

# **Tribunals (Scotland) Act 2014: Consultation on Draft Regulations Making Provision in Relation to Social Security Appeals**

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

## PART 1: BACKGROUND

1. The Scotland Act 2016 devolves 11 benefits to the Scottish Parliament. These represent about 15% of UK social security spend in Scotland, ultimately worth around £3.3 billion annually. The 11 benefits to be devolved are:

- Attendance Allowance;
- Best Start Grant (replaces existing Sure Start Maternity Grant);
- Carer's Allowance;
- Cold Weather Payment
- Disability Living Allowance;
- Discretionary Housing Payments;
- Funeral Payment;
- Industrial Injuries Disablement Benefit;
- Personal Independence Payment;
- Severe Disablement Allowance; and
- Winter Fuel Payment.

2. In the Scottish social security system<sup>1</sup>, the term 'assistance' is used to refer to benefits and this paper will use the term assistance, except for when referring to benefits delivered in the reserved system, for which the Scottish Parliament does not have competence to legislate.

3. The Scottish Government recognises the direct impact that social security has on people's lives and that is why its priority is to ensure the safe and secure transfer of the current DWP benefits to those who receive them. In addition, devolution of social security assistance, especially those for disabled people and carers, creates important opportunities to promote fairness and equality. The Scottish Government has made clear its intention to seize those opportunities: its ambition 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 to be at the heart of everything the new system will do, including how the tribunal system for social security appeals will operate.

4. Taking these aspirations into account, the Scottish Government will deliver devolved social security assistance on a phased approach once the Social Security (Scotland) Bill has completed its Parliamentary process. The Bill was introduced on 20 June 2017 and Royal Assent is anticipated during spring 2018.

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<sup>1</sup> This is the system for providing assistance under the Social Security (Scotland) Bill.

5. The 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 social security assistance between Autumn 2018 and Summer 2019. The more complex types of assistance, e.g. those relating to disability, will be delivered by the end of the current Parliamentary term.

### **Creation of a new chamber of the First-tier Tribunal for Scotland**

6. The Tribunals (Scotland) Act 2014 (“the 2014 Act”) creates a new, simplified statutory framework for tribunals in Scotland, bringing existing tribunal jurisdictions together and providing a structure for new jurisdictions. The 2014 Act creates two new tribunals, the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland, known collectively as the Scottish Tribunals.

7. Under the Heads of Agreement for further devolution of powers to the Scottish Parliament, as set out in the report of the Smith Commission, it was proposed that the operation and administration of 19 reserved tribunals would be devolved to Scotland, including the Social Security and Child Support Tribunal (SSCST), which is part of the Social Entitlement Chamber<sup>2</sup> in the reserved system. Discussions are ongoing with the UK Government (UKG) regarding the timing of the transfer of SSCST to Scotland. However, it is unlikely that the transfer will take place prior to the first wave of social security assistance being delivered.

8. It is therefore the intention of Scottish Ministers to set up a new chamber of the First Tier Tribunal for Scotland (‘FtT’), with responsibility for dealing with appeals against determinations of entitlement to assistance delivered under the Scottish social security system. Necessary provision will have to be made, also, for the Upper Tribunal for Scotland, where appeals against decisions of the First-tier Tribunal are heard.

9. The regulations required for the Scottish Tribunals will, of course, have to be in force, along with the necessary practical arrangements, in time for the first wave of social security assistance being delivered by the Scottish social security agency, which will be ahead of any potential devolution of SSCST. As each chamber of the FtT may consist of a number of jurisdictions that are brought together because they deal with similar subject matters, it is expected SSCST, when devolved, may be housed as a jurisdiction of the Social Security Chamber. This is subject to the final decision of the President of the Tribunals. This will mean that appeals in Scotland against decisions on reserved benefits will ultimately also be heard by the new chamber.

10. Therefore, to ensure the effective operation of the devolved chamber, and ensure consistency with the reserved chamber, the existing procedural rules for of the First-tier Tribunal Social Entitlement Chamber have been used as a starting point. These rules have been amended and strengthened to ensure consistency with Scottish Ministers’ aspirations for how appeals in the devolved system will operate.

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<sup>2</sup> The Social Entitlement Chamber consists of three separate jurisdictions, hearing appeals, respectively, in relation to (1) social security benefits and child support, (2) asylum support and (3) criminal injuries compensation.

