

Status: Point in time view as at 10/01/2018.

Changes to legislation: There are currently no known outstanding effects for the Education (Additional Support for Learning) (Scotland) Act 2004, SCHEDULE 1. (See end of Document for details)

SCHEDULE 1

(introduced by section 17)

ADDITIONAL SUPPORT NEEDS TRIBUNALS FOR SCOTLAND

Interpretation

- 1 In this schedule—
- “panel” means a panel referred to in paragraph 3(1),
 - “regulations” means regulations made by the Scottish Ministers,
 - “Tribunal functions” means the functions which are conferred on a Tribunal by virtue of this Act [^{F1}or the Equality Act 2010],
 - “Tribunal member” means a member of a panel,
 - “Tribunal staff” means the staff provided or appointed under paragraph 9.

Textual Amendments

- F1** Words in Sch. 1 para. 1 inserted (1.10.2010 for specified purposes, 18.3.2011 in so far as not already in force) by [Equality Act 2010 \(c. 15\)](#), s. 216(3), [Sch. 17 para. 12\(c\)](#) (with ss. 6(4), 205); [S.I. 2010/2317](#), arts. 2(9)(k)(ii), 3(d) (with arts. 4-25, Schs. 1-8) (as amended (1.10.2010) by [S.I. 2010/2337](#), art. 2)

Commencement Information

- I1** Sch. 1 para. 1 in force at 3.5.2005 by [S.S.I. 2005/154](#), [art. 2](#)

The President

- 2 (1) The Scottish Ministers must not appoint an individual under section 17(2) as President unless that individual has such qualifications, training and experience as are prescribed in regulations.
- (2) The President may serve as the convener of a Tribunal.
- (3) The President’s functions may, if the office of the President is vacant or the President is for any reason unable to act, be exercised by one of the members of the panel referred to in paragraph 3(1)(a) appointed for that purpose by the Scottish Ministers.
- (4) Regulations may make provision for the delegation by the President of any of the President’s functions to any member of that panel or any member of the Tribunal staff.
- (5) Paragraphs 3(2), 5, 6 and 7 of this schedule apply, with any necessary modifications, to the President as they apply to a Tribunal member.

Commencement Information

- I2** Sch. 1 para. 2 in force at 3.5.2005 by [S.S.I. 2005/154](#), [art. 2](#)

The panels

- 3 (1) The Scottish Ministers must appoint—

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- (a) a panel of individuals having such qualifications, training and experience as may be prescribed in regulations each of whom may act as the convener of a Tribunal, and
 - (b) a panel of individuals having such qualifications, training and experience as may be prescribed in regulations each of whom may act as a member of a Tribunal other than the convener.
- (2) An individual is disqualified from appointment as, and from being, a Tribunal member if the individual is—
- (a) a member of the Scottish Parliament,
 - (b) a member of the Scottish Executive or a junior Scottish Minister, or
 - (c) of such other description as may be prescribed in regulations.

Commencement Information

I3 Sch. 1 para. 3 in force at 3.5.2005 by [S.S.I. 2005/154](#), [art. 2](#)

Constitution of Tribunals

- 4 (1) The President must from time to time constitute such number of Tribunals as the President thinks necessary to exercise Tribunal functions.
- (2) A Tribunal constituted under sub-paragraph (1) must consist of—
- (a) either—
 - (i) the President, or
 - (ii) one member selected by the President from the panel referred to in paragraph 3(1)(a),
 who is to act as the convener of the Tribunal, and
 - (b) two other members selected by the President from the panel referred to in paragraph 3(1)(b).

