

# **Tribunals (Scotland) Act 2014**

**Consultation on Draft Regulations regarding:**

**(1) the Transfer of Functions and Members of the Additional Support Needs Tribunals for Scotland to the Scottish Tribunals;**

**(2) the rules of procedure for the First-tier Tribunal for Scotland Health and Education Chamber;**

**(3) the Composition of the First-tier and Upper Tribunals for Scotland and**

**(4) the Eligibility for Ordinary Membership of the First-tier Tribunal for Scotland Health and Education Chamber**

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## PART 1: BACKGROUND

1. The Tribunals (Scotland) Act 2014 (the 2014 Act) creates a new, simplified statutory framework for tribunals in Scotland, bringing existing tribunal jurisdictions together and providing a structure for new jurisdictions. The 2014 Act creates two new tribunals, the First-tier Tribunal for Scotland (First-tier Tribunal) and the Upper Tribunal for Scotland (Upper Tribunal), known collectively as the Scottish Tribunals.
2. The Additional Support Needs Tribunals for Scotland (ASNTS) were established by the Education (Additional Support for Learning) (Scotland) Act 2004, in order to hear appeals (“references”) against certain decisions of Education Authorities in relation to educational support. The Equality Act 2010 conferred additional functions upon the ASNTS, in order that the tribunals can hear appeals (“claims”) against decisions/actions of an educational body where it is alleged they have discriminated on the basis of disability. The ASNTS is a “listed tribunal”, by virtue of inclusion in Schedule 1 of the 2014 Act.
3. The functions and members of the ASNTS will transfer into the Scottish Tribunals system on 30<sup>th</sup> November 2017, and become part of the Health and Education Chamber. The ASNTS as it presently stands will then be abolished.
4. Legal Aid will continue to be available for claims made under the Equality Act 2010 in the First-tier Tribunal Health and Education Chamber. This will be covered by other regulations not included in this consultation.
5. The draft regulations are attached at **Annexes A, B, C and D**.
6. The draft regulations in **Annex A** provide for:
  - The transfer of functions of the ASNTS to the Scottish Tribunals;
  - Transitional arrangements to regulate how cases pending, in progress and new cases will be dealt with;
  - Consequential amendments and repeals required in light of the transfer of functions;
  - The transfer of legal and ordinary members of the ASNTS to the Scottish Tribunals.
7. The draft regulations in **Annex B** set out the Rules of Procedure for the First-tier Tribunal Health and Education Chamber.
8. The draft regulations in **Annex C** set out the type and number of members who can hear cases in the First-tier Tribunal Health and Education Chamber.

9. The draft regulations in **Annex D** set out the eligibility criteria for membership of the First-tier Tribunal Health and Education Chamber.

## **PART 2: CONSULTATION ON DRAFT REGULATIONS TO TRANSFER THE FUNCTIONS AND MEMBERS OF THE ASNTS TO THE SCOTTISH TRIBUNALS AND REPEAL EXISTING REGULATIONS.**

### **Background**

10. Section 28(2) of the 2014 Act provides the power for the Scottish Ministers to make regulations to transfer the functions of the listed tribunals in Schedule 1 of the 2014 Act, to the First-tier Tribunal only; the Upper Tribunal only; or to the First-tier Tribunal and the Upper Tribunal.
11. Schedule 2 and section 29 of the 2014 Act provides the power for the Scottish Ministers to make regulations to transfer the members of the listed tribunals to the First-tier or Upper Tribunals.

### **Draft Regulations**

12. The policy intent is for the ASNTS to transfer into the Scottish Tribunals structure with their existing membership and functions in so far as practicable. Upon transfer the ASNTS will be abolished and thereafter first instance decisions will be heard in the First-tier Tribunal Health and Education Chamber with onward appeal to the Upper Tribunal.
13. The draft regulations propose that the President of the ASNTS transfers in as Chamber President of the First-tier Tribunal Health and Education Chamber. Convenors of the ASNTS will transfer in as legal members of the First-tier Tribunal. Other members of the ASNTS will transfer in as ordinary members of the First-tier Tribunal with allocation to the Health and Education Chamber.
14. The draft regulations set out the transitional arrangements that cases in progress on the day of transfer will be continued in the First-tier Tribunal. If a hearing is in progress then it will be completed by the First-tier Tribunal comprised of the same members, where possible. Time limits which have started to run prior to commencement of these regulations and have not expired shall continue to apply.
15. If a party wishes to appeal a decision of the ASNTS but has not exercised this right before 29 November 2017 then the appeal route will be to the Upper

Tribunal as opposed to the Court of Session. We propose that if a party has already exercised their right of appeal before 29 November 2017 then the appeal will not be affected by the new regulations and will be completed by the Court of Session.

16. The regulations will repeal Schedule 1 of the Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act), which set up the ASNTS. Once the ASNTS is transferred into the Scottish Tribunals the relevant sections of the 2014 Act will cover the equivalent provisions.
17. The draft regulations make amendments to existing legislation, replacing references to the ASNTS with references to the First-tier Tribunal, and references to the Court of Session with references to the Upper Tribunal.
18. The draft regulations repeal the Additional Support Needs Tribunals for Scotland (Appointment of President, Conveners and Members and Disqualification) Regulations 2005, as these are replaced by the eligibility criteria put forward in this consultation (for ordinary members) and in the Scottish Tribunals (Eligibility for Appointment) Regulations 2015<sup>1</sup> (for legal members).
19. The draft regulations also repeal The Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006<sup>2</sup> and the Additional Support Needs Tribunals for Scotland (Disability Claims Procedure) Rules 2011<sup>3</sup> and replace those with the new Rules and Procedure for the Housing and Property Chamber of the First-tier Tribunal, which replicate the previous rules subject to the alterations set out at Part 3 of this consultation.

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<sup>1</sup> <http://www.legislation.gov.uk/ssi/2015/381/contents/made>

<sup>2</sup> <http://www.legislation.gov.uk/ssi/2006/88/contents/made>

<sup>3</sup> <http://www.legislation.gov.uk/ssi/2011/104/contents/made>

## QUESTIONS ON THE TRANSFER OF THE ASNTS

Q1: Do you have any comments on the draft transfer of functions and members Regulations?

Q2: Are you content with the provisions regarding transitional arrangements?

Q3: Are you content with the provisions relating to the transfer of functions and members?

Q4: Do you have any other comments you wish to make?

## **PART 3: CONSULTATION ON DRAFT REGULATIONS THAT SET OUT THE RULES OF PROCEDURE FOR THE FIRST-TIER TRIBUNAL FOR SCOTLAND HEALTH AND EDUCATION CHAMBER**

### **Background**

20. Schedule 9, paragraph 2(2) and section 81 of the 2014 Act provides the power for the Scottish Ministers to make regulations for the procedural rules of a listed tribunal that are in force immediately before the transfer to have effect for the purposes of either or both the First-tier Tribunal and the Upper Tribunal.

### **Draft Regulations**

21. As the ASNTS already has comprehensive procedural rules in place these have been replicated where possible in the draft Health and Education Chamber Rules in Annex B. There are three main areas where the draft Rules differ from the existing rules of procedure to ensure consistency within the Scottish Tribunals.
22. Firstly, the current review provision will be amended to allow the First-tier Tribunal to, on its own initiative as well as on the application of a party, review a decision. Parties will only have 14 days to ask for a review of a decision as opposed to a month currently. The review procedure will not extend the 30 days that parties have to seek permission to appeal a decision. Parties will now need to seek permission to appeal a decision to the Upper Tribunal from the First-tier Tribunal within 30 days of the decision being sent to the parties. If this is not granted they have a right of appeal within 30 days to the Upper Tribunal. The aim is for these time limits to strike the right balance between access to justice and a more streamlined appeals process. Our aim is to give users a quicker route through the review and appeal process overall.
23. Secondly, there are revised provisions allowing a party to be accompanied by a supporter as well as or instead of a legal representative. The supporter may assist a party and provide moral support if required.
24. Thirdly, there is an amendment to the rules that allows for 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.

## **QUESTIONS ON THE FIRST-TIER HEALTH AND EDUCATION CHAMBER RULES OF PROCEDURE**

Q1: Do you have any comments on the draft regulations on the First-tier Health and Education Chamber Rules of Procedure?

Q2: Do you have any comments on the revised provisions regarding review of decisions and allowing parties to be accompanied by a supporter?

Q3: Do you have any comments on the amendments allowing a legal member to sit alone in certain circumstances?

Q4: Do you have any other comments you wish to make?



## **PART 4: CONSULTATION ON DRAFT REGULATIONS THAT SET OUT THE COMPOSITION OF THE FIRST-TIER AND UPPER TRIBUNAL FOR SCOTLAND**

### **Background**

25. Sections 38 and 40 of the 2014 Act allow the Scottish Ministers, by regulation, to determine the composition of the First-tier and Upper Tribunals.

### **Draft regulations**

26. The draft regulations in **Annex C** apply to the composition of members when hearing cases within the First-tier Tribunal Health and Education Chamber and appeals or referrals from the First-tier Tribunal Health and Education Chamber to the Upper Tribunal.
27. The policy intention is to mirror the existing composition for first instance cases as set out in Schedule 1 of the Education (Additional Support for Learning) (Scotland) Act 2004. This means that cases will be heard by the Chamber President and two ordinary members, or a legal member and two ordinary members. A legal member would also be able to sit 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.
28. Appeals from the First-tier Tribunal will be heard by the same type of judiciary ie Court of Session judges, as currently hear appeals in the courts. However, the appeals will take place in the Upper Tribunal as opposed to the Sheriff Court or Court of Session. The Chamber President is also able to hear cases in the Upper Tribunal if selected to do so. This will ensure appropriate expertise in the Upper Tribunal. The Chamber President may only hear the case as long as they were not involved in the decision at the first instance. The President of Tribunals will determine how the Upper Tribunal should be composed on a case by case basis.

## QUESTIONS ON COMPOSITION REGULATIONS

Q1: Do you have any comments on the proposals regarding the composition of the First-tier Tribunal Health and Education Chamber?

Q2: Do you have any comments on the proposals regarding the composition of the Upper Tribunal when hearing referrals or appeals from the First-tier Tribunal Health and Education Chamber?

Q3: Do you have any other comments you wish to make?

## **PART 5: DRAFT REGULATIONS SETTING OUT THE ELIGIBILITY FOR MEMBERSHIP OF THE FIRST-TIER TRIBUNAL HEALTH AND EDUCATION CHAMBER**

### **Background**

29. The draft regulations contained in Annex D prescribe eligibility criteria for ordinary members of the First-tier Tribunal. The criteria for ordinary (ie non legal) members have been developed specifically to cover members assigned to the Health and Education jurisdiction.
30. The criteria for legal membership of the First-tier Tribunal is generic across the Scottish Tribunals, and are already covered by the Scottish Tribunals (Eligibility for Appointment) Regulations 2015<sup>4</sup>. Briefly, a person may only be appointed as a legal member if the person is practising and has practised for a period of not less than 5 years as a solicitor or advocate in Scotland. If a person is not currently practising in Scotland they must be subsequently engaged in exercising judicial functions in any court or tribunal, practice or employment as a lawyer of any kind or teaching or researching law at or for an educational institution.

### **Draft Regulations**

31. The draft regulations contained within Annex D set out the criteria proposed to be applied by the Scottish Ministers in appointing ordinary members that hear cases within the First-tier Tribunal Health and Education Chamber.
32. The eligibility criteria are the same as the existing criteria for ordinary members of ASNTS. That is that members have knowledge or experience of children or young persons with either additional support needs within the meaning of Section 1(1) of the Education (Additional Support for Learning) (Scotland) Act 2004<sup>5</sup>, or knowledge or experience of children or young persons with a disability within the meaning of section 6 of the Equality Act 2010<sup>6</sup>.

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<sup>4</sup> <http://www.legislation.gov.uk/ssi/2015/381/contents/made>

<sup>5</sup> <http://www.legislation.gov.uk/asp/2004/4/contents>

<sup>6</sup> <http://www.legislation.gov.uk/ukpga/2010/15/section/6>

## QUESTIONS ON ELIGIBILITY REGULATIONS

Q1: Do you have any comments on the proposals regarding the eligibility criteria for ordinary members with health and education experience?

Q2: Are there any additional criteria you would wish to see prescribed?

Q3: Are there any proposed criteria that you do not wish to see prescribed?

Q4: Do you have any other comments you wish to make?

## **PART 6: RESPONDING TO THIS CONSULTATION**

We are inviting responses to this consultation by 1 August 2017

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at: <https://consult.scotland.gov.uk/tribunals-and-administrative-justice/tribunals-scotland-act-2014-draft-regulations>.

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 1 August 2017

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:

Emily Adams

Tribunals and Administrative Justice Policy

GW15 St Andrew's House

Regent Road

Edinburgh

EH1 3DG

### **Handling your response**

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the

provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Next steps in the process**

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to [Tribunals.consultations@gov.scot](mailto:Tribunals.consultations@gov.scot).

### **Scottish Government consultation process**

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

*Draft Regulations laid before the Scottish Parliament under section 79(2)(a) and (b) of the Tribunals (Scotland) Act 2014, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2017 No.**

**TRIBUNALS AND INQUIRIES**

**The First-tier Tribunal for Scotland (Transfer of Functions of the Additional Support Needs Tribunals for Scotland) Regulations 2017**

*Made* - - - - - 2017

*Coming into force* - - - 2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 20(2), 28(2) and 79(1)(b) and paragraph 1(1) of schedule 2 of the Tribunals (Scotland) Act 2014<sup>(7)</sup> and all other powers enabling them to do so.

In accordance with section 11(1)(a) and (b) of that Act, the Scottish Ministers have obtained the Lord President's approval and have consulted such other persons as they considered appropriate.

In accordance with section 79(2)(a) and (b) 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 (Transfer of Functions of the Additional Support Needs Tribunal for Scotland) Regulations 2017 and come into force on [ ] 2017.

**(2)** In these Regulations—

the “2004 Act” means the Education (Additional Support for Learning) (Scotland) Act 2004<sup>(8)</sup>;

the “2010 Act” means the Equality Act 2010<sup>(9)</sup>;

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

“Additional Support Needs Tribunals for Scotland” means tribunals constituted by section 17(1) of the 2004 Act;

“convener” means a member of a panel appointed under paragraph 3(1)(a) of schedule 1 of the 2004 Act;

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<sup>(7)</sup> 2004 asp 4.

<sup>(8)</sup> 2014 asp 16.

<sup>(9)</sup> 2010 c. 15.



the “functions of the Additional Support Needs Tribunals for Scotland” means the functions exercised by the Additional Support Needs Tribunals for Scotland by virtue of section 17(1A) of the 2004 Act; “other member” means a member of a panel appointed under paragraph 3(1)(b) of schedule 1 of the 2004 Act; and the “President” has the meaning in section 17(2) of the 2004 Act.

### **Transfer of functions of the Additional Support Needs Tribunals for Scotland to the First-tier Tribunal and abolition of the Additional Support Needs Tribunals for Scotland**

2.—(1) The functions of the Additional Support Needs Tribunals for Scotland are transferred to the First-tier Tribunal with allocation to the First-tier Tribunal Health and Education Chamber.

(2) The Additional Support Needs Tribunals for Scotland are abolished.

### **Transfer of members of the Additional Support Needs Tribunals for Scotland to the First-tier Tribunal**

3.—(1) Subject to paragraphs (2) and (3), the members of the Additional Support Needs Tribunals for Scotland on the coming into force of these Regulations are transferred to and become members of the First-tier Tribunal, with—

- (a) the President becoming Chamber President of the First-tier Tribunal Health and Education Chamber;
- (b) conveners becoming legal members of the First-tier Tribunal; and
- (c) other members becoming ordinary members of the First-tier Tribunal.

