



The Scottish Parliament
Pàrlamaid na h-Alba

Published 7 December 2017
SP Paper 243
21st Report, 2017 (Session 5)

Justice Committee Comataidh a' Cheartais

Subordinate Legislation



Published in Scotland by the Scottish Parliamentary Corporate Body.

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Justice Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice.



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justicecommittee@parliament.scot



0131 348 5047

Committee Membership



Convener
Margaret Mitchell
Scottish Conservative
and Unionist Party



Deputy Convener
Rona Mackay
Scottish National Party



George Adam
Scottish National Party



Maurice Corry
Scottish Conservative
and Unionist Party



Mary Fee
Scottish Labour



John Finnie
Scottish Green Party



Mairi Gougeon
Scottish National Party



Liam Kerr
Scottish Conservative
and Unionist Party



Fulton MacGregor
Scottish National Party



Ben Macpherson
Scottish National Party



Liam McArthur
Scottish Liberal
Democrats

Subordinate Legislation

Introduction

1. At its meeting on 5 December 2017 the Justice Committee considered the following draft instruments:
 - [First-tier Tribunal for Scotland \(Transfer of Functions of the Additional Support Needs Tribunals for Scotland\) Regulations 2018 \[draft\]](#);
 - [First-tier Tribunal for Scotland \(Transfer of Functions of the Scottish Charity Appeals Panel\) Regulations 2018 \[draft\]](#);
 - [First-tier Tribunal for Scotland Health and Education Chamber and Upper Tribunal for Scotland \(Composition\) Regulations 2018 \[draft\]](#);
 - [First-tier Tribunal for Scotland General Regulatory Chamber Charity Appeals Cases and Upper Tribunal for Scotland \(Composition\) Regulations 2018 \[draft\]](#);
 - [Public Records \(Scotland\) Act 2011 \(Authorities\) Amendment Order 2018 \[draft\]](#).
2. The instruments were referred to the Justice Committee as lead committee and were subject to the affirmative procedure. The Minister for Community Safety and Legal Affairs, Annabelle Ewing, attended the meeting to give evidence on the instruments and also to move the relevant motions recommending approval of the instruments.

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

3. The instrument is made under sections 20(2), 28(2) and (6) and 79(1) and paragraph 1(1) of schedule 2 of the Tribunals (Scotland) Act 2014 (the 2014 Act). The Regulations make provision for the transfer to the First-tier Tribunal for Scotland of the functions of the Additional Support Needs Tribunals for Scotland (ASNTS). The First-tier Tribunal was set up by section 1 of the 2014 Act. It is divided into chambers, with the chambers hearing cases according to the subject-matter of the case. The functions of the ASNTS are transferred to the First-tier Tribunal for Scotland with allocation to the Health and Education Chamber.

First-tier Tribunal for Scotland (Transfer of Functions of the Scottish Charity Appeals Panel) Regulations 2018 [draft]

4. The instrument is made under sections 20(2), 28(2) and (6) and 79(1) and paragraph 1(1) of schedule 2 of the 2014 Act. The Regulations make provision for the transfer to the First-tier Tribunal for Scotland of the functions and members of the Scottish Charity Appeals Panel. The functions of the Scottish Charity Appeals Panel are transferred to the First-tier Tribunal for Scotland with allocation to the General Regulatory Chamber.

First-tier Tribunal for Scotland Health and Education Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018 [draft]

5. The instrument is made under sections 38(1) and 40(1) of the 2014 Act. The 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. 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.
6. The Regulations 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. 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.

First-tier Tribunal for Scotland General Regulatory Chamber Charity Appeals Cases and Upper Tribunal for Scotland (Composition) Regulations 2018

7. The instrument is made under sections 38(1) and 40(1) of the 2014 Act. The Regulations set out the composition of the First-tier Tribunal for Scotland General Regulatory Chamber (First-tier Tribunal) when hearing Charity Appeals cases. The policy intent is to replicate the existing composition for cases when they are heard in the Scottish Charity Appeals Panel (SCAP). This means that cases will be heard by three members, one of whom will be a chairing (legal) member.
8. These Regulations also set out the composition of the Upper Tribunal for Scotland (Upper Tribunal) hearing appeals or referrals from the First-tier Tribunal for Charity Appeals cases. The policy intent is to replicate the existing procedure of cases when heard in the Court of Session.

