

Islands Communities Screening Assessment

Regulations making provision in relation to Social Security Appeals

Introduction

1. The importance of island-proofing was recognised in the “*Empowering Scotland’s Island Communities prospectus*”¹ published in June 2014. The principle of island-proofing is one of building a broad-based islands awareness into the decision making process of all parts of the public sector.

2. The Islands (Scotland) Act 2018 places a duty on the Scottish Ministers and other relevant authorities, including a number of public authorities, to have regard to island communities in exercising their functions, and for the Scottish Ministers this will also include the development of legislation. This duty is often referred to as ‘island-proofing’.

3. The Scottish Government recognises the importance of island-proofing and committed to island-proofing its Social Security (Scotland) Act 2018 (the 2018 Act), in advance of the Islands Act placing a formal requirement. The Scottish Government is also committed to island-proofing the secondary legislation required in setting up the new Chamber of the First-tier Tribunal for Scotland that will hear appeals in the Scottish social security system.

Background

4. The then Cabinet Secretary for Communities, Social Security and Equalities statement to Parliament on 30 May 2017 set out that the Scottish Government will begin to deliver the first wave of benefits Best Start Grant and Funeral Expense Assistance by summer 2019. The First Minister announced on 4 September in the Programme for Government that the first benefit to be delivered by Social Security Scotland (the agency) will be Best Start Grant (BSG). The agency will start making payments for BSG by this Christmas.

5. The Scottish Government is introducing a different approach to decision making and appeals, one which aims to get decisions right first time. It is taking a rights based approach that respects the dignity of the individual. The Scottish Government has always been clear that people will have a right to challenge if they believe that the new agency, Social Security Scotland, has not made the right decision and that the process for challenging a decision is as simple and straight forward as possible.

¹ <http://www.gov.scot/Resource/0045/00452796.pdf>

6. To ensure an individual is able to challenge the decision of the agency through an independent institution, Scottish Ministers decided that a new chamber of the First-tier Tribunal for Scotland will be created to hear appeals in relation to social security cases in the Scottish system. This was decided against the background of discussions that are currently taking place with the UK Government on the devolution of the reserved tribunals, including the Social Security and Child Support Tribunal, under the Scotland Act 2016. The transfer will not take place prior to the first wave of social security benefits being delivered and it has therefore been necessary to set up a Chamber within the First-tier Tribunal for Scotland.

7. In embarking upon the process of drafting the necessary regulations for consultation, the starting point (particularly in the context of the rules of procedure for the Social Security Chamber) was to look at the approach of the rules of procedure of the existing chambers of the First-tier Tribunal for Scotland. A key consideration was ensuring so far as appropriate the aim of having broad uniformity of approach, across the chambers in Scotland. These were considered alongside the rules of the Social Entitlement Chamber (the 2008 Rules) which currently deal with social security appeals for the reserved benefits in Scotland. The regulations as consulted upon were framed with the overall principles of the Scottish social security system in mind, to establish what adjustments might be needed.

8. For the Upper Tribunal for Scotland, a similar exercise was carried out. The generic rules of procedure of the Upper Tribunal for Scotland were looked at, alongside the rules of procedure for the Upper Tribunal, as they apply to social security cases.

Consultation process

9. A consultation process was undertaken in relation to the draft Regulations between January and July 2018. This included a full public consultation² which ran from 22 January 2018 to 16 April 2018 and consultation with senior members of the judiciary that the 2014 Act requires. The Scottish Parliament's Social Security Committee also undertook an evidence gathering session during the full public consultation period. The consultation with the judiciary took place after the conclusion of the full public consultation.

10. The Scottish Government's full public consultation on Draft Regulations making provision in relation to Social Security Appeals in Scotland set out the vision and key principles for the draft regulations proposed for the new Chamber of the First-tier Tribunal. The consultation was in six parts, covering:

- Establishing a New Chamber of the First-Tier Tribunal (FtT)
- Adding the Name of the Social Security Chamber
- Rules of Procedure for the FtT for Scotland Social Security Chamber
- Composition of the FtT and Upper Tribunal for Scotland (UT)
- Eligibility Criteria for Appointments
- Rules of Procedure for the UT for Scotland

²https://consult.gov.scot/social-security/provision-for-social-security-appeals/consultation/published_select_respondent

11. A total of 25 written responses to the consultation were received, 4 from individuals and 21 from organisations. The independent analysis of the responses was undertaken by KSO Research. Respondents represented a range of individuals and organisations with knowledge and experience of, or an interest in, social security matters, including organisations representing island interests.

