POLICY NOTE

THE FIRST-TIER TRIBUNAL FOR SCOTLAND HEALTH AND EDUCATION CHAMBER AND UPPER TRIBUNAL FOR SCOTLAND (COMPOSITION) REGULATIONS 2018

SSI 2018/xxx

1. The above instrument was made in exercise of the powers conferred by sections 38(1) and 40(1) of the Tribunals (Scotland) Act 2014 (the 2014 Act). In accordance with section 11(2) of the 2014 Act the President of Tribunals has been consulted.

Policy Objectives

2. The 2014 Act allows the Scottish Ministers to determine the composition of the First-tier Tribunal or Upper Tribunal when convened to decide any matter in a case before it.

3. These regulations set out the composition of the First-tier Tribunal for Scotland Health and Education Chamber (First-tier Tribunal) when hearing cases. The policy intent is to replicate the existing composition for cases when they are heard in the Additional Support Needs Tribunals for Scotland. The regulations specify an exception to the general composition in cases where a legal member sitting alone may 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.

4. These regulations also set out the composition of the Upper Tribunal for Scotland (Upper Tribunal) hearing appeals or referrals from the First-tier Tribunal. The policy intent is to replicate the existing procedure of cases being heard in the Court of Session. Appeals will be heard in the Upper Tribunal, by Court of Session judges.

5. The regulations allow the Chamber President of the First–tier Tribunal Health and Education Chamber to hear appeals in the Upper Tribunal provided they have had no involvement with the case prior to the appeal. The Lord President and the President of Tribunals being members of the Upper Tribunal may also hear appeals or referrals from the First-tier Tribunal.

6. Fuller details of the policy objectives relating to the 2014 Act are described in the Policy Memorandum which accompanied the Tribunals Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.
http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62938.aspx

Consultation

7. A consultation with interested parties took place between May and August 2017. There were 15 responses to this consultation. The responses are available on the Scottish Government website:
https://consult.scotland.gov.uk/tribunals-administrative-justice-policy/additional-support-needs-tribunals

Impact Assessments

8. An Equality Impact Assessment has already been completed for the Tribunals (Scotland) Bill – see link below:
http://www.scotland.gov.uk/Resource/0042/00421637.pdf

9. An Equality Impact Assessment is not required for these Regulations.

10. A Business and Regulatory Impact Assessment is not required as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Education, Communities and Justice Directorate
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