(2) Members of the Additional Support Needs Tribunals for Scotland transferred to the First-tier Tribunal under paragraph (1) shall (subject to the provisions of the 2014 Act) be members of the First-tier Tribunal in accordance with terms and conditions to be offered by the Scottish Ministers on transfer, which will supersede any existing terms and conditions of appointment.

(3) Paragraph (1) does not apply to any member of the Additional Support Needs Tribunals for Scotland if the member has already been transferred to and is a member of the First-tier Tribunal by virtue of regulations made under section 28(2) of the 2014 Act which were in force prior to these Regulations coming into force.

### **Transitional and savings provisions**

4. Schedule 1 of these Regulations contains transitional and savings provisions.

### **Consequential provisions**

5. Schedule 2 of these Regulations contains consequential provisions.

### **Revocations**

6. Schedule 3 of these Regulations contains revocations

St Andrew’s House,  
Edinburgh  
Date

*Name*  
Authorised to sign by the Scottish Ministers

## SCHEDULE 1

Regulation 4

### Transitional and savings provisions

#### **References, claims and proceedings in progress before the Additional Support Needs Tribunals for Scotland immediately before 29th November 2017 to transfer to the First-tier Tribunal**

1. Any reference or claim to the Additional Support Needs Tribunals for Scotland in progress immediately before 29th November 2017 but not yet determined and any proceedings of the Additional Support Needs Tribunals for Scotland in progress immediately before that date shall be transferred to and be completed by the First-tier Tribunal but with so far as possible the same persons hearing and determining the case before the First-tier Tribunal as members of that tribunal as were prior to 29th November 2017 hearing the case as members of the Additional Support Needs Tribunals for Scotland.

#### **Decisions, directions and orders of the Additional Support Needs Tribunals for Scotland to continue in force**

2. Any decision (whether or not called a decision), direction or order given or made in or in respect of a reference or claim to, and proceedings before, the Additional Support Needs Tribunals for Scotland which is in force immediately before 29th November 2017 remains in force on and after that date as if it were a decision, direction or order of the First-tier Tribunal.

#### **Time limits in respect of references and claims to, and proceedings before, the Additional Support Needs Tribunals for Scotland to carry over to the First-tier Tribunal**

3. Any time limit which has started to run before 29th November 2017 in respect of references and claims to, and proceedings before, the Additional Support Needs Tribunals for Scotland (and which has not expired) shall continue to apply where references, claims and proceedings are transferred to the First-tier Tribunal.

#### **Unexercised right of appeal to Court of Session, if exercised, is an appeal to the Upper Tribunal**

4. Where in respect of a decision of the Additional Support Needs Tribunals for Scotland before 29th November 2017, there lies a right of appeal to the Court of Session, which has not been exercised before that date but is still exercisable, any appeal on or after 29th November 2017 shall be to the Upper Tribunal as if the decision had been made by the First-tier Tribunal and the appeal shall be an appeal from the First-tier Tribunal for the purposes of section 46(1) of the 2014 Act.

#### **Exercised right of appeal to the Court of Session shall be completed by the Court of Session**

5. Where in respect of a decision of the Additional Support Needs Tribunals for Scotland before 29th November 2017, there lies a right of appeal to the Court of Session which has been exercised before that date, the appeal shall not be affected by these Regulations and be completed by the Court of Session except that any reference in the 2004 or 2010 Act to the Court of Session remitting such a reference to it back to the Tribunal shall be construed as a reference to remitting the reference back to the First-tier Tribunal.

PART 1

Consequential amendments and repeals of primary legislation

**House of Commons Disqualification Act 1975**

**6.**—(1) The House of commons Disqualification Act 1975<sup>(10)</sup> is amended as follows.

(2) In Part III of Schedule 1 (Other disqualifying offices), the entry for “President of the Additional Support Needs Tribunal for Scotland” is omitted.

**Tribunals and Inquiries Act 1992**

**7.**—(1) The Tribunals and Inquiries Act 1992<sup>(11)</sup> is amended as follows.

(2) In Part II of Schedule 1 (Scottish Tribunals), in respect of the entry relating to education, paragraph 50(ba) is omitted.

**Education (Additional Support for Learning) (Scotland) Act 2004**

**8.**—(1) The Education (Additional Support for Learning) (Scotland) Act 2004<sup>(12)</sup> is amended as follows.

(2) In section 3B (Assessment of wellbeing)—

- (a) in subsection (1) for “Tribunal” substitute “the First-tier Tribunal”; and
- (b) in subsection (2) for “Tribunal” substitute “the First-tier Tribunal”.

(3) In section 11 (Co-ordinated support plans: further provision) —

- (a) in subsection (2)(b)(ii) for “a Tribunal” substitute “the First-tier Tribunal”; and
- (b) in subsection (4)(b)(ii) for “a Tribunal” substitute “the First-tier Tribunal”.

(4) In section 14A (Provision of advocacy service: Tribunal) —

- (a) in subsection (1) for “Tribunal proceedings” substitute “ proceedings before the First-tier Tribunal”; and
- (b) in subsection (3) for “Tribunal” substitute “First-tier Tribunal”.

(5) The title of section 14A becomes “**Provision of advocacy service: First-tier Tribunal**”.

In section 15 (mediation services), in subsection (3)(b) for “a Tribunal” substitute “the First-tier Tribunal”.

(6) In section 16 (Dispute resolution), in subsection (3)(b) for “ a Tribunal” substitute “ the First-tier Tribunal”.

(7) Section 17 (Additional Support needs for Scotland) is repealed.

(8) In section 18 (References to Tribunal)—

- (a) in subsection (1) for “a Tribunal” substitute “the First-tier Tribunal”;
- (b) in subsection (2A)(a) for “Tribunal” substitute “First-tier Tribunal”;
- (c) in subsection (2A)(b) for “Tribunal” substitute “First-tier Tribunal”;
- (d) in subsection (4) for “a Tribunal” substitute “the First-tier Tribunal”;

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<sup>(10)</sup> 1975 c.24.

<sup>(11)</sup> 1992 c.53.

<sup>(12)</sup> 2004 asp.4.

- (e) in subsection (6) for “a Tribunal” substitute “the First-tier Tribunal”;
- (f) in subsection (7) for “a Tribunal” substitute “the First-tier Tribunal”;
- (g) in subsection (7)(b) for “a Tribunal” substitute “the First-tier Tribunal”;
- (h) in subsection (9) for “a Tribunal” substitute “the First-tier Tribunal”; and
- (i) in subsection (10) —
  - (i) for “President” substitute “Chamber President”; and
  - (ii) for “a Tribunal” substitute “the First-tier Tribunal”.
- (9) The title of section 18 becomes “**References to the First-tier Tribunal**”.
- (10) In section 19 (Powers of Tribunal in relation to reference)—
  - (a) in subsection (1) for “a Tribunal” substitute “the First-tier Tribunal”;
  - (b) in subsection (2) for “Tribunal” substitute “First-tier Tribunal”;
  - (c) in subsection (2)(b) for “Tribunal” substitute “First-tier Tribunal”;
  - (d) in subsection (3) for “Tribunal” in each place occurring substitute “First-tier Tribunal”;
  - (e) in subsection (4) for “Tribunal” substitute “First-tier Tribunal”;
  - (f) in subsection (4)(b) for “Tribunal” in each place occurring substitute “First-tier Tribunal”;
  - (g) in subsection (4A) for “Tribunal” substitute “First-tier Tribunal”;
  - (h) in subsection (4A)(b) for “Tribunal” in each place occurring substitute “First-tier Tribunal”;
  - (i) in subsection (5) for “Tribunal” in each place occurring substitute “First-tier Tribunal”;
  - (j) in subsection (5A) for “Tribunal” substitute “First-tier Tribunal”; and
  - (k) in subsection (7) for “Tribunal” substitute “First-tier Tribunal”.
- (11) The title of section 19 becomes “**Powers of First-tier Tribunal in relation to reference**”.
- (12) In section 20 (References to Tribunal and powers of Tribunal: further provision)—
  - (a) in subsection (1) for “Tribunal” substitute “First-tier Tribunal”;
  - (b) in subsection (2) —
    - (i) for “Tribunal” substitute “First-tier Tribunal”; and
    - (ii) for “President” twice occurring substitute “Chamber President”; and
  - (c) in subsection (3) for “Tribunal’s” substitute “First-tier Tribunal”.
- (13) The title of section 20 becomes “**References to First-tier Tribunal and powers of First-tier Tribunal: further provision**”.
- (14) In section 21 (Appeal to Court of Session against Tribunal decision)—
  - (a) in subsection (1) for “appeal on a point of law to the Court of Session against a decision of a Tribunal” substitute “seek permission to appeal to the Upper Tribunal on a point of law from the First-tier Tribunal against a decision of the First-tier Tribunal”;
  - (b) in subsection (2) for “Tribunal” substitute “First-tier Tribunal”; and
  - (c) in subsection (3) —
    - (i) for “Court of Session” substitute “Upper Tribunal”;
    - (ii) for “allows” substitute “considers”;
    - (iii) for “Tribunal” in each place occurring substitute “First-tier Tribunal”; and
    - (iv) for “Court” substitute “Upper Tribunal”.
- (15) The title of section 21 becomes “**Appeal to Upper Tribunal against First-tier Tribunal decision**”.
- (16) In section 29 (Interpretation)—
  - (a) omit the entry for “President”;
  - (b) omit the entry for “Tribunal”;

(c) after the entry for “appropriate agency” insert ““Chamber President” means the Chamber President of the First-tier Tribunal”; and

(d) after the entry for “eligible pre-school child” insert ““First-tier Tribunal” means the First-tier Tribunal for Scotland Health and Education Chamber”.

(17) Schedule 1 is repealed.

(18) In schedule 2 (Children and Young Persons with additional support needs: placing requests)—

(a) in sub-paragraph (2) of paragraph 5 (Reference to appeal committee of refusal of placing request) for “a Tribunal” substitute “the First-tier Tribunal”;

(b) in sub-paragraph (5) of paragraph 6 (References to appeal committee: supplementary provisions) for “Tribunal” twice occurring substitute “First-tier Tribunal”; and

(c) in paragraph 7 (Appeal to sheriff from appeal committee) —

(i) in sub-paragraph (1A) for “a Tribunal” substitute “the First-tier Tribunal”; and

(ii) in sub-paragraph (9) for “Tribunal” twice occurring substitute “First-tier Tribunal”.

## **Equality Act 2010**

**9.**—(1) The Equality Act 2010<sup>(13)</sup> is amended as follows.

(2) In sub-section (1)(c) of section 116 (Education cases) for “an Additional Support Needs Tribunal for Scotland” substitute “the First-tier Tribunal for Scotland Health and Education Chamber”.

(3) In sub-section (6)(f) of section 136 (Burden of proof) for “an Additional Support Needs Tribunal for Scotland” substitute “the First-tier Tribunal for Scotland Health and Education Chamber”.

(4) In Schedule 17 (Disabled pupils; enforcement)—

(5) (a) in paragraph 1 for “an Additional Support Needs Tribunal for Scotland” twice occurring substitute “the First-tier Tribunal for Scotland Health and Education Chamber”;

(b) in paragraph 11—

(i) in sub-paragraph (1) for “appeal on a point of law to the Court of Session against a decision of a Tribunal” substitute “seek permission to appeal to the Upper Tribunal on a point of law from the First-tier Tribunal for Scotland Health and Education Chamber against a decision of the First-tier Tribunal for Scotland Health and Education Chamber”; and

(ii) in sub-paragraph (3) for “Court of Session allows” substitute “Upper Tribunal considers”.

## **Public Services Reform (Scotland) Act 2010**

**10.**—(1) The Public Services Reform (Scotland) Act 2010<sup>(14)</sup> is amended as follows.

(2) In schedule 5 (Improvement of public functions: listed bodies) in paragraph 1 (Scottish public authorities with mixed functions or no reserved functions), the entry of “Additional Support Needs Tribunals for Scotland” is omitted.

## **Public Records (Scotland) Act 2011**

**11.**—(1) The Public Records (Scotland) Act 2011<sup>(15)</sup> is amended as follows.

(2) In schedule 1 (Authorities to which Part 1 applies) the entry of “Additional Support Needs Tribunals for Scotland” is omitted.

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<sup>(13)</sup> 2010 c. 15.

<sup>(14)</sup> 2010 asp 8.

<sup>(15)</sup> 2011 asp 12.

## PART 2

### Consequential amendments of subordinate legislation

#### **Education (Appeal Committee Procedures) (Scotland) Regulations 1982**

**12.**—(1) The Education (Appeal Committee Procedures) (Scotland) Regulations 1982<sup>(16)</sup> is amended as follows.

(2) In regulation 2 (Interpretation) —

(a) after the entry for “ education authority” insert “”First-tier Tribunal” means “the First-tier Tribunal for Scotland Health and Education Chamber”; and

(b) the entry of “Tribunal” is omitted.

(3) In regulation 8 (Notification of hearing) in sub-paragraph (1)(b) for “Tribunal” substitute “First-tier Tribunal”.

#### **Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005**

**13.**—(1) The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005<sup>(17)</sup> are amended as follows.

(2) In regulation 2 (Interpretation) after the entry for “Additional Support Co-ordinator” insert “”First-tier Tribunal” means the First-tier Tribunal for Scotland Health and Education Chamber”.

(3) In regulation 6A (Information flow arrangements) —

(a) in sub-paragraph (1)(g) for “a Tribunal” substitute “the First-tier Tribunal”;

(b) in sub-paragraph (1)(h) for “a Tribunal” substitute “the First-tier Tribunal”;

(c) in sub-paragraph (2) for “a Tribunal” substitute “the First-tier Tribunal”; and

(d) in sub-paragraph (4) for “Tribunal” substitute “ First-tier Tribunal”.

(4) In regulation 11 (Discriminations, retention and destruction of the plan) —

(a) in sub-paragraph (1)(c) for “an Additional Support Needs Tribunal” substitute “the First-tier Tribunal”; and

(b) in sub-paragraph (2) for “a Tribunal” substitute “the First-tier Tribunal”.

#### **Additional Support for Learning (Placing Requests and Deemed Decisions) (Scotland) Regulations 2005**

**9.**—(1) The Additional Support for Learning (Placing Requests and Deemed Decisions) (Scotland) Regulations 2005<sup>(18)</sup> is amended as follows.

(2) In regulation 2 (Interpretation) —

(i) after the entry for “appeal committee” insert “”First-tier Tribunal” means the First-tier Tribunal for Scotland Health and Education Chamber”; and

(ii) the entry for “Tribunal” is omitted.

(3) In regulation 5 (Deemed decision; placing request referred to the Tribunal) in sub-paragraph (1)(b) —

(i) for “a Tribunal” substitute “the First-tier Tribunal” and

(ii) for “Tribunal” twice occurring substitute “First-tier Tribunal”.

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<sup>(16)</sup> S.I. 1982/1736.

<sup>(17)</sup> S.S.I. 2005/518.

<sup>(18)</sup> S.S.I. 2005/515.

(4) The title of the regulation becomes “**Deemed decision: placing requests referred to First-tier Tribunal**”.

### **Education (School and Placing Information)(Scotland) Regulations 2012**

**10.**—(1) The Education (School and Placing Information)(Scotland) Regulations 2012<sup>(19)</sup> are amended as follows.

(2) In paragraph 13(i) of schedule 1, for “sections 17 to 22 (Additional Support Needs Tribunals for Scotland)” substitute “sections 18 to 22”.

