

Tribunals (Scotland) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Section 1 to 26	Schedule 1
Section 27 and 28	Schedule 2
Section 29	Schedules 3 to 6
Sections 30 to 32	Schedule 7
Section 33	Schedule 8
Section 34 to 75	Schedule 9
Section 76	Schedule 10
Section 77 and 78	Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Before section 1

Elaine Murray

1* Before section 1, insert—

<Definition of Tribunal

- (1) For the purposes of this Act, a tribunal is a body established under an enactment to adjudicate on a matter concerning administrative justice between—
 - (a) a person and the state, or
 - (b) different persons,and is independent of both the executive and legislature and of the parties appearing before it.
- (2) In subsection (1), “administrative justice” means the determination of an issue arising from a statutory right or obligation which is within the jurisdiction of a tribunal.>

Section 1

Roseanna Cunningham

6 In section 1, page 1, line 18, at end insert <or another Act>

Roseanna Cunningham

7 In section 1, page 1, line 20, at end insert <or another Act>

Section 2

Elaine Murray

8 In section 2, page 2, line 2, at end insert—

- <() The Lord President must, in carrying out the functions of that office, adhere to the following principles for the Scottish Tribunals—
- (a) the need for the Scottish Tribunals to be accessible,
 - (b) the need for proceedings before the Scottish Tribunals—
 - (i) to be fair, and
 - (ii) to be handled quickly and efficiently,
 - (c) the need for members of the Scottish Tribunals to be experts in the subject-matter of, or the law to be applied in, cases in which they decide matters, and
 - (d) the need to consider and develop innovative methods of resolving disputes that are of a type that may be brought before the Scottish Tribunals.>

Section 10

Roseanna Cunningham

9 In section 10, page 4, line 7, leave out <or 37(1)> and insert <, 37(1) or (*Voting for decisions*)(1)>

Section 11

Roseanna Cunningham

10 In section 11, page 4, line 18, leave out <or 37(1)> and insert <, 37(1) or (*Voting for decisions*)(1)>

After section 11

Roseanna Cunningham

11 After section 11, insert—

<Guiding principle

Principle to be observed

- (1) In exercising their regulation-making functions under this Act, the Scottish Ministers must have regard to the principle below.
- (2) In exercising their leadership functions under this Act, the Lord President and the President of Tribunals must have regard to the principle below.
- (3) The principle is the need for proceedings before the Scottish Tribunals—
 - (a) to be accessible and fair, and
 - (b) to be handled quickly and effectively.>

Section 13

Roseanna Cunningham

- 12 In section 13, page 5, line 4, leave out <mentioned in subsection (3)> and insert <for which this section makes provision>

Roseanna Cunningham

- 13 In section 13, page 5, line 7, leave out <mentioned in subsection (3)> and insert <for which this section makes provision>

Roseanna Cunningham

- 14 In section 13, page 5, line 9, leave out <mentioned in subsection (3)> and insert <for which this section makes provision>

Roseanna Cunningham

- 15 In section 13, page 5, line 11, leave out subsection (3) and insert—
- <(3) This section makes provision—
 - (a) in the case of an ordinary, legal or judicial member of the Scottish Tribunals, for the purpose of holding the position of and acting as such a member,
 - (b) in the case of an extra judge of the Upper Tribunal, for the purpose of holding that position and acting as mentioned in section 17(5).>

Section 16

Margaret Mitchell

- 92 In section 16, page 6, line 20, leave out <authorised> and insert <appointed>

Roseanna Cunningham

- 16 In section 16, page 6, line 21, leave out <Apart from the Lord President and the President of Tribunals,>

Margaret Mitchell

- 93 In section 16, page 6, line 23, leave out <authorised> and insert <appointed>

Roseanna Cunningham

- 17 In section 16, page 6, line 23, at end insert <(but see next instead for the Lord President and the President of Tribunals)>

Margaret Mitchell

- 94 In section 16, page 6, line 27, leave out subsection (6) and insert—
- <(6) Before making an appointment under subsection (3)(a) or (b) or (4) the President of the Tribunals must—

- (a) be satisfied that the person concerned is suitably qualified,
- (b) have the approval of the Lord President (including as to the person to be appointed),
- (c) have the agreement of the person concerned,
- (d) in the case of a sheriff (apart from a sheriff principal), also have the concurrence of the relevant sheriff principal.>

