

CRWIA – Regulations making Provision in Relation to Social Security Appeals

| CRWIA title Date of publication | |
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| Executive Summary | <p>The aim of this Child Rights and Wellbeing Impact Assessment (CRWIA) is to identify, research, analyse and record the anticipated impact of the regulations for the FtT and UT on children’s human rights and wellbeing in Scotland.</p> <p>The CRWIA has been informed by a range of evidence including two public consultations:-</p> <p>Full analysis report of the Consultation on Social Security in Scotland was published in March 2017 and can be found at: http://www.gov.scot/Resource/0051/00514352.pdf</p> <p>On 22 January 2018, a full public consultation was launched on the draft Tribunals Regulations required for creating a new chamber in the First-tier Tribunal for Scotland and ensure necessary provision for Upper Tribunal for Scotland when dealing with social security appeals for devolved benefits. The full independent analysis report of the consultation can be found here www.gov.scot/ISBN/9781787811928</p> <p>Following on from and as a result of these consultations amendments were made to strengthen the regulations prior to being laid in Parliament.</p> <p>These amendments enhanced the roles of supporters, representatives and made provision for interpreters while also clarifying the duty to provide accessible locations based on the appellants needs. These all have the potential to positively impact on children and young people appealing to the FtT.</p> |
| Background | <p>The First Minister’s statement to Parliament on the Programme for Government on 4 September set out that the Scottish agency – Social Security Scotland – will begin to make payments for the first devolved benefit Best Start Grant by this Christmas. Scottish Government will deliver the benefits to be devolved under the Scotland Act 2016 over the term of the current Parliament. The Scottish Government is creating a new system to deliver the devolved benefits that is rights-based and grounded in the principles of dignity, fairness and respect. An important element is that people will have a right to challenge decision. Therefore it is the intention of Scottish Ministers to set up a new chamber in the First-tier of the Scottish Tribunals that will hear devolved benefit appeals when Best Start Grant</p> |

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| | <p>begin to be delivered by the agency. Necessary provision is also required for the Upper Tribunal (UT) for Scotland, where appeals against decisions of the First-tier Tribunal (FtT) are heard.</p> <p>The CRWIA covers the suite of regulations being laid for the operation and procedures of the FtT and UT where there is an impact on Children’s rights and wellbeing.</p> |
| Scope of the CRWIA | The CRWIA will potentially affect all children and young people in Scotland who will appeal the decision of the agency to a tribunal. |
| Children and young people’s views and experiences | The regulations have been developed in a collaborative way taking into account the views of wide range of stakeholders. |
| Key Findings | <p>The regulations have a supportive impact on the following UNCRC articles</p> <p>Article 2 (non-discrimination) Article 3 (best interests of the child) Article 4 (protection of rights) Article 12 (respect for the views of the child) Article 26 (social security) Article 27 (adequate standard of living) Article 42 (knowledge of rights)</p> <p>Further, the regulations promote the wellbeing indicators of</p> <p>Respected Responsible Included</p> <p>The regulations are not considered to have any negative impacts on children and young people and are a necessary provision in setting up the appeal tribunal.</p> |
| Conclusions and Recommendations | <p>Based on the evidence gathered, the Scottish Government considers that the Regulations do not infringe upon the rights of the Child as set out in the Articles of the UNCRC, nor upon the indicators of wellbeing (SHANARRI).</p> <p>The Scottish Government considers that any impact would be neutral or positive. The CRWIA, along with consultation analysis and discussions with key stakeholders, has demonstrated that no changes to the policy are required in order to achieve the best outcome for children and young people.</p> |
| Monitoring and review | The Social Security Act (Scotland) 2018 (the 2018 Act) also places a duty on Scottish Ministers to report annually to the |

| | <p>Scottish Parliament on the performance of the Scottish social security system during the previous financial year. SCTS will administer the tribunal throughout the phased rollout of devolved benefits, monitoring the effectiveness of the regulations on all tribunal users including children and young people.</p> <p>Scotland's Commissioner for Children and Young People also has a role to play . The Commissioner has a duty to review law, policy and practice to examine their effectiveness in respecting the rights of children and young people. The Commissioner can investigate on behalf of groups of children and young people. As of April 2016, the Commissioner has also been able to investigate on behalf of an individual and this may include aspects of the tribunal operations to which the regulations refer.</p> | | | |
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| Regulation - Clause | Aims of measure | Likely to impact on . . . | Compliance with UNCRC requirements | Contribution to wellbeing indicators |
| <p>The First-tier Tribunal for Scotland (Allocation of Functions to the Social Security Chamber) Regulations 2018</p> | <p>The Tribunals (Scotland) Act 2014 created a new structure for tribunals in Scotland 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 for Scotland and an Upper Tribunal for Scotland, with these being known, collectively, as the</p> | <p>Children and young people choosing to exercise their right of appeal to the FtT</p> | <p>The regulations do not infringe upon any UNCRC Article. Scottish Government considers that it gives further effect to:</p> <p>Article 2 (non-discrimination) Article 3 (best interests of the child) Article 4 (protection of rights) Article 12 (respect for the views of the child) Article 18 (parental responsibilities; state assistance) Article 26 (social security)</p> | <p>The regulations do not infringe upon any of the indicators. They are likely to have a positive impact on the following indicators:</p> <p>Respected, Responsible, Included</p> |

