

Judiciary
of Scotland



Legal Member

Upper Tribunal
For Scotland





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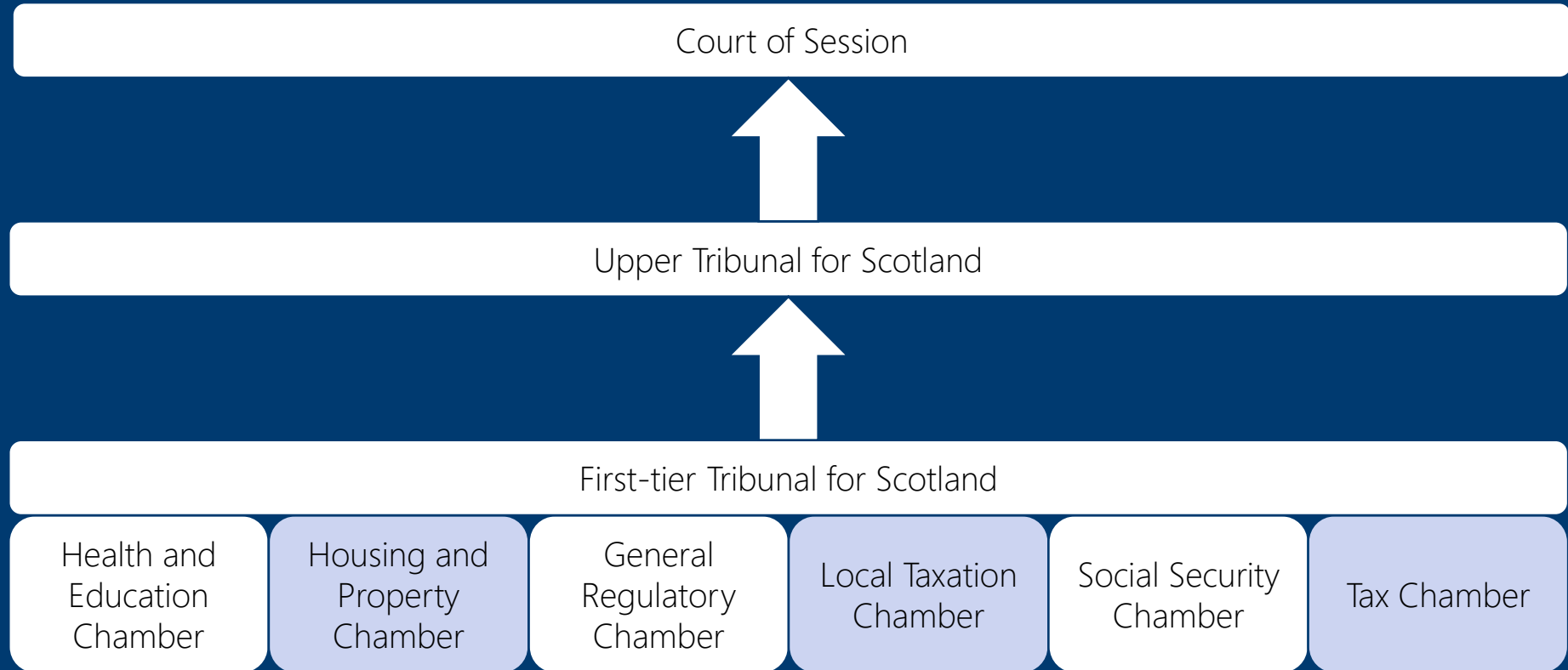
History of the Scottish Tribunals

The Tribunals (Scotland) Act 2014 (“the 2014 Act”) created a statutory framework for the Tribunals in Scotland. The Act created two new Tribunals, the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland, known collectively as the Scottish Tribunals. The First-tier Tribunal consists of a number of Chambers, each with its own jurisdiction and headed by a Chamber President.

The First-tier Tribunal for Scotland deals with first instance decisions. These are cases heard at a Tribunal for the first time. The Upper Tribunal hears appeals on decisions of the chambers of the First-tier Tribunal. In certain circumstances, some matters can be appealed from the Upper Tribunal to the Court of Session.

