listed tribunal at a time (paragraph 3(3)).

87. Paragraph 4 of schedule 2 sets out the positions in the Scottish Tribunals to which a transferable person may be transferred.

#### **PART 4 – MORE ABOUT MEMBERSHIP ETC.**

##### *Section 29 – Scheduled provisions*

88. Section 29 introduces schedules 3 to 6.

##### *Schedule 3 – Appointment to First-tier Tribunal*

###### Schedule Part 1 – Ordinary members

89. Section 29(1) introduces schedule 3 which makes provision as to the eligibility and appointment of ordinary and legal members of the First-tier Tribunal.

90. Paragraphs 1 and 2 of schedule 3 provide that it is for the Scottish Ministers to appoint a person as an ordinary member of the First-tier Tribunal. A person may only be appointed as such, if the person has the qualifications, experience and training which are prescribed by the Scottish Ministers in regulations made under paragraph 1(2). The effect of this provision will be to allow the Scottish Ministers to prescribe a wide range of criteria by which a person will qualify to be appointed as an ordinary member. Regulations made under section 35(1) providing for the composition of the First-tier Tribunal when convened to exercise its decision-making functions may also make reference to these criteria. See the commentary on that section.

Schedule Part 2 – Legal members

91. Paragraphs 3 to 7 of schedule 3 make provision as to the eligibility and appointment of legal members of the First-tier Tribunal other than Chamber Presidents (about whom section 20 makes provision) and Deputy Chamber Presidents (about whom paragraphs 1 to 3 of schedule 4 make provision).

92. It is for the Scottish Ministers to appoint a person as a legal member of the First-tier Tribunal (paragraph 4(1)).

93. A person may be appointed as a legal member if he or she is practising as a solicitor or advocate in Scotland or as a solicitor or barrister in England and Wales or Northern Ireland and has been practising for a period of not less than 5 years (paragraphs 4(2) and 5(1)).

94. A person may also be appointed as a legal member if he or she falls within a description specified by the Scottish Ministers in regulations made under paragraph 5(2) of schedule 3 (paragraphs 4(2) and 5(2)).

95. Paragraph 6(2) enables regulations made under paragraph 5(2) of schedule 3 to make provision in relation to persons who previously practised as solicitors, advocates or barristers and who have engaged in another law-related activity. Paragraph 6(3) enables regulations to make provision in relation to persons engaged in the activities listed in paragraph 6(4) through which they have acquired a suitable experience in law. The activities listed in paragraph 6(4) include the exercise of judicial functions, practice as a lawyer, teaching or researching law at an educational institution and certain other legal activities such as advising on the application of the law, drafting legal documents and assisting in the resolution of disputes.

96. Paragraph 7 also enables the Scottish Ministers to make more particular provision as regards the eligibility criteria to be appointed as a legal member of the First-tier Tribunal including the calculation of the 5 year qualification period and modifying the list of activities set out in paragraph 6(4).

*Schedule 4 – Positions in the First-tier Tribunal*

97. Section 29(2) introduces schedule 4 which makes provision as to the appointment and assignment of Deputy Chamber Presidents and Temporary Chamber Presidents as well as the assignment of the members among chambers.

Schedule Part 1 – Deputy or Temporary President

*Deputy President*

98. Paragraph 1 provides that the Scottish Ministers may appoint a person as a Deputy Chamber President of a particular chamber if they are requested to make such an appointment by the President of Tribunals.

99. A person is eligible for appointment as a Deputy Chamber President if the person is already a legal member of the First-tier Tribunal (other than a Chamber or Deputy Chamber President) or if the person is not already a legal member of the First-tier Tribunal but is eligible

to be appointed as a legal member in accordance with paragraph 4(2) of schedule 3 (paragraph 2(1)).

100. The President of Tribunals may only request the Scottish Ministers to appoint a person as a Deputy Chamber President after consultation with the Chamber President of the chamber to which the appointment is to be made (paragraph 2(2)).

101. Paragraph 2(3) places a duty on the Scottish Ministers to give written reasons to the President of Tribunals where they do not make an appointment of a Deputy Chamber President following such a request.

102. Paragraph 3 makes provision so that a Deputy Chamber President can assist with the exercise of the functions of the Chamber President.

#### *Temporary President*

103. Paragraphs 4 and 5 enable the President of Tribunals to assign a legal or judicial member of the First-tier Tribunal as a Temporary Chamber President in the event of a temporary vacancy in the presidency of a chamber. A Chamber President cannot be assigned as a Temporary Chamber President of another chamber.

#### Schedule Part 2 – Assignment internally

104. Schedule Part 2 makes provision for assigning the various members of the First-tier Tribunal among the chambers.

105. The function of assigning the members of the First-tier Tribunal vests in the President of Tribunals (paragraph 6(1)) but is subject to the provision made in paragraphs 7 to 9 (paragraph 6(2)).

106. A Chamber President is to be assigned to the chamber to which he or she is appointed to preside over and may also be assigned to act as a legal member in another chamber (but cannot be assigned to another chamber to act as a Chamber President or Deputy Chamber President) (paragraph 7(1)). Any assignment of a Chamber President to act as a legal member of another chamber requires the concurrence of the Chamber President of that chamber as well as the agreement of the member being assigned.

107. A Deputy Chamber President is to be assigned to the chamber to which he or she is appointed and may also be assigned to act as a legal member in another chamber (but cannot be assigned to another chamber to act as a Chamber President or Deputy Chamber President) (paragraph 7(2)). Any assignment of a Deputy Chamber President to act as a legal member of another chamber requires the concurrence of the Chamber President of that chamber as well as the agreement of the member being assigned.

108. All other legal members of the First-tier Tribunal and its ordinary members are to be assigned to at least one chamber but may be assigned to more than one chamber (paragraph

8(2)). Any assignment to a chamber under paragraph 8 requires the concurrence of the Chamber President and the agreement of the member to be assigned (paragraph 8(3)).

109. Judicial members of the First-tier Tribunal are to be assigned to at least one chamber but may be assigned to more than one chamber (paragraph (9(1))). Any assignment to a chamber under paragraph 9 requires the concurrence of the Chamber President and the agreement of the member being assigned (paragraph 9(2)).

#### *Schedule 5 – Appointment to Upper Tribunal*

##### Schedule Part 1 – Ordinary members

110. Section 29(3) introduces schedule 5 which makes provision as to the eligibility and appointment of ordinary and legal members of the Upper Tribunal.

111. Paragraphs 1 and 2 of schedule 5 provide that it is for the Scottish Ministers to appoint a person as an ordinary member of the Upper Tribunal. A person may only be appointed as such, if the person has the qualifications, experience and training which are prescribed by the Scottish Ministers in regulations made under paragraph 1(2). The effect of this provision will be to allow the Scottish Ministers to prescribe a wide range of criteria by which a person will qualify to be appointed as an ordinary member. Regulations made under section 37(1) providing for the composition of the Upper Tribunal when convened to exercise its decision-making functions may also make reference to these criteria. See the commentary on that section.

##### Schedule Part 2 – Legal members

112. Paragraphs 3 to 7 of schedule 5 make provision as to the eligibility and appointment of legal members of the Upper Tribunal other than Vice-Presidents (about whom section 23 makes provision) or a person who is a legal member of the Upper Tribunal by virtue of being a Chamber President in the First-tier Tribunal by virtue of section 15(2)(b).

113. It is for the Scottish Ministers to appoint a person as a legal member of the Upper Tribunal (paragraph 4(1)).

114. A person may be appointed as a legal member if he or she is practising as a solicitor or advocate in Scotland or as a solicitor or barrister in England and Wales or Northern Ireland and has been practising for a period of not less than 7 years (paragraphs 4(2) and 5(1)).

115. A person may also be appointed as a legal member if he or she falls within a description specified by the Scottish Ministers in regulations made under paragraph 5(2) of schedule 5 (paragraphs 4(2) and 5(2)).

116. Paragraph 6(2) enables regulations made under paragraph 5(2) of schedule 5 to make provision in relation to persons previously practising as solicitors, advocates or barristers who have engaged in another law-related activity. Paragraph 6(3) enables regulations to make provision in relation to persons engaged in the activities listed in paragraph 6(4) through which they have acquired a suitable experience in law. The activities listed in paragraph 6(4) include the exercise of judicial functions, practice as a lawyer, teaching or researching law at an

educational institution and certain other legal activities such as advising on the application of the law, drafting legal documents and assisting in the resolution of disputes.

117. Paragraph 7 also enables the Scottish Ministers to make more particular provision as regards the eligibility criteria to be appointed as a legal member of the Upper Tribunal including the calculation of the 7 year qualification period and modifying the list of activities set out in paragraph 6(4).

#### *Schedule 6 – Positions in Upper Tribunal*

118. Section 29(4) introduces schedule 6 which makes provision for assigning a Temporary Vice-President and the assignment of the members of the Upper Tribunal among the divisions.

#### Schedule Part 1 – Temporary Vice-President

119. Paragraphs 1 and 2 enable the President of Tribunals to assign a legal member of the Upper Tribunal as a Temporary Vice-President in the event of a temporary shortage in the number of Vice-Presidents or a temporary vacancy in a position. A Vice-President cannot be assigned as a Temporary Vice-President of another division.