### **Scottish Parliament (Disqualification) Order 2012**

**11.**—(1) The Scottish Parliament (Disqualification) Order 2015<sup>(20)</sup> is amended as follows.

(2) In schedule 1 (Part 1 Office-holders Disqualified from being a Member of the Scottish Parliament) the entry of “President of the Additional Support Needs Tribunal for Scotland” is omitted.

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<sup>(19)</sup> S.S.I. 2012/130.

<sup>(20)</sup> S.S.I. 2015/350.

## SCHEDULE 3

Regulation 6

### Revocations of subordinate legislation

**1. The following instruments are revoked:**

(a) The Additional Support Needs Tribunals for Scotland (Appointment of President, Conveners and Members and Disqualification) Regulations 2005<sup>(21)</sup>;

(b) The Additional Support Needs Tribunals for Scotland (Practice and Procedure ) Rules 2006<sup>(22)</sup>; and

(c) The Additional Support Needs Tribunals for Scotland (Disability Claims Procedure ) Rules 2011<sup>(23)</sup>;

A member of the Scottish Government

St Andrew's House,  
Edinburgh  
2017

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<sup>(21)</sup> S.S.I. 2005/155.  
<sup>(22)</sup> S.S.I. 2006/88.  
<sup>(23)</sup> S.S.I. 2011/104.



## **EXPLANATORY NOTE**

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

The Additional Support Needs Tribunals for Scotland were set up by the Education (Additional Support for Learning)(Scotland) Act 2004 to deal with references in respect of certain decisions of education authorities primarily to do with additional support needs and disability discrimination cases under the Equality act 2010.

These regulations make provision for the transfer to the First-tier Tribunal of the functions and members of the Additional Support Needs Tribunals for Scotland. The First-tier Tribunal was set up by section 1 of the Tribunals (Scotland) Act 2014. It is divided into chambers, with the chambers hearing cases according to the subject matter of the case. The First-tier Tribunal Health and Education Chamber hears cases previously dealt with by the Additional Support Needs Tribunals For Scotland.

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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2017 No.

**TRIBUNALS AND INQUIRIES**
**The First-tier Tribunal for Scotland Health and Education Chamber  
(Procedure) Regulations 2017**

<i>Made</i>	- - - - -	2017
<i>Laid before the Scottish Parliament</i>		2017
<i>Coming into force</i>	- -	2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014<sup>(24)</sup> and all other powers enabling them to do so.

In accordance with paragraph 4(3) of schedule 9 of that Act, they have consulted the President of the Scottish Tribunals and such other persons as they have considered appropriate.

**Citation and commencement**

**14.**—(1) These Regulations may be cited as the First-tier Tribunal for Scotland Health and Education Chamber (Procedure) Regulations 2017, and the Rules set out in the schedule may be cited as The First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2017.

(2) These Regulations come into force on [ ] 2017.

**Application of the Rules set out in the schedule**

**15.** The Rules in the schedule apply to proceedings before the First-tier Tribunal for Scotland Health and Education Chamber, when exercising the functions allocated to it by regulation 2(1) of the First-tier Tribunal for Scotland (Transfer of Functions of the Additional Support Needs Tribunals for Scotland) Regulations 2017<sup>(25)</sup>.

Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh  
2017

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<sup>(24)</sup> 2014 asp 10.

<sup>(25)</sup> S.S.I. 2017/XXX.

## SCHEDULE

Regulation 2

### THE FIRST-TIER TRIBUNAL FOR SCOTLAND HEALTH AND EDUCATION CHAMBER RULES OF PROCEDURE 2017

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## PART 2

### General provisions

#### Interpretation

##### 1.—(1) In these Rules:

“the 2004 Act” means the Education (Additional Support for Learning) (Scotland) Act 2004<sup>(26)</sup>;

“the 2010 Act” means the Equality Act 2010<sup>(27)</sup>;

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

the 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<sup>(28)</sup> and “electronic signature” has the same meaning as in section 7 of that Act;

“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.

“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
- (e) a day specified as a bank holiday in Scotland in or by virtue of the Banking and Financial Dealings Act 1971<sup>(29)</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;

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<sup>(26)</sup> 2004 asp 4.

<sup>(27)</sup> 2010 c. 15.

<sup>(28)</sup> 2000 c. 7.

<sup>(29)</sup> 1971 c. 80.

- (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 legal representative or lay 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 legal representative or lay 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 legal representative or lay 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—
- (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 award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party or parties to unnecessary or unreasonable expense.

(2) Where expenses are awarded under paragraph (1), the amount of the expenses awarded and recoverable under that paragraph shall be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party or parties in whose favour the order for expenses is made.

### **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.

### **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 and any interested party 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<sup>(30)</sup> for making an application for permission to appeal.

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

The Chamber President may, in any case where a decision of the First-tier 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 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.

## **PART 2**

Procedure in Respect of references to First-tier Tribunal under section 18(1) of the Education (Additional Support for Learning) (Scotland) Act 2004

### **Interpretation**

#### **13. In this Part of the Rules—**

“the appellant” means the person who makes a reference to the First-tier Tribunal under section 18 of the 2004 Act;

“an appeal committee” means a committee set up under section 28D of the Education (Scotland) Act 1980<sup>(31)</sup>;

“case statement period” means the period referred to in either rule 17(2)(a) or (b) as appropriate;

“the child or young person” means the child or young person to whom a reference relates;

“decision” in relation to the First-tier Tribunal includes—

- (a) an order, including dismissal of a reference;
- (b) a requirement under section 19 of the 2004 Act; and
- (c) a reference by the First-tier Tribunal to an appeal committee under section 19(5) of the 2004 Act;

“grounds of reference” includes the matters specified in rule 14(2)(f) and (g);

“party” means either the appellant or authority in respect of any reference made to a Tribunal;

“reference” means a reference under section 18(1) of the 2004 Act;

“Register” means the Register of References to the First-tier Tribunal kept in pursuance of rule 53;

“response” means a written response submitted by an authority under rule 18;

“in writing” has the meaning in section 29(5) of the 2004 Act.

### **Reference**

**14.—**(1) A reference to the First-tier Tribunal shall be made by notice in writing and shall be signed by the appellant or, at the discretion of the First-tier Tribunal, a reference transmitted by electronic means may be accepted without the appellant's signature.

(2) The reference shall state—

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<sup>(30)</sup> S.S.I. 2016/231.

<sup>(31)</sup> 1980 c.44.

- (a) the name, address and telephone number of the appellant;
  - (b) the address to which correspondence should be sent to the appellant if different;
  - (c) the name and date of birth of the child or young person;
  - (d) the name and address of the authority;
  - (e) the date on which—
    - (i) the authority notified the appellant under section 11 or 28 of the 2004 Act of the right to make a reference to a Tribunal in respect of the decision as referred to in section 18(3)(a), (b), (d)(iv), (da) or (e), or of the information as referred to in section 18(3)(d)(i) which is the subject of the reference;
    - (ii) the authority, if they failed to notify the appellant of the right to make such a reference, notified the appellant of that decision or information;
    - (iii) the authority became deemed, in terms of regulations made under paragraph 4 of schedule 2 of the 2004 Act, to have refused the placing request which is the subject of the reference; or
    - (iv) the failure as referred to in section 18(3)(c), (d)(ii) or (iii) which is the subject of the reference first occurred.
  - (f) the details of the decision, failure or information in respect of which the reference is made;
  - (g) the appellant's reasons for making the reference;
  - (h) the main facts on which the appellant intends to rely;
  - (i) if the appellant seeks an order that a co-ordinated support plan be amended, the part or parts of that plan to which the reference relates; and
  - (j) the name, address and profession of any representative appointed by the appellant, and, where available, the representative's telephone number, fax number and electronic address.
- (3) Where the child or young person is the subject of a placing request, and whether or not that placing request is the subject of the reference, the reference shall state—
- (a) whether there is an outstanding reference to an appeal committee under paragraph 5 of schedule 2 of the 2004 Act; or
  - (b) whether there is an outstanding appeal to the sheriff under paragraph 7 of that schedule in which case it shall specify the court in which the appeal is proceeding and, if known to the appellant, any case reference number relative to it.
- (4) The reference shall be accompanied by—
- (a) a copy of any decision in respect of which the reference is made; and
  - (b) where the reference relates to a co-ordinated support plan, a copy of that plan.
- (5) Where the reference is in respect of a decision or information as referred to in paragraph (2)(e)(i) the reference shall be sent so as to be received by the First-tier Tribunal no later than two months from the later of the date on which the authority—
- (a) notified the appellant of the right to make reference to the First-tier Tribunal; or
  - (b) in a case as referred to in paragraph (2)(e)(ii), notified the appellant of the decision or information which is the subject of the reference.
- (6) Where the reference is in respect of the deemed refusal of a placing request as referred to in paragraph (2)(e)(iii) the reference shall be sent so as to be received by the First-tier Tribunal no later than two months from the date on which the authority became deemed to have refused that request.
- (7) Where the reference is in respect of a failure as referred to in paragraph (2)(e)(iv) the reference shall be sent so as to be received by the First-tier Tribunal no later than two months from the date on which that failure first occurred.

### **Action upon receiving a reference**

#### **15.—On receiving a reference the First-tier Tribunal shall—**

- (a) enter the details of such matters specified in rule 13(2) in the Register and such other information as the Chamber President may from time to time direct under section 74(2) of the 2014 Act.
- (b) send a copy of the reference and of any accompanying documents to the authority, together with a notice in writing giving the case number of the reference from the Register, and including information, as appropriate to the matter referred, about the means and time for submission of a response, the consequences of failure to do so, and the right to receive a copy of the decision;

- (c) acknowledge receipt and provide the appellant with a notice in writing giving the case number of the reference, and including information as appropriate to the matter referred, about the time for the authority to submit a response, the right to withdraw the reference, and the right to receive a copy of the decision;
- (d) where the reference discloses the existence of an appeal to an appeal committee under paragraph 5 of schedule 2 of the 2004 Act in relation to the refusal of a placing request, notify the authority and the appeal committee to that effect; and
- (e) where the reference discloses the existence of an appeal to the sheriff under paragraph 7 of that schedule in relation to a placing request, send a copy to the sheriff clerk of the court in which that appeal is proceeding.

### **Sufficiency of reasons for reference**

- 16.—**(1) If the reference does not state grounds of reference which a legal member considers sufficient to enable the authority to respond to it, the legal member shall direct the appellant to send further and better particulars of the grounds of reference to the First-tier Tribunal within 10 working days of the receipt of notice of such direction by the appellant in accordance with rule 58.
- (2) Rules 25 and 27 shall apply to a direction under paragraph (1).
  - (3) Further and better particulars of the grounds of reference sent in response to a direction made under paragraph (1) shall, if a legal member is satisfied that, together with the reference, such particulars are sufficient to enable the authority to respond to it, be treated as part of the reference.
  - (4) Where a legal member has made a direction under paragraph (1), a copy of that direction shall be sent to the authority with confirmation that the case statement period will not commence until the direction has been complied with.

### **Case statement period and statement of appellant's case**

- 17.—**(1) Where rule 16 does not apply or a legal member is satisfied under rule 16(3), the First-tier Tribunal shall send notice in writing to both parties advising them of the dates of the case statement period.
- (2) The case statement period shall be—
    - (a) in the case of an alleged failure of the type referred to in section 18(3)(c) of the 2004 Act, the period of 15 working days; or
    - (b) in any other case, the period of 30 working days, beginning on the date on which notice under paragraph (1) is taken to have been received in accordance with rule 58.
  - (3) The appellant must submit all written evidence to be relied on and which has not already been submitted and may submit to the First-tier Tribunal a written statement of the appellant's case, which may include the views of the child or young person—
    - (a) where rule 17(2)(a) applies, before the end of the case statement period;
    - (b) where rule 17(2)(b) applies, before the end of the first 20 working days of the case statement period.
  - (4) The appellant may amend the reference, submit a supplementary written statement of the appellant's case or amend a supplementary written statement, if permission is given by a legal member or a First-tier Tribunal at a hearing after having first sought and taken account of the views of the respondent.
  - (5) The appellant shall submit to the First-tier Tribunal a copy of every amendment and supplementary statement for which permission is given.
  - (6) Subject to paragraphs (7) and (8), on the application of either party or on the legal member's own initiative, a legal member may make an order shortening or extending the case statement period in any reference.
  - (7) Before making an order under paragraph (6), the legal member shall seek oral or written representations from the parties on the issue of shortening or extending the case statement period.
  - (8) A legal member may only make an order under paragraph (6) if satisfied that—
    - (a) both parties will have sufficient time to prepare their cases; and
    - (b) it is fair and just to do so.
  - (9) In the case of any reference where permission is given by a legal member under paragraph (4) the legal member giving permission may extend the case statement period if satisfied that it is fair and just to do so.
  - (10) If, at the time permission is granted under paragraph (4), the authority is not entitled to take any part in the proceedings in accordance with rule 19(4), the giving of permission shall restore such entitlement

and, if necessary, the hearing shall be rearranged or adjourned, as a legal member or the First-tier Tribunal at the hearing may consider appropriate, so that the authority can be represented.

### **Distribution of documents by the First-tier Tribunal**

**18.—**((1) Subject to paragraph (2), the First-tier Tribunal shall—

- (a) forthwith send to the authority a copy of any amendment to the reference received during the case statement period;
- (b) at the end of the case statement period, and in so far as copies have not already been sent, send to each party—

- (i) a copy of any amendment to the reference or response;
  - (ii) any statement of case submitted by the other party; and
  - (iii) the written evidence of the other party;

- (c) forthwith send to the other party copies of any amendments or supplementary statements, written representations, written evidence (other than written evidence of which a copy is received in accordance with rule 17(3) or 19(3)) or other documents received from a party after the end of the case statement period.

(2) If, after the closure of the case statement period, any amendment, supplementary statement, written representation, written evidence or other document or application is delivered to the First-tier Tribunal, the First-tier Tribunal shall—

- (a) where the parties agree to the late submission, send a copy of it to the other party; or
- (b) where the parties do not agree to the late submission, send a copy of it to the other party to enable the parties to make representations on its admission within such time limits as may be determined by a legal member or by the First-tier Tribunal at a hearing.

(3) Where an education authority has been called under rule 35(2), the First-tier Tribunal shall send to that authority a copy of all of the documentation submitted by the appellant under rule 17(3) and (5).

### **Response**

**19.—**(1) The authority shall submit a response to the First-tier Tribunal within the last ten working days of the case statement period.

(2) The response shall be signed and dated on behalf of the authority and shall state—

- (a) the name and address of the authority;
- (b) the address to which correspondence should be sent, if different;
- (c) the response to the grounds stated in the reference;
- (d) the basis on which the reference is resisted;
- (e) which facts as set out in the reference or in any statement of case under rule 17 are admitted and which are disputed;
- (f) any further facts on which the authority propose to rely;
- (g) the views of the child or young person concerning the issues raised by the reference, or the reason why the authority has not ascertained those views; and
- (h) the name, address and profession of any representative appointed by the authority, and, where available, the representative's telephone number, fax number and electronic address.

(3) The authority must submit along with the response all written evidence to be relied on.

(4) An authority who does not submit a response shall not be entitled to take any part in the proceedings, except—

- (a) to make an application under rule 25 for a direction requiring the appellant to provide further information on the grounds on which the appellant relies and any facts and submissions relevant thereto, to enable the authority to respond;
- (b) to apply under rule 29 for an extension of the time appointed under this rule for the response; or
- (c) in exceptional circumstances at the discretion of a legal member or the First-tier Tribunal at a hearing.

(5) In exceptional circumstances the authority may amend the response if permission is given by a legal member or the First-tier Tribunal at a hearing.

(6) The authority shall submit to the First-tier Tribunal a copy of every amendment for which permission is given.

