

POLICY NOTE

THE FIRST-TIER TRIBUNAL FOR SCOTLAND HEALTH AND EDUCATION CHAMBER (PROCEDURE) REGULATIONS 2017

SSI 2017/366

1. The above instrument was made in exercise of the powers conferred by paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014 (the 2014 Act). In accordance with paragraph 4(3) of Schedule 9 to the 2014 Act the President of the Scottish Tribunals has been consulted on these regulations.

Policy Objectives

2. The 2014 Act allows rules to be made to regulate the practice and procedure of both the First-tier and Upper Tribunals. Paragraph 4(2) of Schedule 9 to the 2014 Act allows rules to be made by the Scottish Ministers until such time as responsibility for rule making passes to the Court of Session.

3. These regulations establish rules of procedure for the First-tier Tribunal Health and Education Chamber, which insofar as possible have been drawn from the existing rules of procedure for the Additional Support Needs Tribunal for Scotland, the functions of which have been transferred to the First-tier Tribunal in regulations (SSI 2018/XXX).

4. There are four main areas in which the new rules of procedure differ from the existing ASNTS rules. This is to aid consistency within the Scottish Tribunals. Firstly, the rules of procedure in these regulations contain new provision for the right of a party to have a supporter accompany them to tribunal proceedings. Secondly, the existing review procedure is amended to allow the First-tier Tribunal to, on its own initiative as well as on the application of a party, review a decision. Thirdly, parties must seek permission from the First-tier Tribunal for an appeal to the Upper Tribunal. If permission is refused, parties may then seek permission directly from the Upper Tribunal. Lastly, there is a provision allowing a legal member sitting alone to decide whether a child over the age of 12 has capacity to exercise their rights under the Education (Additional Support for Learning) (Scotland) Act 2004 on their own behalf.

5. Fuller details of the policy objectives relating to the 2014 Act are described in the Policy Memorandum which accompanied the Tribunals Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62938.aspx>

Consultation

6. A consultation with interested parties took place between May and August 2017. There were 15 responses to this consultation. The responses are available on the Scottish Government website:

<https://consult.scotland.gov.uk/tribunals-administrative-justice-policy/additional-support-needs-tribunals/>

Impact Assessments

7. An Equality Impact Assessment has already been completed for the Tribunals (Scotland) Bill – see link below:

<http://www.scotland.gov.uk/Resource/0042/00421637.pdf>

8. An Equality Impact Assessment is not required for these regulations.

9. A Business and Regulatory Impact Assessment is not required as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Education, Communities and Justice Directorate
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