#### Schedule Part 2 – Assignment internally

120. Schedule Part 2 makes provision for assigning the various members of the Upper Tribunal among the divisions.

121. The function of assigning the members of the Upper Tribunal vests in the President of Tribunals (paragraph 3(1)) but is subject to the provision made in paragraphs 4 to 7 (paragraph 3(2)).

122. A Vice-President is to be assigned to the division to which he or she is appointed or assigned to preside over. A judicial member who is assigned to act as a Vice-President under section 24(2) may also be assigned to act as a judicial member in another division (but cannot be assigned to another division to act as a Vice-President) while a legal member who is appointed to act as a Vice-President under section 25(1) may also be assigned to act as a legal member in another division (but cannot be assigned to act as a Vice-President of that Division) (paragraph 4). This requires the concurrence of the Vice-President of the division to which the member is being assigned.

123. All other legal members of the Upper Tribunal (including a person who is a legal member of the Upper Tribunal by virtue of being a Chamber President in the First-tier Tribunal) and its ordinary members are to be assigned to at least one division but may be assigned to more than one division (paragraphs 5 and 6). Any assignment to a division under paragraphs 5 and 6 requires the concurrence of the Vice-President and the agreement of the member to be assigned (paragraph 5(3) or 6(3)).

124. All other judicial members of the Upper Tribunal are to be assigned to at least one division but may be assigned to more than one division (paragraph (7(1))). A person who is authorised to act as a judicial member of the Upper Tribunal under section 17(5) is also to be

assigned to at least one division but may be assigned to more than one division (paragraph 7(2)). Any assignment to a division under paragraph 7 requires the concurrence of the Vice-President and the agreement of the member being assigned (paragraph 7(3)).

*Section 30 – Assignment Policy*

125. This section places a duty on the Lord President to publish, and keep under review, a document setting out the policy to be adopted in relation to the assignment of the members of the Scottish Tribunals within each Tribunal.

126. Subsection (3) requires the policy to be designed to ensure that appropriate use is made of the knowledge and experience of the members.

127. The Lord President's functions under section 30(1) and (2) may be delegated to the President of Tribunals under section 8.

*Section 31 – Training and review*

128. Section 31(1) confers the responsibility for making and maintaining arrangements for the training and guidance of the members of the Scottish Tribunals (including any extra judges authorised to act under section 17(5)) on the Lord President.

129. Section 31(2) also enables the Lord President to make arrangements for the review of the competence and development of the ordinary and legal members of the Scottish Tribunals. The review of the competence and development of the judicial members is to continue to be assessed in their capacity as members of the courts judiciary in accordance with arrangements made under the Judiciary and Courts (Scotland) Act 2008.

130. The Lord President's functions under section 31 may be delegated to the President of Tribunals under section 8.

*Section 32 and schedule 7 – Conditions of membership etc.*

131. Section 32 introduces schedule 7 which makes provision as to the terms and conditions on which the ordinary and legal members of the Scottish Tribunals hold office as such. The terms of schedule 7 do not apply to judicial members (paragraph 1(1) of schedule 7).

*Initial period of office*

132. Where a person is appointed as a member of the Scottish Tribunals, paragraph 2(1) of schedule 7 provides for that person to hold that position for an initial period of 5 years.

133. Where a person is transferred-in as a member of the Scottish Tribunals, paragraph 2(2) and (3) of schedule 7 provides for that person to hold that position either until the end of the unexpired period of the appointment to the listed tribunal or the period of 5 years from the date of transfer (whichever comes first).

134. Paragraph 3 of schedule 7 provides that where a person holds a position in the Scottish Tribunals and is appointed to hold an additional position then the initial period of appointment for the additional appointment is to expire on the same date as the period of the earlier appointment.

#### *Reappointment*

135. Where a member's period of appointment expires (or, in the case of a member who is transferred-in, the initial period of office expires), paragraph 4 provides for that person to be reappointed for a period of 5 years unless the member declines to be reappointed, is no longer eligible for reappointment or the President of Tribunals has recommended to the Scottish Ministers that the member should not be reappointed. Paragraph 5 also requires the member to meet the eligibility criteria set out in schedule 3 or 5 as if that person was being appointed to the position for the first time.

136. Paragraph 6 sets out the bases on which the President of Tribunals can recommend to the Scottish Ministers that a member should not be reappointed.

137. Paragraph 7 clarifies that the re-appointment of a member is not subject to the same process as the initial appointment as set out in section 10(2A) of the Judiciary and Courts (Scotland) Act 2008. The act of re-appointing a member is, therefore, for the Scottish Ministers alone.

#### *Termination of appointment*

138. Paragraphs 8 and 9 set out the circumstances in which a person ceases to hold a position in the Scottish Tribunals. A member ceases to hold that position upon becoming disqualified from acting as a member of the Scottish Tribunals (see paragraph 11 of schedule 7); being removed from the position by the First Minister under paragraph 23 of schedule 8 following a conclusion by a fitness assessment tribunal that the member is unfit to hold that position; or resigning or retiring.

139. Section 26 of the Judicial Pensions and Retirement Act 1993 applies to the legal and ordinary members of the Scottish Tribunals which requires such a member to retire at the age of 70 subject to continuing in office in accordance with the provisions of subsections (4) (to (6) of that section. See the commentary on paragraph 10 of schedule 9.

140. Where an existing member of the Scottish Tribunals is appointed as a Chamber President, Deputy Chamber President or Vice-President, that person will cease to hold the previous position (paragraph 10).

#### *Disqualification from office*

141. Paragraph 11 sets out those persons who are disqualified from being a member of the Scottish Tribunals.

*Pensions etc.*

142. Paragraph 12 enables the Scottish Ministers to make arrangements for the payment of pensions, allowances and gratuities to, or in respect of, members or former members of the Scottish Tribunals.

*Oaths*

143. Paragraph 13 sets out a requirement for all legal and ordinary members of the Scottish Tribunals to take the oath of allegiance and the judicial oath as set out in the Promissory Oaths Act 1868. It also makes provision regarding the person before whom the oaths are to be taken and for oaths which have been previously taken to continue to apply.

*Other conditions*

144. Paragraph 14 is a general provision that enables the Scottish Ministers to determine the terms and conditions of a member of the Scottish Tribunals which are not provided for in the Bill including the payment of remuneration, expenses and allowances.

*Section 33 and schedule 8 – Conduct and fitness etc.*

145. Section 33 introduces schedule 8 which makes provision in connection with the conduct and fitness of the legal and ordinary members of the Scottish Tribunals.

146. Schedule 8 only applies to the legal and ordinary members of the Scottish Tribunals and not to the judicial members (paragraphs 1(1) and 11(1)). The conduct and fitness of the judicial members of the Scottish Tribunals will continue to be covered by the provision made in the Judiciary and Courts (Scotland) Act 2008.

147. The functions of the Lord President under schedule 8 may not be delegated under section 8.

*Conduct and discipline*

148. Paragraph 2 confers responsibility for making and maintaining appropriate arrangements for the investigation and determination of any matter concerning the conduct of the members of the Scottish Tribunals and the review of any such determination on the Lord President. The Lord President may make provision to this effect through Conduct Rules (paragraph 3). Paragraph 3(2) sets out a non-exhaustive list of the matters that may be covered by the Conduct Rules, which are required to be published under paragraph 4.

149. Paragraph 5 enables the Lord President to administer one of three types of disciplinary sanction where an investigation has been carried out and the investigator has recommended a disciplinary sanction. The disciplinary sanctions are set out in sub-paragraph (1) and are, in ascending order of severity: formal advice, a formal warning and a reprimand. This is a discretionary power and paragraph 6 makes it clear that this does not restrict what the Lord President may do informally.

150. Paragraph 7 provides for the suspension of a member of the Scottish Tribunals where the Lord President considers it necessary for the purpose of maintaining public confidence in the Scottish Tribunals. Such suspension does not affect any remuneration payable to, or in respect of the suspended member. An example of a situation where this might be used is when an allegation of a serious nature is made against a member of the Scottish Tribunals. This power is separate from the suspension provisions in paragraph 19 of schedule 8 which applies during an investigation by a fitness assessment tribunal.

151. Paragraph 9 confers the following functions on the Judicial Complaints Reviewer (established under section 30 of the Judiciary and Courts (Scotland) Act 2008): on the request of the person who had made the complaint which was the subject of an investigation or the member whose conduct has been investigated, to review the handling of an investigation in terms of procedure; where the procedure has not been followed, to refer such a case to the Lord President; to prepare and publish reports on investigations; and to make written representations to the Lord President about such procedures (to which the Lord President must have regard). The functions of the Judicial Complaints Reviewer only relate to the procedure adopted in an investigation and not the merits of the findings of the investigation.

152. Where the Reviewer refers a case to the Lord President under paragraph 9(2)(b), the Lord President may vary or revoke the determination (or part of it); cause a fresh investigation to be carried out; confirm the determination; or deal with the referral in such other way as the Lord President considers to be appropriate (paragraph 10).

153. Section 32 of the 2008 Act requires the Reviewer to comply with any guidance issued by the Scottish Ministers on the functions of the Reviewer set out in the Bill.

