

SCHEDULE 9

(introduced by section 81)

TRANSITIONAL AND CONSEQUENTIAL

PART 1

TRANSITIONAL AND OTHER MATTERS

Exercise of functions

- 1 (1) Sub-paragraph (2) applies for the purposes of—
 - (a) the exercise of functions by a member of the Scottish Tribunals by virtue of this Act, and
 - (b) the operation of provisions in or under this Act to which such a member is subject.
- (2) Except where the context otherwise requires, it is immaterial whether a person who is, or who is acting as, such a member is in place by virtue of appointment, assignment, transfer-in or other means under this Act.

Rules of listed tribunals

- 2 (1) Sub-paragraph (2) applies where some or all of the functions of a listed tribunal have been, or are to be, transferred by regulations under section 28(2).
 - (2) The Scottish Ministers may by regulations provide for the procedural rules of a listed tribunal that are in force immediately before the transfer to have effect for the purposes of either or both of the First-tier Tribunal and the Upper Tribunal.
 - (3) Regulations under sub-paragraph (2) may provide for the procedural rules to which the regulations relate to have effect subject to such modifications as appear to the Scottish Ministers to be necessary or expedient with respect to the purposes mentioned in that sub-paragraph.
 - (4) In this paragraph—

“listed tribunal” is to be construed in accordance with Part 3 (see section 27(1)),

“procedural rules” means provision for the purposes of a listed tribunal (whether or not contained in an enactment and irrespective of whether called rules)—

 - (a) regulating the practice or procedure to be followed in proceedings at a listed tribunal, or
 - (b) otherwise applying in relation to the exercise by a listed tribunal of its functions.
- 3 (1) Regulations under paragraph 2(2) may—
 - (a) make different provision for different purposes,
 - (b) include supplemental, incidental, consequential, transitional, transitory or saving provision.
 - (2) Regulations under paragraph 2(2) are subject to the negative procedure.

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Pre-SCJC rule-making

- 4 (1) Until the Scottish Civil Justice Council and the Court of Session are involved in the making of Tribunal Rules by virtue of the coming into force of paragraph 13(2) to (5)—
- (a) section 68(3) and (4) is of no effect,
 - (b) instead of that section, sub-paragraph (2) applies for the purpose of making rules—
 - (i) regulating the practice and procedure to be followed in proceedings at the Scottish Tribunals, or
 - (ii) containing provision of other sorts appropriate with respect to the Scottish Tribunals (including in relation to the exercise by them of their functions).
- (2) The function of making such rules is exercisable by the Scottish Ministers by setting them out in regulations.
- (3) Before making regulations under sub-paragraph (2), the Scottish Ministers must consult—
- (a) the President of Tribunals, and
 - (b) such other persons as they consider appropriate.
- 5 (1) Regulations under paragraph 4(2) may—
- (a) modify rules having effect as mentioned in paragraph 2(2) (by virtue of regulations made under that paragraph),
 - (b) do anything that may be done by Tribunal Rules by virtue of Chapter 2 of Part 7 (including the making of different provision for different purposes).
- (2) Regulations under paragraph 4(2) are subject to the negative procedure.

Adoption of inherited rules

- 6 (1) Sub-paragraph (2) applies to—
- (a) rules having effect as mentioned in paragraph 2(2) (by virtue of regulations made under that paragraph),
 - (b) rules set out in regulations made by virtue of paragraph 4(2).
- (2) Once the Scottish Civil Justice Council and the Court of Session are involved in the making of Tribunal Rules by virtue of the coming into force of paragraph 13(2) to (5)—
- (a) all rules to which this sub-paragraph applies are to be regarded as if made as Tribunal Rules under Chapter 2 of Part 7,
 - (b) all such rules have effect accordingly (and may therefore be revoked, amended or remade by Tribunal Rules under Chapter 2 of Part 7).

Chambers and divisions

- 7 (1) For as long as it appears to the Scottish Ministers that the acquisition of functions by the First-Tier Tribunal for the time being is such that there is justification for not organising it into a number of chambers as required by section 20(1), regulations under section 20(2)—
- (a) need not be made, or
 - (b) may provide for the Tribunal to have a single chamber only.