Commencement Information

I4 Sch. 1 para. 4 in force at 3.5.2005 by [S.S.I. 2005/154](#), [art. 2](#)

Terms of Office

- 5 (1) Each Tribunal member—
- (a) holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment,
 - (b) may at any time resign office by giving notice in writing to the Scottish Ministers,
 - (c) vacates office on becoming disqualified from being a Tribunal member under paragraph 3(2),
 - (d) in other respects holds office in accordance with the terms of the member's instrument of appointment.
- (2) A Tribunal member whose period of office (including any period of office following re-appointment under this sub-paragraph) expires under sub-paragraph (1)(a) may

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be re-appointed by the Scottish Ministers for a further period to the same panel to which the member was last appointed, unless—

- (a) the member has declined re-appointment,
- (b) the President has recommended to the Scottish Ministers that the member should not be re-appointed and the Scottish Ministers have accepted that recommendation,
- (c) since the member was last appointed to the panel, there has been a reduction in the overall number of members of the panel which the Scottish Ministers consider are needed to enable the President to carry out the functions under paragraph 4,
- (d) the member has, since the member was last appointed to the panel, failed without reasonable excuse to comply with the terms of the member's appointment,
- (e) the member no longer has the qualifications, training or experience prescribed under paragraph 3(1) for appointment to the panel.

Commencement Information

I5 Sch. 1 para. 5 in force at 3.5.2005 by [S.S.I. 2005/154](#), [art. 2](#)

Removal from office

- 6 The Scottish Ministers may remove a Tribunal member from office if the member is unfit for office by reason of inability, neglect of duty or misbehaviour.

Commencement Information

I6 Sch. 1 para. 6 in force at 3.5.2005 by [S.S.I. 2005/154](#), [art. 2](#)

Allowances for Tribunal members

- 7 The Scottish Ministers may pay to a Tribunal member such allowances as they may determine.

Commencement Information

I7 Sch. 1 para. 7 in force at 3.5.2005 by [S.S.I. 2005/154](#), [art. 2](#)

Administration of Tribunal functions

- 8
- (1) The Tribunals constituted under paragraph 4(1) are to sit at such times and in such places as the President may determine.
 - (2) The President must ensure that Tribunal functions are exercised by those Tribunals efficiently and effectively.
 - (3) The President may—
 - (a) give such directions, and
 - (b) issue such guidance,

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as respects the administration of the Tribunals, or any one of them, as appear to the President to be necessary or expedient for the purpose of ensuring that Tribunal functions are exercised efficiently and effectively.

Commencement Information

I8 Sch. 1 para. 8 in force at 3.5.2005 by [S.S.I. 2005/154](#), **art. 2**

Staff, property and services

^{F2}9

Textual Amendments

F2 [Sch. 1 para. 9](#) repealed (1.4.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), **Sch. 4 para. 6**; [S.S.I. 2015/77](#), art. 2(2)(3), [Sch.](#)

Finance

10 The Scottish Ministers are to pay any expenses reasonably incurred by the President or a Tribunal in the exercise of the President's functions or, as the case may be, Tribunal functions.

Commencement Information

I9 Sch. 1 para. 10 in force at 3.5.2005 by [S.S.I. 2005/154](#), **art. 2**

Rules of procedure

11 (1) The Scottish Ministers must make rules as to the practice and procedure of the Tribunals.

(2) Such rules may, in particular, include provision for or in connection with—

- (a) the form and manner in which references to a Tribunal under section 18(1) are to be made,
- (b) the time within which such references are to be made,
- (c) the withdrawal of references,
- (d) the recovery and inspection of documents,
- (e) the persons who may appear on behalf of the parties,
- (f) the persons who may be present at proceedings alongside any party or witness to support the party or witness,
- [^{F3}(fa) seeking the views of children whose parents have made references to a Tribunal under section 18(1) in relation to the children,]
- (g) enabling specified persons other than the parties to appear or be represented in specified circumstances,
- (h) requiring specified persons to give notice to other specified persons of specified matters,
- (i) the time within which any such notice must be given,