#### *Fitness and removal*

154. Paragraphs 11 to 22 provide for fitness assessment tribunals to be set up to investigate and report on whether a member of the Scottish Tribunals is unfit to hold the position by reason of inability, neglect of duty or misbehaviour.

155. The First Minister must constitute a tribunal when requested to do so by the Lord President (paragraph 13(1)). The First Minister may (but is not required to) constitute a tribunal in other circumstances if the First Minister thinks fit but only after consultation with the Lord President (paragraph 13(2)).

156. Paragraph 14 enables the Court of Session to make provision, by act of sederunt, with regard to the procedure to be adopted by a tribunal.

157. Paragraphs 15 and 16 provide for the composition and voting, and remuneration and expenses of the tribunal. Paragraph 15(2) provides for the members of a fitness assessment tribunal to be selected by the First Minister with the agreement of the Lord President. In selecting the members, the First Minister must ensure that the composition of the tribunal reflects the requirements set out in paragraph 15(1). Paragraph 16 enables the Scottish Ministers to pay remuneration and expenses to the members of a fitness assessment tribunal. Remuneration

cannot, however, be paid to those members of a fitness assessment tribunal who are sheriffs or judges of the Court of Session.

158. Paragraphs 17 and 18 make provision with regard to the conduct of proceedings of a tribunal. Paragraph 17 enables a fitness assessment tribunal to require the attendance of persons to give evidence and the production of documents in the same fashion as a court of law in Scotland. Where these requirements are not fulfilled, paragraph 18 provides for the tribunal to make an application to the Court of Session. The Court of Session may make such order as it thinks fit to ensure compliance with the requirements of the tribunal or deal with the matter as if it were a contempt of the Court.

159. Paragraphs 19 to 21 set out the circumstances in which a member of the Scottish Tribunals can be suspended pending a decision of a tribunal. Paragraph 19 enables the Lord President to suspend a member of the Scottish Tribunals if the Lord President has made a request to the First Minister to constitute a fitness assessment tribunal to investigate whether that member is unfit to hold the position of member of the Scottish Tribunals. The Lord President may suspend the member at any time prior to the point that the fitness assessment tribunal submits its report to the First Minister and the Lord President under paragraph 22(2). Such a suspension will terminate on being revoked by the Lord President or, if not revoked, when the report is laid in the Scottish Parliament. Paragraph 20 enables the First Minister to suspend the member of the Scottish Tribunals where the fitness assessment tribunal has recommended that the member is suspended. The First Minister may suspend the member at any time prior to the tribunal's report being laid in the Parliament. Such a suspension will terminate on being revoked by the First Minister or, if not revoked, when the report is laid in the Parliament. Paragraph 21 provides that any suspension under paragraph 19 or 20 does not affect any remuneration payable to the suspended member.

160. Paragraph 22 makes provision for the form and content of a tribunal's report. The First Minister must lay the report before the Scottish Parliament.

161. Paragraph 23 provides that the First Minister may remove a member of the Scottish Tribunals from his or her position if a fitness assessment tribunal has submitted a report concluding that the member is unfit to hold office by reason of inability, neglect of duty or misbehaviour.

## **PART 5 – DECISION-MAKING AND COMPOSITION**

### **Decisions in First-tier Tribunal**

#### *Section 34 – Decisions in the Tribunal*

162. Section 34 makes provision as to the exercise of the First-tier Tribunal's function of deciding any matter in a case within its jurisdiction. This function is to be exercised by the member or members of the chamber to which the case is allocated. It is for regulations made under section 19(2)(b) (chambers in the Tribunal) to make provision for the allocation of the First-tier Tribunal's functions among the chambers.

163. The Chamber President has the responsibility for selecting the members but, in so doing, must comply with any relevant provision made by regulations under section 35 (composition of the Tribunal).

164. If the First-tier Tribunal is exercising a function in a case which has been remitted to it by the Upper Tribunal under section 42(2)(b) (disposal of an appeal by the Upper Tribunal), the Chamber President must also comply with any directions given by the Upper Tribunal under section 42(5)(b) as to the members to be chosen to reconsider the case.

#### *Section 35 – Composition of the Tribunal*

165. This section provides for the Scottish Ministers to make regulations providing for the composition of the First-tier Tribunal when convened to decide a case falling within its jurisdiction. Such regulations may provide for the determination of the number of members who are to hear a particular matter as well as the types of member (whether ordinary, legal or judicial) that those members must be.

166. Where the regulations provide for an ordinary member to be part of the convened Tribunal, the regulations may also make provision for determining the qualifications, experience and training that that member should possess (subsection (4)).

167. By virtue of section 10(2), regulations made under section 35 may make provision authorising the President of Tribunals, or relying on Tribunal Rules (see commentary on section 62), to determine these matters. By virtue of section 11(2), the Scottish Ministers must consult the President of Tribunals before making regulations under section 35.

### **Decisions in Upper Tribunal**

#### *Section 36 – Decisions in the Tribunal*

168. Section 36 makes provision as to the exercise of the Upper Tribunal's function of deciding any matter in a case falling within its jurisdiction. This function is to be exercised by the member or members of the division to which the case is allocated. It is for regulations made under section 22(2)(b) (Divisions of the Tribunal) to make provision for the allocation of the Upper Tribunal's functions among the divisions.

169. The Vice-President has the responsibility for selecting the members but, in so doing, the Vice-President must comply with any relevant provision made by regulations under section 37 (composition of the Tribunal).

170. The Vice-President must also comply with subsection (4) which enables the Lord President and the Tribunals President to exercise a right to be selected (provided that this complies with the provisions of any regulations made under section 37 (composition of the Tribunal)).

171. If the Upper Tribunal is exercising a function in a case which has been remitted to it by the Court of Session under section 44(2)(b) (disposal of an appeal by the Court of Session), the

Vice-President must also comply with any directions given by the Court of Session under section 44(5)(b) as to the members to be chosen to reconsider the case.

### *Section 37 – Composition of the Tribunal*

172. This section provides for the Scottish Ministers to make regulations providing for the composition of the Upper Tribunal when convened to decide a case falling within its jurisdiction. Such regulations may provide for the determination of the number of members who are to hear a particular matter as well as the types of member (whether ordinary, legal or judicial) that those members should be.

173. Such regulations may also make separate provision depending on whether the Upper Tribunal is exercising functions at first instance or on review or appeal (subsection (2)).

174. Where the regulations provide for a judicial member to be part of the convened Tribunal, the regulations may also make provision requiring the judicial member to be of a particular type (whether a sheriff, sheriff principal or judge of the Court of Session) as well as for the involvement of any extra judge who is authorised to act under section 17(5) (subsection (5)).

175. Where the regulations provide for an ordinary member to be part of the convened Tribunal, the regulations may also make provision for determining the qualifications, experience and training that that member should possess (subsection (6)).

176. By virtue of section 10(2), regulations made under section 37 may make provision authorising the President of Tribunals, or relying on Tribunal Rules (see commentary on section 62), to determine these matters. By virtue of section 11(2), the Scottish Ministers must consult the President of Tribunals before making regulations under section 37.

## **PART 6 – REVIEW OR APPEAL OF DECISIONS**

### **Internal review**

#### *Section 38 – Review of decisions*

177. Section 38 provides powers for the First-tier and Upper Tribunals to review their own decisions without the need for a full onward appeal. The power is discretionary and it will be for each Tribunal to decide whether or not it should review one of its own decisions.

178. Under section 38(2), a decision may be reviewed at the Tribunal's own instance or, with the Tribunal's agreement, at the request of a party in the case.

179. Under section 38(3), no decision may be the subject of a review if it is an excluded decision (see sections 46 to 49 on excluded decisions). Tribunal Rules (see commentary on section 62) made under section 38(3)(b) may also make provision excluding other decisions from being reviewed or otherwise restricting the powers of the Scottish Tribunals to review their own decisions.

180. A decision to review or not to review a prior decision of the Tribunal may not, itself, be reviewed or appealed (section 38(4)) and the fact that a decision has been reviewed does not affect a party's rights of appeal under the Bill (section 38(5)).

*Section 39 – Actions on review*

181. Section 39 sets out the courses of action which are available to the Tribunals in determining any review. These include taking no action, setting the decision aside, and correcting minor or accidental errors. If the First-tier Tribunal sets aside a decision of its own it must either re-decide the matter concerned or refer the matter to the Upper Tribunal to re-decide. Where the Upper Tribunal sets aside a decision of its own, it must re-decide the matter itself.

*Section 40 – Review only once*

182. Section 40 provides that no decision of the First-tier or Upper Tribunal may be reviewed on more than one occasion. A decision on review to set aside an earlier decision and a re-made decision are, however, to be regarded as separate decisions from the earlier decision which was subjected to review and can, therefore, be the subject of a further review. Subsection (3) provides that the power of the Scottish Tribunals to review their own decisions does not affect their powers to correct minor or accidental errors in a decision administratively.

**Appeal from First-tier Tribunal**

*Section 41 – Appeal from the Tribunal*

183. Section 41 makes provision for a general right to appeal a decision of the First-tier Tribunal to the Upper Tribunal. Such an appeal can only be made by a party in the case on a point of law and with the permission of the First-tier Tribunal or (if refused by the First-tier Tribunal) the Upper Tribunal.