Margaret Mitchell

- 95 In section 16, page 6, line 34, leave out <authorisation for the purpose of> and insert <appointment under>

Roseanna Cunningham

- 18 In section 16, page 6, line 36, leave out <relevant by virtue of> and insert <referred to in>

Section 17

Roseanna Cunningham

- 19 In section 17, page 7, line 6, leave out <retired judge of the Court of Session> and insert <former—
- (i) judge of the Court of Session (including temporary judge),
 - (ii) Chairman of the Scottish Land Court, or
 - (iii) sheriff (except part-time sheriff)>

Roseanna Cunningham

- 20 In section 17, page 7, line 7, leave out from first <the> to end of line 8 and insert <a court or tribunal in a country or territory outwith Scotland (whether or not another part of the United Kingdom).>

Roseanna Cunningham

- 21 In section 17, page 7, line 12, leave out subsection (4)

Roseanna Cunningham

- 22 In section 17, page 7, line 18, leave out from <, agreement> to <(4)> in line 19 and insert <and agreement as is referred to in subsection (3)>

Roseanna Cunningham

- 23 In section 17, page 7, line 20, leave out <, agreement and consent> and insert <and agreement>

Roseanna Cunningham

- 24* In section 17, page 7, line 24, at end insert—
- <() An authorisation under subsection (1) may not be issued if the person concerned—

- (a) is aged 75 years or over, or
- (b) has been removed from judicial office because of unfitness by reason of inability, neglect of duty or misbehaviour (or is for the time being suspended from such office in connection with an investigation into the question of such unfitness).>

Roseanna Cunningham

25 In section 17, page 7, line 24, at end insert—

<() In the case of a person mentioned in subsection (2)(b)—

- (a) subsections (1) and (6) are subject to such further arrangements as the Scottish Ministers may make with a governmental or other body in the person’s country or territory for the purposes of those subsections,
- (b) if the person has not previously taken the required oaths, the person must take them in the presence of the President of Tribunals before acting as mentioned in subsection (5).>

Roseanna Cunningham

26 In section 17, page 7, line 26, leave out from <mentioned> to <counts> in line 28 and insert <of the required oaths counts (so far as necessary)>

Roseanna Cunningham

27 In section 17, page 7, line 33, at end insert—

<() In this section, “the required oaths” means the oath of allegiance and the judicial oath as set out in the Promissory Oaths Act 1868.>

Roseanna Cunningham

28 In section 17, page 7, line 34, leave out subsection (9)

Section 18

Margaret Mitchell

96 In section 18, page 7, line 37, leave out <authorised for the purpose of> and insert <appointed under>

Margaret Mitchell

97 In section 18, page 8, line 1, leave out <authorised for the purpose of> and insert <appointed under>

Section 19

Elaine Murray

2 In section 19, page 8, line 12, at end insert—

<() The First-tier Tribunal must include a single chamber to adjudicate exclusively on the subject-matter of mental health.>

Elaine Murray

3 In section 19, page 8, line 16, at end insert—

<() Regulations under subsection (2) must provide for a single chamber to adjudicate exclusively on the subject-matter of mental health.>

Section 26

Roseanna Cunningham

29 In section 26, page 11, line 10, leave out <(iv)> and insert—

<()>

Schedule 1

Roseanna Cunningham

30 In schedule 1, page 32, line 21, leave out <section 72(2) and 73(3)(a)> and insert <sections 72(2) and 73(3)>

After section 28

Roseanna Cunningham

31 After section 28, insert—

<Conferral of functions by another Act

Accommodation of functions

- (1) Subsections (2) and (3) apply where any functions are conferred on either or both of the Scottish Tribunals by or under an Act other than this Act.
- (2) The Scottish Ministers may by regulations modify this Act so that this Act specifies the relevant provisions of the other Act (whether in existing or new provisions of this Act).
- (3) The Scottish Ministers may by regulations modify this Act or the other Act so as to make the functions exercisable in accordance with or subject to (as far as not already so exercisable)—
 - (a) the whole of this Act, or
 - (b) particular provisions of this Act.>