12. The main issues raised by stakeholders representing the views of island and rural communities were in relation to accessibility and choice. It was recognised that Skype and other forms of video conferencing can improve accessibility and avoid the need to travel distances which can be time consuming, expensive and difficult for people living in rural and island communities. The Scottish Government is also aware of the challenges that people living in the island communities face who have to travel a great distance to attend appointments.

13. Respondents suggested that digital would not always be the best delivery model for everyone (particularly given the digital connectivity challenges in rural and island communities) and therefore other engagement channels would need to be available. There will always be some people who need face to face contact, due to digital exclusion, disability or difficulty in communicating.

14. Scottish Courts and Tribunal Services (SCTS), as the administrator of the tribunal, has a presence across the country. Tribunal hearings can currently take place in Lerwick, Kirkwall, and Stornoway and the tribunal is also able to travel to other locations, subject to operational reasons and health and safety considerations.

15. The regulations are being taken forward, for the most part, under the Tribunals (Scotland) Act 2014 and the operationalisation of these is the responsibility of SCTS.

16. The regulations have been drafted through a wide consultative process and how different users may be impacted has been central to the consideration from the start of the process. The regulations were amended following the consultation process in order to ensure any impacts that were identified can be mitigated as far as possible. These regulations may have to change from time to time to reflect changes in economic and social conditions and as the new chamber gains further experience as it delivers the new system.

17. As with every other aspect of the work to develop the new social security system, the Scottish Government has sought to involve expert organisations and people outside of government in the development of the secondary legislation. This builds on the earlier work and commitment to work with people through the earlier consultation exercise and in the development of the 2018 Act.

18. The Scottish Government is keen to ensure that as much information as possible will be online, as well as allowing for the electronic submission of appeals. However, the Scottish Government is aware that some remote and island communities may not have access to digital services nor is it everyone's preferred choice of communication.

19. The Scottish Government is aware that people want tailored solutions to suit their different preferences and need, and will therefore work to ensure the availability of digital, telephone and face to face communication channels where possible.

Reporting

20. The 2018 Act confers a duty on the Scottish Ministers to publish an annual report on the performance of the Scottish social security system, which will include information on the impact of island-proofing. The report will also include information on the appeals process. It is therefore expected that in working with SCTS, the Scottish Government will be able to identify and highlight any areas where the regulations have not performed as intended once the tribunal gains further experience in running the new system. Appropriate remedial action will then be taken forward.

21. Scottish Ministers will continue to work with SCTS to set up the new chamber and this will continue as the benefits are rolled out, allowing SCTS to report back any procedural difficulties and allowing remedial action to be taken.

Conclusion

22. Scottish Ministers are aware of the duty to consult island communities before making a material change to any policy, strategy or service which, in the Scottish Ministers' opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities.

23. Scottish Ministers, by taking as a starting point the existing procedural rules for both the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland, have ensured that there will be no new unique impacts on island communities. Likewise in consultations with relevant stakeholders and the judiciary there was not found to be any significantly different effect of the regulations on inhabited island communities. Similarly there will be no financial impact for island communities in isolation resulting from the provision in relation to social security appeals.

24. Scottish Ministers are aware that there may be a financial impact on individuals required to travel considerable distance in attending a tribunal. This could include, but not limited to, situations such as if they are unable to attend at Lerwick, Kirkwall or Stornoway or if those venues are unavailable or if the tribunal cannot be held at another island venue. To negate the financial implications of attending there will also be a short set of regulations made under ancillary powers in the 2018 Act. These will enable a scheme to be set up for payment of travel and subsistence (T&S) expenses, and, where appropriate, payment of allowances towards loss of remunerative time. SCTS will administer the scheme, with the underlying policy being the responsibility of the Scottish Ministers. Claims for expenses of attendance will be open to parties (other than representatives of the Scottish Ministers) and witnesses cited to attend hearings related to social security appeals. The scheme will cover both the First-tier and Upper Tribunals.