184. The general right to appeal a decision of the First-tier Tribunal to the Upper Tribunal under section 41 is not universal and does not apply to excluded decisions (see sections 46 to 49) or a decision of the First-tier Tribunal to review or not to review one of its own decisions (see section 38(4)). Section 50 (process for permission) also prevents a decision of the First-tier Tribunal to refuse permission to appeal to the Upper Tribunal from being appealed to the Upper Tribunal (a separate application can, however, be made to the Upper Tribunal under section 41(3)(b) should the First-tier Tribunal refuse permission to appeal).

185. Permission to appeal to the Upper Tribunal under section 41 is only to be granted if the Tribunal whose permission is sought is satisfied that there are arguable grounds for the appeal (section 41(4)).

*Section 42 – Disposal of an appeal*

186. Section 42 provides that, in determining an appeal made under section 41, the Upper Tribunal may uphold or quash the decision of the First-tier Tribunal on a point of law. Where the Upper Tribunal quashes the decision of the First-tier Tribunal it may re-make the decision, remit the case back to the First-tier Tribunal to be re-decided or make such other order as the Court considers is appropriate.

187. Where the Upper Tribunal elects to re-make a decision, subsection (3) enables the Upper Tribunal to make findings in fact and, otherwise, to do anything that could have been done by the First-tier Tribunal if it was re-making the decision.

188. Where the Upper Tribunal elects to remit the case to the First-tier Tribunal, it may direct the First-tier Tribunal as to issues of fact, law and procedure (subsections (4) and (5)).

## **Appeal from Upper Tribunal**

### *Section 43 – Appeal from the Tribunal*

189. Section 43 makes provision for a general right to appeal a decision of the Upper Tribunal to the Court of Session. Such an appeal can only be made by a party in the case on a point of law and with the permission of the Upper Tribunal or (if refused by the Upper Tribunal) the Court of Session.

190. The general right to appeal a decision of the Upper Tribunal to the Court of Session under section 43 is not universal and does not apply to excluded decisions (see sections 46 to 49) or a decision of the Upper Tribunal to review or not to review one of its own decisions (see section 38(4)). Section 50 (process for permission) also prevents a decision of the Upper Tribunal to refuse permission to appeal to the Court of Session from being appealed to the Court of Session (a separate application can, however, be made to the Court of Session under section 43(3)(b) should the Upper Tribunal refuse permission to appeal).

191. Permission to appeal to the Court of Session under section 43 is only to be granted if the Upper Tribunal or Court of Session is satisfied that there are arguable grounds for the appeal (section 43(4)) except in relation to permission to make a second appeal (see commentary on section 45).

### *Section 44 – Disposal of an appeal*

192. Section 44 provides that, in determining an appeal made under section 43, the Court of Session may uphold or quash the decision of the Upper Tribunal in question on a point of law. Where the Court of Session quashes the decision of the Upper Tribunal it may re-make the decision, remit the case back to the Upper Tribunal to be re-decided or make such other order as the Court considers appropriate.

193. Where the Court of Session elects to re-make a decision, subsection (3) enables the Court of Session to make findings in fact and, otherwise, to do anything that could have been done by the Upper Tribunal if it was re-making the decision.

194. Where the Court of Session elects to remit the case to the Upper Tribunal, it may direct the Upper Tribunal as to issues of fact, law and procedure (subsection (4) and (5)).

*Section 45 – Procedure on second appeal*

195. Section 45 makes provision in relation to a ‘second appeal’ which is an appeal to the Court of Session under section 43 against a decision of the Upper Tribunal on an appeal from a decision of the First-tier Tribunal under section 41 (see the definition in subsection (7)).

196. The effect of subsections (1), (3) and (4) is to prevent the Upper Tribunal and the Court of Session from giving permission to make a second appeal unless the Tribunal or Court (as appropriate) is satisfied that the appeal would raise an important issue of principle or practice or there is another compelling reason for allowing the appeal to proceed.

197. The effect of subsections (2), (5) and (6) is to enable the Court of Session, where it quashes the decision of the Upper Tribunal in relation to a second appeal, to do anything in re-making the decision that could have been done by the First-tier Tribunal or the Upper Tribunal if either of them was re-making the decision. It also enables the Court of Session to remit the case back to either the Upper Tribunal or the First-tier Tribunal with directions as to issues of fact, law and procedure. In addition, if the Court of Session remits the case to the Upper Tribunal, the Upper Tribunal itself may remit the case to the First-tier Tribunal with the directions from the Court of Session.

**Excluded decisions**

*Section 46 – Excluded decisions*

198. Sections 46 to 49 make provision with respect to decisions of the Scottish Tribunals which may not be the subject of a review under section 38 or the subject of the general right of appeal contained in sections 41 and 43. By virtue of section 46, such decisions are known as “excluded decisions”.

*Section 47 – Decisions on review*

199. Section 47 provides that certain decisions and determinations in a review under section 38 are excluded decisions. The effect of section 47 is to exclude decisions which have already been set aside under a review under section 38 as well as any decision or determination made as part of such a review (other than any matter which has been re-decided) from being appealed or further reviewed.

*Section 48 – Other appeal rights*

200. Section 48 provides that any decision against which there is a right of appeal under any enactment other than the right to review contained in section 38 or the rights of appeal in sections 41 and 43 is an excluded decision. The effect of section 48 is to create a general rule excluding from the rights of review and appeal established by the Bill, any decision for which another enactment makes express provision for a right of appeal. Subsection (2) enables the Scottish Ministers, by regulations, to make exceptions to that general rule.

*Section 49 – Position on transfer-in*

201. Section 49 provides that any decision made in the exercise of the functions of the First-tier Tribunal or Upper Tribunal which is specified by the Scottish Ministers in regulations made

under subsection (1) is an excluded decision. Subsection (2) provides that a decision made in the exercise of the functions of the First-tier Tribunal or Upper Tribunal may only be specified in regulations if the functions were transferred-in from a listed tribunal by regulations made under subsection 27(2) and, immediately prior to the transfer of those functions, there was no statutory right of appeal against the decision.

202. The effect of section 49 is to enable the Scottish Ministers, by regulations, to exclude the rights of review and appeal established by the Bill in relation to decision-making functions which have been transferred-in to the Scottish Tribunals from a listed tribunal from which there was previously no statutory right of appeal.

### **Miscellaneous procedure**

#### *Section 50 – Process for permission*

203. Section 50(1) enables the Scottish Ministers, by regulations, to specify time limits within which permission to appeal must be sought.

204. Section 50(2) provides that a decision of the First-tier Tribunal or the Upper Tribunal to refuse permission to appeal a decision of the First-tier Tribunal to the Upper Tribunal cannot be the subject of review or appeal under the Bill. Similarly, a decision of the Upper Tribunal to refuse permission to appeal a decision of the Upper Tribunal to the Court of Session cannot be reviewed or appealed under the Bill.

#### *Section 51 – Participation of non-parties*

205. It is only a party in a case who can apply for a review of a Tribunal decision under section 38 or appeal a Tribunal decision under section 41 or 43. Section 51(2) enables the Scottish Ministers, by regulations, to make provision so that persons falling within a specified description can be regarded as a party to a case for the purposes of sections 38, 41 and 43.

### **Special jurisdiction**

#### *Section 52 – Judicial review cases*

206. Section 52 makes provision so that the Court of Session may, by order of the Court, remit a petition for judicial review to the Upper Tribunal for determination. The Court may only remit a petition for judicial review to the Upper Tribunal where the petition does not seek anything other than the exercise of the Court's judicial review function (section 52(3)) and it falls within a category specified by an act of sederunt made by the Court for the purposes of section 52(4). The effect of subsection (4) is that no petition for judicial review will be able to be transferred unless an act of sederunt has been made specifying the categories of petitions which may be transferred and the petition falls within one of those categories.

207. In addition, the Court may only remit a petition to the Upper Tribunal if it considers it appropriate to do so having regard to the functions and expertise of the Tribunal in relation to the subject-matter of the petition (subsection (2)(b)).

*Section 53 – Decision on remittal*

208. Section 53 provides that the Upper Tribunal has the same powers and should apply the same principles as the Court of Session when determining a petition for judicial review. Subsection (4) makes it clear that a determination of a petition for judicial review remitted to the Upper Tribunal under section 52 is not an excluded decision and can be appealed to the Court of Session in accordance with section 43.

*Section 54 – Additional matters*

209. Section 54 makes further provision so that where a petition for judicial review is remitted to the Upper Tribunal, any order made or steps taken by the Court of Session are to be treated as if made or taken by the Tribunal. Subsection (2) enables the procedural rules of the Upper Tribunal to make further provision as to the exercise of the Upper Tribunal's functions in relation to a petition for judicial review.

*Section 55 – Meaning of judicial review*

210. Section 55 provides that references in sections 52 to 54 to judicial review are to the supervisory jurisdiction of the Court of Session.

## **PART 7 – POWERS, PROCEDURE AND ADMINISTRATION**

### **Powers and enforcement**

*Section 56 – Venue for hearings*

211. Section 56 enables the Scottish Tribunals to be convened anywhere in Scotland. Tribunal Rules may make further provision in this respect.