The 2014 Act brings Tribunal appointments under the remit of the Judicial Appointments Board for Scotland (JABS) and transfers administrative support of Tribunals to the Scottish Courts and Tribunals Service (SCTS).

Scottish Tribunal Structure



Eligibility

Legal Members of the Upper Tribunal are appointed by the Scottish Ministers. The eligibility criteria for this appointment are contained in the Scottish Tribunals (Eligibility for Appointment) Regulations 2015 (regulation 5) made under schedule 5, part 2 of the Tribunals (Scotland) Act 2104.

To be eligible for appointment you must have had:

- (i) Previous engagement in practice for a period of not less than 7 years as a solicitor or advocate in Scotland; and
 - (ii) Subsequent engagement in any of the activities listed below:
 - (a) exercising judicial functions in any court or tribunal; or
 - (b) practice or employment as a lawyer of any kind.
- The 7-year period referred to above (and the 7-year period referred to in paragraph 5(1) of schedule 5 of the 2014 Act) may be calculated on a cumulative or a continuous basis.

The Judicial Appointments Board for Scotland (JABS) (the Board) is an independent non-departmental public body whose statutory role is to make recommendations to the Scottish Ministers for appointment to judicial offices under the provisions of the Judiciary and Courts (Scotland) Act 2008.

The Board's responsibilities under the 2008 Act are that:

- a) selection of an individual to be recommended for appointment must be solely on merit;
- b) the Board may select an individual only if it is satisfied that the individual is of good character; and
- c) in carrying out its functions, the Board must have regard to the need to encourage diversity in the range of individuals available for selection to be recommended for appointment to a judicial office. This is subject to the provisions a) and b) above.

Candidates will go through a holistic application process which tests the level of skill, experience and professionalism required to perform the duties of the office.

JABS encourages diversity and particularly welcomes applications from groups currently under-represented in the judiciary. The principles of fair and open competition will apply and recommendation for appointment will be made solely on merit.

Each applicant will be assessed against a set of skills and qualities which are necessary for the role:



Personal and Judicial Qualities

As well as the statutory eligibility, applicants are also required to demonstrate judicial and personal qualities. Applicants will possess the following qualities:

Legal Knowledge

- A high level of expertise in the applicant's area of practice.
- Ability to master new areas of law and keep up to date with all relevant law.
- Thorough knowledge of the law of evidence, procedure and practice in courts or tribunals.
- Practical experience of rating and valuation is highly desirable but not essential.

Interpretation of Law

- Ability to analyse and interpret case law and statute.
- Able to analyse and assess complex evidence and arguments, often involving significant volumes of written and oral submissions.
- Ability to identify and focus on key issues and apply the law in unfamiliar areas.
- Ability to analyse complex and challenging legal problems and reach clear and well-reasoned decisions applying the law correctly.

Managing Work Efficiently

- Able to take responsibility for processes and decisions, with responsibility for producing clear and well-reasoned decisions.
- Ability to confidently manage and chair the hearing process.
- Ability to efficiently and effectively despatch Upper Tribunal business.

Exercising Judgement

- Is confident in judging and making independent decisions.
- Ability to provide clear reasoning for decisions made.
- Remains impartial and open minded and is seen to be fair to all.

Working with others

- Able to work effectively (with other members of the Upper Tribunal) and be active in deliberations and decision making.
- Treats people fairly with respect and sensitivity
- Shows an understanding of and commitment to the role and to public service.

Communicating Effectively

- Able to use clear and straightforward language with all who appear before them in Upper Tribunal proceedings which will include unrepresented parties.
- Able to produce written work promptly that is clear, concise and well-reasoned.
- Able to establish authority and inspire respect and confidence.

