



Law Society
of Scotland

Consultation Response

Consultation in Draft Regulations Regarding the
Transfer of the Additional Support Needs Tribunals
for Scotland into the First-tier Tribunal for Scotland

August 2017



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

General comments

The Sub-committee has previously commented on proposed legislation relevant to additional support needs matters, and remains grateful for the engagement and discussions with Scottish Government that ensued, and for the outcomes. Broadly, the Sub-committee welcomes the terms of the draft regulations and the care which appears to have already been taken to address relevant issues. We comment mainly on matters where we believe that further improvements can be made. Our comments are limited to "Part 3: Draft Regulations setting out the rules of procedure for the First-tier Tribunal for Scotland Health and Education Chamber".

Questions on the First-tier Health and Education Chamber Rules of Procedure

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

We are pleased to note the terms of draft rule 44, which places an obligation on the Tribunal to seek the views of the child. It is important that this obligation be explicit in this part of the rules. This accords not only with internationally accepted human rights principles relating solely to children, but to the extent that children subject to these procedures may have disabilities, is also necessary in accordance with the UN Convention on the Rights of Persons with Disabilities (such persons including children), which was ratified without qualification by UK Government on behalf of the whole of the United Kingdom.

However, we would suggest that it is equally important to include an equivalent provision in Part 3 of the rules.

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

In the context of tribunal reform generally, we previously made representations that processes for appeals to the Upper Tribunal should be more efficient than the previous appeal process, to the Inner House of the Court of Session. It appears to us that the present proposals will help to ensure efficiency of review provisions, and of appeals to the Upper Tribunal. However, we recommend the inclusion of explicit provision that – where the parties agree – a review may be decided upon the parties' written submissions, and without an oral hearing. So long as this is what the parties have agreed in a particular case, there seems to us to be no reason why this should not be explicitly permitted, for the benefit of all concerned including the workload of the tribunal.

We welcome the terms of draft rule 5 as to the role of the supporter.

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

The issues in capacity and wellbeing appeals will generally be legal in nature. We support the proposal that they may be taken by a convener sitting alone. That also should assist efficiency. It is noted that the President may allocate other members if that is considered necessary.

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