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- (j) enabling Tribunal proceedings to be conducted in the absence of any member of a Tribunal other than the convener,
- (k) enabling any matters that are preliminary or incidental to the determination of proceedings to be determined by the convener of a Tribunal alone or with such other members of the Tribunal as may be specified,
- [^{F4}(ka) enabling specified matters relating to the failure by an education authority to comply with time limits required by virtue of this Act to be determined by the convener of a Tribunal alone,]
- [^{F5}(kb) enabling a convener of a Tribunal and without holding a hearing to determine specified matters relating to the decision of an education authority as respects—
 - (i) the capacity of a child who has attained the age of 12 years to exercise a right under this Act, or
 - (iii) whether something would adversely affect the wellbeing of a child who has attained the age of 12 years,
- (kc) the practice and procedure relating to matters that may be determined by a convener alone by virtue of paragraph (kb),
- (kd) applying (with such modifications as may be specified) section 19(2) to a convener determining a matter by virtue of paragraph (kb) as that section applies to a Tribunal,]
- (l) enabling Tribunal proceedings to be held in private,
- (m) enabling a Tribunal to exclude any person from attending all or part of Tribunal proceedings,
- (n) enabling a Tribunal to impose reporting restrictions in relation to all or part of Tribunal proceedings,
- (o) enabling a Tribunal to determine specified matters without holding a hearing,
- (p) the recording and publication of decisions and orders of a Tribunal,
- (q) enabling a Tribunal to commission medical and other reports in specified circumstances,
- (r) requiring a Tribunal to take specified actions, or to determine specified proceedings, within specified periods,
- (s) enabling a Tribunal to make an award of expenses,
- (t) the taxation or assessment of such expenses.
- [^{F6}(u) enabling a Tribunal, in specified circumstances, to—
 - (i) review,
 - (ii) vary or revoke,any of its decisions, orders or awards,
- (v) enabling a Tribunal, in specified circumstances, to review the decisions, orders or awards of another Tribunal [^{F7}, or a convener alone following a determination mentioned in paragraph (kb)] and take such action (including variation and revocation) in respect of those decisions, orders or awards as it thinks fit.]

(3) In sub-paragraph (2), “specified” means specified in the rules.

Textual Amendments

F3 Sch. 1 para. 11(2)(fa) inserted (10.1.2018) by Education (Scotland) Act 2016 (asp 8), s. 33(2), **sch. para. 25(a)**; S.S.I. 2017/354, reg. 2(a)

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- F4** Sch. 1 para. 11(2)(ka) inserted (2.4.2010) by [Education \(Additional Support for Learning\) \(Scotland\) Act 2009 \(asp 7\)](#), **ss. 20(a)**, 26(3); S.S.I. 2010/129, art. 2(d)
- F5** Sch. 1 para. 11(2)(kb)-(kd) inserted (10.1.2018) by [Education \(Scotland\) Act 2016 \(asp 8\)](#), s. 33(2), **sch. para. 25(b)**; S.S.I. 2017/354, reg. 2(a)
- F6** Sch. 1 para. 11(2)(u)(v) added (2.4.2010) by [Education \(Additional Support for Learning\) \(Scotland\) Act 2009 \(asp 7\)](#), **ss. 20(b)**, 26(3); S.S.I. 2010/129, art. 2(d)
- F7** Words in sch. 1 para. 11(2)(v) inserted (10.1.2018) by [Education \(Scotland\) Act 2016 \(asp 8\)](#), s. 33(2), **sch. para. 25(c)**; S.S.I. 2017/354, reg. 2(a)

Commencement Information

- I10** Sch. 1 para. 11 in force at 3.5.2005 by [S.S.I. 2005/154](#), **art. 2**

Power to monitor implementation of Tribunal decisions

- [^{F8}11A The President may, in any case where a decision of a Tribunal required an education authority to do anything, keep under review the authority's compliance with the decision and, in particular, may—
- (a) require the authority to provide information about the authority's implementation of the Tribunal decision,
 - (b) where the President is not satisfied that the authority is complying with the decision, refer the matter to the Scottish Ministers.]

