

## SCHEDULE

### THE FIRST-TIER TRIBUNAL FOR SCOTLAND HEALTH AND EDUCATION CHAMBER RULES OF PROCEDURE 2018

## PART 1

### General provisions

#### Interpretation

1.—(1) In these Rules:

“the 2004 Act” means the Education (Additional Support for Learning) (Scotland) Act 2004(1);

“the 2010 Act” means the Equality Act 2010(2);

“the 2014 Act” means the Tribunals (Scotland) Act 2014;

“authority” means the education authority responsible for the school education of the child or young person and in the case of the decision of an education authority refusing a placing request includes an education authority which refused the request;

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

“electronic communication” has the meaning given to it by section 15(1) of the Electronic Communications Act 2000(3) and “electronic signature” has the same meaning as in section 7 of that Act(4);

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

“hearing” means a sitting of the First-tier Tribunal for the purpose of enabling the First-tier tribunal to take a decision on a reference or a claim or on any question or matter at which the parties are entitled to attend and be heard;

“legal member” means an individual holding membership of the First-tier Tribunal in accordance with section 15(2) of the 2014 Act;

“ordinary member” means an individual holding membership of the First-tier Tribunal in accordance with section 15(1) of the 2014 Act;

“overriding objective” means the objective referred to in rule 2;

“wellbeing” has the definition in section 3B of the 2004 Act(5);

“working day” means any day which is not—

- (a) a Saturday;
- (b) a Sunday;
- (c) a day from 27th December to 31st December inclusive;
- (d) a day in July; or

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(1) 2004 asp 4.

(2) 2010 c.15.

(3) 2000 c.7. Section 15(1) was amended by paragraph 158 of schedule 17 of the Communications Act 2003 (c.21).

(4) Section 7 was amended by paragraph 1 of schedule 3 of the Electronic Identification and Trust Services for Electronic Transaction Regulations 2016/696.

(5) Section 3B was inserted by paragraph 3 of schedule 1 of the Education (Scotland) Act 2016.

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- (e) a day specified as a bank holiday in Scotland in or by virtue of the Banking and Financial Dealings Act 1971<sup>(6)</sup>;

“written evidence” includes evidence recorded in any way.

(2) In these Rules—

- (a) a reference to a rule is a reference to a rule in these Rules, and in any rule a reference to a paragraph or sub paragraph is, unless the context requires otherwise, a reference to a paragraph or sub paragraph in the rule; and
- (b) where the time prescribed by these Rules for doing any act expires on a day which is not a working day, that act is done in time if it is done on the next working day.

### **The overriding objective**

2.—(1) These Rules are a procedural code with the overriding objective of enabling the First-tier Tribunal with the assistance of the parties to deal with references or claims fairly and justly.

(2) Dealing with references or claims fairly and justly includes—

- (a) dealing with the reference or claim in ways which are proportionate to the complexity of the issues and to the resources of the parties;
- (b) seeking informality and flexibility in the proceedings under these Rules;
- (c) ensuring, so far as practicable, that the parties are on an equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of his or her case without advocating the course he or she should take;
- (d) using the First-tier Tribunal’s special expertise effectively; and
- (e) avoiding delay, so far as compatible with the proper consideration of the issues.

### **Application by First-tier Tribunal of the overriding objective**

3.—(1) The First-tier Tribunal must seek to give effect to the overriding objective when it—

- (a) exercises any power under these Rules; or
- (b) interprets any rule.

(2) In particular the First-tier Tribunal must manage references or claims actively in accordance with the overriding objective.

### **Representatives**

4.—(1) A party may be represented in any proceedings by a representative whose details must be communicated to the First-tier Tribunal prior to any hearing.

(2) A party may disclose any document or communicate any information about the proceedings to that party’s representative without contravening any prohibition or restriction on disclosure of the document or information.

(3) Where a document or information is disclosed under paragraph (2), the representative is subject to any prohibition or restriction on disclosure in the same way that the party is.

(4) Anything permitted or required to be done by a party under these Rules, a practice direction or an order may be done by a lay representative, except signing of an affidavit or precognition.

(5) The First-tier Tribunal may order that a lay representative is not to represent a party if—

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(6) 1971 c.80.

- (a) it is of the opinion that the lay representative is an unsuitable person to act as a lay representative (whether generally or in the proceedings concerned); or
  - (b) it is satisfied that to do so would be in the interests of the efficient administration of justice.
- (6) Where a party is represented, the First-tier Tribunal must send all documents and notices concerning references or claims to the representative instead of the party.

### **Supporters**

5.—(1) A party who is an individual may be accompanied at a hearing or during other First-tier Tribunal proceedings by another person to act as a supporter.

- (2) A supporter may assist the party by—
- (a) providing moral support;
  - (b) helping to manage tribunal documents and other papers;
  - (c) taking notes of the proceedings;
  - (d) quietly advising on—
    - (i) points of law and procedure;
    - (ii) issues which the party might wish to raise with the tribunal.

