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**TRIBUNALS (SCOTLAND) ACT 2014: CONSULTATION ON
DRAFT REGULATIONS MAKING PROVISION IN RELATION TO SOCIAL SECURITY APPEALS**

**RESPONDENT INFORMATION FORM**

**Please Note** this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

[ ]  Individual

[x]  Organisation

Full name or organisation’s name

National Deaf Children’s Society

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**Information for organisations:**

The option 'Publish response only (without name)’ is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

The Scottish Government would like your

permission to publish your consultation

response. Please indicate your publishing

preference:

[x]  Publish response with name

[ ]  Publish response only (without name)

[ ]  Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

[x]  Yes

[ ]  No

**Question 1**

Do you have any comments on the description of functions exercisable by the Social Security Chamber in considering entitlement to assistance under the Scottish social security system?

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| **No comment** |

**Question 2**

Do you have any comments on the power of the Social Security Chamber to consider all aspects of a determination which it is called upon to review?

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| **No comment** |

**Question 3**

Do you have any other comments you wish to make on the draft regulations?

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| **No comment** |

**Question 4**

Do you have any comments you wish to make on the draft First-tier Tribunal for Scotland (Chambers) Amendment Regulations?

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| **No comment** |

**Question 5**

Do you have any comments on:

(a) any of the elements of the draft rules of procedure described at paragraphs 27 – 38 above;

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| **Paragraph 27**We welcome the Scottish ministers’ aspirations for all social security claimants to be treated with due dignity and respect. We would value an opportunity to view and comment on the social security charter.**Paragraph 28**We welcome the omission of the power to strike out an appeal where a party has failed to comply with an order. This is not appropriate for social security appeals, and particularly appeals by claimants with disabilities.**Paragraph 31**Where a young person under the age of 18 or a vulnerable adult needs to attend a tribunal hearing they should also be able to claim expenses for an adult to accompany them.Childcare costs should be payable, where the appellant has dependant children.**Paragraph 32**We agree with the principle that any interpreter assisting a party to the case must be independent of every party and any supporters or representatives of the parties. However, the Courts & Tribunals Service need to be aware certain communities, including British Sign Language users, can be small and close knit so it is possible that the party and the interpreter have met or know each other. Provided the interpreter acts professionally and independently this should not be a reason for excluding them.Where a young person under 18 or a vulnerable adult is attending a tribunal and brings a supporter with them, if that person needs an interpreter this should be provided.**Paragraph 33**We welcome the intention to expand the role of supporters. Where they have direct knowledge of the appellant and are not acting as representative, the supporter should be able to give oral evidence, as well as make representations. They should not be excluded from the rest of the hearing if they are intending to give evidence, as is currently sometimes the case. In particular, where a young person under 18 or a vulnerable adult is attending, the Tribunal should be particularly sensitive to their need for moral support. It should be very cautious about excluding someone such as a family member who could provide support. In the case of young people under 18, the Tribunal should be aware that they may find it difficult to talk about their disability. Their supporter will need to have heard their evidence to know what additional evidence they need to give the Tribunal to enable the Tribunal to have the full picture of the young person’s needs.**Paragraph 36**We urge the President of Tribunals to continue to avoid the use of court buildings for social security tribunals. Court buildings are unnecessarily formal and intimidating and are inappropriate buildings for inquisitorial hearings.  |

(b) any other aspect of the draft rules of procedure?

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**Question 6**

With reference to (a), do you have any comments, in particular, on:

- the proposal that hearings will be recorded as a matter of routine?

- the possibility of referral for a medical examination, and the circumstances in which this may happen?

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| **Paragraph 35**While we welcome the practice in Scotland of audio recording hearings, where the appellant is deaf an audio tape is inaccessible. As a reasonable adjustment we recommend that a written transcript of the tape should be provided where required. Where the appellant is a signer, we recommend that the hearing should be videoed.**Paragraph 37**We agree that medical examinations are only likely to be needed in exceptional circumstances. In the case of deaf young people, if there is any need for an assessment of their hearing loss, this should be carried out by a qualified audiologist. In respect of Personal Independence Payment and Disability Living Allowance, in addition to the pure tone tests normally carried out in a soundproof room, the audiologist should be instructed to carry out speech in noise tests, to give the Tribunal information relevant to their functional ability in normal living conditions. Generally, for Personal Independence Payment and Disability Living Allowance we would argue that reports from professionals involved with the deaf young person, such as Teachers of the Deaf, Speech and Language Therapists and Audiologists will give the Tribunal more relevant information than a report by a medical practitioner.  |

**Question 7**

Would you welcome provision for supporters in cases before the Social Security Chamber to have the opportunity, with appropriate permission, to make representations during proceedings?