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| | <p>Scottish Tribunals. Generally, the First-tier Tribunal will deal with cases in the first instance to which a general right of appeal will lie to the Upper Tribunal.</p> | | <p>Article 27 (adequate standard of living) Article 42 (knowledge of rights)</p> | |
| <p>The First-tier Tribunal for Scotland (Chambers) Amendment Regulations 2018</p> | <p>These Regulations amend the First-tier Tribunal for Scotland (Chambers) Regulations 2016, which provide for the division of the First-tier Tribunal for Scotland into chambers. A new chamber is brought into being, to be known as the First-tier Tribunal for Scotland Social Security Chamber.</p> | <p>Children and young people choosing to exercise their right of appeal to the FtT</p> | <p>The regulations do not infringe upon any UNCRC Article. Scottish Government considers that it gives further effect to:</p> <p>Article 2 (non-discrimination) Article 3 (best interests of the child) Article 4 (protection of rights) Article 12 (respect for the views of the child) Article 18 (parental responsibilities; state assistance) Article 26 (social security) Article 27 (adequate standard of living)</p> | <p>The regulations do not infringe upon any of the indicators. They are likely to have a positive impact on the following indicators:</p> <p>Respected, Responsible, Included</p> |

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| | | | Article 42 (knowledge of rights) | |
| The First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018 | These Regulations make provision as to the composition of the Social Security Chamber of the First-tier Tribunal for Scotland when dealing with appeals under specified provisions of the Social Security (Scotland) Act 2018 ("the 2018 Act"), or regulations made under that Act which create a right of appeal. They also make provision as to the composition of the Upper Tribunal for Scotland when dealing with appeals from the Social Security Chamber | No impact on children and young people | The regulations do not infringe upon any UNCRC Article. These are procedural administrative provisions for the composition of the tribunal. | The regulations do not infringe upon any of the indicators. |
| The First-tier Tribunal Social Security Chamber (Procedure) Regulations 2018 | The overriding objective of these Rules is to enable the First-tier | Children and young people choosing to exercise their right | The regulations do not infringe upon any UNCRC Article. Scottish Government | The regulations do not infringe upon any of the indicators. They are likely |

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| | <p>Tribunal to deal with cases fairly and justly, and having regard to the Scottish Social Security Charter prepared and published in accordance with section 2 of the 2018 Act</p> | <p>of appeal to the FtT</p> | <p>considers that it gives further effect to:</p> <p>Article 2 (non-discrimination) Article 3 (best interests of the child) Article 4 (protection of rights) Article 12 (respect for the views of the child) Article 18 (parental responsibilities; state assistance) Article 26 (social security) Article 27 (adequate standard of living) Article 42 (knowledge of rights)</p> | <p>to have a positive impact on the following indicators:</p> <p>Respected, Responsible, Included</p> |
| <p>The Scottish Tribunals (Eligibility for Appointment) Amendment Regulations 2018</p> | <p>These Regulations amend the Scottish Tribunals (Eligibility for Appointment) Regulations 2015 to set eligibility criteria for appointment of ordinary members of the First-tier Tribunal for Scotland in respect of medical and</p> | <p>No impact on children and young people</p> | <p>The regulations do not infringe upon any UNCRC Article. These are procedural administrative provisions for the composition of the tribunal.</p> | <p>The regulations do not infringe upon any of the indicators.</p> |

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| | disability experience. | | | |
| The Social Security Appeals (Expenses and Allowances) (Scotland) Regulations 2018 | These Regulations have been made to provide a basis to administer the necessary scheme for the recompense of expenses of attendance, typically, travel and subsistence expenses, as well as allowances towards loss of remunerative time, where these have been reasonably incurred as a result of attending a hearing. | Children and young people choosing to exercise their right of appeal to the FtT | The regulations do not infringe upon any UNCRC Article. Scottish Government considers that it gives further effect to: Article 2 (non-discrimination) Article 3 (best interests of the child) Article 4 (protection of rights) Article 12 (respect for the views of the child) Article 18 (parental responsibilities; state assistance) Article 26 (social security) Article 27 (adequate standard of living) Article 42 (knowledge of rights) | The regulations do not infringe upon any of the indicators. They are likely to have a positive impact on the following indicators: Respected, Responsible, Included |
| The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018 | The Upper Tribunal hears and decides cases referred to it from the First-tier Tribunal for Scotland and hears and decides | Children and young people choosing to exercise their right of appeal to the FtT | The regulations do not infringe upon any UNCRC Article. Scottish Government considers that it gives further effect to: Article 2 | The regulations do not infringe upon any of the indicators. They are likely to have a positive impact on the following indicators: |

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| | appeals from the First-tier Tribunal. The overriding objective of these Rules is to secure that proceedings before the Upper Tribunal relating to the 2018 Act are handled fairly and justly. | | (non-discrimination) Article 3 (best interests of the child) Article 4 (protection of rights) Article 12 (respect for the views of the child) Article 18 (parental responsibilities; state assistance) Article 26 (social security) Article 27 (adequate standard of living) Article 42 (knowledge of rights) | Respected, Responsible, Included |
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CRWIA Declaration

Tick relevant section, and complete the form.

CRWIA required

CRWIA not required

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Authorisation

Policy lead

Naeem Bhatti
Social Security Directorate, Policy Division, Legislation and Operational Policy Unit

Date

6 September 2018

Deputy Director or equivalent

Ann McVie
Deputy Director
Social Security Policy Division

Date

6 September 2018