Roseanna Cunningham

32 After section 28, insert—

<Redistribution of functions

- (1) Where any functions are conferred on either or both of the Scottish Tribunals by or under an Act other than this Act, the Scottish Ministers may by regulations—
 - (a) provide for the functions, or particular functions, to be redistributed between the Tribunals by—
 - (i) transferring them from either of the Tribunals to the other,

- (ii) taking them away from one of the Tribunals (but not the other), or
 - (iii) causing them to be exercisable by both of the Tribunals (instead of one only),
- (b) if they are so redistributed by causing them to be exercisable by both of the Tribunals, also make provision of the sort allowed by subsection (2).
- (2) This subsection allows provision enabling the question as to which of the Tribunals is to exercise particular functions in a specific case or in specified circumstances to be determined, including as against any prescribed criteria—
- (a) in accordance with Tribunal Rules, or
 - (b) by the President of Tribunals (whether or not by reference to Tribunal Rules).
- (3) Regulations under subsection (1) may include provision for the purposes of or in connection with, or for giving full effect to, a redistribution of any functions to which the regulations apply.
- (4) Provision included in such regulations by virtue of subsection (3) may modify any enactment relating to the functions being redistributed by the regulations.
- (5) Subsection (1) is subject to any express provision in the other Act prohibiting or limiting the making of regulations under that subsection.>

Schedule 3

Roseanna Cunningham

- 33 In schedule 3, page 34, line 28, leave out from <, or> to end of line 29

Schedule 5

Roseanna Cunningham

- 34 In schedule 5, page 38, line 31, leave out from <, or> to end of line 32

Section 32

Roseanna Cunningham

- 35 In section 32, page 13, line 27, leave out <office> and insert <their positions>

Roseanna Cunningham

- 36 In section 32, page 13, line 27, at end insert—
- <(2) The Scottish Ministers may by regulations make provision enabling a relevant appointment or transfer to be made or have effect in such terms as to cause a person to hold permanently the type of membership or (as the case may be) particular position in question.
 - (3) The Scottish Ministers must consult the President of Tribunals before—
 - (a) making regulations under subsection (2), or

- (b) exercising in relation to a relevant appointment or transfer the discretion allowed by such regulations.
- (4) The operation of paragraphs 2 to 7A of schedule 7 is subject to provision made by regulations under subsection (2).
- (5) For the purposes of subsection (2)—
 - (a) a relevant appointment is appointment or reappointment by the Scottish Ministers—
 - (i) of a person as an ordinary or legal member of the Scottish Tribunals,
 - (ii) of a legal member of the First-tier Tribunal as a Chamber President or Deputy Chamber President in the Tribunal, or
 - (iii) of a legal member of the Upper Tribunal as a Vice-President of the Tribunal,
 - (b) a relevant transfer is transfer-in to the Scottish Tribunals—
 - (i) of a person as an ordinary or legal member of the Tribunals by virtue of section 28(b), or
 - (ii) of a person to a particular position within the Tribunals by virtue of section 28(a).>

Schedule 7

Roseanna Cunningham

37 In schedule 7, page 43, line 23, at end insert—

<Extension in senior post

7A(1) Sub-paragraphs (2) and (3) apply where—

- (a) a legal member of the First-tier Tribunal becomes by appointment a Chamber President or Deputy Chamber President in the Tribunal, or
- (b) a legal member of the Upper Tribunal becomes by appointment a Vice-President of the Tribunal.
- (2) Despite paragraphs 2 and 3, the period for which the legal member holds that position does not end until the expiry of 5 years beginning with the date of the appointment mentioned in the relevant limb of sub-paragraph (1).
- (3) In all other respects also, the appointment mentioned in the relevant limb of sub-paragraph (1) supersedes the earlier appointment or (as the case may be) transfer-in as a legal member.>

Roseanna Cunningham

38 In schedule 7, page 43, line 25, leave out <to which the member was appointed or transferred-in> and insert <of member of the Tribunals>

Roseanna Cunningham

39 In schedule 7, page 43, line 32, leave out <4> and insert <7A>

Roseanna Cunningham

- 40 In schedule 7, page 43, line 37, leave out paragraph 10

Roseanna Cunningham

- 41 In schedule 7, page 44, line 6, leave out <appointment or transfer-in, and from holding a position, as a> and insert <holding, or continuing to hold, the position of>

Roseanna Cunningham

- 42 In schedule 7, page 44, line 15, leave out paragraph 12

Roseanna Cunningham

- 43 In schedule 7, page 45, line 7, at end insert—

<Pensions etc.

