

POLICY NOTE

THE FIRST-TIER TRIBUNAL FOR SCOTLAND (CHAMBERS) AMENDMENT REGULATIONS 2018

SSI 2018/xxx

The above instrument was made in exercise of the power conferred by section 20(2) of the Tribunals (Scotland) Act 2014 (the 2014 Act). The instrument is subject to the affirmative procedure. In accordance with section 11(2) of that Act, it has been approved by the Lord President.

Policy Objectives

Background

The Social Security (Scotland) Act 2018 (the 2018 Act) allows Scottish Ministers to deliver new, improved benefits, to replace the 11 Department for Work and Pensions benefits for which legislative competence has been transferred to the Scottish Parliament. The Scottish Ministers will deliver those benefits in a phased manner. The First Minister announced on 4 September in the Programme for Government that the first full benefit to be delivered by Social Security Scotland (the agency) will be the Best Start Grant (BSG). The agency will start making payments for BSG by this Christmas.

The Scottish Government has made clear its intention is to take a different approach that is rights-based and to build a social security system that is founded on the principles of fairness, dignity and respect ensuring those with lived experience of the current system co-design the new social security system in Scotland. These ambitions are at the heart of everything the new system will do, including how the tribunal system for social security appeals will operate.

The Scottish Government has always been clear that people will have a right to challenge if they believe that the agency has not made the right decision and that the process for challenging a decision is as simple and straight forward as possible.

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 transfer of responsibility for the management and operation of reserved tribunals, including the Social Security and Child Support Tribunal, in terms of the changes to the devolution settlement brought about by the Scotland Act 2016. The transfer will not take place prior to the first wave of social security benefits being delivered by the agency and it has therefore been necessary to set up a new chamber of the First-tier Tribunal for Scotland and ensure necessary provisions are made for the Upper Tribunal for Scotland in relation to social security cases from First-tier Tribunal.

The 2014 Act provides that the First-tier Tribunal for Scotland is to be divided into a number of chambers dealing with different tribunal jurisdictions. The First-tier Tribunal has already been divided into five chambers, by the First-tier Tribunal for Scotland (Chambers) Regulations 2016. The Chambers Amendment Regulations amend the Chambers Regulations to bring into being a sixth chamber, to be known as the Social Security Chamber. This is necessary in order to give effect to functions conferred on the First-tier Tribunal for Scotland by the 2018 Act. Further functions may be conferred in future by Regulations made under the 2018 Act. In line with the 2014 Act, functions of the First-tier Tribunal must be allocated to a particular chamber. As there is no obvious home for the functions conferred, among the existing five chambers, a new chamber is being created.

Consultation

Section 11(1) of the 2014 Act makes clear that, as well as gaining the approval of the Lord President, the Scottish Ministers must consult such other persons as they consider appropriate, before regulations under section 20(2) are made.

A consultation process was undertaken in relation to the draft Regulations between January and July 2018. This included a full public consultation and consultation with senior members of the judiciary that the 2014 Act requires. In addition, the Social Security Committee of the Scottish Parliament undertook an evidence gathering session with key stakeholders. The full public consultation lasted for 12 weeks and took place from 22 January to 16 April 2018. There were 25 responses to the full public consultation, 4 from individuals and 21 from representative organisations. The independent analysis of the responses was undertaken by KSO Research. Where permission was received, individual responses were published online on the Citizen Space website at:

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

The full Scottish Government response to the consultation is available at www.gov.scot/ISBN/9781787812123

The Chambers Amendment Regulations attracted little comment among respondents to the consultation. The few who did respond stressed the importance of choosing a name for the new chamber which would give a clear indication of its main function. The name should be destigmatising and accessible for those facing communication challenges. There was no suggestion that the name Social Security Chamber did not achieve this end. It was in fact welcomed.

Impact Assessments

The following impact assessments have been completed and are attached separately:

- The Equality Impact Assessment
- Islands Communities Screening Assessment
- Child Rights and Wellbeing Impact Assessment

Financial Effects

A partial Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. No impacts of this policy were found on business. The Scottish Courts and Tribunals Service will be expected to handle appeals related to social security, which it does not currently, and ensure sufficient members are available to deal with matters before the Tribunal. The impact of the new system on local organisations is that they would be expected to provide advice on the new system whereas the burden on such organisations having to lodge appeals on behalf of their clients will be undertaken by Social Security Scotland. The overall impact would therefore be neutral.

Scottish Government
Social Security Directorate

13 September 2018