*Section 57 – Conduct of cases*

212. Section 57 enables Tribunal Rules to make further provision in respect of the conduct of cases before the Scottish Tribunals. The Tribunal Rules may make provision so as to ensure that the Scottish Tribunals have the necessary powers, rights, privileges and authority regarding the attendance or examination of witnesses, the production of evidence, the preparation of reports and other matters relating to the conduct of a case.

213. Subsection (2) enables the Tribunal Rules to make provision by reference to the authority which is exercisable by a sheriff or the Court of Session.

*Section 58 – Enforcement of decisions*

214. This section enables Tribunal Rules to provide for the means by which an order of the Scottish Tribunals giving effect to a decision of the Tribunals is to be enforced.

215. Subsection (3) makes provision so that an order made by the Upper Tribunal under section 53 (judicial review cases) continues to have the same effect as an order made by the Court of Session on a petition for judicial review. Subsection (4), otherwise, enables the Tribunal

Rules to make provision by reference to the means by which an order of a sheriff or the Court of Session is enforced.

*Section 59 – Award of expenses*

216. Section 59 enables the Scottish Tribunals to award expenses only where this is provided for in Tribunal Rules. Where Tribunal Rules make provision for the award of expenses these may include provision as to the scales or rates of the expenses that are to be awarded; for the Tribunals to set-off the expenses against specified other sums; for interest to be paid at a rate to be specified in Tribunal Rules in the event of the expenses remaining unpaid; for wasted expenses to be disregarded (and to specify what constitutes wasted expenses); as well as such other factors that the Tribunals may take into account (subsections (3) and (4)).

*Section 60 – Additional powers*

217. This section enables the Scottish Ministers, by regulations, to confer such additional powers on the Scottish Tribunals as are necessary or expedient for the proper exercise of their functions. Such regulations may provide for the application of rules of court made by the Court of Session by act of sederunt in relation to the Scottish Tribunals. In so doing, the regulations may make provision so that the process for making the act of sederunt should follow the procedure for making Tribunal Rules (see section 62(4)). The Lord President's approval is required before making any such regulations.

*Section 61 – Application of enactments.*

218. The effect of this section is to enable the Scottish Ministers, by regulations, to modify the application of any enactment so far as they consider is necessary or expedient for the purposes of making or giving effect to Tribunal Rules. Such regulations may provide for the application of rules of court made by the Court of Session by act of sederunt in relation to the Scottish Tribunals. In so doing, the regulations may make provision so that the process for making the act of sederunt should follow the procedure for making Tribunal Rules (see section 62(4)). The Lord President's approval is required before making any such regulations.

**Practice and procedure**

*Section 62 – Tribunal rules*

219. Sections 62 to 67 make provision for the making of rules to regulate the practice and procedures to be adopted by the Scottish Tribunals which are to be known as Scottish Tribunal Rules (but are referred to in the Bill as Tribunal Rules).

220. Subsections (3) and (4) of section 62 set out the process for making Tribunal Rules. Tribunal Rules are to be made by the Court of Session by act of sederunt and in accordance with Part 1 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013.

221. Paragraph 12 of schedule 9 amends Part 1 of the 2013 Act so that the SCJC has the function of reviewing the practice and procedure used in the Scottish Tribunals (section 2(1)(ba) of the 2013 Act) and the function of preparing and submitting draft Tribunal Rules to the Court of Session (section 2(1)(c)(ii) of the 2013 Act). Section 4(1) and (2) of the 2013 Act also sets out

the role of the Court of Session in approving, approving with modification, or rejecting the rules proposed by the SCJC.

222. Sub-paragraphs (6) to (10) of paragraph 12 of schedule 9 amend the 2013 Act with the effect of increasing the membership of the SCJC so as to include members representing the Scottish Tribunals and providing for the SCJC to establish a committee in pursuance of its functions in relation to the Scottish Tribunals under section 13A of the 2013 Act. The Committee is to be chaired by one of the members of the SCJC representing the Scottish Tribunals, and its members are to be selected by the President of Tribunals.

#### *Section 63 – Exercise of functions*

223. Section 63 allows Tribunal Rules to make provision about how a function of the Tribunals is to be exercised and by whom, or allow a specified person to make a decision about those matters. Such Rules may provide for something to require further authorisation, allow something to be done on a person's behalf, or allow a specified person to make a decision about those matters. They may rely on the effect of practice directions issued under section 68.

#### *Section 64 – Extent of rule-making*

224. The extent of the provision which may be made by Tribunal Rules is set out in section 64. In particular, the generality of the power to make provision regulating the practice and procedure followed in the Scottish Tribunals is not limited by any other more specific provisions in the Bill regarding the content of Tribunal Rules (subsection (4)). Tribunal Rules may also make equal or different provision in respect of the First-tier Tribunal and the Upper Tribunal (subsection (1)), particular provision for different chambers or divisions or different types of proceedings (subsection (2)) and, more generally, different provision for different purposes (subsection (3)).

#### *Section 65 – Proceedings and steps*

225. Sections 65 to 67 set out specific matters on which Tribunal Rules may make provision.

226. Section 65 allows Tribunal Rules to make provision for the purpose of proceedings in a case before the Tribunals, including as to the form and manner in which a case is to be brought before them, withdrawal of a case, time limits for making a referral of a matter to the Scottish Tribunals for decision or for taking steps as part of the proceedings, and circumstances in which the Tribunals may act of their own initiative.

#### *Section 66 – Hearings in cases*

227. Section 66 allows Tribunal Rules to make provision about hearings, including as to when matters can be dealt with without one, whether a hearing is to be held in private or public, appearance and representation at hearings, notice of hearings, adjournment with a view to resolution, and the imposition of reporting restrictions.

*Section 67 – Evidence and decisions*

228. Section 67 allows Tribunals Rules to make provision about evidence given before the Scottish Tribunals, including as to the administering of oaths and presumptions to apply, and about their decisions (for example, how they are recorded and published).

229. Sections 10(1)(b) and (2)(b) (authority under regulations), 27(3) (transfer-in of functions), 38(3) (review of decisions), 54(2) (additional matters), 56(2) (venue for hearings), 57(1) (conduct of cases), 58(1) (enforcement of decisions) and 59(1) and (3) (award of expenses) also deal with matters on which Tribunal Rules may make provision.

*Section 68 – Practice directions*

230. This section sets out the process for issuing directions as to the practice and procedure to be followed in the Scottish Tribunals. Directions may include instruction or guidance as to the application or interpretation of the law and the making of decisions by the members of the Scottish Tribunals (subsection (5)).

231. Directions by the President of Tribunals may make provision with regard to both the First-tier Tribunal and the Upper Tribunal (subsection (1)).

232. Directions by a Chamber President may only make provision in respect of the chamber over which the Chamber President presides (subsection (2)) and can only be issued with the approval of the President of Tribunals (subsection (4)).

233. Directions by a Vice-President may only make provision in respect of the division over which the Vice-President presides (subsection (3)) and can only be issued with the approval of the President of Tribunals (subsection (4)).

234. Directions may also make different provision for different purposes as well as vary and revoke earlier directions (subsection (6)).

*Section 69 – Reconciling differences*

235. Section 69 makes provision in the event of any conflict arising between Tribunal Rules and directions issued by the Lord President under section 9 or by the President of Tribunals, a Chamber President or a Vice-President under section 68. The effect of section 69 is, in the event of any conflict, to provide for Tribunal Rules to prevail over any directions, directions of the Lord President to prevail over directions of the President of Tribunals, a Chamber President or Vice-President and directions of the President of Tribunals to prevail over directions of a Chamber President or Vice-President.

**Fees and administration**

*Section 70 – Tribunal fees*

236. This section allows the Scottish Ministers by regulations to make provision for the Scottish Tribunals to charge reasonable fees in respect of any matter dealt with by the Scottish

Tribunals. The Scottish Ministers are required to consult the Lord President before exercising this power.

*Section 71 – Administrative support*

237. Section 71 places a duty on the Scottish Ministers to provide property, services and personnel to the Scottish Tribunals so as to ensure their proper operation and the discharge of the Lord President's responsibility for the efficient disposal of business in the Tribunals. The Scottish Ministers are obliged to have regard to any representations made to them by the Lord President in this respect (subsection (2)).

*Section 72 – Annual reporting*

238. Section 72 places a duty on the President of Tribunals to prepare an annual report for the Lord President on the operation and business of the Scottish Tribunals which must explain how the Tribunals have exercised their functions during the financial year (and may contain other information). The report is to be sent to the Scottish Ministers as well as published.

**PART 8 – FINAL PROVISIONS**

*Section 73 – Regulation-making*

239. Section 73 makes further provision with regard to the various regulation-making powers set out in the Bill including details as to the parliamentary procedure to be adopted.

*Section 74 – Ancillary regulations*

240. Section 74 allows the Scottish Ministers, by regulations, to make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider is necessary or expedient for the purposes or in connection with the Bill.

*Section 75 and schedule 9 – Transitional and consequential*

241. Section 75 introduces schedule 9 which makes transitional arrangements and consequential modifications to other enactments.