Textual Amendments

- F8** Sch. 1 para. 11A inserted (14.11.2010) by [Education \(Additional Support for Learning\) \(Scotland\) Act 2009 \(asp 7\)](#), **ss. 21**, 26(3); S.S.I. 2010/277, art. 2

Practice directions

- 12 The President may give directions as to the practice and procedure to be followed by Tribunals in relation to any matter.

Commencement Information

- I11** Sch. 1 para. 12 in force at 3.5.2005 by [S.S.I. 2005/154](#), **art. 2**

Evidence

- 13 (1) A Tribunal may by citation require any person—
- (a) to attend proceedings of the Tribunal, at such time and place as is specified in the citation, for the purposes of giving evidence,
 - (b) to produce any document in the custody, or under the control of, that person.
- (2) A Tribunal may administer oaths to persons giving evidence.
- (3) A person is not obliged by virtue of this paragraph to answer any question or produce any document which that person would be entitled to refuse to answer or produce in civil proceedings before the Court of Session.
- (4) If a person on whom a citation under sub-paragraph (1) has been served—
- (a) fails to attend the Tribunal proceedings as required by the citation,

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- (b) refuses or fails, whilst attending proceedings as so required, to answer any question,
 - (c) deliberately alters, conceals or destroys any document which that person is required by the citation to produce,
 - (d) refuses or fails to produce any such document,
- that person is guilty of an offence.
- (5) It is a defence for a person charged with an offence under sub-paragraph (4)(a), (b) or (d) to show that the person had a reasonable excuse for the refusal or failure.
- (6) A person who commits an offence under sub-paragraph (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Commencement Information

I12 Sch. 1 para. 13 in force at 3.5.2005 by [S.S.I. 2005/154](#), [art. 2](#)

Decisions of a Tribunal

- 14 (1) A decision of a Tribunal—
- (a) may be reached by majority, and
 - (b) must be recorded in a document which contains a full statement of the facts found by the Tribunal and the reasons for the decision.
- (2) The Tribunal must—
- (a) inform each party of its decision, and
 - (b) send a copy of the document mentioned in sub-paragraph (1)(b) to each party as soon as reasonably practicable after it is prepared.

Commencement Information

I13 Sch. 1 para. 14 in force at 3.5.2005 by [S.S.I. 2005/154](#), [art. 2](#)

Annual report

- 15 (1) The President must, in respect of each reporting year, prepare a written report as to the exercise of Tribunal functions during that year.
- (2) The President must submit each report prepared under sub-paragraph (1), as soon as practicable after the end of the reporting year to which it relates, to the Scottish Ministers.
- (3) The Scottish Ministers must lay before the Scottish Parliament a copy of each report submitted to them under sub-paragraph (2).
- (4) A reporting year for the purposes of this paragraph is—
- (a) the period beginning with the date on which the first President is appointed and ending with 31st March next following that date, and
 - (b) each successive period of 12 months ending with 31st March.

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Commencement Information

I14 Sch. 1 para. 15 in force at 3.5.2005 by [S.S.I. 2005/154](#), **art. 2**

Disclosure of information

- 16 The President must, at such times and in respect of such periods as regulations may specify, provide to—
- (a) the Scottish Ministers, and
 - (b) such persons as the regulations may specify,
- such information relating to the exercise of Tribunal functions as is specified in the regulations.

Commencement Information

I15 Sch. 1 para. 16 in force at 3.5.2005 by [S.S.I. 2005/154](#), **art. 2**

Allowances etc. for attendance at hearings and preparation of reports

- 17 A Tribunal may pay to any person (other than the President, a Tribunal member or a member of the Tribunal staff)—
- (a) such allowances and expenses as the President may determine for the purposes of or in connection with the person's attendance at hearings of the Tribunal,
 - (b) such amounts as the President may determine in connection with any report prepared in pursuance of rules made under paragraph 11(2)(q).

Commencement Information

I16 Sch. 1 para. 17 in force at 3.5.2005 by [S.S.I. 2005/154](#), **art. 2**

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