

## POLICY NOTE

### THE FIRST-TIER TRIBUNAL FOR SCOTLAND SOCIAL SECURITY CHAMBER (RULES OF PROCEDURE) AMENDMENT REGULATIONS 2018

#### SSI 2018/343

1. The above instrument was made in exercise of the powers conferred by paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014 ('the 2014 Act'). The instrument is subject to the negative procedure. In accordance with paragraph 4(3) of schedule 9 the President of the Scottish Tribunals has been consulted on these Regulations. Where, in this note, reference is made to the 'First-tier Tribunal,' this refers to the Social Security Chamber of the First-tier Tribunal for Scotland.

#### Policy Objectives

2. The 2014 Act allows rules to be made to regulate the practice and procedure of both the First-tier and Upper Tribunals. Paragraph 4(2) of schedule 9 of the 2014 Act allows rules to be made by the Scottish Ministers until such time as responsibility for rule making passes to the Court of Session.

3. The Delegated Powers and Law Reform Committee ('DPLRC') considered the First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018 (S.S.I. 2018/273) at its meeting on 2 October 2018 and raised various points in relation to the drafting of the rules of procedure set out in the schedule. The Scottish Government undertook to lay an amending instrument to address these points.

The points raised by the Committee are addressed as follows:

- A new rule 9(3) is substituted. The purpose of this is to enhance the clarity of rule 9(3)(a). It is made explicit that the duty to supply documents to representatives rests with the First-tier Tribunal. This ties in with the fact that it is only the First-tier Tribunal which has a requirement to supply documents to a represented party (in practice, the appellant). Also, it is made explicit that the duty is not confined to documents which the First-tier Tribunal is required to supply to the represented party *after* a representative is appointed. A representative must also be provided with copies of any documents which the First-tier Tribunal has already been required to supply to the represented party, prior to the appointment. This will be relevant where a representative is appointed after appeal proceedings have begun. An appellant's decision to change representative may be a common explanation for this. This approach is designed to make the system as accessible as possible to those who are attending hearings by making sure they are in possession of relevant documents.
- In rule 22(4)(g), the reference to "the Scottish Ministers" is replaced by reference to the "First-tier Tribunal". This corrects a simple error of drafting. The Social Security (Scotland) Act 2018 requires that notices of appeal against process decisions be sent directly to the First-tier Tribunal for Scotland. This is in term of section 61(1). Against that background, the requirement in rule 22(4) (g) is to explain why a notice of appeal against a process decision was not sent or delivered to the *First-tier Tribunal* sooner, not to the Scottish Ministers.

- In rules 35(5) and (7), dealing with reviews, errors in cross-references to other paragraphs within the rule are corrected.
- In rules 1(1), 2(2)(a) and 33(2)(c), minor printing points highlighted by the DPLRC are addressed.

4. In the course of preparing these amending Regulations the Scottish Government has taken the opportunity to enhance clarity in relation to a small number of further points, over and above those raised by the DPLRC.

5. Rule 2(5)(a) is amended to make it explicit on the face of the Rules of Procedure that there is no possibility of a review of a decision made by the First-tier Tribunal in dealing with an appeal against a process decision. The exclusion is made by section 61(5) of the Social Security (Scotland) Act 2018. However, in the interests of usability of the rules for the reader, the exclusion is to be included expressly on the face of the Rules of Procedure.

6. A new rule 21(5) is substituted. This makes clear that responsibility for forwarding the decision maker's response to the notice of appeal to the appellant rests with the First-tier Tribunal. This ties in with the overall approach of the Rules of Procedure; documents are sent to parties by the First-tier Tribunal.

7. Rule 29 is modified to make it explicit on the face of the Rules of Procedure that reasons for a decision may be communicated to the parties by means of a summary of a decision, as an alternative to a full statement of reasons. This flows from rule 28(3)(c). However, a party who receives a summary of a decision will be able to apply for a full statement of reasons if they wish to do so.

8. Rule 35(8) is modified to make clearer the intended effect of that provision. Its effect is that the time period for applying for permission to appeal to the Upper Tribunal continues to run even if an application for a review is made. The time period is not suspended as a result of the application.

## **Consultation**

9. Paragraph 4(3) of schedule 9 of the 2014 Act requires that, in addition to the President of the Scottish Tribunals, consultation must take place with such other persons as the Scottish Ministers consider appropriate. The views of former members of the Judicial Reference Group, which provided advice and guidance on the establishment of the Social Security Chamber, have been sought on these Regulations.

10. As a result of the consultation exercise, the First-tier Tribunal is to be required to send to any representative appointed once proceedings are under way copies of *all* documents which it required to supply to the represented party before the day on which the representative was appointed. Members of the group advised that this fits better with the practical context of social security appeals than the Tribunal attempting to identify which documents a newly appointed representative has not received from an appellant, or a previous representative, and filling any gaps.

## **Impact Assessments**

11. The following impact assessments were completed in respect of the package of instruments of which the First-tier Tribunal for Scotland Social Security Chamber Rules of Procedure Regulations 2018 formed part:

- Equality impact assessment;
- Islands Communities Screening assessment;
- Child Rights and Wellbeing Impact Assessment.

12. These Regulations do not alter the outcome of those assessments. Accordingly, no further assessments are required in these areas.

## **Financial Effects**

13. A Partial Business and Regulatory Impact Assessment was prepared in respect of the package of instruments of which the First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018 formed part. These Regulations do not alter the outcome of that assessment. Accordingly, no further assessment is required.

Scottish Government  
Social Security Directorate  
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