*Transitional and other matters*

242. Part 1 of schedule 9 sets out the transitional arrangements for the transfer of functions from existing tribunals to the Scottish Tribunals. Where the functions of a listed tribunal are transferred to the Scottish Tribunals by regulations made under section 27(2), paragraph 2 enables the Scottish Ministers to make provision, by regulations, for the procedural rules of the listed tribunal to continue to apply (with such modification as the Scottish Ministers consider to be necessary or expedient) to the exercise of those functions by the Scottish Tribunals.

243. The effect of paragraph 4 is to enable the Scottish Ministers, by regulations, to make Tribunal Rules until such time as the provisions conferring responsibility on the SCJC and the Court of Session for the making of Tribunal Rules are commenced. The Scottish Ministers are to consult the Lord President, the President of Tribunals and such other persons as they consider appropriate before making any such regulations.

244. Once the provisions conferring responsibility on the SCJC and the Court of Session for the making of Tribunal Rules are commenced, paragraph 6 has effect so that all rules applying by virtue of regulations made under paragraphs 2 and 4 are to be regarded as Tribunal Rules.

245. Paragraphs 7 to 9 of schedule 9 make provision so as to enable the First-tier Tribunal not to be organised into chambers and the Upper Tribunal not to be organised into divisions until such time as they have acquired sufficient functions from the listed tribunals.

#### *Consequential modifications*

246. Paragraph 10 of schedule 9 amends the Judicial Pensions and Retirement Act 1993 so that the ordinary and legal members of the Scottish Tribunals are added to the list of offices set out in Schedule 5 to that Act. By virtue of the operation of section 26 of that Act, those members of the Scottish Tribunals are required to retire from office on reaching the age of 70. Subsections (4) to (6) of that provision, however, enable those members to continue in office on an annual rolling basis up until the age of 75 if the Scottish Ministers, after consultation with the President of Tribunals, consider it is desirable in the public interest to allow those persons to continue in office.

247. Paragraph 11 amends the Judiciary and Courts (Scotland) Act 2008 to bring the ordinary and legal members of the Scottish Tribunals within the remit of the Judicial Appointments Board for Scotland (JABS) and to exclude them from holding office as the Judicial Complaints Reviewer.

248. Sub-paragraph (2) amends section 10 of that Act so that any persons appointed to the positions of Vice-President or ordinary or other legal member of the Upper Tribunal, or Chamber President, Deputy Chamber President or ordinary or other legal member of the First-tier Tribunal fall within the remit of JABS. By virtue of section 11 of the 2008 Act, an individual cannot be appointed to one of these positions unless recommended for appointment by JABS.

249. Sub-paragraph (3) amends section 30 of the 2008 Act so that the ordinary and legal members of the Scottish Tribunals are disqualified from being appointed as the Judicial Complaints Reviewer.

250. Sub-paragraph (4) amends the composition of JABS so as to include representation from the Scottish Tribunals and sub-paragraph (5) sets out the proceedings that are to apply in respect of an appointment to the Scottish Tribunals.

251. Paragraph 12 amends the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013. These amendments are explained in the commentary on Tribunal Rules (section 62).

#### *Section 76 and schedule 10 – List of expressions*

252. Section 76 defines “Lord President” for the purposes of the Bill, and introduces a list of expressions used in the Bill in schedule 10.

*These documents relate to the Tribunals (Scotland) Bill (SP Bill 30) as introduced in the Scottish Parliament on 8 May 2013*

*Section 77 – Commencement*

253. Section 77 makes provision as to the commencement of the Bill. Sections 76 to 78 come into force on the day after Royal Assent. All other provisions are to come into force on such day as the Scottish Ministers may, by order, appoint. Any such order may include transitional, transitory or saving provision.

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## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. This document relates to the Tribunals (Scotland) Bill, introduced to the Scottish Parliament on 8 May 2013. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament. The purpose of the Financial Memorandum is to set out the costs associated with the measures proposed by the Bill. It should be read in conjunction with the Bill and the other accompanying documents.

### **BACKGROUND**

2. The Bill seeks to address the complexity and fragmentation of the current tribunal structure. It will establish a First-tier Tribunal, for taking first decisions and an Upper Tribunal primarily for hearing further appeals. The Bill will enable the functions (and members) of existing tribunal jurisdictions within devolved competence to be transferred into the new First-tier or Upper Tribunals by an order of the Scottish Ministers. The Bill also provides for new rule making powers and new arrangements for the selection and appointment of devolved tribunal members. The Policy Memorandum, which is published separately, explains in detail the background and policy intention of the Bill.

3. The Scottish Government has given detailed consideration to the impact of the policy reforms and has consulted with those likely to be affected, including the Lord President's Office, tribunal members and the Judicial Appointments Board for Scotland ("the Board"), as well as the wider stakeholder community.

4. There are very few provisions within the Bill which commit the Scottish Administration to new costs. Using information from a range of sources it has been possible to identify three areas in which the Bill will have financial implications. The main areas covered in this memorandum relate to the financial implications of provisions relating to:

- the new judicial appointments process for tribunals;
- the President of the Scottish Tribunals; and
- the making and amendment of tribunal rules.

5. The Scottish Government does not anticipate any new costs associated with other aspects of the Bill's provisions, for example by the creation of the Upper Tribunal; the transferring-in of tribunal functions or members; or the addition of new bodies to Schedule 1.

### **COSTS ON THE SCOTTISH ADMINISTRATION**

6. The operational budgets for the tribunals listed in Schedule 1 of the Bill are estimated to be around £12.5m per annum. This is set against an estimated spend of around £12.0m per annum. These figures are the current operational budgets for the individual tribunals and are not a consequence of this Bill. Table 1 provides a breakdown of these costs.

**Table 1: Cost of Tribunals listed in Schedule 1 of Tribunals (Scotland) Bill.**

| <b>Tribunal</b>                                      | <b>Budget 2011-2012</b> | <b>Spend 2011-2012</b>              |
|--|-------------------------|-------------------------------------|
| Additional Support Needs Tribunals for Scotland      | £296,000                | £294,000                            |
| Scottish Charity Appeals Panel*                      | £0                      | £0                                  |
| Crofting Commission#                                 | £2,726,000              | £2,798,000                          |
| Education Appeal Committees**                        | Not held centrally      | Not held centrally                  |
| Private Rented Housing Panel/Homeowner Housing Panel | £429,000                | £430,000                            |
| Lands Tribunal for Scotland                          | £311,000                | £286,000                            |
| Mental Health Tribunal for Scotland                  | £8,415,000              | £8,033,000                          |
| NHS National Appeal Panel                            | £93,100                 | £119,707                            |
| NHS Tribunal   | £61,000                 | £49,345                             |
| Scottish Parking Appeals Service                     | £240,000                | £209,000                            |
| Police Appeals Tribunals***                          | Not held centrally      | Not held centrally                  |
| Valuation Appeal Panels****                          | Not held centrally      | £336,233 (for 2010-11) <sup>1</sup> |
| <b>Total</b>   | <b>£12,571,100</b>      | <b>£12,219,052</b>                  |

<sup>1</sup> This figure is not included in the total spend.

\* There is no budget for SCAP and that the cost of any hearings is absorbed by the main Scottish Tribunals Service budget.

\*\* These figures are not held centrally. Funding is provided to local government by means of a block grant and spend is determined by local authorities in light of local circumstances and priorities'.

\*\*\*This is a new tribunal established by the Police and Fire Reform (Scotland) Act 2012

\*\*\*\* These figures are not held centrally. Funding is provided to local government by means of a block grant and spend is determined by local authorities in light of local circumstances and priorities'.

# This figure is the total allocation for the budget and spend for the Crofting Commission as a whole. It is estimated that the proportion associated with the operation of the tribunal is £1,515k.

7. There are new costs associated with the provisions contained in the Bill. These are estimated to be between £175k and £181k per annum in the first year (2016/17) and £145k to £151k per annum thereafter. Table 2 provides a breakdown of these costs with further detail provided in

paragraphs 8-30. All additional costs will be met from existing resources. The functions of existing tribunals will transfer into the new structure with their existing budgets.

**Table 2: Summary of estimated new costs associated with the Bill provisions**

| <b>In relation to:</b>         | <b>Est. cost 2016/17</b>   | <b>Est. annual recurring costs from 2017/18</b> | <b>Comments</b>  |
|--------------------------------|----------------------------|---|--|
| Appointments support           | £30,000                    | £30,000   | Support staff 1.0 FTE @ B1.(see para 19)   |
| 2 new Board members for JABS*  | £17,000 [to £23,000]       | £17,000 [to £23,000]                            | To cover fees and sitting days, estimated at between 30-40 days (see para 19)    |
| Tribunal rules – legal support | £32,000                    | £32,000   | Lawyer 0.5 FTE @ C1 (see para 30)  |
| Judicial support               | £96,000                    | £66,000   | Backfill for President of Scottish Tribunals and admin support (see paras 22-24) |
|                                |                            |   |  |
| <b>TOTAL**</b>                 | <b>£175,000 [£181,000]</b> | <b>£145,000 [£151,000]</b>                      | <b>Per annum - which will be funded from existing resources</b>                  |

*(costs rounded to the nearest thousand)*

*\*JABS – Judicial Appointments Board for Scotland*

*\*\* There will also be some costs associated with judicial training. These will be met from existing budgets as is currently the practice. Details of training budgets can be found in table 3.*

### **The new appointments process**

8. The Bill will confer responsibility for recommending individuals for appointment to tribunals to the Judicial Appointments Board for Scotland (“the Board”). The Board became an advisory non-departmental public body on 1 June 2009 under the relevant provisions of the Judiciary and Courts (Scotland) Act 2008.