### **Withdrawal of reference**

- 20.**—(1) An appellant may withdraw any reference made to the First-tier Tribunal—
- (a) at any time before the hearing of the reference by sending to the First-tier Tribunal a notice to that effect signed by the appellant, or by the representative of the appellant; or
  - (b) at the hearing of the reference.
- (2) Upon receipt of any such notice, the First-tier Tribunal shall send a copy to the authority.
- (3) Upon withdrawal of the reference a legal member or the First-tier Tribunal at a hearing shall make an order dismissing the reference.

### **Withdrawal of opposition**

- 21.**—(1) The authority may withdraw their opposition to the reference—
- (a) at any time before the hearing of the reference by sending to the First-tier Tribunal a notice to that effect signed on their behalf; or
  - (b) at the hearing of the reference.
- (2) Upon receipt of any such notice, the First-tier Tribunal shall send a copy to the appellant.

### **Preliminary matters**

- 22.**—(1) A legal member or, at the start of a hearing, the First-tier Tribunal may, either on the application of a party or on their own initiative, consider and determine any preliminary or incidental issue arising from a reference which must be determined prior to the substantive hearing of the reference, and which cannot be determined by the giving of directions under rule 25.
- (2) Before any such issue is determined by a legal member or the First-tier Tribunal, the legal member or the First-tier Tribunal may direct that—
- (a) notice is given to the parties giving them an opportunity to submit representations in writing within a specified period; or
  - (b) notice is given requiring the parties to appear before a legal member or the First-tier Tribunal for a preliminary hearing on that issue.

### **Power for legal member to decide references**

- 23.** A legal member of the First-tier Tribunal may consider and determine any reference made to the First-tier Tribunal of a decision referred to in section 18(3)(ea) or (eb) of the 2004 Act<sup>(32)</sup>.

### **Suspension of proceedings**

- 24.**— (1) A legal member or the First-tier Tribunal at a hearing may—
- (a) if both parties are so agreed, suspend proceedings in respect of a reference pending the outcome of mediation or dispute resolution under section 15 or 16 of the 2004 Act; or
  - (b) on the application of either party, or on their own initiative, suspend such proceedings if it would be fair and just to do so.
- (2) Any such suspension may be indefinite or for such specified period as the legal member or the First-tier Tribunal may consider appropriate.

### **Directions**

- 25.**— (1) A legal member may, at any time before the hearing, either on the written application of a party or on his or her own initiative, give such directions to either or both parties as the legal member may consider necessary or expedient to further the overriding objective in the consideration of the reference and may in particular—

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<sup>(32)</sup> Sections 18(3)(ea) and (eb) were inserted by para. 16(c) of schedule 1 of the Education (Scotland) Act 2016 (2016 asp. 8).

- (a) direct a party to provide any further information or particulars;
  - (b) direct a party to produce any document which may reasonably be required and which it is in the power of that party to produce;
  - (c) direct that a party shall supply a list of documents and a list of witnesses whom that party intends to call to give evidence at the hearing, on such date before the hearing as may be specified;
  - (d) give directions as to the dates by which any documents or other evidence which any party is intending to rely on or produce shall be submitted;
  - (e) where a party has notified that they do not wish to attend a hearing, give a direction as to the date by which that party shall send any written representations on the case to the First-tier Tribunal;
  - (f) give a direction on—
    - (i) any issues on which evidence is required;
    - (ii) the nature of the evidence so required;
    - (iii) the way in which the evidence is to be provided to the First-tier Tribunal; and
    - (iv) the exclusion of any evidence which is irrelevant, unnecessary or improperly obtained.
- (2) Where an application is made by a party for a direction under paragraph (1), it shall be made in writing to the First-tier Tribunal specifying the direction sought and the basis for the application.
- (3) On receipt of such an application, the First-tier Tribunal shall, unless the application is accompanied by the written consent of the other party, send a copy of the application to the other party inviting the party to make written representations on it within 10 working days or such other period as may be specified by a legal member.
- (4) Where a party objects to the application, a legal member shall consider the objection and, if considered necessary for deciding the application, may afford the parties an opportunity to be heard.
- (5) The First-tier Tribunal shall give notice to the parties of any direction to any party required to comply with it and shall—
- (a) include a statement of the possible consequences of failure to comply as mentioned in rule 27; and
  - (b) unless the person to whom the direction is addressed had consented to the application, contain a statement to the effect that that party may apply to a legal member under rule 26 to have that direction varied or set aside.
- (6) When making a direction under paragraph (1)(b) of this rule a legal member may—
- (a) impose a condition on the supply of a document that the party receiving the document shall treat it as confidential and shall use it only for the purposes of the reference; and
  - (b) require, before the direction takes effect, a written undertaking to that effect from that party.

### **Varying or setting aside of directions**

- 26.—**(1) Where a party to whom a direction is given under rule 25 was not afforded the opportunity to be heard before the direction was given and did not consent to the relative application, that person may apply at any time before the First-tier Tribunal has determined the reference to a legal member, by notice to the First-tier Tribunal, for the direction to be varied or set aside, but a legal member shall not vary it or set it aside without first notifying the other party and considering any representations made by that party.
- (2) An application under paragraph (1) may be considered by a legal member alone or with such other members of the First-tier Tribunal as the legal member considers appropriate.

### **Failure to comply with a direction**

- 27.—**(1) If any direction given to a party under rule 25 is not complied with by that party within any period specified in the direction, a legal member or the First-tier Tribunal at a hearing, may—
- (a) where the party in default is the appellant, dismiss the reference either in whole or in part;
  - (b) where the party in default is the authority, determine the reference without a hearing; or
  - (c) where appropriate, direct that a party in default take no further part in the proceedings.
- (2) In this rule the expression “party in default” means the party who failed to comply with the direction.

### **Power to dismiss**



**28.—**(1) Without prejudice to the powers of the First-tier Tribunal at a hearing, a legal member may, at any time before the hearing of a reference, direct that the First-tier Tribunal serves notice on the appellant stating that it appears that the reference should be dismissed on one or more of the grounds specified in paragraph (2) or for want of prosecution.

(2) The grounds referred to in paragraph (1) are that the reference—

- (a) is made otherwise than in accordance with these Rules;
- (b) is not, or is no longer, within the jurisdiction of the First-tier Tribunal; or
- (c) is frivolous or vexatious.

(3) The notice under paragraph (1) shall invite the appellant within such period as may be specified (being not less than 5 working days) to make representations in writing as to why the reference should not be dismissed and shall explain that the appellant may request a hearing.

(4) After expiry of the period specified in paragraph (3), and subject to paragraph (5), a legal member may order that the reference be struck out on one or more of the grounds specified in paragraph (2) or for want of prosecution.

(5) Before making an order under paragraph (4) a legal member shall consider any representations under paragraph (3) and may afford the appellant the opportunity of a hearing.

(6) Any decision to dismiss a reference under this rule shall be recorded in summary form in a document signed by the legal member and a copy of that document shall be sent by the First-tier Tribunal to each of the parties, and details of the decision entered in the Register.

### **Extension of time**

**29.—**(1) Where these Rules or any direction made under them require or authorise a party or other person to do something within a period of time, a legal member or the First-tier Tribunal at a hearing may, in exceptional circumstances, on the application of that person or on their own initiative, and even if the period has expired, grant such further period as the legal member or the First-tier Tribunal may consider appropriate.

(2) Where such a further period has been granted, reference in these Rules to the period of time shall be construed as a reference to the period of time as so extended, and, unless the further period is granted by the First-tier Tribunal at a hearing at which both parties are either present or represented, the First-tier Tribunal shall give notice to each of the parties of any such extension.

### **Consolidation of references**

**30.—**(1) Where more than one reference relates to the same child or young person, or requires a decision on substantially the same issue, a legal member may order that such references be heard at the same hearing.

(2) A legal member may make an order varying or revoking an earlier order made under paragraph (1).

(3) An order under this rule shall only be made if it appears to the legal member to be fair and just to do so and, before an order is made, the parties to each reference affected shall have the opportunity to be heard, and to have their views taken into account, either by a legal member alone or with such other members of the First-tier Tribunal as the legal member may consider appropriate.

(4) A legal member must not make an order under this rule if it would cause a breach of any of these Rules, or the rules in Part 3 to these Regulations.

### **Consolidation of hearings of claims and references**

**31.—**(1) Where a claim under paragraph 8 of Schedule 17 of the 2010 Act and a reference relate to the same person, and the other party to the claim and the reference is also the same, the person or, where the claim was made by the person's parent, the parent or the other party may apply to the First-tier Tribunal for an order that such a claim and reference be heard at the same hearing.

(2) A legal member may—

- (a) make an order under paragraph (1);
- (b) make an order varying or revoking an earlier order made under paragraph (1).

(3) An order under this rule shall only be made if it appears to the legal member to be fair and just to do so and, before an order is made, the parties have had the opportunity to be heard, and their views taken into

account, either by a legal member alone or with such other members of the First-tier Tribunal as the legal member may consider appropriate.

(4) A legal member must not make an order under this rule if it would cause a breach of any of these rules, or the rules in Part 3 to these Regulations.

### **Recovery of documents**

**32.**—(1) Subject to the provisions of the Act and to paragraph (2) of this rule, the First-tier Tribunal or a legal member may, on the application of any party or on its or his or her own initiative, direct that citation be sent to any person requiring that person to produce to the First-tier Tribunal, by such date as may be specified, any document in the custody, or under the control, of that person.

(2) The citation must explain that it is an offence under the Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016<sup>(33)</sup> to refuse or fail to produce any such document without reasonable excuse or to deliberately alter, conceal or destroy any document which that person is required by the citation to produce, and that a person guilty of such an offence may be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Where such a citation has been duly served on a person and that person fails to comply within the time specified in the citation, a legal member or the First-tier Tribunal at a hearing may—

(a) where the person in default is the appellant, dismiss the reference without a hearing or further hearing; or

(b) where the person in default is the authority, order that the authority take no further part in the proceedings.

(4) In the exercise of the power conferred under paragraph (1) regard shall be had to the need to protect any matter that relates to intimate personal or financial circumstances of any person or consists of information communicated or obtained in confidence.

### **Witnesses and citation of witnesses**

**33.**—(1) Where a party wishes to call witnesses to attend a hearing to give evidence, that party shall, prior to the end of the case statement period, provide to the First-tier Tribunal a list of the names and addresses of such witnesses.

(2) A party may not call and lead evidence from any witness who is not included on their list of witnesses except with the permission of a legal member or the First-tier Tribunal at a hearing.

(3) Subject to the provisions of the Act and to paragraph (5) of this rule, the First-tier Tribunal or a legal member may, on the written application of any party made not later than 8 working days before the hearing, or on its or his or her own initiative, direct that citation be sent to any person whose details are included in either party's list of witnesses under paragraph (1) requiring that person to attend any hearing, including any adjourned hearing, of the First-tier Tribunal at such time and place as may be specified in the citation, for the purpose of giving evidence.

(4) The citation must explain that it is an offence under the Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016 without reasonable excuse to fail to attend the First-tier Tribunal proceedings as required by the citation or to refuse or fail, whilst attending proceedings as so required, to answer any question and that a person guilty of such an offence may be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) No person shall be required so to attend unless—

(a) they have been given at least 5 working days' notice of the hearing or, if less than 5 such days, they have informed the First-tier Tribunal that they accept such notice as they have been given; and

(b) the necessary expenses of their attendance are paid or tendered to them by the party seeking their attendance.

(6) At the hearing of a reference, the parties shall, subject to the provisions of these Rules, be entitled to be present and be heard, to give evidence, to call witnesses, to question witnesses and to address the First-tier Tribunal both on the evidence and generally on the subject matter of the reference, provided that neither party shall be entitled unless permitted to do so by a legal member, or the First-tier Tribunal at a hearing, to call more than two witnesses in addition to the child or young person to give evidence in person.

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<sup>(33)</sup> S.S.I. 2016/342.

## **Expert evidence**

**34.—**(1) The First-tier Tribunal or a legal member may, if any issue arises in relation to a reference on which, in the opinion of the First-tier Tribunal or a legal member, it would be desirable for the First-tier Tribunal to have the assistance of an expert, appoint a person having appropriate qualifications to enquire into and report on any matter.

(2) The First-tier Tribunal must supply the parties with a copy of any written report received under paragraph (1) in advance of the hearing or resumed hearing.

(3) If the First-tier Tribunal or a legal member sees fit, it, he or she may direct that the expert shall attend the hearing and give evidence.

## **Specified persons**

**35.—**(1) On the application of either party or on its own initiative the First-tier Tribunal or a legal member may call any person having a sufficient interest in the matter before the First-tier Tribunal to attend a hearing and give evidence.

(2) In the case of the decision of an education authority refusing a placing request the First-tier Tribunal or legal member may call the education authority for the area to which the child or young person belongs (where it would be desirable for the First-tier Tribunal to have the assistance of the education authority) to attend a hearing and give evidence.

## **Notice of hearing**

**36.—**(1) The First-tier Tribunal shall, after consultation with the parties, fix the date, time and place of the hearing and, not less than 10 working days (or such shorter time as the parties may agree) before the date so fixed, send to each party a notice that the hearing is to be at such time and at such place or notify them in such other manner as the First-tier Tribunal thinks fit.

(2) The First-tier Tribunal shall include in or with the notice of hearing—

(a) information and guidance as to attendance at the hearing of the parties, their witnesses and any persons whom they may wish to be present at the hearing in support, the lodging of documents, and the right of representation or assistance as provided for in rule 3 and 4;

(b) a statement explaining the possible consequences of non-attendance by a party, unless that party has stated in writing that they wish to withdraw the reference or withdraw the response, and of the consequences of the failure to name a representative or witness whom the party may wish to attend;

(c) an invitation to notify the First-tier Tribunal if a party or a witness may require the attendance of an interpreter or other person to give other necessary assistance at the hearing or may require any other particular arrangements to be made; and

(d) a statement explaining the right to make representations in writing provided for under rule 38(6) by—

(i) an appellant who does not attend and is not represented at the hearing; or

(ii) an authority if they are not represented at the hearing and if they have submitted a response, unless they have stated in writing that they do not resist the reference or have withdrawn opposition to the reference.

(3) The First-tier Tribunal may alter the date, time or place of any hearing provided that the parties are given at least 5 working days' notice (or such shorter time as the parties may agree) of any altered hearing date, time or place.

(4) An altered hearing date shall not (unless the parties so agree) be earlier than the date previously fixed.

(5) Nothing in this rule shall oblige the First-tier Tribunal, in relation to the arrangements for any hearing, to consult with or send notice to any party who is not entitled to be present or represented at that hearing.

(6) In this rule, "working day" has the meaning given to it in rule 1 except that it includes any day in July which is not a Saturday, a Sunday or a day specified as a bank holiday in accordance with these Rules.

## **Power to decide reference without hearing**

**37.—**(1) The First-tier Tribunal may, in any of the circumstances referred to in paragraph (2), decide the reference without a hearing.

- (2) For the purposes of paragraph (1) the circumstances are—
- (a) where no response is submitted to the First-tier Tribunal within the time appointed by rule 18 or any extension of time allowed under rule 29;
  - (b) where the authority states in writing that they do not resist the reference;
  - (c) where the authority withdraws their opposition to the reference;
  - (d) where both parties agree in writing to dispense with a hearing;
  - (e) where it has been established that the child or young person requires a co-ordinated support plan and the authority fails to prepare such a plan within the time limit provided; or
  - (f) where a reference to the First-tier Tribunal is made by a child or child's parent under section 18(3)(ea) or (eb) of the 2004 Act.
- (3) In deciding a reference under paragraph (1) the First-tier Tribunal shall do so on the basis of the notice of reference, any response, any statement of case and any written evidence submitted in accordance with the Rules.
- (4) The First-tier Tribunal shall, after receipt of a reference which is to proceed without a hearing in accordance with this rule, send to the parties—
- (a) information and guidance; and
  - (b) an indication of when the First-tier Tribunal expects to be able to notify the parties of the decision of the legal member.