## Overview

11. The Scottish Government is now seeking views of any organisation or individual with an interest in these matters to ensure what is being proposed will meet the needs of the users in the Scottish social security system. The sets of regulations described below will be required in order to create a new chamber of the FtT to deal with social security cases and to make the necessary provision for the Upper Tribunal. The draft regulations are attached at **Annexes A – F** to this document. These regulations reflect the content of the Social Security (Scotland) Bill as introduced. Modifications may, of course, require to be made to reflect amendments made as the Social Security (Scotland) Bill completes its Parliamentary process.

12. The draft regulations in **Annex A** provide for the establishment of the new chamber of the FtT, to be known as the First-tier Tribunal for Scotland Social Security Chamber, and set out its functions.

13. The draft regulations in **Annex B** add the Social Security Chamber to the list in regulation 2 of the First-Tier Tribunal for Scotland (Chambers) Regulations 2016 of chambers into which the First-tier Tribunal for Scotland is divided.

14. The draft regulations in **Annex C** set out the rules of procedure for the Social Security Chamber.

15. The draft regulations in **Annex D** set out the type and number of members of the FtT who can consider cases before the Social Security Chamber, and, when cases are appealed from there, before the Upper Tribunal.

16. The draft regulations in **Annex E** set out the eligibility criteria for appointment to the FtT of ordinary members with medical and disability experience. These members, alongside legal members of the Tribunal, will be responsible for deciding cases coming before the Social Security Chamber.

17. The draft regulations in **Annex F** set out specific rules of procedure of the Upper Tribunal for Scotland when dealing with proceedings under what is currently the Social Security (Scotland) Bill. By the time the regulations come into force, it is expected that this will be the Social Security (Scotland) Act 2018. Proceedings will arise where cases are appealed from the Social Security Chamber to the Upper Tribunal.

18. This consultation seeks views on the six sets of draft regulations. Parts 2-7 of this document describe, in broad terms, the approach taken in the drafts, and set out particular questions on which views are sought. More general comments are also welcomed.

## **PART 2: CONSULTATION ON DRAFT REGULATIONS ESTABLISHING A CHAMBER OF THE FIRST-TIER TRIBUNAL FOR SCOTLAND DEALING WITH ENTITLEMENT TO SOCIAL SECURITY AND SETTING OUT ITS FUNCTIONS**

### **Background**

19. Section 20 of the 2014 Act gives power for the Scottish Ministers to make regulations providing for the organisation of the FtT into chambers, and setting out how the functions of the FtT are to be allocated between those chambers.

### **Draft regulations**

20. The draft regulations in **Annex A** provide for the establishment of a new chamber of the FtT, to be known as the Social Security Chamber. They also set out what the functions of that chamber will be.

21. The First-tier Tribunal for Scotland Social Security Chamber will have responsibility for dealing with appeals against determinations relating to entitlement to assistance delivered under the Scottish social security system. This will include determinations involving the making of deductions from the levels of assistance payable in order to recover overpayments. It may also include determinations on entitlement to top-up by recipients of reserved benefits, should regulations be made under section 45 of the Social Security (Scotland) Bill to provide for top-up (Top-up is essentially a mechanism by which the Scottish Ministers will be able to provide assistance to a person who is receiving, or is entitled to receive, a reserved benefit. This will be paid where it is concluded that the person is in need of assistance, over and above any reserved benefit paid, but to fulfil the same purpose as the reserved benefit. Depending on the terms of regulations made, if assistance by way of top-up is to be introduced, it may carry a right of appeal).

22. The regulations make clear that the Social Security Chamber will have power to look at all aspects of a determination in relation to which an appeal is brought, and not only the particular aspects which are challenged by the individual bringing the appeal. "Dealing with" an appeal will, in general, mean reaching a decision which disposes of it, unless the conclusion is drawn that the proceedings should be transferred away from the Social Security Chamber. In disposing of an appeal the Chamber may either uphold the determination which is appealed against, or make its own determination of the individual's entitlement to the type of assistance in question.

**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?**

**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?**

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

## **PART 3: CONSULTATION ON DRAFT REGULATIONS ADDING THE NAME OF THE SOCIAL SECURITY CHAMBER TO THE LIST OF CHAMBERS INTO WHICH THE FIRST-TIER TRIBUNAL FOR SCOTLAND IS DIVIDED**

### **Background**

23. Section 20 of the 2014 Act gives the power for the Scottish Ministers to make regulations providing for the organisation of the First-tier Tribunal for Scotland into chambers. This power has been exercised in making the First-tier Tribunal for Scotland (Chambers) Regulations 2016. Regulation 2 lists the chambers into which the First-tier Tribunal for Scotland is divided.