9. The role of the Board is to make recommendations to the Scottish Ministers on individuals suitable for appointment to judicial offices including Judge of the Court of Session, Sheriff, and Sheriff Principal.

10. The Bill makes provision for tribunal members to also be appointed under a process supervised by the Board. Currently, the cost of recruitment for new tribunal members is met from the existing budgets of individual tribunals. The creation of a new structure would not require an increase in the total number of tribunal members currently appointed as the Bill does not create any new jurisdictions or affect the operation of the current tribunals. Therefore any costs arising from future recruitment would be broadly in line with current costs, notwithstanding any unforeseen changes in the volume of tribunal business or the establishment of new tribunals.

11. Arrangements for providing additional funding to the Board for the recruitment of tribunal members will be on a case-by-case basis. It is envisaged that funds will be reimbursed for each specific exercise the Board will undertake for the recruitment of tribunal members. It is not possible to accurately estimate how much a recruitment exercise would cost as these vary from jurisdiction to jurisdiction. For example, the Mental Health Tribunal for Scotland (MHTS) currently has 332 members as opposed to the Scottish Charity Appeals Tribunals which has 19. Membership requirements of each tribunal also varies e.g. the Private Rented Housing Panel (PRHP) require surveyor members and MHTS require medical members.

#### *Costs to Board arising from recruitment exercises*

12. Estimated costs would be based on the fees of members of the appointment panel and the number of days they would be required to sit on the panel. Fees for the appointment panel will be paid at the same rate as all JABS fee-paid Board members (£290 daily). The time needed for each appointment exercise would also depend on the number of appointments required. There would also be some costs associated with advertising the posts. While these would be new costs to the JABS they are not new costs to the Scottish Administration and provision has been made within the individual tribunals budget, as regardless of the Bill members still require to be appointed to tribunals.

13. In 2010, the Scottish Tribunals Service (STS) took over responsibility for tribunal appointments for four of the tribunals<sup>1</sup> supported by them. Since then there have been three occasions where it has been necessary to conduct an appointment exercise. The first was in December 2011 to appoint a new President for the Additional Support Needs Tribunals for Scotland following the resignation of the previous President. Secondly, a more recent exercise (2012) was undertaken to recruit 32 members for the PRHP in respect of appointments to the new Homeowner Housing Panel<sup>2</sup>. On this occasion, a significant number of new appointments were required for this new jurisdiction. Thirdly there is an on-going recruitment exercise for the MHTS to recruit 35 legal and medical members to replenish the current membership. It is anticipated however, that unless there are any new jurisdictions emerging, new appointments to tribunals will be low.

14. The Bill proposes that current legislation in relation to judicial retirement will apply to members of the Scottish Tribunals. This would effectively set a retirement age of 70. Table 3 provides data on the number of members in existing tribunals who are approaching 70 to illustrate the impact that a retirement age will have on the work of the Board. The data demonstrates that the number of tribunal members in this category is not significant enough to give rise to considerably

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<sup>1</sup> STS supported tribunals include, the Additional Support Needs Tribunals for Scotland; the Mental Health Tribunal for Scotland; the Private Rented Housing/Homeowner Housing Panels; and the Scottish Charity Appeals Panel.

<sup>2</sup> The Homeowner Housing Panel is a devolved Scottish Tribunal set up under the Property Factors (Scotland) Act 2011. It expands the jurisdiction of the Private Rented Housing Panel.

increased costs. It will not necessarily be the case, however, that members will retire when they are 70 as individual members could remain on an annual rolling basis until the age of 75 in accordance with section 26 of the Judicial Pensions and Retirement Act 1993.

15. There is no role for JABS in reappointments which would continue to be made by the Scottish Ministers.

16. The Bill enables cross-ticketing over chambers. Although, there will be no automatic right to assignment to hear cases in another chamber except in relation to members who currently hold an appointment in a jurisdiction in a chamber other than their chamber of primary assignment. Members will be eligible to be assigned to hear a case in another chamber if they can demonstrate they meet the criteria for the jurisdiction and can demonstrate they have the skills, knowledge and experience, as well as the agreement of both the Chamber President of their primary assignment and the Chamber President of the chamber where they would be hearing the case. Individuals can hear cases in more than one jurisdiction at the moment (where they have multiple appointments). Members who are assigned to another chamber would not need to go through a formal appointment process by way of the Judicial Appointments Board. They would, however, still have to demonstrate that they meet all the criteria and have the necessary skills, knowledge and experience. The ability to be able to do this could result in fewer new appointments being necessary with tribunal members who meet the criteria and have the relevant skills, knowledge and experience being drawn from the existing tribunal community.

17. Table 3 sets out the estimated number of new tribunal appointments required from 2014 to 2017. It is expected that the new structure will be operating from 2016/17. It is difficult to say how many appointments JABS may be expected to undertake during that timescale as it depends on a number of factors including: whether the jurisdiction requiring members has been transferred into the new structure; the intention of the new leadership for tribunals to recruit from within the available tribunal community and therefore not require a JABS process; or whether or not the recruitment exercise has already taken place. For example MHTS have already undertaken a recruitment exercise for the vacancies expected in 2014 and 2015.

18. The estimated cost to JABS also depends on how they decide to operate the recruitment exercises. Interviews are currently undertaken by a three member panel, for example if a three member recruitment panel was convened for one day to appoint two new members of the Private Rented Housing Panel the total cost of that exercise would be 3 x £290 (the daily fee for a JABS Board member). However JABS may decide on a different model which will have implications for the costs of running a recruitment exercise.

#### *Costs arising from administrative support to the Board*

19. In addition to specific funding for recruitment exercises, it is likely that the Board would require additional administrative support corresponding to one full-time equivalent member of staff equivalent to Scottish Government pay grade B1. The average cost of this is £30k per annum. The Scottish Government would also anticipate increasing the Board membership by two to cover the interests of tribunals. This is likely to cost between £17k to £23k per annum. These figures cover Board meetings, estimated number of sitting days (between 30-40) and ad hoc Board duties, such as attending conferences or contributing to publications. These costs could be met from existing budgets.

**Table 3: Projection of number of members approaching 70, and number of resignations**

| Tribunals supported by STS that will be transferring into the new system. | Number of members due to reach age 70 in year (estimated new members required) |           |           |           | Total Number of Resignations in 2011 and 2012 |
|---|--|-----------|-----------|-----------|---|
|   | 2014   | 2015      | 2016      | 2017      |   |
| Mental Health Tribunal for Scotland                                       | 5  | 12        | 13        | 15        | <b>10</b>                                     |
| Private Rented Housing Panel/<br>Homeowner Housing Panel                  | 0  | 2         | 4         | 3         | <b>2</b>                                      |
| Scottish Charity Appeals Panel  | 1  | 0         | 0         | 0         | <b>0</b>                                      |
| Additional Support Needs Tribunals for Scotland                           | 0  | 0         | 2         | 2         | <b>3</b>                                      |
| <b>TOTAL</b>  | <b>6</b>   | <b>14</b> | <b>19</b> | <b>20</b> | <b>15</b>                                     |

**The duties of the Lord President of the Court of Session and the President of Scottish Tribunals**

20. The Bill confers responsibilities on the Lord President of the Court of Session in relation to the efficient disposal of business in the new tribunal system. The Lord President will have the power to delegate these responsibilities and functions (except for making representations, on behalf of the Scottish Tribunals, to the Scottish Parliament or Scottish Ministers) to the President of Scottish Tribunals.

21. The Bill requires that the President of the Scottish Tribunals should be a Senator of the College of Justice. Whilst the direct cost of the President of Scottish Tribunals will be covered by the salary he or she is already paid as a Senator, there will be associated costs that will have to be borne by the court service. Court business will be managed in such a way that the gap created by the time the Senator spends on tribunal business can be filled by a part-time sheriff in the Sheriff Court. The Judicial Office for Scotland has been consulted on this matter and has indicated that it would be necessary to provide for part-time sheriffs to backfill the time that the President of Scottish Tribunals is occupied in tribunals work so that the business of the courts is not unduly delayed or affected.

22. While precise figures are difficult to reach at this stage, it is envisaged that the role of the President of the Scottish Tribunals would initially occupy 40% of a Senator's time in the first year that the new structure is in operation. After the initial stages of implementation of the new system it is likely that the role would only require an estimated 20% of a Senator's time. The estimates on the amount of time the role will occupy are derived from comparisons with the Senior President of

Tribunals (in the UK tribunal system<sup>3</sup>). Although the following figures are based on the time spent by the Senior President of Tribunals in the UK system it should be borne in mind that there are many more tribunals in that structure. The Scottish system may not require the same time commitment.

23. The Scottish Government is able to estimate the costs associated with the role of the President of Scottish Tribunals using the rate for a part-time sheriff (court business being managed in such a way that the gap will be in the Sheriff Court rather than the Court of Session). The current daily rate for a part-time sheriff is £583. On an assumption of 250 working days a year, the cost for backfill when the President's role occupies 40% of a Senator's time would be £59k per annum. The cost when the role occupies 20% of a Senator's time would be £29k per annum.