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| Yes, parents and deaf young people themselves have told us of the importance of having moral support on the day of tribunal. Deaf young people have often spent their whole lives trying to fit in and downplay their disability; consequently they may find it particularly difficult and unnatural to talk about the barriers they face to a group of strangers. Support may enable them to do this, or if they are still unable to their supporter should be allowed to give further evidence based on their knowledge of the young person. The supporter should be allowed to sit next to the young person rather than behind them, to allow them to benefit from their presence. |

**Question 8**

Are there any other respects in which you would consider that the approach of the 2008 Rules should be departed from?

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| **No comment** |

**Question 9**

Do you have any other comments which you would wish to make on the draft procedure regulations?

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| Accessibility of the venue for hearings is vital for deaf young people to participate fully in their hearing. We have received reports from families of a lack of deaf awareness at Tribunal hearings. For example one family reported that the sun was blaring in the young persons face during the hearing, posing a barrier to lip reading the panel. Where induction loops have been requested, these should be fully functional and staff should know how to set them up.  |

**Question 10**

(a) Do you have any comments on the proposed composition of the Social Security Chamber when dealing with an appeal against a determination of entitlement to assistance under the Scottish Social Security System?

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(b) In particular, are you content with the default position that cases should be decided by only one member, namely the legal member, unless certain forms of assistance are under consideration?

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| Where deaf children are concerned the appeal should be heard by three members panels including a legally qualified member, disability member and a medical member. Smaller panels than this could magnify the risk of the specialist nature of deafness being insufficiently understood to produce a fair hearing. Specialist knowledge of deafness should be present on tribunal panels hearing cases involving deaf young people.  |

**Question 11**

Do you have any comments on the proposed composition of the Upper Tribunal for Scotland when deciding appeals from the Social Security Chamber to the Upper Tribunal?

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| **No comment** |

**Question 12**

Do you have any other comments you wish to make on the draft composition regulations?

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| **No comment** |

**Question 13**

Do you have any comments on the proposed composition of the Upper Tribunal for Scotland when deciding appeals from the Social Security Chamber to the Upper Tribunal?

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| **No comment** |

**Question 14**

Do you have any other comments you wish to make on the draft composition regulations?

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| **No comment** |

**Question 15**

Do you have any comments on the proposals regarding eligibility criteria for appointment of ordinary members of the First-tier Tribunal with medical and disability experience?

In particular:

(a) can you envisage a situation in which a person may have gained experience of the needs of people with disabilities, but which may not be covered by the criteria set out in the draft regulations?

b) do you have any concerns about our proposed approach to identifying when a person will be considered to have a disability?

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| **No comment** |

**Question 16**

Do you have any other comments you wish to make on the draft eligibility for appointment regulations?

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| The impact of childhood deafness are complex and often poorly understood. The understanding of deafness will vary considerably amongst those persons deemed to have experience of disability or who have a disability themselves. We are concerned that ordinary members may not have sufficient expertise to decide cases of those people with complex and low-incidence disabilities, in particular disabilities which are difficult to understand and not straight forward in terms of assessing the impact the disability has on a person’s daily life and functional ability. We recommend that the Courts & Tribunals Service considers appointing professionals such as Teachers of the Deaf and Audiologists to the Disability Member role, to increase the Tribunals’ understanding of the effects of chilehood deafness. |

**Question 17**

Do you have any comments on:

a) any of the elements of the draft rules of procedure described at paragraphs 54 – 61 above?

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| Where a young person under the age of 18 or a vulnerable adult needs to attend a tribunal hearing they should also be able to claim expenses for an adult to accompany them. We would suggest that paragraph 56 is amended to include this provision.Additionally we believe this paragraph should be amended to ensure childcare costs are also payable where the appellant has dependant children.We welcome paragraph 60 and the opportunity for any party to give their view on whether a hearing should be held. |

(b) any other aspect of the draft rules of procedure?

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| We would recommend that there is further consultation around the use of orders for expenses as detailed in paragraph 13. |

**Question 18**

Are there any other elements of the rules applicable to social security proceedings in the Upper Tribunal which you think should be replicated in the draft rules for the Upper Tribunal for Scotland, and have not been?

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| **No comment** |

**Question 19**

Conversely, are there any elements of the rules applicable to social security proceedings in the Upper Tribunal which have been replicated in the draft rules for the Upper Tribunal for Scotland, and which you do not think should be so replicated

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| **No comment** |

**Question 20**

Do you have any other comments you wish to make on the draft procedure regulations for the Upper Tribunal?

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| **No comment** |