### **Draft regulations**

24. The draft regulations in **Annex B** add the name of the Social Security Chamber to the list in regulation 2 of the Chambers Regulations of chambers into which the First-tier Tribunal for Scotland is divided.

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

## **PART 4: CONSULTATION ON DRAFT REGULATIONS SETTING OUT RULES OF PROCEDURE FOR THE FIRST-TIER TRIBUNAL FOR SCOTLAND SOCIAL SECURITY CHAMBER**

### **Background**

25. Schedule 9, paragraph 4(2) of the 2014 Act provides the power for the Scottish Ministers to make regulations setting out the procedural rules to be applicable to chambers of the First-tier Tribunal for Scotland and to the Upper Tribunal.

### **Draft regulations**

26. The draft regulations in **Annex C** set out rules of procedure which will apply to the Social Security Chamber. Their approach is intended, largely, to mirror that of the rules of procedure of the Social Entitlement Chamber, which contains the social security jurisdiction that hears appeals brought in Scotland under the reserved system against decisions on entitlement to benefits. The rules are set out in the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (“the 2008 Rules”). This draft does, however, reflect some substantive changes of approach/additional provisions, in comparison with the 2008 Rules. These are designed primarily to ensure that the new chamber is able to function in a manner which is appropriate in a modern social security context and, where relevant, consistent with the approach of other chambers of the First-tier Tribunal on overarching matters. The changes and additions are described in the paragraphs that follow.

### **Social security charter**

27. The overriding objective of the procedural rules is that the appellant should be treated fairly and justly and provided all necessary support in bringing their case to the tribunal. Tribunals are independent of Scottish Ministers and are judicially led; they will be the independent mechanism for scrutinising determinations of entitlement to assistance under the Scottish social security system. To ensure the individual’s experience at tribunals is consistent with the Scottish Ministers’ aspirations of treating people with dignity and respect, the Scottish Government considers both the FtT and the Upper Tribunal should have regard to the social security charter, which is to be prepared in terms of section 2 of the Social Security (Scotland) Bill, when dealing with appeals. The purpose of the social security charter will be to take the high level strategic ambitions set out in the principles and translate these into more practical action points and commitments. In this way, the charter can be seen as a bridge between principles and the nature of the system’s day-to-day operation, that will set out in clear, plain English terms what people are entitled to expect. Given its importance in defining people’s rights and what the nature of delivery should be, it is important that the Tribunals should be able to take account of the charter in their deliberations where they consider that relevant. An explicit reference therefore has been made to the overriding objective that when dealing with cases the FtT and Upper Tribunal may have regard to the Scottish social security charter which is to be prepared and published in accordance with section 2 of the then Social Security (Scotland) Act 2018.



## Dismissal of a party's case

28. The Scottish Government proposes to omit any equivalent of the provision of the 2008 Rules which states that proceedings will be dismissed automatically if a party fails to comply with an order which states expressly that non-compliance will lead to striking out. This provision does not typically feature in the procedure rules of the First-tier Tribunal. The Scottish Government assumes that such a provision would, in any event, rarely be relied upon.

29. The Scottish Government proposes, too, to omit the provision of the 2008 Rules which allows for dismissal of a case because the Tribunal considers that there is no reasonable prospect of the appellant's case succeeding. It is difficult to envisage that such a decision could reasonably be reached at first sight of proceedings in the Social Security Chamber.

30. The provision of the 2008 Rules stating that dismissal of proceedings, so far as the respondent is concerned, means that the respondent is debarred from taking any further part in the proceedings have also been omitted. The Scottish Government cannot envisage this as being of real relevance to proceedings in the Social Security Chamber where, at least in the vast majority of cases, there will be only one respondent, this being the maker of the determination which is being appealed against.