- (1) The Scottish Ministers may make arrangements as to—
 - (a) the payment of pensions, allowances and gratuities to or in respect of the members, or former members, of the Scottish Tribunals,
 - (b) contributions or other payments towards provision for such pensions, allowances and gratuities.
- (2) Under sub-paragraph (1), such arrangements may (in particular)—
 - (a) include provision relating to payment of compensation for loss of office,
 - (b) make different provision for different types of member, different positions or other different purposes.>

Roseanna Cunningham

- 44 In schedule 7, page 45, line 9, leave out from <in> to <the> in line 11 and insert <elsewhere in this Act or under it, the Scottish Ministers may determine the terms and conditions on which the members of the Scottish Tribunals hold their positions.

- (2) Under sub-paragraph (1), a>

Roseanna Cunningham

- 45 In schedule 7, page 45, line 14, leave out <categories of member> and insert <types of member, different positions>

Schedule 8

Roseanna Cunningham

- 46 In schedule 8, page 48, leave out lines 25 to 28 and insert <is, or has been—

- <(i) a judge of the Court of Session (except a temporary judge), or
- (ii) a sheriff (except a part-time sheriff),>

Roseanna Cunningham

- 47 In schedule 8, page 48, leave out lines 30 to 33 and insert—
- <() where the member under investigation is an ordinary member, another ordinary member, or
 - () where the member under investigation is a legal member, another legal member, and>

Roseanna Cunningham

- 48 In schedule 8, page 50, line 21, at end insert <of member of the Scottish Tribunals>

Section 34

Roseanna Cunningham

- 49 In section 34, page 14, line 6, leave out <a member or> and insert <one, or two or more, of the>

Section 36

Roseanna Cunningham

- 50 In section 36, page 14, line 38, leave out <a member or> and insert <one, or two or more, of the>

Roseanna Cunningham

- 51 In section 36, page 15, line 9, leave out <37> and insert <37(1)>

After section 37

Roseanna Cunningham

- 52 After section 37, insert—

<Decisions by two or more members

Voting for decisions

- (1) The Scottish Ministers may by regulations make provision for the purposes of sections 34(1) and 36(1) in so far as a matter in a case before the First-tier Tribunal or the Upper Tribunal is to be decided by two or more members of the Tribunal, including—
 - (a) for a decision to be made unanimously or by majority,
 - (b) where a decision is to be made by majority, for the chairing member to have a casting vote in the event of a tie.
- (2) Subsection (1) applies in relation to the Upper Tribunal as if an extra judge who is authorised to act as mentioned in section 17(5) were a member of the Tribunal (with section *(Chairing members)*(1) so applying accordingly).>

Roseanna Cunningham

- 53 After section 37, insert—

<Chairing members

- (1) Tribunal Rules may make provision for determining the question as to who is to be the chairing member where a matter in a case before the First-tier Tribunal or the Upper Tribunal is to be decided by two or more members of the Tribunal.
- (2) Rules making provision as described in subsection (1) may (in particular)—
 - (a) allow the President of Tribunals to determine the question,
 - (b) specify criteria as against which the question is to be determined (including by reference to type of member or particular expertise).>

Section 45

Roseanna Cunningham

- 54 In section 45, page 19, line 21, leave out <issue> and insert <point>

Roseanna Cunningham

- 55 In section 45, page 19, line 22, leave out <another> and insert <some other>

Section 48

Roseanna Cunningham

- 56 In section 48, page 20, line 18, at end insert—
<() for a right of appeal under an enactment apart from this Act to cease to be exercisable in relation to a decision no longer falling within this section.>

Section 56

Roseanna Cunningham

- 57 In section 56, page 22, line 14, after <any> insert <time and>

Roseanna Cunningham

- 58 In section 56, page 22, line 16, after <of> insert <when and>

Roseanna Cunningham

- 59 In section 56, page 22, line 17, at end insert <(and such Rules may allow the President of Tribunals to determine the question)>