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- (2) For as long as it appears to the Scottish Ministers that the acquisition of functions by the Upper Tribunal for the time being is such that there is justification for not organising it into a number of divisions as required by section 23(1), regulations under section 23(2)—
- (a) need not be made, or
 - (b) may provide for the Tribunal to have a single division only.
- 8 (1) Sections 20(1) and (2) and 23(1) and (2) are subject to paragraph 7(1) and (2) (until it appears to the Scottish Ministers that the relevant justification no longer exists).
- (2) Any provision of this Act (apart from this schedule Part) that mentions a chamber or more than one chamber of the First-tier Tribunal is, for as long as by virtue of paragraph 7(1) the First-tier Tribunal has no chambers or a single chamber, to be read with such modifications as are necessary for the effective operation of the provision while the Tribunal is not organised into a number of chambers.
- (3) Any provision of this Act (apart from this schedule Part) that mentions a division or more than one division of the Upper Tribunal is, for as long as by virtue of paragraph 7(2) the Upper Tribunal has no divisions or a single division, to be read with such modifications as are necessary for the effective operation of the provision while the Tribunal is not organised into a number of divisions.
- 9 For the purposes of paragraph 7(1) and (2), the Scottish Ministers must have regard to the following matters so far as relevant for the time being—
- (a) the different subject-matters falling within the jurisdiction of the First-tier Tribunal or (as the case may be) the Upper Tribunal, and
 - (b) any other factors relevant in relation to the exercise of the functions of the First-tier Tribunal or (as the case may be) the Upper Tribunal.

Making appointments

- 10 (1) Until all of the functions of a listed tribunal have been transferred to the Scottish Tribunals by regulations under section 28(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, or a person who exercises functions as, any listed tribunal.
- (2) In this paragraph—
- “the 2008 Act” means the Judiciary and Courts (Scotland) Act 2008 (see paragraph 12(4)(b) and (5)),
 - “listed tribunal” is to be construed in accordance with Part 3 (see section 27(1)).

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PART 2

CONSEQUENTIAL MODIFICATIONS

Judicial Pensions and Retirement Act 1993

- 11 (1) The Judicial Pensions and Retirement Act 1993 is amended as follows.
- (2) In section 26 (retirement date for certain judicial officers)—
- (a) in subsection (12), in the definition of “the appropriate person”, after paragraph (e) there is inserted—
- “(f) the Scottish Ministers, in the case of a relevant member of the Scottish Tribunals;”
- (b) after subsection (15) there is inserted—
- “(16) The Scottish Ministers must consult the President of Tribunals before exercising any function arising by virtue of subsection (12) (f) in relation to a relevant member of the Scottish Tribunals.
- (17) In paragraph (f) of the definition of “the appropriate person” in subsection (12), and in subsection (16), a reference to a relevant member of the Scottish Tribunals is to an ordinary or legal member of either or both of the Tribunals by virtue of section 15 or 16 of the Tribunals (Scotland) Act 2014.”.
- (3) In section 30 (interpretation), after subsection (1) there is inserted—
- “(1A) For the purposes of section 26(12)(f), (16) and (17), and the related entry in Schedule 5, “Scottish Tribunals” or “President of Tribunals” is to be construed in accordance with the Tribunals (Scotland) Act 2014.”.
- (4) In Schedule 5 (relevant offices in relation to retirement provisions), at the end there is inserted—
- “Ordinary or legal member of either or both of the Scottish Tribunals by virtue of section 15 or 16 of the Tribunals (Scotland) Act 2014.”.

Judiciary and Courts (Scotland) Act 2008

- 12 (1) The Judiciary and Courts (Scotland) Act 2008 is amended as follows.
- (2) In section 10 (judicial offices within the Board’s remit)—
- (a) in subsection (1), the word “and” immediately preceding paragraph (g) is repealed,
- (b) before paragraph (g) of that subsection there is inserted—
- “(fa) the positions within the Scottish Tribunals mentioned in subsection (2A), and”
- (c) after subsection (2) there is inserted—
- “(2A) The positions within the Scottish Tribunals are—
- (a) Vice-President of the Upper Tribunal, if to be appointed under section 26(1) of the Tribunals (Scotland) Act 2014,
- (b) Chamber President in the First-tier Tribunal, if to be appointed under section 22(1) of that Act,

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- (c) Deputy Chamber President in the First-tier Tribunal, if to be appointed under the relevant provisions of schedule 4 to that Act,
 - (d) ordinary member or legal member of the First-tier Tribunal or the Upper Tribunal, if to be appointed under the relevant provisions of schedule 3 or (as the case may be) schedule 5 to that Act.”.
- (3) In section 30 (Judicial Complaints Reviewer), in subsection (5), after paragraph (h) there is inserted—
 - “(i) an ordinary or legal member of either or both of the Scottish Tribunals by virtue of section 15 or 16 of the Tribunals (Scotland) Act 2014.”.
- (4) In paragraph 3 of schedule 1—
 - (a) in sub-paragraph (1), the word “and” immediately preceding paragraph (c) is repealed,
 - (b) after paragraph (c) of sub-paragraph (1) there is inserted “, and
 - (d) one person holding the position of Chamber President or of Vice-President within the Scottish Tribunals.”,
 - (c) after sub-paragraph (5) there is inserted—
 - “(6) For the purposes of sub-paragraph (1)(d)—
 - “Scottish Tribunals” is to be construed in accordance with the Tribunals (Scotland) Act 2014,
 - “Chamber President” means Chamber President in the First-tier Tribunal as referred to in that Act and “Vice-President” means Vice-President of the Upper Tribunal as referred to in that Act.”.
- (5) After paragraph 16 of schedule 1 there is inserted—