### **Attendance at hearings**

- 38.**—(1) Subject to the provisions of this rule, any hearing before the First-tier Tribunal shall be in private.
- (2) A legal member or the First-tier Tribunal at a hearing may, on the application of the appellant or on his, her or its own initiative, make an order that a hearing or part of a hearing be held in public.
- (3) An order shall not be made under paragraph (2) in any of the circumstances referred to in paragraph (4).
- (4) Those circumstances are that a public hearing—
- (a) would prejudice the welfare, wellbeing or interests of the child or young person;
  - (b) would not, in all the circumstances, allow the fair hearing of the reference; or
  - (c) would not be fair or just.
- (5) The First-tier Tribunal, with the consent of the parties or their representatives actually present, may permit any other person to attend the hearing of a reference which is held in private.
- (6) An appellant or authority who does not intend to attend or be represented at the hearing may, not less than five working days before the hearing, submit additional written representations in support of their case.
- (7) The following persons, as well as the parties and their representatives, shall be entitled to attend the hearing of a reference held in private:—
- (a) the child or young person unless, in the case of a child, the First-tier Tribunal considers that in respect of the whole or any part of the proceedings the welfare, wellbeing, or interests of that child would be prejudiced by being present;
  - (b) a parent of the child or young person who is not a party;
  - (c) a person attending to support a party;
  - (d) a person appointed under rule 43(2);
  - (e) a witness, but only for the purpose of giving evidence;
  - (f) the Chamber President and a member of the First-tier Tribunal (when not sitting as a member of the First-tier Tribunal);
  - (g) a member of staff of the Scottish Courts and Tribunals Service;
  - (h) an interpreter;
  - (i) a person giving necessary assistance to a person entitled to attend the hearing.
- (8) Without prejudice to any other powers it may have, the First-tier Tribunal may exclude from the hearing, or any part of it—
- (a) a person whose conduct has disrupted or is likely, in the opinion of the First-tier Tribunal, to disrupt the hearing;
  - (b) a person, including the child or young person, whose presence is likely, in the opinion of the First-tier Tribunal, to make it difficult for any person to present evidence or make representations necessary for the proper conduct of the hearing;

- (c) a representative who was not notified to the First-tier Tribunal in the reference, response or in accordance with rule 4; or
- (d) a witness not included in the list of witnesses submitted by either party in accordance with rule 33(1).

### **Conduct of the hearing**

- 39.**—(1) At the beginning of the hearing the legal member shall explain the procedure which the First-tier Tribunal proposes to adopt.
- (2) The First-tier Tribunal may permit a parent of the child or young person, who is not a party, to address it on the subject matter of the reference.
- (3) The First-tier Tribunal may, if it is satisfied that it is fair and just to do so, permit—
- (a) the appellant to rely on grounds not stated in the reference or in any statement of case and to produce or lead any evidence not presented to the authority prior to the date of—
    - (i) the decision which is the subject of the reference; or
    - (ii) the provision of a copy of the co-ordinated support plan or amended plan in accordance with section 11(5)(a) of the 2004 Act containing the information which is the subject of the reference; or
  - (b) the authority to rely on grounds not specified in the response.
- (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.
- (5) In the absence of the consent referred to in paragraph (4) the hearing shall be postponed.
- (6) Except in so far as expressly permitted by these Rules to give evidence or to address the First-tier Tribunal none of the persons mentioned in rule 38(5) or (7) shall, save in the case of persons mentioned in rule 38(7)(h), take any part in the hearing or (where entitled or permitted to remain) in the deliberations of the First-tier Tribunal.
- (7) For the purposes of arriving at its decision the First-tier Tribunal shall, and for the purposes of discussing a question of procedure, may, notwithstanding anything contained in these Rules order all persons to withdraw from the sitting of the First-tier Tribunal other than the legal member and ordinary members of the First-tier Tribunal and any of the persons mentioned in rule 38(7)(f) to (g) .

### **Evidence at hearing**

- 40.**— (1) Evidence at a hearing may be given in person or by written statement, but, subject to the provisions of these Rules, the First-tier Tribunal may at any stage of the proceedings require the personal attendance of the maker of a written statement.
- (2) A party shall only be permitted to give evidence by written statement if such statement is submitted prior to the expiry of the case statement period or at any time with the consent of the other party and with the approval of a legal member or the First-tier Tribunal at a hearing.
- (3) A legal member or the First-tier Tribunal may at the start of a hearing, on the application of either party or on his, her or its own initiative, determine that a witness be allowed to give evidence by telephone, video link or any other means of communication, if satisfied that this would not prejudice the achievement of the overriding objective.

### **Postponement of hearing**

- 41.**—(1) A legal member may, on his or her own initiative, or on application by either party, postpone any hearing.
- (2) The First-tier Tribunal shall notify the parties of the date, time and place of any postponed hearing.

### **Adjournment of hearing**

- 42.**—(1) The First-tier Tribunal may from time to time adjourn a hearing.
- (2) A hearing shall not be adjourned solely on account of the failure of a witness to appear unless the First-tier Tribunal, on cause shown, so directs.

- (3) When the hearing is adjourned, a legal member or the First-tier Tribunal may give directions to be complied with, before or at the resumed hearing.
- (4) Such directions may require a party to provide such particulars or evidence as may reasonably be required for the determination of the reference.
- (5) If a party fails to comply with such a direction, the First-tier Tribunal shall take account of that fact when determining the reference or deciding whether to make an order for expenses.
- (6) The First-tier Tribunal shall notify the parties of the date, time and place for the resumed hearing.

## **Children**

**43.—**(1) The First-tier Tribunal may permit a child under the age of 12 to give evidence only where it considers—

- (a) that the evidence of the child is necessary to enable a fair and just hearing of the reference; and
- (b) that the welfare, wellbeing and interests of the child will not be prejudiced by so doing.

(2) If it allows such a child to give evidence in person, a legal member or the First-tier Tribunal may appoint for the purpose of the hearing a person with appropriate skills or experience in facilitating the giving of evidence by children.

(3) The First-tier Tribunal shall pay such reasonable fees, expenses or allowances as the Chamber President may determine to any person appointed under this rule.

## **Views of the Child**

**44.** Where a parent of a child refers any decision, failure or information specified in section 18(3) of the 2004 Act relating to that child for whose school education an education authority are responsible to the First-tier Tribunal, the First-tier Tribunal is required to seek the views of that child.

## **Late evidence**

**45.** At the start of a hearing, where a party proposes to submit further documents not already lodged as productions, or to call a witness not on their list of witnesses, the First-tier Tribunal, after considering any representations from the other party, may allow that proposal if it is satisfied that, in all the circumstances, it would be fair and just to do so.

## **Restricted reporting orders**

**46.—**(1) If it appears appropriate to do so a restricted reporting order may be made by a legal member or the First-tier Tribunal at a hearing.

(2) A restricted reporting order is an order limiting or prohibiting the publishing of any matter specified in the order, which may include matter likely to lead members of the public to identify the appellant or any specified child or other person, where it is considered that they should not be identified.

(3) In this rule “publishing” includes, without prejudice to the generality of that expression—

- (a) publishing any matter in a programme service, as defined by section 201 of the Broadcasting Act 1990<sup>(34)</sup> and
- (b) causing any matter to be published.

(4) An order under this rule may be made in respect of a limited period and may be varied or revoked by a legal member or the First-tier Tribunal before or at the hearing.

## **Failure of parties to attend**

**47.—**(1) If a party fails to attend or be represented at a hearing of which they have been duly notified, the First-tier Tribunal may—

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<sup>(34)</sup> 1990 c. 42.

- (a) unless it is satisfied that there is sufficient reason for such absence, hear and determine the reference in the party's absence; or
  - (b) adjourn the hearing.
- (2) Before disposing of the reference in the absence of a party, the First-tier Tribunal shall consider the reference, any response, any statement of case and any written evidence submitted in accordance with the Rules.

### **Decisions on references**

**48.—**(1) A decision of the First-tier Tribunal on a reference may be reached by a majority, but where the Tribunal is constituted by a legal member and one ordinary member in terms of the First-tier Tribunal for Scotland Health and Education Chamber and Upper Tribunal for Scotland (Composition) Regulations 2017<sup>(35)</sup> the legal member shall have a second or casting vote.

(2) The decision of the First-tier Tribunal may be given orally at the end of the hearing or may be reserved and, in any event, whether there has been a hearing or not, the Tribunal shall inform each party of the decision which shall as soon as may be practicable be recorded in a document signed by the legal member which contains a full statement of the facts found by the Tribunal and the reasons for the decision.

(3) The First-tier Tribunal shall—

- (a) as soon as practicable after it is prepared send a copy of the document referred to in paragraph (2) to each party and send notice about the circumstances in which there is a right to appeal under section 21 of the 2004 Act against a decision of the First-tier Tribunal;
- (b) enter such details in the Register as the Chamber President may from time to time direct under section 74(2) of the 2014 Act; and
- (c) where the circumstances mentioned in section 19(5)(c) of the 2004 Act apply, notify the appeal committee of the reference to the committee of the First-tier Tribunal's decision.

### **Further procedure on appeal**

**49.—**(1) If any appeal against a decision of the First-tier Tribunal is allowed by either the First-tier Tribunal or the Upper Tribunal, the entry relating to the decision in the Register shall be altered to reflect that and the parties shall be notified accordingly.

(2) If by order of the Upper Tribunal a reference is remitted back to the First-tier Tribunal, and subject to any directions or orders of the Upper Tribunal made under section 21(3) of the 2004 Act, the First-tier Tribunal shall notify the parties that, during such period as a legal member may specify each party may submit a supplementary statement of case and further written evidence.

(3) If an appeal against an order to dismiss a reference is allowed, the First-tier Tribunal shall notify the parties—

- (a) in the case where the case statement period had not expired before the order to dismiss took effect—
  - (i) that a new case statement period shall be commenced in accordance with rule 16; and
  - (ii) that, within the new period, the parties may submit the documentation referred to in sub paragraph (b) in respect of a statement of case or evidence submitted before the dismissal took effect; or
- (b) in any other case, that each party may within such period as the legal member may specify submit a supplementary statement of case along with any further written evidence.

(4) The First-tier Tribunal shall forthwith send a copy of all statements and written evidence received from a party in accordance with this rule to the other party.

### **Miscellaneous**

**50.—**(1) Subject to the provisions of the 2014 Act and these Rules, the First-tier Tribunal may regulate its own procedure.

(2) The First-tier Tribunal may, if it thinks fit, make a decision in terms agreed in writing by the parties.

### **Change of authority**

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<sup>(35)</sup> S.S.I. 2017/ .

**51.—**(1) This rule applies if, after the date of receipt by the First-tier Tribunal of a reference, an education authority (“the new authority”) other than the authority named in the notice of reference (“the original authority”) becomes responsible for the school education of the child or young person.

(2) On receiving information that this rule applies a legal member or the First-tier Tribunal at a hearing may order that, for all the purposes of the reference, the new authority be substituted for the original authority.

(3) The appellant, the original authority and the new authority shall have an opportunity to be heard before an order is made under paragraph (2).

(4) When an order is made under paragraph (2)–

- (a) the First-tier Tribunal shall notify the appellant, the original authority and the new authority;
- (b) the original authority shall no longer be a party;
- (c) the new authority shall become a party;
- (d) these Rules shall apply as if the new authority had made the decision or was responsible for the failure or information to which the reference relates;
- (e) the First-tier Tribunal shall send to the new authority copies of all the documents and written evidence relating to the reference duly received by the First-tier Tribunal from the appellant or from the original authority; and
- (f) the legal member or the First-tier Tribunal shall give directions as to further procedure and in particular may set new dates for the new case statement period or for any hearing.

#### **Power to exercise functions of a legal member**

**52.—**(1) Any function of a legal member may be exercised by the Chamber President or by any other legal member selected by the Chamber President.

(2) Where the Chamber President or a legal member determines any preliminary or incidental matter alone, then unless the interests of fairness and justice require that particular reference to be determined by the First-tier Tribunal with the same legal member, the reference may be considered by the First-tier Tribunal with a different legal member, if the Chamber President considers it necessary or expedient.

(3) Subject to rule 56(6), if the circumstances referred to in paragraph (4) occur after the decision of a legal member or of the First-tier Tribunal, the functions of the legal member for the completion of the proceedings may be exercised by the Chamber President or any other legal member.

(4) The circumstances referred to in paragraph (3) are–

- (a) the death or incapacity of the legal member; or
- (b) the legal member ceasing to be a member of the First-tier Tribunal.

#### **Power to exercise functions of an ordinary member**

**53.—**(1) If either of the circumstances referred to in paragraph (2) occur after the decision of the First-tier Tribunal, the functions of the First-tier Tribunal may be undertaken by the legal member and the remaining ordinary member.

(2) The circumstances referred to in paragraph (1) are–

- (a) the death or incapacity of an ordinary member; or
- (b) such a member ceasing to be a member of the First-tier Tribunal.

(3) This rule shall not apply to the First-tier Tribunal–

- (a) when constituted with a legal member and one ordinary member in accordance with rule 38(5); or
- (b) in relation to which the Chamber President or another legal member is acting in place of the legal member in accordance with rule 52(3).

#### **Register**

**54.—**(1) The First-tier Tribunal shall keep a Register of References to the First-tier Tribunal.

(2) There shall be entered in the Register a note of all references, and the entry for each case shall contain the following particulars where appropriate:–

- (a) the names and addresses of the parties;
- (b) brief details of the nature of the reference;



- (c) the date of any hearing including any hearing on preliminary or incidental matters, and, where appropriate, the nature of the hearing and any hearing at which the legal member sat alone;
  - (d) details of any directions or orders issued; and
  - (e) the document in terms of which the decision of the First-tier Tribunal has been recorded under rule 47(2).
- (3) The Register or any part of it may be kept in electronic form.

### **Publication**

- 55.**—(1) The Chamber President shall make such arrangements as the Chamber President considers appropriate for the publication of decisions of the First-tier Tribunal.
- (2) Decisions may be published electronically.
- (3) A decision may be published in an edited form, or subject to any deletions, where the Chamber President or a legal member considers that to be appropriate bearing in mind—
- (a) the need to safeguard the welfare, wellbeing and interests of the child or young person or any other person;
  - (b) the need to protect the private life of any person;
  - (c) any representations on the matter which any person has provided in writing to the First-tier Tribunal at any time prior to publication under the arrangements made under paragraph (1).
- (4) A decision of the First-tier Tribunal shall be published in such a manner as to protect the anonymity of the child or young person.

### **Irregularities**

- 56.**—(1) Any irregularity resulting from failure, at any time before the First-tier Tribunal has determined the reference, to comply with any provision of, or direction made under, these Rules shall not by itself render the proceedings void.
- (2) Where any such irregularity comes to the attention of the First-tier Tribunal, the First-tier Tribunal may, and shall, if it considers that any person has been prejudiced by the irregularity, give such directions as it thinks just before reaching its decision to cure or waive the irregularity.

### **Proof of documents and certification of decisions**

- 57.**—(1) A document purporting to be a document issued by or on behalf of the Chamber President, a legal member, or the First-tier Tribunal shall, unless the contrary is proved, be deemed to be a document so issued.
- (2) A document purporting to be certified by the First-tier Tribunal as a true copy of a document containing a decision of the First-tier Tribunal shall, unless the contrary is proved, be sufficient evidence of its contents.