Section 57

Roseanna Cunningham

- 60 In section 57, page 22, line 26, after <the> insert <citation,>

Section 59

Roseanna Cunningham

- 61 In section 59, page 23, line 16, leave out <may> and insert <is to>

Roseanna Cunningham

- 62 In section 59, page 23, line 19, leave out <such> and insert <awardable>

Roseanna Cunningham

- 63 In section 59, page 23, leave out lines 24 to 26

Roseanna Cunningham

- 64 In section 59, page 23, line 29, at end insert—
<(3A) Tribunal Rules may make provision—
(a) for disallowing any wasted expenses,
(b) for requiring a person who has given rise to such expenses to meet them.>

Roseanna Cunningham

- 65 In section 59, page 23, line 30, after <(3)> insert <or (3A)>

Roseanna Cunningham

- 66 In section 59, page 23, line 31, leave out <that subsection> and insert <this section>

After section 61

Roseanna Cunningham

- 67 After section 61, insert—
<Offences in relation to proceedings>
(1) The Scottish Ministers may by regulations make provision, in relation to proceedings before the First-tier Tribunal or the Upper Tribunal—
(a) for offences and penalties—
(i) for making a false statement in an application in a case,
(ii) for failure by a person to attend, or give evidence in, such proceedings when required to do so in accordance with Tribunal Rules,
(iii) for alteration, concealment or destruction by a person of, or failure by a person to produce, something that is required to be produced in such proceedings in accordance with Tribunal Rules,
(b) about the circumstances in which a person need not give evidence or produce something (for example, where a person could not be compelled to give evidence or produce something in proceedings in a case before the sheriff or in the Court of Session).

- (2) Before making regulations under subsection (1), the Scottish Ministers must obtain the Lord President's approval.>

Section 62

Elaine Murray

68 In section 62, page 24, line 33, at end insert—

- <() In making Tribunal Rules, the Court of Session must have regard to the need for—
- (a) tribunals to be accessible,
 - (b) the rules to be clear and easy to understand,
 - (c) proceedings before the tribunal to be—
 - (i) fair,
 - (ii) handled quickly and efficiently,
 - (d) members of tribunals to be experts in the subject-matter of, or the law to be applied in, cases in which they decide matters.>

Section 63

Roseanna Cunningham

69 In section 63, page 25, line 1, at end insert—

- <(A1) Tribunal Rules may confer functions on the persons mentioned in subsection (4) or the other members of the Scottish Tribunals.>

Roseanna Cunningham

70 In section 63, page 25, line 2, after first <the> insert <persons mentioned in subsection (4) or the other>

Roseanna Cunningham

71 In section 63, page 25, line 11, at end insert—

- <() Neither Tribunal Rules nor directions under section 68 may make provision altering the operation of section 34(1) or 36(1).>

Roseanna Cunningham

72 In section 63, page 25, line 11, at end insert—

- <(4) For the purpose of subsections (A1) and (1), the persons are—
- (a) the Lord President,
 - (b) the President of Tribunals,
 - (c) in the First-tier Tribunal—
 - (i) a Chamber President,
 - (ii) a Deputy Chamber President,

(d) a Vice-President of the Upper Tribunal.>

Section 64

Roseanna Cunningham

73 In section 64, page 25, line 26, after <27(5)> insert <, (*Chairing members*)(1)>

Section 65

Roseanna Cunningham

74 In section 65, page 26, line 2, at end insert—
<() enable two or more applications to be conjoined in certain circumstances,>

Section 66

Roseanna Cunningham

75 In section 66, page 26, line 23, at end insert—
<() enable two or more sets of proceedings to be taken concurrently at a hearing in certain circumstances,>

Section 67

Roseanna Cunningham

76 In section 67, page 27, line 5, leave out from <(in> to end of line 6 and insert <, including as to—
(a) the manner in which such decisions are to be made,
(b) the incorporation in such decisions of findings in fact,
(c) the recording, issuing, and publication of such decisions.>

Section 68

Roseanna Cunningham

77 In section 68, page 27, line 21, leave out subsection (5)

Roseanna Cunningham

78 In section 68, page 27, line 24, leave out subsection (6)

Section 69

Roseanna Cunningham

79 In section 69, page 27, line 28, at end insert—

<() The President of Tribunals must arrange for directions under section 68(1), (2) or (3) to be published in such manner as the President of Tribunals considers appropriate.>