Public Records (Scotland) Act 2011 (Authorities) Amendment Order 2018 [draft]

9. The instrument is made under section 2(2) of the Public Records (Scotland) Act 2011. The Order amends the schedule of the Public Records (Scotland) Act 2011, which lists the bodies, office-holders and other persons that are subject to Part 1 of that Act, to add the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland. Part 1 of that Act makes provision for records management plans.

Delegated Powers and Law Reform Committee consideration

10. The Delegated Powers and Law Reform Committee considered these instruments at its meetings on 8 November and 28 November 2017 and agreed that it did not need to draw them to the attention of the Parliament on any grounds within its remit.

Justice Committee consideration

11. At its meeting on 5 December 2017 the Justice Committee took evidence on the instruments from Annabelle Ewing, Minister for Community and Legal Affairs.¹
12. The Minister stated that these were mainly technical instruments. Ms Ewing explained that the first two instruments transferred the functions of the Additional Support Needs Tribunals for Scotland and the Scottish Charity Appeals Panel to the First-tier Tribunal for Scotland.

13. Ms Ewing then explained that the third and fourth instruments specify the type of member who will hear cases in the Health and Education Chamber, and the type of member who will hear charity appeals cases in the First-tier Tribunal for Scotland. The Minister confirmed that the provisions mirror the existing composition of the Additional Support Needs Tribunals for Scotland and the Scottish Charity Appeals Panel respectively.
14. Finally, the Minister explained that the Public Records (Scotland) Act 2011 (Authorities) Amendment Order 2018 is a very technical instrument that adds the First-tier Tribunal for Scotland and the Upper Tribunal to the list of authorities that are covered by the Public Records (Scotland) Act 2011.
15. There being no questions from Members, the Minister moved the motions in her name:

S5M-08839—That the Justice Committee recommends that the First-tier Tribunal for Scotland (Transfer of Functions of the Additional Support Needs Tribunals for Scotland) Regulations 2018 [draft] be approved;

S5M-08840—That the Justice Committee recommends that the First-tier Tribunal for Scotland (Transfer of Functions of the Scottish Charity Appeals Panel) Regulations 2018 [draft] be approved;

S5M-08841—That the Justice Committee recommends that the First-tier Tribunal for Scotland Health and Education Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018 [draft] be approved;

S5M-09234—That the Justice Committee recommends that the First-tier Tribunal for Scotland General Regulatory Chamber Charity Appeals Cases and Upper Tribunal for Scotland (Composition) Regulations 2018 [draft] be approved;

S5M-08843—That the Justice Committee recommends that the Public Records (Scotland) Act 2011 (Authorities) Amendment Order 2018 [draft] be approved.

16. The motions were agreed to without debate or dissent.

Recommendations

17. The Justice Committee recommends to the Parliament that it approve the
First-tier Tribunal for Scotland (Transfer of Functions of the Additional Support
Needs Tribunals for Scotland) Regulations 2018 [draft];

First-tier Tribunal for Scotland (Transfer of Functions of the Scottish Charity
Appeals Panel) Regulations 2018 [draft];

First-tier Tribunal for Scotland Health and Education Chamber and Upper
Tribunal for Scotland (Composition) Regulations 2018 [draft];

First-tier Tribunal for Scotland General Regulatory Chamber Charity Appeals
Cases and Upper Tribunal for Scotland (Composition) Regulations 2018 [draft];

Public Records (Scotland) Act 2011 (Authorities) Amendment Order 2018 [draft].

Justice Committee

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- 1 Scottish Parliament Justice Committee. *Official Report 5 December 2017* Cols 5-8.
Available at: [http://www.parliament.scot/parliamentarybusiness/
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