## Orders for expenses

31. Under the 2008 Rules, it is a matter for the Secretary of State to pay travelling and other daily expenses deemed payable in respect of attendance at a hearing. In the draft rules of procedure for the Social Security Chamber we provide that the FtT may make an award of expenses to cover such expenditure, incurred by any person who is required to attend a hearing. This will include, as appropriate, both the parties to the case and any witness called by the parties or the Tribunal itself. The intention is that payment of daily expenses of attendance be covered – in other words, expenses of travel, sustenance, loss of remunerative time and similar. No other expenses are to be payable. In general the FtT will have the discretion to decide (a) whether expenses should be paid and (b) if so, whether to make an award of expenses against one of the parties, or to pay the expenses itself. Where, however, the expenses in issue are those of a person required to attend a hearing to produce a medical report which they have been commissioned to compile, in terms of rule 26, necessary expenses of attendance *must* be paid. These are to be met by the FtT.

## Interpreters

32. The draft rules of procedure include express provision that any interpreter who is involved in assisting a party to a case must be independent of every party and any supporters or representatives of the parties. This is intended as a 'for the avoidance of doubt' type provision. However, it should help to ensure that the needs of witnesses with particular requirements, including those in need of the assistance of a sign language interpreter, are adequately catered for.

## Supporters

33. The draft rules currently mirror the standard provision in procedure rules of chambers of the First-tier Tribunals which allows individuals to be accompanied by supporters. The function of the supporter is typically to operate in the background, helping with tasks such as taking notes and organising papers, as well as providing general moral support. It may be thought desirable to provide for supporters involved in cases before the Social Security Chamber to have a more expansive role, where appropriate. This might include, in particular, the opportunity to put forward representations to the FtT. It would be subject to the FtT, and all parties, being content that this should happen. This would not affect the role of any representative; the intention is that they would be able to present a party's case, or otherwise advocate for a party, in the same way as they would be able to do before any other chamber of the FtT.

## Chairing member

34. The question of who is to be the chairing member, where relevant, is a matter typically covered in the rules of procedure of chambers of the FtT. Where a case is being considered by the Social Security Chamber, there will always be one legal member of the FtT involved in the case. There will never be any more than one legal member involved in the case. On that basis the rules of procedure have been drafted to provide that where there is more than one member of the FtT sitting in any given case, the legal member will always be the chairing member

## Recording of hearings

35. The draft rules of procedure provide for a default position that hearings of the Social Security Chamber are to be recorded digitally, unless an order is given that this should not be done, owing to the circumstances of a particular case.

## Venue for hearings

36. The draft rules mirror the typical approach of rules of procedure of the FtT in providing that cases before the Social Security Chamber may be heard at such location in Scotland, and at such time, as the President of Tribunals may decide. The overriding objectives ensures the individual is able to participate fully and their access needs are taken into account when deciding the format and location of a hearing.

## Independent medical examination

37. In contrast with the 2008 Rules, the draft rules do not make provision for a member of the FtT to carry out a medical examination. Rather, an order may be given by the Social Security Chamber only that an independent examination of an appellant be carried out. In other words, the appellant will be referred to a medical practitioner, who is independent of the parties to the case. The medical practitioner will be asked to carry out an examination of the appellant and to produce a report. It is intended that a medical examination should be ordered only in exceptional circumstances, where such an examination is thought necessary to enable a decision to be reached.

## Review of decisions of the Social Security Chamber

38. In terms of the draft rules review of a decision of the Social Security Chamber may be undertaken either at the request of a party to the case, or as a result of the FtT deciding to revisit its own decision. Various consequences could flow from this, including that the decision is set aside, so that it no longer applies, and that a new one is made. This contrasts with the position under the 2008 Rules on availability of review. Under those Rules, a review may only be undertaken if an application for permission to appeal to the Upper Tribunal has been submitted by a party against a decision of the Social Entitlement Chamber. The first step, in that event, will be for a review of the original decision to be carried out.

### **Do you have any comments on:**

- (a) any of the elements of the draft rules of procedure described at paragraphs 27 – 38 above;**
- (b) any other aspect of the draft rules of procedure?**

### **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?**

**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?**

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

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

## **PART 5: CONSULTATION ON DRAFT REGULATIONS SETTING OUT THE COMPOSITION OF THE FIRST-TIER TRIBUNAL FOR SCOTLAND SOCIAL SECURITY CHAMBER AND THE UPPER TRIBUNAL FOR SCOTLAND**

### **Background**

39. Sections 38 and 40 of the 2014 Act allow the Scottish Ministers, by regulations, to determine the composition of the First-tier and Upper Tribunals.

