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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 3**

**TRIBUNALS AND INQUIRIES**

**The First-tier Tribunal for Scotland Health  
and Education Chamber and Upper Tribunal  
for Scotland (Composition) Regulations 2018**

*Made* - - - - *9th January 2018*

*Coming into force* - - *12th January 2018*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 38(1) to (3) and 40(1) of the Tribunals (Scotland) Act 2014(1) and all other powers enabling them to do so.

In accordance with section 11(2) of that Act, they have consulted the President of Tribunals.

In accordance with section 79(2)(c) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the First-tier Tribunal for Scotland Health and Education Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018 and come into force on 12th January 2018.

(2) In these Regulations—

“Chamber President” means the Chamber President of the First-tier Tribunal; and

“First-tier Tribunal” means the First-tier Tribunal for Scotland Health and Education Chamber.

**Composition of First-tier Tribunal**

2.—(1) Subject to paragraphs (2) to (4), the First-tier Tribunal, when convened at a hearing to decide any matter in a case, may consist of—

(a) the Chamber President and two ordinary members; or

(b) a legal member and two ordinary members.

(2) The First-tier Tribunal, when convened at a hearing to decide any matter in a case under section 18(3)(ea) or (eb) of the Education (Additional Support for Learning) (Scotland) Act 2004(2), may consist of only the Chamber President or a legal member.

(3) The First-tier Tribunal, when convened without a hearing (see rules 37 and 84 of [S.S.I. 2017/366](#)) to decide any matter in a case may consist of a legal member only.

(4) If, at or after the beginning of a hearing, a member of the First-tier Tribunal other than the legal member is absent, the hearing may, with the consent of the parties, be conducted by the legal member and the remaining member and in that event the First-tier Tribunal shall be deemed to be properly constituted, and the decision of the First-tier Tribunal shall be taken by the legal member and that member.

### **Composition of Upper Tribunal hearing appeals or referrals from First-tier Tribunal**

3.—(1) The Upper Tribunal, when deciding an appeal to the Upper Tribunal in a case decided by the First-tier Tribunal, shall consist of—

- (a) a judge of the Court of Session, acting either alone or with a judicial member of the Upper Tribunal;
- (b) the Chamber President (except a temporary Chamber President), acting either alone or with another judicial member of the Upper Tribunal;
- (c) the President of Tribunals, acting either alone or with another judicial member of the Upper Tribunal; or
- (d) the Lord President, acting either alone or with a judicial member of the Upper Tribunal.

(2) The Chamber President referred to in paragraph (1) must not have had any involvement in the case prior to the appeal of the case to the Upper Tribunal.

(3) In this regulation “judicial member of the Upper Tribunal” means a judge of the Court of Session.

St Andrew’s House,  
Edinburgh  
9th January 2018

*ANNABELLE EWING*  
Authorised to sign by the Scottish Ministers

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(2) [2004 asp 4](#). Sections 18(3)(ea) and (eb) were inserted by the Education (Scotland) Act 2016 ([2016 asp 8](#)), schedule 1, paragraph 16(c).

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision as to the composition of the First-tier Tribunal for Scotland when dealing with a case in the Health and Education Chamber. They also make provision as to the composition of the Upper Tribunal for Scotland when hearing appeals from the First-tier Tribunal for Scotland Health and Education Chamber.

These two Tribunals were established by the Tribunals (Scotland) Act 2014. The First-tier Tribunal is divided into chambers according to the subject matter of the case, with the Health and Education Chamber dealing with certain health and education disputes. Members of the tribunals can be ordinary members, legal members or judicial members according to criteria set out in the Tribunals (Scotland) Act 2014 and regulations made under that Act. This instrument sets out which member or members may hear cases in the two tribunals.