Role of a Legal Member

Depending on the type of case, Legal Members may sit alone or as part of a panel. Members will be required to:

- Communicate effectively with all parties and their representatives;
- Reading and assimilating appeal papers before a hearing, including studying substantial complex documentary evidence;
- Weighing up potentially conflicting evidence and reaching an independent and well-reasoned decision;
- Taking an active role in hearings, including asking questions, demonstrating familiarity with key issues including knowledge of the subject area, relevant legislation and the facts of the particular case;
- Where appropriate, carrying out site visits. Site visits may be required for appeals on ratings and valuation matters;
- Working collaboratively with other members of the Upper Tribunal when required and facilitating collective decision making. Producing high quality written decisions and statements of reasons;
- Manage cases actively and expeditiously, promoting the efficient disposal of business;
- Ensuring decisions, directions and any orders of the Upper Tribunal are made efficiently and effectively;
- Travel throughout Scotland, as required; and
- Carrying out all other Upper Tribunal tasks that may reasonably be required.

Upper Tribunal (UT)

The Scottish Ministers are seeking to appoint legal members to the Upper Tribunal for Scotland to hear non-domestic rates appeals and other Upper Tribunal appeals. Appointments are made under schedule 5, part 2 of the Tribunals (Scotland) Act 2014.

The Upper Tribunal hears and decides cases transferred or referred to it from the First-tier Tribunal for Scotland (First-tier Tribunal) and hears and decides appeals on decisions of the Chambers of the First-tier Tribunal. The current Chambers are the General Regulatory Chamber, the Housing and Property Chamber, the Health and Education Chamber, the Local Taxation Chamber, the Social Security Chamber, and the Tax Chamber.

The Upper Tribunal hears Non-domestic Rates (NDR) Valuation Appeals that have been referred from the Local Taxation Chamber to the Upper Tribunal. From December 2024 the Upper Tribunal will also hear appeals against decisions of the Traffic Commissioner in relation to bus service standard decisions and penalties.

A decision of the First-tier Tribunal in any matter in a case before the Tribunal may be appealed by a party to the Upper Tribunal on a point of law. An appeal to the Upper Tribunal requires the permission of the First-tier Tribunal or, if the First-tier Tribunal refuses its permission, the Upper Tribunal.

As the Upper Tribunal is an appellate jurisdiction, cases will often involve particularly complex issues of law and procedure. This requires knowledge and experience in the branch of the law in which individuals have practised and also an ability to work in other branches of the law that may arise in the course of their duties. It is therefore important that an Upper Tribunal legal member is a lawyer of sufficient standing to command confidence in their decisions with immediate effect. Upper Tribunal decisions are binding on the First-tier Tribunal. Appeals in the Upper Tribunal are heard by Senators of the College of Justice, Sheriffs or other legal or ordinary members. The composition of the Upper Tribunal depends on which First-tier Tribunal Chamber decision is being appealed, with legal members in the Upper Tribunal often sitting and hearing appeals alone. Parties in Upper Tribunal proceedings are often represented, although this is not always the case. Appeals against decisions of the Upper Tribunal are made to the Court of Session.

Remuneration

TIME COMMITMENT

The time commitment is expected to be not less than 24 days per annum, depending on the volume of work of the tribunal. The number of sitting days in any year is not guaranteed. In addition, it is anticipated that there will be in the order of two days of training per year.

FEES AND EXPENSES

The current fee for the Upper Tribunal is £553.87 per day. Travel and subsistence expenses will also be met.

PERIOD OF APPOINTMENT

By virtue of paragraph 4 of schedule 7 of the 2014 Act you will be automatically reappointed for periods of five years, unless one of the conditions listed in paragraph 4(3) of schedule 7 applies. You may decline automatic reappointment by providing one month's written notice to the Lord President that you do not wish to continue in post at the expiry of your current period in office.

You are required to vacate your office on the day on which you attain the age of 75.

Useful Links

The Upper Tribunal has its own website which provides more information.. The website include their own useful links such as links to relevant legislation or advice bodies.

Tribunal decisions and forthcoming hearings are also published on the website.

- Upper Tribunal

[Upper Tribunal for Scotland | Scottish Courts \(scotcourts.gov.uk\)](https://www.scotcourts.gov.uk/upper-tribunal)

- Tribunals (Scotland) Act 2014

[Tribunals \(Scotland\) Act 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2014/12)



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