“Proceedings relating to the Scottish Tribunals

- 16A (1) Sub-paragraph (2) applies where the Board is exercising any function under this Act in connection with a position mentioned in section 10(2A).
- (2) At least one member of the Scottish Tribunals is to take part in any proceedings relating to the function (whether or not also a member of the Board).
- (3) It is for the President of Tribunals to select a member of the Scottish Tribunals to take part as mentioned in sub-paragraph (2).
- (4) Before making a selection under sub-paragraph (3), the President of Tribunals must consult the Chairing Member.
- (5) Sub-paragraph (6) applies where a person taking part as mentioned in sub-paragraph (2) is not a member of the Board.
- (6) The person is to be treated as if a member of the Board for the purposes of—
 - (a) sections 11 to 15 and 17, and

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- (b) paragraphs 5, 12 and 13 of this schedule.
- (7) The Board may not make a determination under paragraph 15 which is inconsistent with this paragraph.
- (8) In this paragraph, “President of Tribunals” is to be construed in accordance with the Tribunals (Scotland) Act 2014 and the references to a member of the Scottish Tribunals are to be construed in accordance with section 13(3) of that Act.”.

Scottish Civil Justice Council and Criminal Legal Assistance Act 2013

- 13 (1) The Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 is amended as follows.
- (2) In subsection (1) of section 2 (functions of the Council)—
 - (a) after paragraph (b) there is inserted—
 - “(ba) to review the practice and procedure followed in proceedings in the Scottish Tribunals,”
 - (b) in paragraph (c)—
 - (i) the words “draft civil procedure rules” become sub-paragraph (i),
 - (ii) after that sub-paragraph (as so numbered) there is inserted—
 - “(ii) draft tribunal procedure rules,”
 - (3) In subsection (3) of section 2, after paragraph (c) there is inserted—
 - “(ca) practice and procedure should, where appropriate, be similar in both of the Scottish Tribunals (and in different chambers or divisions within them),”.
 - (4) After subsection (6) of section 2 there is inserted—
 - “(7) For the purposes of this Part, “draft tribunal procedure rules” are draft rules prepared with a view to the making by the Court of Session by act of sederunt of Tribunal Rules with respect to the Scottish Tribunals.”.
 - (5) In section 4 (Court of Session to consider rules)—
 - (a) in subsection (1), after the words “draft civil procedure rules” there is inserted “or draft tribunal procedure rules”,
 - (b) in subsection (2), after the words “draft civil procedure rules” there is inserted “or draft tribunal procedure rules”.
 - (6) In section 6 (composition of the Council), in subsection (1)—
 - (a) for the word “20” there is substituted “22”,
 - (b) after paragraph (a) there is inserted—
 - “(aa) the President of Tribunals,”
 - (c) after paragraph (e) there is inserted—
 - “(ea) from the membership of the Scottish Tribunals, 1 Chamber President or 1 Vice-President (“Tribunal representative member”),”.
 - (7) In section 8 (tenure)—
 - (a) in subsection (1), after the words “Lord President,” there is inserted “the President of Tribunals,”

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(b) after subsection (3) there is inserted—

“(3A) A Tribunal representative member holds office for a period of 3 years unless, prior to the expiry of that period, the Lord President replaces the representative with another Tribunal representative member or requires the member to leave office.”.

(8) The title of section 13 becomes “**Committees generally**”.

(9) After section 13 there is inserted—

“Tribunals

13A Tribunals committee

- (1) The Council must establish a particular committee under section 13(1) in connection with the exercise by it of the functions arising by virtue of section 2(1)(ba) and (c)(ii).
 - (2) The committee is to be chaired by the President of Tribunals or the Tribunal representative member.
 - (3) The other members of the committee are to be selected by the President of Tribunals.
 - (4) In selecting those members of the committee, the President of Tribunals is to have particular regard to the need to ensure that its membership includes persons with knowledge of how the Scottish Tribunals exercise their functions.
 - (5) The Council may not make a determination under section 12(3)(b) which is inconsistent with subsections (2) to (4).”.
- (10) In section 16 (interpretation of Part 1)—
- (a) the existing text becomes subsection (1),
 - (b) in that subsection (as so numbered), after the entry relating to draft civil procedure rules there is inserted—

“draft tribunal procedure rules” has the meaning given in section 2(7),”,
 - (c) after that subsection (as so numbered) there is inserted—

“(2) In this Part—
“Scottish Tribunals”, “President of Tribunals” and “Tribunal Rules” are to be construed in accordance with the Tribunals (Scotland) Act 2014,
“Chamber President” means Chamber President in the First-tier Tribunal as referred to in that Act and “Vice-President” means Vice-President of the Upper Tribunal as referred to in that Act (with “chamber” and “division” in relation to the Scottish Tribunals to be construed in accordance with that Act).”.