### **Manner and time of service of notices etc.**

- 58.**—(1) A notice given under these Rules shall be in writing and a person required under these Rules to notify a matter to the First-tier Tribunal shall do so in writing.
- (2) Notices and documents required by these Rules to be sent or delivered to the First-tier Tribunal may be sent by post, by fax or by electronic communication to or be delivered at the address of the First-tier Tribunal or such other address as the First-tier Tribunal may notify.
- (3) Any citation under rule 32 or 33 shall—
- (a) be posted by first class recorded or special delivery post properly addressed and pre paid to the addressee at their ordinary or last notified address; and
  - (b) be deemed, unless the contrary is proved, to have been received on the second working day after posting.
- (4) Any notice or document, other than a citation under rule 32 or 33, required or authorised to be given or sent under these Rules shall, subject to the provisions of paragraph (6) be deemed to have been given or sent if it was—
- (a) sent by first class post properly addressed and pre-paid to the addressee at their ordinary or last notified address; or

- (b) transmitted by fax or communicated electronically to a fax number or electronic address specified by the addressee.
- (5) Any such notice or document as is referred to in paragraph (4), shall, unless the contrary is proved, be deemed to have been received—
  - (a) where sent by first class post, on the second working day after posting; or
  - (b) if transmitted by fax or communicated electronically, on the first working day after the day on which it is received in legible form.
- (6) Any such notice or document as is referred to in paragraph (4) shall not be transmitted by fax or electronic communication to a person unless that person has confirmed in writing that notices or documents will be considered to have been duly sent if transmitted or communicated to a specified fax number or electronic address.
- (7) A person may at any time by notice to the First-tier Tribunal change their address for service under these Rules.
- (8) Where for any sufficient reason service of any document or the giving of any notice cannot be effected in the manner prescribed under this rule, a legal member or the First-tier Tribunal may dispense with service or make an order for substituted service in such manner as may be deemed fit and such service shall have the same effect as service in the manner prescribed under this rule.
- (9) In this rule, “working day” has the meaning given to it in rule 1 except that it includes any day in July which is not a Saturday, a Sunday or a day specified as a bank holiday in accordance with these Rules.

### **Signature of documents**

- 59.** Where any of these Rules requires a document to be signed, that requirement shall be satisfied—
- (a) if the signature is written; or
  - (b) subject to rule 15(1) in the case of a document which is communicated electronically in accordance with these Rules by the electronic signature of the person who is required to sign it.

## **PART 3**

Procedure in respect of disability claims under paragraph 8 of schedule 17 of the 2010 Act.

### **Interpretation**

- 60.** In this Part of these Rules—

“case statement period” means the period referred to in rule 63(2);  
 “claim” means a claim under paragraph 8 of Schedule 17 of the 2010 Act and “claimant” shall be construed accordingly;  
 “party” means either the claimant or responsible body in respect of any claim made to the First-tier Tribunal;  
 “Register” means the Register of Claims to the First-tier Tribunal kept in pursuance of rule 99;  
 “response” means a written response submitted by a responsible body under rule 66;  
 “responsible body” has the same meaning as in section 85(9) of the 2010 Act;

### **Claim**

**61.—**(1) A claim to the First-tier Tribunal shall be made by notice in writing and shall be signed by the claimant or, at the discretion of the First-tier Tribunal, a claim transmitted by electronic means may be accepted without the claimant's signature.

(2) The claim shall state—

- (a) the name, address, telephone number, date of birth and nature of the disability of the person to whom the claim relates;
- (b) the name, address and telephone number of the claimant, if the claimant is not the person to whom the claim relates;
- (c) the address to which correspondence should be sent to the claimant, if different;
- (d) the name, address and telephone number of the responsible body;

- (e) the name, address and profession of any representative appointed by the claimant, and, where available, the representative's telephone number, fax number and electronic address;
  - (f) the main facts on which the claimant intends to rely; and
  - (g) details of the alleged contravention of Chapter 1 of Part 6 of the 2010 Act.
- (3) The claimant must send a copy of the claim to the Equality and Human Rights Commission.
- (4) The First-tier Tribunal shall not consider a claim unless the claim has been received by the First-tier Tribunal before the end of the period of six months beginning when the act complained of was done.
- (5) If, in relation to proceedings or prospective proceedings under section 27 of the Equality Act 2006<sup>(36)</sup> the dispute is referred for conciliation in pursuance of arrangements under that section before the end of the period specified in paragraph (4), that period is extended by 3 months.
- (6) The First-tier Tribunal may consider any claim which is out of time under paragraphs (4) or (5) if, in all the circumstances of the case, it considers that it is just and equitable to do so.

### **Action upon receiving a claim**

**62.**—On receiving a claim the First-tier Tribunal shall—

- (a) enter the details of such matters specified in rule 61(2) in the Register and such other information as the Chamber President may from time to time direct under section 74(2) of the 2014 Act;
- (b) send a copy of the claim and of any accompanying documents to the responsible body, together with a notice in writing giving the case number of the claim from the Register, and including information, as appropriate to the claim, about the means and time for submission of a response, the consequences of failure to do so, and the right to receive a copy of the decision; and
- (c) acknowledge receipt and provide the claimant with a notice in writing giving the case number of the claim, and including information as appropriate to the claim, about the time for the responsible body to submit a response, the right to withdraw the claim, and the right to receive a copy of the decision.

### **Sufficiency of reasons for claim**

**63.**— (1) If the claim does not state grounds of claim which a legal member considers sufficient to enable the responsible body to respond to it, the legal member shall direct the claimant to send further and better particulars of the grounds of claim to the First-tier Tribunal within 10 working days of the receipt of notice of such direction by the claimant in accordance with rule 104.

(2) Rules 71 and 73 shall apply to a direction under paragraph (1).

(3) Further and better particulars of the grounds of claim sent in response to a direction made under paragraph (1) shall, if a legal member is satisfied that, together with the claim, such particulars should be sufficient to enable the responsible body to respond to it, be treated as part of the claim.

(4) Where a legal member has made a direction under paragraph (1), a copy of that direction shall be sent to the responsible body with confirmation that the case statement period will not commence until the direction has been complied with.

### **Case statement period and statement of claimant's case**

**64.**—(1) Where rule 62 does not apply or a legal member is satisfied under rule 63(3), the First-tier Tribunal shall send notice in writing to both parties advising them of the dates of the case statement period.

(2) The case statement period shall be the period of 30 working days beginning on the date on which notice under paragraph (1) is taken to have been received in accordance with rule 102.

(3) Before the end of the case statement period, the claimant must submit all written evidence to be relied on and which has not already been submitted and may submit to the First-tier Tribunal a written statement of the claimant's case, which may include the views of the person to whom the claim relates.

(4) The claimant may amend the claim, submit a supplementary written statement of the claimant's case or amend a supplementary written statement, if permission is given by a legal member or the First-tier Tribunal at a hearing after having first sought and taken account of the views of the responsible body.

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<sup>(36)</sup> 2006 c. 3.

- (5) The claimant shall submit to the First-tier Tribunal a copy of every amendment and supplementary statement for which permission is given.
- (6) Subject to paragraphs (7) and (8), on the application of either party or on the legal member's own initiative, a legal member may make an order shortening or extending the case statement period in any claim.
- (7) Before making an order under paragraph (6), the legal member shall seek oral or written representations from the parties on the issue of shortening or extending the case statement period.
- (8) A legal member may only make an order under paragraph (6) if satisfied that—
- (a) both parties will have sufficient time to prepare their cases; and
  - (b) it is fair and just to do so.
- (9) In the case of any claim where permission is given by a legal member under paragraph (4) the legal member giving permission may extend the case statement period if satisfied that it is fair and just to do so.
- (10) If, at the time permission is granted under paragraph (4), the responsible body is not entitled to take any part in the proceedings in accordance with rule 66(4), the giving of permission shall restore such entitlement and, if necessary, the hearing shall be rearranged or adjourned, as a legal member or the First-tier Tribunal at the hearing may consider appropriate, so that the responsible body can be represented.

### **Distribution of documents by the First-tier Tribunal**

- 65.—**(1) Subject to paragraph (2), the First-tier Tribunal shall—
- (a) forthwith send to the responsible body a copy of any amendment to the claim received during the case statement period;
  - (b) at the end of the case statement period, and in so far as copies have not already been sent, send to each party—
    - (i) a copy of any amendment to the claim or response;
    - (ii) any statement of case submitted by the other party; and
    - (iii) the written evidence of the other party;
  - (c) forthwith send to the other party copies of any amendments or supplementary statements, written representations, written evidence (other than written evidence of which a copy is received in accordance with rule 64(3) or 66 (3)) or other documents received from a party after the end of the case statement period.
- (2) If, after the closure of the case statement period, any amendment, supplementary statement, written representation, written evidence or other document or application is delivered to the First-tier Tribunal, the First-tier Tribunal shall—
- (a) where the parties agree to the late submission, send a copy of it to the other party; or
  - (b) where the parties do not agree to the late submission, send a copy of it to the other party to enable the parties to make representations on its admission within such time limits as may be determined by a legal member or by the First-tier Tribunal at a hearing.
- (3) Where any individual has been called under rule 80, the First-tier Tribunal shall send to them a copy of all of the documentation submitted by the claimant under rule 64(3) and (5).

### **Response**

- 66.—**(1) The responsible body shall submit a response to the First-tier Tribunal within the last ten working days of the case statement period.
- (2) The response shall be signed and dated on behalf of the responsible body and shall state—
- (a) the name and address of the responsible body;
  - (b) the address to which correspondence should be sent, if different;
  - (c) the response to the grounds stated in the claim;
  - (d) the basis on which the claim is resisted;
  - (e) which facts as set out in the claim or in any statement of case under rule 64 are admitted and which are disputed;
  - (f) any further facts on which the responsible body propose to rely; and
  - (g) the name, address and profession of any representative appointed by the responsible body, and, where available, the representative's telephone number, fax number and electronic address.
- (3) The responsible body must submit along with the response all written evidence to be relied on.

(4) A responsible body who does not submit a response shall not be entitled to take any part in the proceedings, except—

(a) to make an application under rule 72 for a direction requiring the claimant to provide further information on the grounds on which the claimant relies and any facts and submissions relevant thereto, to enable the responsible body to respond;

(b) to apply under rule 76 for an extension of the time appointed under this rule for the response; or

(c) in exceptional circumstances at the discretion of a legal member or the First-tier Tribunal at a hearing.

(5) In exceptional circumstances the responsible body may amend the response if permission is given by a legal member or the First-tier Tribunal at a hearing.

(6) The responsible body shall submit to the First-tier Tribunal a copy of every amendment for which permission is given.

### **Withdrawal of claim**

**67.**—(1) A claimant may withdraw any claim made to the First-tier Tribunal—

(a) at any time before the hearing of the claim by sending to the First-tier Tribunal a notice to that effect signed by the claimant or by the representative of the claimant; or

(b) at the hearing of the claim.

(2) Upon receipt of any such notice, the First-tier Tribunal shall send a copy to the responsible body.

(3) Upon withdrawal of the claim, a legal member or the First-tier Tribunal at a hearing shall make an order dismissing the claim.

### **Withdrawal of opposition**

**68.**—(1) The responsible body may withdraw their opposition to the claim—

(a) at any time before the hearing of the claim by sending to the First-tier Tribunal a notice to that effect signed on their behalf; or

(b) at the hearing of the claim.

(2) Upon receipt of any such notice, the First-tier Tribunal shall send a copy to the claimant.

### **Preliminary matters**

**69.**—(1) A legal member or, at the start of a hearing, the First-tier Tribunal may, either on the application of a party or on their own initiative, consider and determine any preliminary or incidental issue arising from a claim which must be determined prior to the substantive hearing of the claim, and which cannot be determined by the giving of directions under rule 70.

(2) Before any such issue is determined by a legal member or the First-tier Tribunal, the legal member or the First-tier Tribunal may direct that—

(a) notice is given to the parties giving them an opportunity to submit representations in writing within a specified period; or

(b) notice is given requiring the parties to appear before a legal member or the First-tier Tribunal for a preliminary hearing on that issue.

### **Suspension of proceedings**

**70.**—(1) A legal member or the First-tier Tribunal at a hearing may, on the application of either party, or on their own initiative, suspend such proceedings if it would be fair and just to do so.

(2) Any such suspension may be indefinite or for such specified period as the legal member or the First-tier Tribunal may consider appropriate.

### **Directions**

**71.**—(1) A legal member may, at any time before the hearing, either on the written application of a party or on the legal member's own initiative, give such directions to either or both parties as the legal member

may consider necessary or expedient to further the overriding objective in the consideration of the claim and may in particular—

- (a) direct a party to provide any further information or particulars;
- (b) direct a party to produce any document which may reasonably be required and which it is in the power of that party to produce;
- (c) direct that a party shall supply a list of documents and a list of witnesses whom that party intends to call to give evidence at the hearing, on such date before the hearing as may be specified;
- (d) give directions as to the dates by which any documents or other evidence which any party is intending to rely on or produce shall be submitted;
- (e) where a party has notified that they do not wish to attend a hearing, give a direction as to the date by which that party shall send any written representations on the case to the First-tier Tribunal;
- (f) give a direction on—
  - (i) any issues on which evidence is required;
  - (ii) the nature of the evidence so required;
  - (iii) the way in which the evidence is to be provided to the First-tier Tribunal; and
  - (iv) the exclusion of any evidence which is irrelevant, unnecessary or improperly obtained.

(2) Where an application is made by a party for a direction under paragraph (1), it shall be made in writing to the First-tier Tribunal specifying the direction sought and the basis for the application.

(3) On receipt of such an application, the First-tier Tribunal shall, unless the application is accompanied by the written consent of the other party, send a copy of the application to the other party inviting the party to make written representations on it within 10 working days or such other period as may be specified by a legal member.

(4) Where a party objects to the application, a legal member shall consider the objection and, if considered necessary for deciding the application, may afford the parties an opportunity to be heard.

(5) The First-tier Tribunal shall give notice to the parties of any direction to any party required to comply with it and shall—

- (a) include a statement of the possible consequences of failure to comply as mentioned in rule 73; and
- (b) unless the party to whom the direction is addressed had consented to the application, contain a statement to the effect that that party may apply to a legal member under rule 72 to have that direction varied or set aside.

(6) When making a direction under paragraph (1)(b) a legal member may—

- (a) impose a condition on the supply of a document that the party receiving the document shall treat it as confidential and shall use it only for the purposes of the claim; and
- (b) require, before the direction takes effect, a written undertaking to that effect from that party.

### **Varying or setting aside of directions**

**72.—**(1) Where a party to whom a direction is given under rule 71 was not afforded the opportunity to be heard before the direction was given and did not consent to the relative application, that party may apply at any time before the First-tier Tribunal has determined the claim to a legal member, by notice to the First-tier Tribunal, for the direction to be varied or set aside, but a legal member shall not vary it or set it aside without first notifying the other party and considering any representations made by that party.

(2) An application under paragraph (1) may be considered by a legal member alone or with such other members of the First-tier Tribunal as the legal member considers appropriate.

### **Failure to comply with a direction**

**73.—**(1) If any direction given to a party under rule 71 is not complied with by that party within any period specified in the direction, a legal member or the First-tier Tribunal at a hearing, may—

- (a) where the party in default is the claimant, dismiss the claim either in whole or in part;
- (b) where the party in default is the responsible body, determine the claim without a hearing; or
- (c) where appropriate, direct that a party in default take no further part in the proceedings.

(2) In this rule the expression “party in default” means the party who failed to comply with the direction.

## **Power to dismiss**

**74.—**(1) Without prejudice to the powers of the First-tier Tribunal at a hearing, a legal member may, at any time before the hearing of a claim, direct that the First-tier Tribunal serves notice on the claimant stating that it appears that the claim should be dismissed on one or more of the grounds specified in paragraph (2) or for want of prosecution.