### **Draft regulations**

40. The draft regulations in **Annex D** govern the composition of members of the Scottish Tribunals when deciding cases before the Social Security Chamber and appeals from the Social Security Chamber to the Upper Tribunal for Scotland.

#### First-tier Tribunal for Scotland

41. In every case dealt with by the Social Security Chamber there will be one legal member of the FtT involved in the proceedings. As regards appeals relating to entitlement to social security assistance of the types described in Chapter 2 of Part 2 of the Social Security (Scotland) Bill, the policy intention is that cases should generally be decided by the legal member, sitting alone. An exception will, though, be made where there are characteristics of the form of assistance that make it appropriate to involve an ordinary member or two ordinary members with particular specialism. On that basis, the draft composition regulations provide that cases involving assessment of medical issues in relation to entitlement to disability assistance will be decided by the legal member, plus one ordinary member of the First-tier Tribunal who has disability experience and one ordinary member who is a registered medical practitioner. Cases involving assessment of medical issues relating to entitlement to employment-injury assistance will be decided by the legal member and one ordinary member who is a registered medical practitioner. All other cases are to be decided by the legal member sitting alone.

42. The Scottish Government proposes that there should be flexibility as to the composition of the Social Security Chamber when dealing with any appeals brought against decisions on entitlement to assistance by way of top up, should provision for this be made. This reflects the potentially wide variety of matters that may require to be considered. As a result, the draft composition regulations provide that cases may be decided by a legal member of the First-tier Tribunal sitting alone, a legal member and one ordinary member, or a legal member and two ordinary members. There is no specification as to whether ordinary members should be registered medical practitioners, members with disability experience, or, where relevant, potentially one of each. It intends that the composition be determined as appropriate to the circumstances of any particular case.

43. Applying the approach outlined above, cases before the Social Security Chamber will never be considered by any more than three members of the FtT

## Upper Tribunal

44. The Scottish Government proposes that cases appealed from the Social Security Chamber to the Upper Tribunal for Scotland should be decided by a legal member of the Upper Tribunal, the Chamber President of the Social Security Chamber (as long as they were not involved in the case prior to its being appealed), the President of Tribunals, the Lord President, or a judicial member of the Upper Tribunal. A judicial member of the Upper Tribunal is meant, in terms of these regulations, a judge of the Court of Session.

**(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?**

**(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?**

**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?**

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

## **PART 6: DRAFT REGULATIONS SETTING OUT ELIGIBILITY CRITERIA FOR APPOINTMENT OF ORDINARY MEMBERS OF THE FIRST-TIER TRIBUNAL FOR SCOTLAND: MEDICAL AND DISABILITY EXPERIENCE**

### **Background**

45. The draft regulations contained in **Annex E** prescribe eligibility criteria for appointment of ordinary members of the FtT with medical and disability experience. These members will be responsible for deciding cases before the Social Security Chamber.

46. The criteria for legal membership of the FtT are set down in the Scottish Tribunals (Eligibility for Appointment) Regulations 2015 and are generic across the FtT. Briefly, a person may be appointed as a legal member if the person is currently practising and has practised as a solicitor or advocate in Scotland for a period of not less than 5 years. Alternatively, a person may be appointed as such if they have previously practised as a solicitor or advocate for a period of not less than 5 years and, subsequent to that, have been engaged in related activities such as exercising judicial functions in a court or tribunal or teaching or researching law at an educational institution. As a result of these generic criteria, we do not need to make any specific provision for legal membership in relation to the Social Security Chamber. The Eligibility for Appointment Regulations also lay down generic criteria which apply to the appointment of legal members of the Upper Tribunal for Scotland.

### **Draft Regulations**

47. The draft regulations contained in **Annex E** set out the criteria which it is proposed will be applied when appointing ordinary members of the FtT who will decide cases before the Social Security Chamber.

48. The eligibility criteria are that members should either be registered medical practitioners or should have experience of the needs of persons who have a disability. That experience may be gained as a result of the member themselves having a disability, or through working with people who have a disability. Any work may be undertaken in a professional or a voluntary capacity; a formal qualification in relation to disability is not necessarily required. Alternatively, disability experience may be gained as a result of providing care to a person who has a disability, otherwise than in the context of undertaking work.

49. In referring to persons with a disability, we intend to capture those falling within section 6 of the Equality Act 2010. In terms of that Act, people have a disability if they have a physical or mental impairment which has a substantial and detrimental effect, on a long-term basis, on their ability to carry out normal day-to-day activities.