24. The Judicial Office for Scotland provides support to the Lord President and it is expected that this office will also provide support to the President of the Scottish Tribunals. An increase in staffing resource for the Judicial Office may be necessary to account for the increased responsibilities relating to the tribunals system. It is proposed that the Office would require additional administrative support corresponding to one full-time member of staff equivalent to Scottish Government pay grade B2. The average cost of this is £37k per annum.

### **The making and amendment of Tribunal Rules**

25. It is proposed that the existing rules of tribunals transferring into the new system are retained until such time as they are required to be reviewed or amended. The rules of each of the listed tribunals will require a degree of modification so as to fit with the transfer of functions to the new tribunals.

26. In 2009 Lord Gill, then the Lord Justice Clerk, delivered the Scottish Civil Courts Review<sup>4</sup> which was heralded as the "most far-reaching reform of Scotland's civil justice system in nearly two centuries". One of the recommendations from Lord Gill's 206 proposals was the establishment of a new Scottish Civil Justice Council ("the Council") to draft rules of procedure for civil proceedings in the Court of Session and sheriff court (Chapter 15). Whilst Lord Gill's proposal covered Civil Courts it did not address the need for independent rule making procedures for tribunals. Presently there is no single body that writes or amends rules for tribunals. Tribunal rules are currently made by Scottish Ministers (acting on the advice of government officials) by order, under various rule making powers. However, in response to Lord Gill's review the Scottish Government noted that the Council's remit could be extended to cover tribunals<sup>5</sup>.

27. The Bill proposes that the Council take over responsibility for the making and amendment of tribunal rules. The Council is established by the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 which gives the Council the responsibility for formulating policy, and drafting court procedure rules, in relation to civil justice matters.

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<sup>3</sup> The Tribunals, Courts and Enforcement Act 2007 reformed the structure of reserved tribunals operating in the UK.

<sup>4</sup> Rt Hon Lord Gill, The Report of the Scottish Civil Courts Review (2009):  
<http://www.scotcourts.gov.uk/civilcourtsreview/>

<sup>5</sup> Scottish Government response to report and recommendations of the Scottish Civil Courts Review (2010):  
[www.scotland.gov.uk/Resource/Doc/330272/0107186.pdf](http://www.scotland.gov.uk/Resource/Doc/330272/0107186.pdf)

28. However, it is likely that the Council will be unable to assume responsibility for tribunal rule-making in the first instance as it will be concentrating on court business, rather the Scottish Government envisages that the Council will take on tribunal work when it is ready to do so. Until that time the Scottish Ministers would continue to make rules for tribunals as is currently the practice. As the Scottish Government does not intend to rewrite tribunal rules comprehensively the Scottish Government does not expect there to be a substantial workload for the Council to undertake.

29. An exercise to make rules for the Upper Tribunal would be necessary at an early stage but would have to take place before the Council is in a position to take on this role. Therefore these rules would be made by the Scottish Ministers. There will be staff time associated with this work. This will be built into the implementation project following this Bill.

30. The Council would likely require further resource to perform the additional functions relating to tribunal rules. It is difficult to provide an accurate or detailed analysis of the potential cost as the Council has not yet been created. However, initial discussions with the Judicial Office for Scotland indicate that a part-time lawyer (0.5 full-time equivalent) at Scottish Government pay grade C1 would be required. The average cost of this is £32k per annum. This cost would be met from existing resources. It is not expected that this additional cost will be required before 2017/18.

### **Judicial training**

31. The Bill does not require the provision of new training. It does, however place the responsibility for the training of tribunal members on the Lord President. Currently training is provided by each tribunal individually. It is not expected that this will change significantly in the new structure.

32. The Judiciary and Courts (Scotland) Act 2008 transferred the responsibility for judicial training to the Lord President. That training is provided by the Judicial Institute for Scotland which was established (originally as the Judicial Studies Committee) in 1997. As the Tribunals Bill proposes that the Lord President is responsible for the training of tribunal members it is likely that the Institute will assume some responsibility for training of tribunal members. However, this will be for the Lord President to determine.

33. Specific jurisdictional training would rest with individual chambers or jurisdictions and would continue to be provided from the individual jurisdictions' budgets. The majority of jurisdictions that are transferring into the new structure in the initial stages each have their own training budgets. However, training budgets vary from year to year depending on requirements. Details of budgets for 2012-13 are given in Table 4.

**Table 4: Training budgets for 2012-13 for existing STS tribunals**

| <b>Tribunal</b>                     | <b>Number of members</b> | <b>Budget</b> |
|-------------------------------------|--------------------------|---------------|
| Mental Health Tribunal for Scotland | 332                      | £90,000       |
| Private Rented Housing Panel/       | 70                       | £26,000/      |

*These documents relate to the Tribunals (Scotland) Bill (SP Bill 30) as introduced in the Scottish Parliament on 8 May 2013*

|   |            |                           |
|---|------------|---------------------------|
| Homeowner Housing Panel                         |            | £49,000                   |
| Additional Support Needs Tribunals for Scotland | 35         | £15,000                   |
| Lands Tribunal for Scotland                     | 4          | <i>no specific budget</i> |
| Scottish Charity Appeals Panel                  | 19         | <i>no specific budget</i> |
| <b>TOTAL</b>                                    | <b>460</b> | <b>£180,000</b>           |

*(costs rounded to the nearest thousand)*

### **Authorisation of others**

34. The Bill proposes to provide the Scottish Ministers with the power, if requested, to authorise the deployment of retired judges of the Court of Session or judges of the UK Upper Tribunal to the Scottish Upper Tribunal. This would allow a tribunal judge from England and Wales or Northern Ireland to be authorised to hear cases in the Upper Tribunal for Scotland. It is intended that this power would be used to assist with the disposal of business in the Upper Tribunal if the required expertise was not readily available in a particular case. It is expected that this power would be used on very rare occasions.

35. The Bill makes provision for the Scottish Ministers to make payment of sums in respect to any time spent by the authorisation of others in the Upper Tribunal for Scotland. It is not possible to estimate what the cost of using this power would be. The UK Upper Tribunal has a mix of fee-paid and salaried members. Fees for UK Upper Tribunal Members range from £203 to £589. The Scottish Government would have to negotiate with the relevant UK Department on a case by case basis dependent on whether the tribunal member was fee-paid or salaried and on the number of days they would be required to sit in the Upper Tribunal for Scotland to hear a particular case. It is expected that this power would only be used in exceptional circumstances (for example if there was any devolution of currently reserved matters that would currently be appealed to the UK Upper Tribunal) and any costs associated with the use of this power would be met from existing budgets. It is difficult to estimate if and when this power would be required. There are no plans to authorise the use of UK Upper Tribunal judges in the new structure until the need arises.

### **Upper Tribunal**

36. Although the Bill creates a new Upper Tribunal the Scottish Government does not expect new costs to be associated with this. The appeal work that currently goes to the Sheriff Court or the Court of Session will merely be redistributed to the Upper Tribunal where cases will be heard by the same people i.e. senators, sheriffs etc, sitting as the Upper Tribunal as opposed to the court. However, there may be unforeseen costs associated with this new tribunal once it is in operation.

### **COSTS ON LOCAL AUTHORITIES**

37. The Scottish Government does not expect local authorities to incur any additional costs as a result of the changes to tribunals.

## **COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

38. The Bill makes provision for the Scottish Ministers by regulation to set fees for any matter that may be dealt with by the Scottish Tribunals. This provision is aimed at allowing the setting of fees in the future in order to recover some of the costs associated with the operation of a tribunal. Where there are currently fees charged these will continue to be applied, but there are no current plans to set new fees for the work currently carried out by any of the tribunals listed in Schedule 1 of the Bill.

39. The Lands Tribunal for Scotland currently charges fees for all areas of their business. The average annual fee income over the last ten years has been around £60k (2001-2012)<sup>6</sup>. Fees are set well below full cost recovery level and vary from one jurisdiction to another. Fees have not been increased since 1996. Application fees vary from £52 for a tenant's right to buy case to £500 for an appeal against a valuation for rating. This income is paid into the Scottish Consolidated Fund. The Scottish Government is not aware of any other devolved tribunals which currently charge fees.

40. The Scottish Government does not expect other bodies, individuals or businesses to incur any additional costs as a result of the changes provided for in this Bill.

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<sup>6</sup> This includes two particularly 'bumper' years (2009 and 2010) where a total of £356k was received due to the high volumes of rating appeals. This is not untypical following the 5-yearly revaluation of non-domestic premises. Annual fee totals of £35k - £40k are typical out-with revaluation years.

## **SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE**

On 8 May 2013, the Cabinet Secretary for Justice (Kenny MacAskill MSP) made the following statement:

“In my view, the provisions of the Tribunals (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

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## **PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE**

On 8 May 2013, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Tribunals (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”



*These documents relate to the Tribunals (Scotland) Bill (SP Bill 30) as introduced in the Scottish Parliament on 8 May 2013*

# **TRIBUNALS (SCOTLAND) BILL**

## **EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)**

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