(2) The grounds referred to in paragraph (1) are that the claim—

- (a) is made otherwise than in accordance with these Rules;
- (b) is not, or is no longer, within the jurisdiction of the First-tier Tribunal; or
- (c) is frivolous or vexatious.

(3) The notice under paragraph (1) shall invite the claimant within such period as may be specified (being not less than 5 working days) to make representations in writing as to why the claim should not be dismissed and shall explain that the claimant may request a hearing.

(4) After expiry of the period specified in paragraph (3), and subject to paragraph (5), a legal member may order that the claim be struck out on one or more of the grounds specified in paragraph (2) or for want of prosecution.

(5) Before making an order under paragraph (4) a legal member shall consider any representations under paragraph (3) and may afford the claimant the opportunity of a hearing.

(6) Any decision to dismiss a claim under this rule shall be recorded in summary form in a document signed by the legal member and a copy of that document shall be sent by the First-tier Tribunal to each of the parties, and details of the decision entered in the Register.

## **Extension of time**

**75.—**(1) Where these Rules or any direction made under them require or authorise a party or other person to do something within a period of time, a legal member or the First-tier Tribunal at a hearing may, in exceptional circumstances, on the application of that party or other person, or on their own initiative, and even if the period has expired, grant such further period as the legal member or the First-tier Tribunal may consider appropriate.

(2) Where such a further period has been granted, reference in these Rules to the period of time shall be construed as a reference to the period of time as so extended, and, unless the further period is granted by the First-tier Tribunal at a hearing at which both parties are either present or represented, the First-tier Tribunal shall give notice to each of the parties of any such extension.

## **Consolidation of claims**

**76.—**(1) Where more than one claim relates to the same person, or requires a decision on substantially the same issue, a legal member may order that such claims be heard at the same hearing.

(2) A legal member may make an order varying or revoking an earlier order made under paragraph (1).

(3) An order under this rule shall only be made if it appears to the legal member to be fair and just to do so and, before an order is made, the parties to each claim affected shall have the opportunity to be heard, and to have their views taken into account, either by a legal member alone or with such other members of the First-tier Tribunal as the legal member may consider appropriate.

(4) A legal member must not make an order under this rule if it would cause a breach of any of these rules or the rules in Part 2 to these Regulations.

## **Consolidation of hearings of claims and references**

**77.—**(1) Where a reference under section 18(1) of the 2004 Act and a claim relate to the same person, and the other party to the reference and the claim is also the same, the person or, where the claim was made by the person's parent, the parent or the other party may apply to the First-tier Tribunal for an order that such a claim and reference be heard at the same hearing.

(2) A legal member may—

- (a) make an order under paragraph (1);
- (b) make an order varying or revoking an earlier order made under paragraph (1).

(3) An order under this rule shall only be made if it appears to the legal member to be fair and just to do so and, before an order is made, the parties have had the opportunity to be heard, and to have their views

taken into account, either by a legal member alone or with such other members of the First-tier Tribunal as the legal member may consider appropriate.

(4) A legal member must not make an order under this rule if it would cause a breach of any of these rules or the rules in Part 2 to these Regulations.

### **Recovery of documents**

**78.**—(1) Subject to the provisions of the 2004 Act and to paragraph (2), the First-tier Tribunal or a legal member may, on the application of any party or on their own initiative, direct that citation be sent to any person requiring them to produce to the First-tier Tribunal, by such date as may be specified, any document in their custody, or under their control.

(2) The citation must explain that it is an offence under SSI 2016/342 to refuse or fail to produce any such document without reasonable excuse or to deliberately alter, conceal or destroy any document which that person is required by the citation to produce, and that a person guilty of such an offence may be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Where such a citation has been duly served on a person and that person fails to comply within the time specified in the citation, a legal member or the First-tier Tribunal at a hearing may—

(a) where the person in default is the claimant, dismiss the claim without a hearing or further hearing; or

(b) where the person in default is the responsible body, order that the responsible body take no further part in the proceedings.

(4) In the exercise of the power conferred under paragraph (1) regard shall be had to the need to protect any matter that relates to intimate personal or financial circumstances of any person or consists of information communicated or obtained in confidence.

### **Witnesses and citation of witnesses**

**79.**—(1) Where a party wishes to call witnesses to attend a hearing to give evidence, that party shall, prior to the end of the case statement period, provide to the First-tier Tribunal a list of the names and addresses of such witnesses.

(2) A party may not call and lead evidence from any witness who is not included on their list of witnesses except with the permission of a legal member or the First-tier Tribunal at a hearing.

(3) Subject to the provisions of the 2004 Act and to paragraph (5), the First-tier Tribunal or a legal member may, on the written application of any party made not later than 8 working days before the hearing, or on their own initiative, direct that citation be sent to any person whose details are included in either party's list of witnesses under paragraph (1) requiring that person to attend any hearing, including any adjourned hearing, of the First-tier Tribunal at such time and place as may be specified in the citation, for the purpose of giving evidence.

(4) The citation must explain that it is an offence under SSI 2016/342 without reasonable excuse to fail to attend the First-tier Tribunal proceedings as required by the citation or to refuse or fail, whilst attending proceedings as so required, to answer any question and that a person guilty of such an offence may be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) No individual shall be required so to attend unless—

(a) they have been given at least 5 working days' notice of the hearing or, if less than 5 such days, they have informed the First-tier Tribunal that they accept such notice as they have been given; and

(b) the necessary expenses of their attendance are paid or tendered to them by the party seeking their attendance.

(6) At the hearing of a claim, the parties shall, subject to the provisions of these Rules, be entitled to be present and be heard, to give evidence, to call witnesses, to question witnesses and to address the First-tier Tribunal both on the evidence and generally on the subject matter of the claim.

### **Expert evidence**

**80.**—(1) The First-tier Tribunal or a legal member may, if any issue arises in relation to a claim on which, in the opinion of the First-tier Tribunal or a legal member, it would be desirable for the First-tier Tribunal



to have the assistance of an expert, appoint a person having appropriate qualifications to enquire into and report on any matter.

(2) The First-tier Tribunal must supply the parties with a copy of any written report received under paragraph (1) in advance of the hearing or resumed hearing.

(3) If the First-tier Tribunal or a legal member sees fit, it, he or she may direct that the expert shall attend the hearing and give evidence.

### **Specified individual**

**81.** On the application of either party or on its own initiative the First-tier Tribunal or a legal member may call any individual having a sufficient interest in the matter before the First-tier Tribunal to attend a hearing and give evidence.

### **Notice of hearing**

**82.—**(1) The First-tier Tribunal shall, after consultation with the parties, fix the date, time and place of the hearing and, not less than 10 working days (or such shorter time as the parties may agree) before the date so fixed, send to each party a notice that the hearing is to be at such time and at such place or notify them in such other manner as the First-tier Tribunal thinks fit.

(2) The First-tier Tribunal shall include in or with the notice of hearing—

(a) information and guidance as to attendance at the hearing of the parties, their witnesses and any persons whom they may wish to be present at the hearing in support, the lodging of documents, and the right of representation or assistance as provided for in rules 4 and 5;

(b) a statement explaining the possible consequences of non-attendance by a party, unless that party has stated in writing that they wish to withdraw the claim or withdraw the response, and of the consequences of the failure to name a representative or witness whom the party may wish to attend;

(c) an invitation to notify the First-tier Tribunal if a party or a witness may require the attendance of an interpreter or other person to give other necessary assistance at the hearing or may require any other particular arrangements to be made; and

(d) a statement explaining the right to make representations in writing provided for under rule 83(6) by—

(i) a claimant who does not attend and is not represented at the hearing; or

(ii) a responsible body if they are not represented at the hearing and if they have submitted a response, unless they have stated in writing that they do not resist the claim or have withdrawn opposition to the claim.

(3) The First-tier Tribunal may alter the date, time or place of any hearing provided that the parties are given at least 5 working days' notice (or such shorter time as the parties may agree) of any altered hearing date, time or place.

(4) An altered hearing date shall not (unless the parties so agree) be earlier than the date previously fixed.

(5) Nothing in this rule shall oblige the First-tier Tribunal, in relation to the arrangements for any hearing, to consult with or send notice to any party who is not entitled to be present or represented at that hearing.

(6) In this rule, "working day" has the meaning given to it in rule 1 except that it includes any day in July which is not a Saturday, a Sunday or a day specified as a bank holiday in accordance with these Rules.

### **Power to decide claim without hearing**

**83.—**(1) The First-tier Tribunal may, in any of the circumstances referred to in paragraph (2), decide the claim without a hearing.

(2) For the purposes of paragraph (1) the circumstances are—

(a) where no response is submitted to the First-tier Tribunal within the time appointed by rule 65 or any extension of time allowed under rule 75;

(b) where the responsible body states in writing that they do not resist the claim;

(c) where the responsible body withdraws their opposition to the claim; or

(d) where both parties agree in writing to dispense with a hearing.

(3) In deciding a claim under paragraph (1) the First-tier Tribunal shall do so on the basis of the notice of claim, any response, any statement of case, any supplementary written statement of case and any written evidence submitted in accordance with the Rules.

(4) The First-tier Tribunal shall, after receipt of a claim which is to proceed without a hearing in accordance with this rule, send to the parties—

(a) information and guidance; and

(b) an indication of when the First-tier Tribunal expects to be able to notify the parties of the decision of the legal member.

### **Attendance at hearings**

**84.**—(1) Subject to the provisions of this rule, any hearing before the First-tier Tribunal shall be in private.

(2) A legal member or the First-tier Tribunal at a hearing may, on the application of the claimant or on their own initiative, make an order that a hearing or part of a hearing be held in public.

(3) An order shall not be made under paragraph (2) in any of the circumstances referred to in paragraph (4).

(4) Those circumstances are that a public hearing—

(a) would prejudice the welfare, wellbeing or interests of the person to whom the claim relates;

(b) would not, in all the circumstances, allow the fair hearing of the claim; or

(c) would not be fair or just.

(5) The First-tier Tribunal, with the consent of the parties or their representatives actually present, may permit any other person to attend the hearing of a claim which is held in private.

(6) A claimant or responsible body who does not intend to attend or be represented at the hearing may, not less than 5 working days before the hearing, submit additional written representations in support of their case.

(7) The following persons, as well as the parties and their representatives, shall be entitled to attend the hearing of a claim held in private—

(a) the person to whom the claim relates, where the person is the claimant;

(b) a parent of the person to whom the claim relates where the person is not the claimant;

(c) an individual attending to support a party;

(d) an individual appointed under rule 89(4);

(e) a witness, but only for the purpose of giving evidence;

(f) the Chamber President and a member of the First-tier Tribunal (when not sitting as a member of the First-tier Tribunal);

(g) a member of staff of the Scottish Courts and Tribunals Service;

(h) an interpreter;

(i) a person giving necessary assistance to a person entitled to attend the hearing.

(8) Without prejudice to any other powers it may have, the First-tier Tribunal may exclude from the hearing, or any part of it—

(a) a person whose conduct has disrupted or is likely, in the opinion of the First-tier Tribunal, to disrupt the hearing;

(b) a person whose presence is likely, in the opinion of the First-tier Tribunal, to make it difficult for anyone to present evidence or make representations necessary for the proper conduct of the hearing;

(c) a representative who was not notified to the First-tier Tribunal in the claim, response or in accordance with rule 4;

(d) a witness not included in the list of witnesses submitted by either party in accordance with rule 79(1).

### **Conduct of the hearing**

**85.**—(1) At the beginning of the hearing the legal member shall explain the procedure which the First-tier Tribunal proposes to adopt.

(2) At the hearing of a claim, the parties shall, subject to the provisions of these Rules, be entitled to be present and be heard, to give evidence, to call witnesses, to question witnesses and to address the First-tier Tribunal both on the evidence and generally on the subject matter of the claim, provided that neither party shall be entitled to call more than five witnesses to give evidence in person in addition to the claimant,

unless, in exceptional circumstances, permitted to do so by a legal member, or the First-tier Tribunal at a hearing.

(3) The First-tier Tribunal may permit a parent of a claimant to address it on the subject matter of the claim.

(4) The First-tier Tribunal may, if it is satisfied that it is fair and just to do so, permit—

(a) the claimant to rely on grounds not stated in the claim or in any statement of case; or

(b) the responsible body to rely on grounds not specified in the response.

(5) 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.

(6) In the absence of the consent referred to in paragraph (5) the hearing shall be postponed.

(7) Except in so far as expressly permitted by these Rules to give evidence or to address the First-tier Tribunal none of the persons mentioned in rule 84(5) or (7) shall, save in the case of persons mentioned in rule 84(7)(h), take any part in the hearing or (where entitled or permitted to remain) in the deliberations of the First-tier Tribunal.

(8) For the purposes of arriving at its decision the First-tier Tribunal shall, and for the purposes of discussing a question of procedure, may, notwithstanding anything contained in these Rules order all persons to withdraw from the sitting of the First-tier Tribunal other than the legal member and ordinary members of the First-tier Tribunal and any of the persons mentioned in rule 84(7)(f) to (g).

### **Evidence at hearing**

**86.**—(1) Evidence at a hearing may be given in person or by written statement, but, subject to the provisions of these Rules, the First-tier Tribunal may at any stage of the proceedings require the personal attendance of the maker of a written statement.

(2) A party shall only be permitted to give evidence by written statement if such statement is submitted prior to the expiry of the case statement period or at any other time with the consent of the other party and with the approval of a legal member or the First-tier Tribunal at a hearing.

(3) A legal member or the First-tier Tribunal may at the start of a hearing, on the application of either party or on their own initiative, determine that a witness be allowed to give evidence by telephone, video link or any other means of communication, if satisfied that this would not prejudice the achievement of the overriding objective.

### **Postponement of hearing**

**87.**—(1) A legal member may, on their own initiative, or on application by either party, postpone any hearing.

(2) The First-tier Tribunal shall notify the parties of the date, time and place of any subsequent hearing following postponement.

### **Adjournment of hearing**

**88.**—(1) The First-tier Tribunal may from time to time adjourn a hearing.

(2) A hearing shall not be adjourned solely on account of the failure of a witness to appear unless the First-tier Tribunal, on cause shown, so directs.

(3) When the hearing is adjourned, a legal member or the First-tier Tribunal may give directions to be complied with, before or at the resumed hearing.

(4) Such directions may require a party to provide such particulars or evidence as may reasonably be required for the determination of the claim.

(5) If a party fails to comply with such a direction, the First-tier Tribunal shall take account of that fact when determining the claim or deciding whether to make an order for expenses.

(6) The First-tier Tribunal shall notify the parties of the date, time and place for the resumed hearing.

### **Children**

**89.**—(1) Any child who is a claimant may give evidence.

- (2) Any child of 12 years of age or over who is not a claimant may give evidence.
- (3) A child under 12 years of age who is not a claimant may only give evidence where a legal member or the First-tier Tribunal considers—
- (a) that the evidence of the child is necessary to enable a fair and just hearing of the claim; and
  - (b) that the welfare, wellbeing and interests of the child will not be prejudiced by so doing.
- (4) Where a child gives evidence in person, a legal member or the First-tier Tribunal may appoint for the purpose of the hearing a person with appropriate skills or experience in facilitating the giving of evidence by children.
- (5) The First-tier Tribunal shall pay such reasonable fees, expenses or allowances as the Chamber President may determine to any person appointed under this rule.

### **Late evidence**

**90.** At the start of a hearing, where a party proposes to submit further documents not already lodged as productions, or to call a witness not on their list of witnesses, the First-tier Tribunal, after considering any representations from the other party, may allow that proposal if it is satisfied that, in all the circumstances, it would be fair and just to do so.