**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?**

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

## **PART 7: CONSULTATION ON DRAFT REGULATIONS SETTING OUT RULES OF PROCEDURE TO BE APPLICABLE TO THE UPPER TRIBUNAL FOR SCOTLAND WHEN DEALING WITH CASES UNDER THE CURRENT SOCIAL SECURITY (SCOTLAND) BILL**

### **Background**

50. Schedule 9, paragraph 4(2) of the 2014 Act provides the power for the Scottish Ministers to make regulations setting out the procedural rules to be applicable to chambers of the First-tier Tribunal for Scotland and to the Upper Tribunal for Scotland.

### **Draft regulations**

51. The draft regulations in **Annex F** set out specific rules of procedure to be applicable to the Upper Tribunal for Scotland when dealing with proceedings under what is currently the Social Security (Scotland) Bill. By the time the regulations come into force, it is expected this will be the Social Security (Scotland) Act 2018. Proceedings will arise where cases are appealed from the Social Security Chamber to the Upper Tribunal.

52. There already exist generic rules of procedure applicable to the Upper Tribunal for Scotland, as set out in the Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016. While these will not apply to proceedings under what is currently the Social Security (Scotland) Bill, the rules of procedure on which we propose to rely are modelled closely on those. The draft rules have been modified only where it was considered necessary to ensure that no substantive element of the procedure followed currently by the Upper Tribunal, when dealing with a social security case emanating from the reserved Social Entitlement Chamber, is lost. That procedure is laid down in the Tribunal Procedure (Upper Tribunal) Rules 2008. This approach also produces consistency with the Social Security Chamber in relation to provision for award of expenses and the overriding objective of taking account of the Scottish social security Charter that is to be prepared.

53. The Scottish Government highlights in the paragraphs that follow the main areas where the draft regulations in **Annex F** reflect a departure from the approach of the generic rules of procedure for the Upper Tribunal for Scotland. Where appropriate, the current position under the Upper Tribunal Rules of 2008, has also been set out.

#### Application for reinstatement of a case which has been dismissed

54. The rules of procedure followed by the Upper Tribunal in dealing with social security cases in the reserved system provide that the appellant may, in certain circumstances, apply for their case to be reinstated following its dismissal. This option is available where the appellant has failed to comply with an order which stated that non-compliance could lead to dismissal of the proceedings. The Scottish Government proposes to follow this approach in the rules of procedure for the Upper Tribunal for Scotland when dealing with cases under what is currently the Social Security Bill. (There is no equivalent provision in the generic rules of procedure for the Upper Tribunal for Scotland).



## Withdrawal of a case and application for reinstatement

55. The rules of procedure followed by the Upper Tribunal in dealing with social security cases provide that a case may only be withdrawn with the permission of the Upper Tribunal (unless what is being withdrawn is simply an application for permission to appeal). The Scottish Government proposes to follow this approach in the social security rules of procedure for the Upper Tribunal for Scotland. The Upper Tribunal rules provide, also, that the party who has withdrawn their case may apply for its reinstatement. Again, this approach will be followed. (In the generic rules of procedure for the Upper Tribunal for Scotland, there is no need for permission to withdraw. Conversely, there is no possibility of a case being reinstated after it has been withdrawn).

## Orders for expenses

56. The Scottish Government proposes that the social security rules of procedure for the Upper Tribunal for Scotland should provide only for the payment of expenses in relation to the daily expenditure incurred, by any person required to attend a hearing in connection with social security proceedings before the Upper Tribunal. These may cover such matters as travel, sustenance and loss of remunerative time. The Upper Tribunal may make an order for such expenses against any party to a case. Alternatively, the Upper Tribunal may pay the expenses itself. This mirrors the approach proposed for the Social Security Chamber.

## Consent orders

57. Consent orders are provided for in the rules of procedure applied by the Upper Tribunal in dealing with social security cases, and so it is proposed to include provision for them in the social security rules for the Upper Tribunal for Scotland. Their function is to provide a declaration that all parties have agreed that the proceedings need not progress any further. (There is no equivalent provision in the generic rules of procedure applicable to the Upper Tribunal for Scotland).

