

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.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2018 No.

TRIBUNALS AND INQUIRIES

The First-tier Tribunal for Scotland (Transfer of Functions of the Additional Support Needs Tribunals for Scotland) Regulations 2018

Made - - - - 2018

Coming into force - - 12th January 2018

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⁽¹⁾ 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 Tribunals for Scotland) Regulations 2018 and come into force on 12th January 2018.

(2) In these Regulations—

“the 2004 Act” means the Education (Additional Support for Learning) (Scotland) Act 2004⁽²⁾;

“the 2010 Act” means the Equality Act 2010⁽³⁾;

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

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

(1) 2014 asp 10.
(2) 2004 asp 4.
(3) 2010 c.15.

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

“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

“President” means the individual appointed under section 17(2) of the 2004 Act to be President of the Additional Support Needs Tribunals for Scotland.

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 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 conveners, other members and President 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) The persons transferred to the First-tier Tribunal under paragraph (1), are (subject to the provisions of the 2014 Act) to be members of the First-tier Tribunal in accordance with terms and conditions to be offered by the Scottish Ministers immediately before transfer, which are to 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 amendments, repeals and revocations

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 12th January 2018 to transfer to the First-tier Tribunal

1. Any reference or claim to the Additional Support Needs Tribunals for Scotland in progress immediately before 12th January 2018 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 12th January 2018 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 12th January 2018 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 12th January 2018 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.

Application for assistance by way of representation made to the Scottish Legal Aid Board to carry over to the First-tier Tribunal.

4. Any application for assistance by way of representation made to the Scottish Legal Aid Board immediately before 12th January 2018 in relation to a claim made to an Additional Support Needs Tribunal for Scotland in accordance with Part 3 of schedule 17 of the 2010 Act (which provides for claims to be made to a tribunal that a responsible body of a school has contravened Chapter 1 of Part 6 of that Act because of a person's disability) which is still to be determined or has been approved, shall be treated on or after 12th January 2018 as if it had been made, or approved, in relation to a claim made to the First-tier Tribunal for Scotland Health and Education Chamber in accordance with Part 3 of Schedule 17 of the 2010 Act.

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

5. Where in respect of a decision of the Additional Support Needs Tribunals for Scotland before 12th January 2018, 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 12th January 2018 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

6. Where in respect of a decision of the Additional Support Needs Tribunals for Scotland before 12th January 2018, 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.

SCHEDULE 2

Regulation 5

PART 1

Consequential amendments and repeals of primary legislation

House of Commons Disqualification Act 1975

1.—(1) The House of Commons Disqualification Act 1975⁽⁴⁾ 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 repealed.

Tribunals and Inquiries Act 1992

2.—(1) The Tribunals and Inquiries Act 1992⁽⁵⁾ 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 repealed.

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

3.—(1) The Education (Additional Support for Learning) (Scotland) Act 2004⁽⁶⁾ 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”;
- (b) in subsection (3), for “Tribunal” substitute “First-tier Tribunal”; and
- (c) the title of the section becomes “Provision of advocacy service: First-tier Tribunal”.

(4) 1975 c.24.

(5) 1992 c.53.

(6) 2004 asp 4.

- (5) 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 Tribunals 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)(c), for “a Tribunal” substitute “the First-tier Tribunal”;
 - (e) in subsection (6), for “a Tribunal” substitute “the First-tier Tribunal”;
 - (f) in subsection (7), for “a Tribunal” in each place substitute “the First-tier Tribunal”;
 - (g) in subsection (9), for “a Tribunal” substitute “the First-tier Tribunal”; and
 - (h) in subsection (10)—
 - (i) for “President” substitute “Chamber President”; and
 - (ii) for “a Tribunal” substitute “the First-tier Tribunal”;
 - (iii) the title of the section becomes “References to the First-tier Tribunal”.
- (9) In section 19 (powers of Tribunal in relation to reference)—
- (i) in subsection (1), for “a Tribunal” substitute “the First-tier Tribunal”;
 - (ii) in subsection (2), for “Tribunal” in each place substitute “First-tier Tribunal”;
 - (iii) in subsection (3), for “Tribunal” in each place substitute “First-tier Tribunal”;
 - (iv) in subsection (4), for “Tribunal” in each place substitute “First-tier Tribunal”;
 - (v) in subsection (4A), for “Tribunal” in each place substitute “First-tier Tribunal”;
 - (vi) in subsection (5), for “Tribunal” in each place substitute “First-tier Tribunal”;
 - (vii) in subsection (5A), for “Tribunal” substitute “First-tier Tribunal”;
 - (viii) in subsection (7), for “a Tribunal” substitute “the First-tier Tribunal”; and
 - (ix) the title of the section becomes “Powers of First-tier Tribunal in relation to reference”.
- (10) 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” in each place substitute “Chamber President”;
 - (c) in subsection (3) for “Tribunal’s” substitute “First-tier Tribunal’s”; and
 - (d) the title of the section becomes “References to First-tier Tribunal and powers of First-tier Tribunal: further provision”.
- (11) Section 21 (appeal to Court of Session against Tribunal decision) is repealed.
- (12) In section 28 (requests under this Act: further provision), in subsection (2)—
- (a) in paragraph (d), for “a Tribunal” substitute “the First-tier Tribunal”; and
 - (b) in paragraph (e)(ii), for “a Tribunal” substitute “the First-tier Tribunal”.
- (13) In section 29 (interpretation), in subsection (1)—