### **Restricted reporting orders**

- 91.**—(1) If it appears appropriate to do so a restricted reporting order may be made by a legal member or the First-tier Tribunal at a hearing.
- (2) A restricted reporting order is an order limiting or prohibiting the publishing of any matter specified in the order, which may include matter likely to lead members of the public to identify the claimant or any child under 16 years of age or other individual, where it is considered that they should not be identified.
- (3) In this rule “publishing” includes, without prejudice to the generality of that expression—
- (a) publishing any matter in a programme service, as defined by section 201 of the Broadcasting Act 1990; and
  - (b) causing any matter to be published.
- (4) An order under this rule may be made in respect of a limited period and may be varied or revoked by a legal member or the First-tier Tribunal before or at the hearing.

### **Failure of parties to attend**

- 92.**—(1) If a party fails to attend or be represented at a hearing of which they have been duly notified, the First-tier Tribunal may—
- (a) unless it is satisfied that there is sufficient reason for such absence, hear and determine the claim in the party's absence; or
  - (b) adjourn the hearing.
- (2) Before disposing of the claim in the absence of a party, the First-tier Tribunal shall consider the claim, any response, any statement of case, any supplementary written statement of case and any written evidence submitted in accordance with the Rules.

### **Decisions on claims**

- 93.**— (1) A decision of the First-tier Tribunal on a claim may be reached by a majority, but where the Tribunal is constituted by a legal member and one ordinary member in terms of the First-tier Tribunal for Scotland Health and Education Chamber and Upper Tribunal for Scotland (Composition) Regulations 2017 the legal member shall have a second or casting vote.
- (2) The decision of the First-tier Tribunal may be given orally at the end of the hearing or may be reserved and, in any event, whether there has been a hearing or not, the Tribunal shall inform each party of the decision which shall as soon as may be practicable be recorded in a document signed by the legal member which contains a full statement of the facts found by the Tribunal and the reasons for the decision.
- (3) The First-tier Tribunal shall—

- (a) as soon as practicable after it is prepared send a copy of the document referred to in paragraph (2) to each party and send notice about the circumstances in which there is a right to appeal under paragraph 11 of schedule 17 of the 2010 Act against a decision of the First-tier Tribunal; and
- (b) enter such details in the Register as the Chamber President may from time to time direct under section 74(2) of the 2014 Act.

### **Further procedure on appeal**

- 94.**—(1) If any appeal against a decision of the First-tier Tribunal is allowed by either the First-tier Tribunal or the Upper Tribunal, the entry relating to the decision in the Register shall be altered to reflect that and the parties shall be notified accordingly.
- (2) If by order of the Upper Tribunal a claim is remitted back to the First-tier Tribunal, and subject to any directions or orders of the Upper Tribunal made paragraph 11(3) of schedule 17 of the 2010 Act, the First-tier Tribunal shall notify the parties that, during such period as a legal member may specify each party may submit a supplementary statement of case and further written evidence.
- (3) If an appeal against an order to dismiss a reference is allowed, the First-tier Tribunal shall notify the parties—
- (a) in the case where the case statement period had not expired before the order to dismiss took effect—
    - (i) that a new case statement period shall be commenced in accordance with rule 64; and
    - (ii) that, within the new period, the parties may submit the documentation referred to in sub paragraph (b) in respect of a statement of case or evidence submitted before the dismissal took effect; or
  - (b) in any other case, that each party may within such period as the legal member may specify submit a supplementary statement of case along with any further written evidence.
- (4) The First-tier Tribunal shall forthwith send a copy of all statements and written evidence received from a party in accordance with this rule to the other party.

### **Miscellaneous**

- 95.**—(1) Subject to the provisions of the 2014 Act and these Rules, the First-tier Tribunal may regulate its own procedure.
- (2) The First-tier Tribunal may, if it thinks fit, make a decision in terms agreed in writing by the parties.

### **Change of responsible body**

- 96.**—(1) A legal member or the First-tier Tribunal at a hearing may order that, for all the purposes of the claim, a new responsible body be substituted for, or be added to the claim with, the original responsible body.
- (2) The claimant, the original responsible body and the new responsible body shall have an opportunity to be heard before an order is made under paragraph (1).
- (3) When an order is made under paragraph (1)—
- (a) the First-tier Tribunal shall notify the claimant, the original responsible body and the new responsible body;
  - (b) where a new responsible body is substituted for the original responsible body, the original responsible body shall no longer be a party;
  - (c) the new responsible body shall become a party;
  - (d) the First-tier Tribunal shall send to a new responsible body copies of all the documents and written evidence relating to the claim duly received by the First-tier Tribunal from the claimant or from the original responsible body; and
  - (e) the legal member or the First-tier Tribunal shall give directions as to further procedure and in particular may set new dates for the new case statement period or for any hearing.

### **Power to exercise functions of a legal member**

- 97.**—(1) Any function of a legal member may be exercised by the Chamber President or by any other legal member selected by the Chamber President.

(2) Where the Chamber President or a legal member determines any preliminary or incidental matter alone, then unless the interests of fairness and justice require that particular claim to be determined by the First-tier Tribunal with the same legal member, the claim may be considered by the First-tier Tribunal with a different legal member, if the Chamber President considers it necessary or expedient.

(3) Subject to rule 101(6), if the circumstances referred to in paragraph (4) occur after the decision of a legal member or of the First-tier Tribunal, the functions of the legal member for the completion of the proceedings may be exercised by the Chamber President or any other legal member.

(4) The circumstances referred to in paragraph (3) are—

- (a) the death or incapacity of the legal member; or
- (b) the legal member ceasing to be a member of the First-tier Tribunal.

### **Power to exercise functions of an ordinary member**

**98.**—(1) If either of the circumstances referred to in paragraph (2) occur after the decision of the First-tier Tribunal, the functions of that Tribunal may be undertaken by the legal member and the remaining ordinary member.

(2) The circumstances referred to in paragraph (1) are—

- (a) the death or incapacity of an ordinary member; or
- (b) such a member ceasing to be a member of the First-tier Tribunal.

(3) This rule shall not apply to the First-tier Tribunal—

- (a) when constituted with a legal member and one ordinary member in accordance with rule 81(5); or
- (b) in relation to which the Chamber President or another legal member is acting in place of the legal member in accordance with rule 97(3).

### **Register**

**99.**—(1) The First-tier Tribunal shall keep a Register of Claims to the First-tier Tribunal.

(2) There shall be entered in the Register a note of all claims, and the entry for each case shall contain the following particulars where appropriate—

- (a) the names and addresses of the parties;
- (b) brief details of the nature of the claim;
- (c) the date of any hearing including any hearing on preliminary or incidental matters, and, where appropriate, the nature of the hearing and any hearing at which the legal member sat alone;
- (d) details of any directions or orders issued; and
- (e) the document in terms of which the decision of the First-tier Tribunal has been recorded under rule 93(2).

(3) The Register or any part of it may be kept in electronic form.

### **Publication**

**100.**—(1) The Chamber President shall make such arrangements as the Chamber President considers appropriate for the publication of decisions of the First-tier Tribunal.

(2) Decisions may be published electronically.

(3) A decision may be published in an edited form, or subject to any deletions, where the Chamber President or a legal member considers that to be appropriate bearing in mind—

- (a) the need to safeguard the welfare, wellbeing and interests of the person to whom the claim relates or of any other person;
- (b) the need to protect the private life of any person;
- (c) any representations on the matter which any person has provided in writing to the First-tier Tribunal at any time prior to publication under the arrangements made under paragraph (1).

(4) A decision of the First-tier Tribunal shall be published in such a manner as to protect the anonymity of the person to whom the claim relates.

### **Irregularities**

**101.**—(1) Any irregularity resulting from failure, at any time before the First-tier Tribunal has determined the claim, to comply with any provision of, or direction made under, these Rules shall not by itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the First-tier Tribunal, the First-tier Tribunal may, and shall, if it considers that any person has been prejudiced by the irregularity, give such directions as it thinks just before reaching its decision to cure or waive the irregularity.

### **Proof of documents and certification of decisions**

**102.**—(1) A document purporting to be a document issued by or on behalf of the Chamber President, a legal member, or the First-tier Tribunal shall, unless the contrary is proved, be deemed to be a document so issued.

(2) A document purporting to be certified by the First-tier Tribunal as a true copy of a document containing a decision of the First-tier Tribunal shall, unless the contrary is proved, be sufficient evidence of its contents.

### **Manner and time of service of notices etc.**

**103.**—(1) A notice given under these Rules shall be in writing and a person required under these Rules to notify a matter to the First-tier Tribunal shall do so in writing.

(2) Notices and documents required by these Rules to be sent or delivered to the First-tier Tribunal may be sent by post, by fax or by electronic communication to or be delivered at the address of the First-tier Tribunal or such other address as the First-tier Tribunal may notify.

(3) Any citation under rule 78 or 79 shall—

(a) be posted by first class recorded or special delivery post properly addressed and pre-paid to the addressee at their ordinary or last notified address; and

(b) be deemed, unless the contrary is proved, to have been received on the second working day after posting.

(4) Any notice or document, other than a citation under rule 78 or 79, required or authorised to be given or sent under these Rules shall, subject to the provisions of paragraph (6) be deemed to have been given or sent if it was—

(a) sent by first class post properly addressed and pre-paid to the addressee at their ordinary or last notified address; or

(b) transmitted by fax or communicated electronically to a fax number or electronic address specified by the addressee.

(5) Any such notice or document as is referred to in paragraph (4), shall, unless the contrary is proved, be deemed to have been received—

(a) where sent by first class post, on the second working day after posting; or

(b) if transmitted by fax or communicated electronically, on the first working day after the day on which it is received in legible form.

(6) Any such notice or document as is referred to in paragraph (4) shall not be transmitted by fax or electronic communication to a person unless that person has confirmed in writing that notices or documents will be considered to have been duly sent if transmitted or communicated to a specified fax number or electronic address.

(7) A person may at any time by notice to the First-tier Tribunal change their address for service under these Rules.

(8) Where for any sufficient reason service of any document or the giving of any notice cannot be effected in the manner prescribed under this rule, a legal member or the First-tier Tribunal may dispense with service or make an order for substituted service in such manner as may be deemed fit and such service shall have the same effect as service in the manner prescribed under this rule.

(9) In this rule, “working day” has the meaning given to it in rule 1 except that it includes any day in July which is not a Saturday, a Sunday or a day specified as a bank holiday in accordance with these Rules.

### **Signature of documents**

**104.** Where any of these Rules requires a document to be signed, that requirement shall be satisfied—

(a) if the signature is written; or

(b) subject to rule 61(1) in the case of a document which is communicated electronically in accordance with these Rules by the electronic signature of the individual who is required to sign it.

A member of the Scottish Government

St Andrew's House,  
Edinburgh  
2017



## **EXPLANATORY NOTE**

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

The Tribunals (Scotland) 2014 Act created a new structure for tribunals dealing with devolved matters under the judicial leadership of the Lord President of the Court of Session as head of the Scottish Tribunals. It provided for a First-tier Tribunal and an Upper Tribunal and for the First-tier Tribunal to be divided into chambers dependent on the subject-matter of the case before it and similarly for the Upper Tribunal to be divided into divisions. The First-tier Tribunal has been divided into chambers, one of which is the health and education chamber. These Regulations provide for the rules of procedure which are to apply in that chamber, which are set out in the schedule of the regulations. Paragraph 4 of schedule 9 of the Tribunals (Scotland) Act 2014 enables the Scottish Ministers, by regulations, to make Tribunal Rules until such time as the provisions conferring responsibility on the Scottish Civil Justice Council and the Court of Session for the making of Tribunal Rules are commenced.

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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2017 No.

**TRIBUNALS AND INQUIRIES****The First-tier Tribunal for Scotland Health and Education Chamber and Upper Tribunal for Scotland (Composition) Regulations 2017**

*Made* - - - - 2017

*Coming into force* - - 2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 38(1) and 40(1) of the Tribunals (Scotland) Act 2014<sup>(37)</sup> 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 2017 and come into force on [ ] 2017.

(2) In these Regulations—

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

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

**Composition of First-tier Tribunal**

**2.**—(1) Subject to paragraph (2), 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<sup>(38)</sup>, may consist of only the Chamber President or a legal member.

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<sup>(37)</sup> 2014 asp 10.

<sup>(38)</sup> 2004 asp 4.

(3) The First-tier Tribunal, when convened without a hearing (see rules 37 and 83 of S.S.I 2017/xxxx) to decide any matter in a case may consist of a legal member only.

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

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

- (a) a Court of Session judge, 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.

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

St Andrew’s House,  
Edinburgh  
2017

*ANNABELLE EWING*  
Authorised to sign by the Scottish Ministers

## **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.

## SCOTTISH STATUTORY INSTRUMENTS

2017 No.

## TRIBUNALS AND INQUIRIES

## The Scottish Tribunals (Eligibility for Appointment) Amendment Regulations 2017

<i>Made</i>	- - - -	2017
<i>Laid before the Scottish Parliament</i>		2017
<i>Coming into force</i>	- -	2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 80 and paragraph 1(2) of schedule 3 to the Tribunals (Scotland) Act 2014<sup>(39)</sup> and all other powers enabling them to do so.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Scottish Tribunals (Eligibility for Appointment) Amendment Regulations 2017 and come into force on [ ] 2017.

(2) In these Regulations, “the 2015 Regulations” means the Scottish Tribunals (Eligibility for Appointment) Regulations 2015<sup>(40)</sup>.

**Amendment of the 2015 Regulations**

**2.**—(1) The 2015 Regulations are amended in accordance with paragraph (2).

(2) After regulation 3, insert—

**“Eligibility for appointment as an ordinary member of the First-tier Tribunal for Scotland (health and education experience)**

**3A.** A person is eligible for appointment as an ordinary member of the First-tier Tribunal for Scotland if the person has knowledge and experience of children or young persons with—

(a) additional support needs within the meaning of section 1(1) of the Education (Additional Support for Learning)(Scotland) Act 2004<sup>(41)</sup>; or

(b) a disability within the meaning of section 6 of the Equality Act 2010<sup>(42)</sup>.”.

<sup>(39)</sup> 2014 asp 10.

<sup>(40)</sup> S.S.I. 2015/381

<sup>(41)</sup> 2004 asp 4.

<sup>(42)</sup> 2010 c.15.

St Andrew's House,  
Edinburgh  
2017

Authorised to sign by the Scottish Ministers

## **EXPLANATORY NOTE**

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

These Regulations amend the Scottish Tribunals (Eligibility for Appointment) Regulations 2015 to provide eligibility criteria for appointment of ordinary members of the First-tier Tribunal in respect of health and education experience. They also revoke regulation 4 of the Additional Support Needs Tribunals for Scotland (Appointment of President, Conveners and Members and Disqualification) Regulations 2005.



**Tribunals (Scotland) Act 2014 - Consultation on Draft Regulations  
regarding:**

- (1) the Transfer of Functions and Members of the Additional Support Needs Tribunals for Scotland to the Scottish Tribunals;**
- (2) the rules of procedure for the First-tier Tribunal for Scotland Health and Education Chamber and**
- (3) the Composition of the First-tier and Upper Tribunals for Scotland**
- (4) the Eligibility for Ordinary Membership of the First-tier Tribunal for Scotland Health and Education Chamber**

## **RESPONDENT INFORMATION FORM**

**Please Note** this form **must** be returned with your response.

Are you responding as an individual or an organisation?

- ☐ Individual
- ☐ Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email



The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

**Information for organisations:**

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

- ☐ Publish response with name
- ☐ Publish response only (anonymous)
- ☐ Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- ☐ Yes
- ☐ No



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