(3) A party may disclose any document or communicate any information about the proceedings to that party's supporter without contravening any prohibition or restriction on disclosure of the document or information.

(4) Where a document or information is disclosed under paragraph (3), the supporter is subject to any prohibition or restriction on disclosure in the same way that the party is.

(5) A supporter may not represent the party.

- (6) The First-tier Tribunal may order that a person is not to act as a supporter of a party if—
- (a) it is of the opinion that the supporter is an unsuitable person to act as a supporter (whether generally or in the proceedings concerned); or
  - (b) it is satisfied that to do so would be in the interests of the efficient administration of justice.

### **Expenses**

6.—(1) The First-tier Tribunal may make an order for expenses as taxed by the Auditor of the Court of Session against a party if that party's act, omission or other conduct has caused any other party to incur expense which it would be unreasonable for that other party to be expected to pay, with the maximum recoverable expenses being the expenses incurred.

(2) The First-tier Tribunal, of its own initiative or on the application of a party or the parties, may in exceptional circumstances fix by order a sum payable by a party in discharge of an award of expenses.

### **Delegation to staff**

7.—(1) Staff of the Scottish Courts and Tribunals Service with appropriate legal qualifications may, with the approval of the Chamber President, carry out functions of a judicial nature permitted or required to be done by the First-tier Tribunal provided the functions are of a preliminary or an incidental nature.

(2) The approval referred to at paragraph (1) may apply generally to the carrying out of specified functions by members of staff of a specified description in specified circumstances.

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### **Correction of clerical mistakes or accidental slips or omissions**

8. The First-tier Tribunal may at any time correct any clerical mistake or other accidental slip or omission contained in a decision, order or any document produced by it, by—

- (a) sending notification of the amended decision or order, or a copy of the amended document to all parties; and
- (b) making any necessary amendment to any information published in relation to the decision, order or document.

### **Application for permission to appeal a decision of the First-tier Tribunal**

9.—(1) A person seeking permission to appeal must make a written application to the First-tier Tribunal for permission to appeal.

(2) An application under paragraph (1) must—

- (a) identify the decision of the First-tier Tribunal to which it relates;
- (b) identify the alleged point or points of law on which the person making the application wishes to appeal; and
- (c) state the result the party making the application is seeking.

### **First-tier Tribunal's consideration of application for permission to appeal**

10.—(1) The First-tier Tribunal must decide whether to give permission to appeal on any point of law.

(2) The First-tier Tribunal must provide a record of its decision to the parties as soon as reasonably practicable.

(3) If the First-tier Tribunal refuses permission on any point of law it must provide with the record of its decision—

- (a) a statement of its reasons for such a refusal; and
- (b) notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the method by which, such an application must be made.

### **Review of a decision**

11.—(1) The First-tier Tribunal may either at its own instance or at the request of a party review any decision made by it where it is necessary in the interests of justice to do so.

(2) An application for review under section 43(2)(b) of the 2014 Act must—

- (a) be made in writing (and copied to all other parties);
- (b) be made within 14 days of the date on which the decision was made or within 14 days of the date that the written reasons were sent to the parties (if later); and
- (c) set out why a review of the decision is necessary.

(3) If the First-tier Tribunal considers that the application is wholly without merit, the First-tier Tribunal shall refuse the application and shall also inform the parties of the reasons for the refusal.

(4) Except where paragraph (3) applies, the First-tier Tribunal shall send a notice to the parties—

- (a) setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing; and
- (b) at the discretion of the First-tier Tribunal, setting out the First-tier Tribunal's provisional views on the application.

(5) Except where paragraph (3) applies, the decision shall be reviewed at a hearing unless the First-tier Tribunal considers, having regard to any response to the notice provided under paragraph (4), that a hearing is not necessary in the interests of justice.

(6) Where practicable, the review shall be undertaken by one or more of the members of the First-tier Tribunal who made the decision to which the review relates.

(7) Where the First-tier Tribunal proposes to review a decision at its own instance, it shall inform the parties of the reasons why the decision is being reviewed and the decision shall be reviewed in accordance with paragraph (4) (as if an application had been made and not refused).

(8) A review by the First-tier Tribunal in terms of paragraph (1) either at its own instance or on an application of a party does not affect the time limit of 30 days in regulation 2(1) of the Scottish Tribunals (Time Limits) Regulations 2016(7) for making an application for permission to appeal.

### **Power to monitor implementation of First-tier Tribunal decisions**

**12.** The Chamber President may, in any case where a decision of the First-tier Tribunal required an 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 First-tier Tribunal decision;
- (b) where the Chamber President is not satisfied that the authority is complying with the decision, refer the matter to the Scottish Ministers.

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(7) [S.S.I. 2016/231](#).