- (a) the definition of “President” is repealed;
 - (b) the definition of “Tribunal” is repealed; and
 - (c) after the definition of “eligible pre-school child”, insert—
 - ““First-tier Tribunal” means the First-tier Tribunal for Scotland Health and Education Chamber”.
- (14) Schedule 1 is repealed.
- (15) 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” in each place 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” in each place substitute “First-tier Tribunal”.

Equality Act 2010

4.—(1) The Equality Act 2010⁽⁷⁾ 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)—

- (a) in paragraph 1, for “an Additional Support Needs Tribunal for Scotland” in each place substitute “the First-tier Tribunal for Scotland”; and
- (b) Paragraph 11 is repealed.

Public Services Reform (Scotland) Act 2010

5.—(1) The Public Services Reform (Scotland) Act 2010⁽⁸⁾ is amended as follows.

(2) In schedule 5 (improvement of public functions: listed bodies), the entry for “Additional Support Needs Tribunals for Scotland” is repealed.

(3) In schedule 8 (information on exercise of public functions: listed public bodies), the entry for “Additional Support Needs Tribunals for Scotland” is repealed.

Public Records (Scotland) Act 2011

6.—(1) The Public Records (Scotland) Act 2011⁽⁹⁾ is amended as follows.

(2) In schedule 1 (authorities to which Part 1 applies), the entry for “Additional Support Needs Tribunals for Scotland” is repealed.

(7) 2010 c.15.
(8) 2010 asp 8.
(9) 2011 asp 12.

PART 2

Consequential amendments and revocations of subordinate legislation

Education (Appeal Committee Procedures) (Scotland) Regulations 1982

7.—(1) The Education (Appeal Committee Procedures) (Scotland) Regulations 1982⁽¹⁰⁾ 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 definition of “Tribunal” is revoked.

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

Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003

8.—(1) The Advice and Assistance (Assistance by Way of Representation)(Scotland) Regulations 2003⁽¹¹⁾ are amended as follows.

(2) In paragraph (s) of regulation 3 (assistance by way of representation: miscellaneous proceedings)—

- (a) for “an Additional Support Needs Tribunal” substitute “the First-tier Tribunal for Scotland”; and
- (b) for “a tribunal” substitute “the First-tier Tribunal for Scotland”.

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

9.—(1) The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005⁽¹²⁾ 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 “Tribunal” substitute “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”.

⁽¹⁰⁾ S.I. 1982/1736.

⁽¹¹⁾ S.S.I. 2003/179.

⁽¹²⁾ S.S.I. 2005/518.

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

10.—(1) The Additional Support for Learning (Placing Requests and Deemed Decisions) (Scotland) Regulations 2005(**13**) is amended as follows.

- (2) In regulation 2 (interpretation)—
 - (a) after the entry for “appeal committee” insert “”First-tier Tribunal” means the First-tier Tribunal for Scotland Health and Education Chamber”; and
 - (b) the definition of “Tribunal” is revoked.
- (3) In regulation 5 (deemed decision: placing request referred to the Tribunal)—
 - (a) in paragraph 1—
 - (i) in sub-paragraph (b), for “a Tribunal, the Tribunal” substitute “the First-tier Tribunal, the First-tier Tribunal”;
 - (ii) in the closing words, for “Tribunal” substitute “First-tier Tribunal”; and
 - (b) the title of the regulation becomes “Deemed decision: placing requests referred to First-tier Tribunal”.

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

11.—(1) The Education (School and Placing Information)(Scotland) Regulations 2012(**14**) are amended as follows.

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

Scottish Parliament (Disqualification) Order 2015

12.—(1) The Scottish Parliament (Disqualification) Order 2015(**15**) is amended as follows.

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

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(**16**);
 - (b) The Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006(**17**); and
 - (c) The Additional Support Needs Tribunals for Scotland (Disability Claims Procedure) Rules 2011(**18**).

(13) S.S.I. 2005/515.

(14) S.S.I. 2012/130.

(15) S.S.I. 2015/350.

(16) S.S.I. 2005/155.

(17) S.S.I. 2006/88.

(18) S.S.I. 2011/104.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The First-tier Tribunal for Scotland (Transfer of Functions of the Additional Support Needs Tribunals for Scotland) Regulations 2018 No. 4

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 decisions to do with additional support needs, and also consider disability discrimination cases under the Equality Act 2010.

These regulations make provision for the transfer to the First-tier Tribunal for Scotland 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 will hear cases previously dealt with by the Additional Support Needs Tribunals For Scotland.