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SCOTTISH STATUTORY INSTRUMENTS

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**2022 No. 162**

**TRIBUNALS AND INQUIRIES**

The First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Rules of Procedure) (Miscellaneous Amendment) Regulations 2022

<i>Made</i>	- - - -	<i>10th May 2022</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>12th May 2022</i>
<i>Coming into force</i>	- -	<i>21st June 2022</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014(1) and all other powers enabling them to do so.

In accordance with paragraph 4(3) of schedule 9 of that Act, the Scottish Ministers have consulted the President of the Scottish Tribunals and such other persons as they consider appropriate.

**Citation and commencement**

1. These Regulations may be cited as the First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Rules of Procedure) (Miscellaneous Amendment) Regulations 2022 and come into force on 21 June 2022.

**Amendment of the First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018**

2.—(1) The Rules in the schedule of the First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018(2) are amended in accordance with paragraph (2).

(2) In rule 14 (disclosure of documents and information)—

- (a) the existing text becomes paragraph (1),
- (b) after paragraph (1), insert—

“(2) The First-tier Tribunal may at any stage of the proceedings, on its own initiative or on the request of one or more of the parties, give a direction prohibiting disclosure of a document or information to a person (“the recipient”) if—

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(1) 2014 asp 10.  
(2) S.S.I. 2018/273.

- (a) the document or information relates to the physical or mental health of a person,
- (b) a registered medical practitioner or a registered nurse has informed either the First-tier Tribunal, or one or more of the parties, that disclosure of the document or information would be likely to cause serious harm to the physical or mental health of the recipient or some other person,
- (c) the First-tier Tribunal is satisfied that such disclosure would be likely to cause serious harm to the physical or mental health of the recipient or some other person, and
- (d) the First-tier Tribunal is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction.

(3) If a party considers that the First-tier Tribunal should give a direction under paragraph (2) prohibiting the disclosure of a document or information to a person (“the recipient”), the party must provide to the First-tier Tribunal the document or information, and the reason the party is requesting that it be withheld, so that the First-tier Tribunal may decide whether the document or information should be disclosed to the recipient or should be subject of a direction under paragraph (2).

(4) The First-tier Tribunal must conduct proceedings as appropriate in order to give effect to a direction given under paragraph (2).

(5) If the First-tier Tribunal gives a direction under paragraph (2) which prevents disclosure to a party who has a representative, or any other person acting on their behalf, the First-tier Tribunal may give a direction that the document or information be disclosed to that representative or person if the First-tier Tribunal is satisfied that—

- (a) disclosure to the representative or person would be in the interests of the party, and
- (b) the representative or person will act in accordance with paragraph (6).

(6) Documents or information disclosed to a representative or person in accordance with a direction under paragraph (5) must not be disclosed either directly or indirectly to any other person without the First-tier Tribunal’s consent.”.

### **Amendment of the Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018**

**3.—**(1) The Rules in the schedule of the Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018(3) are amended as follows.

(2) In rule 17 (disclosure of documents and information)—

- (a) the existing text becomes paragraph (1),
- (b) after paragraph (1), insert—

“(2) The Upper Tribunal may at any stage of proceedings, on its own initiative or on the request of one or more of the parties, give a direction prohibiting disclosure of a document or information to a person (“the recipient”) if—

- (a) the document or information relates to the physical or mental health of a person,
- (b) a registered medical practitioner or registered nurse has informed either the Upper Tribunal, or one or more of the parties, that disclosure of the information would be likely to cause serious harm to the physical or mental health of the recipient or some other person,

- (c) the Upper Tribunal is satisfied that such disclosure would be likely to cause serious harm to the physical or mental health of the recipient or some other person, and
- (d) the Upper Tribunal is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction.

(3) If a party considers that the Upper Tribunal should give a direction under paragraph (2) prohibiting the disclosure of a document or information to a person (“the recipient”), the party must provide to the Upper Tribunal the document or information, and the reason the party is requesting that it be withheld, so that the Upper Tribunal may decide whether the document or information should be disclosed to the recipient or should be subject of a direction under paragraph (2).

(4) The Upper Tribunal must conduct proceedings as appropriate in order to give effect to a direction given under paragraph (2).

(5) If the Upper Tribunal gives a direction under paragraph (2) which prevents disclosure to a party who has a representative, or any other person acting on their behalf, the Upper Tribunal may give a direction that the document or information be disclosed to that representative or person if the Upper Tribunal is satisfied that—

- (a) disclosure to the representative or person would be in the interests of the party, and
- (b) the representative or person will act in accordance with paragraph (6).

(6) Documents or information disclosed to a representative or person in accordance with a direction under paragraph (5) must not be disclosed either directly or indirectly to any other person without the Upper Tribunal’s consent.”.

St Andrew’s House,  
Edinburgh  
10th May 2022

*BEN MACPHERSON*  
Authorised to sign by the Scottish Ministers

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make amendments to the First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018 (“the First-tier Tribunal for Scotland Social Security Chamber Regulations”) and Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018 (“the Upper Tribunal Regulations”).

Regulation 2 amends rule 14 (disclosure of documents and information) in the schedule of the First-tier Tribunal for Scotland Social Security Chamber Regulations. The amendments enable the First-tier Tribunal on its own initiative, or on application by one or more of the parties, to give a direction prohibiting disclosure of a document or information to the recipient or some other person if it will cause serious harm to their physical or mental health. The amendments also enable the First-tier Tribunal to give a direction allowing for disclosure of documents or information to a party’s representative, or any other person acting on their behalf, where a direction has been given which prevents disclosure of documents or information to the party. A direction given by the First-tier Tribunal will apply only to proceedings in the First-tier Tribunal.

Regulation 3 amends rule 17 (disclosure of documents and information) in the schedule of the Upper Tribunal Regulations to make equivalent provision for the Upper Tribunal.