Roseanna Cunningham

80 In section 69, page 27, line 28, at end insert—

<() Directions under section 68(1), (2) or (3) may—

(a) vary or revoke earlier such directions,

(b) make different provision for different purposes (in the same respects as Tribunal Rules).>

Roseanna Cunningham

81 In section 69, page 27, line 29, leave out subsection (1)

Section 70

Roseanna Cunningham

82 In section 70, page 28, line 13, at end insert—

<() to such extent as they consider appropriate, persons having an interest in the operation and business of the Scottish Tribunals.>

Section 73

Roseanna Cunningham

83 In section 73, page 29, line 23 leave out <or 37(1)> and insert <, 37(1) or (*Voting for decisions*)(1)>

Roseanna Cunningham

84 In section 73, page 29, line 24, leave out <or 61(1)> and insert <, 61(1) or (*Offences in relation to proceedings*)(1)>

Schedule 9

Margaret Mitchell

98* In schedule 9, page 51, line 10, at end insert—

<() Rules having effect as mentioned in sub-paragraph (2) (by virtue of regulations made under that sub-paragraph)—

(a) are to be regarded as if made as Tribunal Rules under Chapter 2 of Part 7,

(b) have effect accordingly (and may therefore be revoked, amended or remade by Tribunal Rules under Chapter 2 of Part 7).>

Margaret Mitchell

99 In schedule 9, page 51, line 25, leave out paragraphs 4 to 6

Roseanna Cunningham

85 In schedule 9, page 51, line 27, after <62(3)> insert <and (4)>

Elaine Murray

4 In schedule 9, page 52, line 16, at beginning insert <Subject to sub-paragraph (1A),>

Elaine Murray

5 In schedule 9, page 52, line 21, at end insert—

<(1A) Regulations under section 27(2) may not provide for the transfer-in of the functions of the Mental Health Tribunal for Scotland to the First-tier Tribunal until provision has been made for a single chamber to adjudicate exclusively on the subject-matter of mental health.>

Roseanna Cunningham

86 In schedule 9, page 53, line 6, at end insert—

<Making appointments

(1) Until all of the functions of a listed tribunal have been transferred to the Scottish Tribunals by regulations under section 27(2)—

(a) paragraph 3(1)(d) of schedule 1 to the 2008 Act has effect in relation to that tribunal as if the reference in that paragraph to a person holding the position of Chamber President or of Vice-President within the Scottish Tribunals includes the President of, or the holder of an equivalent office in, any listed tribunal,

(b) paragraph 16A(2) and (3) of schedule 1 to the 2008 Act has effect in relation to that tribunal as if the references in that paragraph to a member of the Scottish Tribunals includes a member of any listed tribunal.

(2) In this paragraph—

“the 2008 Act” means the Judiciary and Courts (Scotland) Act 2008 (see paragraph 11(4)(b) and (5)),

“listed tribunal” is to be construed in accordance with Part 3 (see section 26(1)).>

Roseanna Cunningham

87 In schedule 9, page 53, line 35, leave out <following paragraph (f)> and insert <preceding paragraph (g)>

Roseanna Cunningham

88 In schedule 9, page 53, line 36, leave out <after paragraph (f)> and insert <before paragraph (g)>

Elaine Murray

89 In schedule 9, page 55, line 15, at end insert—

<() after paragraph (a) there is inserted—

“(aa) to keep matters relating to the administrative justice system within the jurisdiction of the Scottish Tribunals under review,”>

Elaine Murray

90 In schedule 9, page 55, line 22, at end insert—

<() after paragraph (d) there is inserted—

“(da) to provide advice and make recommendations to the Lord President on the development of, and changes to, matters relating to the administrative justice system within the jurisdiction of the Scottish Tribunals,”>

Elaine Murray

91 In schedule 9, page 55, line 22, at end insert—

<() after paragraph (e) there is inserted—

“(ea) to provide such advice on any matter relating to the administrative justice system within the jurisdiction of the Scottish Tribunals as may be requested by the Lord President.”>

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