## Procedure for applying for and giving orders

58. The rules of procedure applied by the Upper Tribunal when dealing with social security cases require (a) that written notice of any order be given to every party to the proceedings and (b) giving any party the opportunity to challenge the order by applying for another order which amends, suspends or sets aside the first order. It is proposed that this approach is followed in the social security rules for the Upper Tribunal for Scotland. (The generic rules of procedure of the Upper Tribunal for Scotland provide simply that parties must be afforded the opportunity to make representations concerning whether the order should be made and the terms of the order).

## Citation of witnesses to answer questions or produce documents

59. The rules of procedure applied by the Upper Tribunal when dealing with social security cases provide that no person may be compelled to give evidence or produce a document that they could not be compelled to give or produce at a civil trial of an action in a court in Scotland. It is proposed this approach is followed in the social security rules for the Upper Tribunal for Scotland. (There is no equivalent provision in the generic rules of procedure for the Upper Tribunal for Scotland).

## Decision with or without a hearing

60. The rules of procedure applied by the Upper Tribunal when dealing with social security cases require the Upper Tribunal to take account of any views expressed by a party on whether or not a hearing should be held, before reaching a conclusion on whether there is to be a hearing. The Scottish Government proposes to follow this approach in the social security rules for the Upper Tribunal for Scotland. (The generic rules of procedure of the Upper Tribunal for Scotland provide simply that the Upper Tribunal may make a decision without holding a hearing; there is no need to take account of any views expressed on the matter).

## Interested parties

61. Interested parties are defined in the generic rules of procedure for the Upper Tribunal for Scotland to mean parties other than the appellant and respondent to whom notice of the various stages of proceedings before the Tribunal is to be given. The Scottish Government does not envisage that this will be of relevance in the context of social security proceedings. Accordingly, it is proposed that the rules will not include reference to interested parties.

### **Do you have any comments on:**

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

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

**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?**

**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?**

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

*Draft Regulations laid before the Scottish Parliament under section 79(2)(a) of the Tribunals (Scotland) Act 2014, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2018 No.**

**TRIBUNALS AND INQUIRIES**

**The First-tier Tribunal for Scotland Social Security Chamber  
(Establishment and Functions) Regulations 2018**

*Made* - - - - 2018

*Coming into force* - - 2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 20(2) of the Tribunals (Scotland) Act 2014<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 11(1) of that Act, they have obtained the approval of the Lord President for the making of these Regulations and have consulted such other persons as they considered appropriate.

In accordance with section 79(2)(a) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the First-tier Tribunal for Scotland Social Security Chamber (Establishment and Functions) Regulations 2018.

(2) These Regulations come into force on 2018.

**Interpretation**

**2.** In these Regulations—

“the 2018 Act” means the Social Security (Scotland) Act 2018<sup>(2)</sup>;

“the First-tier Tribunal” means the First-tier Tribunal for Scotland Social Security Chamber;

“the prescribed time period” means the period prescribed by the Scottish Ministers by virtue of section 24(5) of the 2018 Act for the making by the Scottish Ministers of a re-determination of an individual’s entitlement to a type of social security assistance described in Chapter 2 of Part 2 of the 2018 Act;

“the Upper Tribunal” means the Upper Tribunal for Scotland; and

“reserved benefit” has the meaning given in section 45(3) of the Social Security (Scotland) Act 2018.

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<sup>(1)</sup> 2014 asp 10.

<sup>(2)</sup> 2018 asp

### **Establishment of the First-tier Tribunal for Scotland Social Security Chamber**

3. There shall be established a chamber of the First-tier Tribunal for Scotland to be known as the First-tier Tribunal for Scotland Social Security Chamber.

### **Function of the First-tier Tribunal in relation to entitlement to assistance of a type provided for in Part 2 of the 2018 Act**

4.—(1) Subject to paragraph (2) below, it shall be the duty of the First-tier Tribunal to review a determination made by the Scottish Ministers of entitlement to assistance of a type described in Chapter 2 of Part 2 of the 2018 Act where an individual brings an appeal against the determination to the First-tier Tribunal under section 27 of that Act.

(2) The duty under paragraph (1) above will apply only where the First-tier Tribunal is satisfied that the following conditions are met:

- (a) a re-determination of the original determination by the Scottish Ministers has been requested, in accordance with section 23 of the 2018 Act; and
- (b) subject to paragraph (3) below, the determination which is appealed against is a determination made under section 24 of the 2018 Act, being a re-determination of the original decision which was reached.

(3) Where the Scottish Ministers have not made a re-determination within the prescribed time period, the First-tier Tribunal shall review the original determination made under section 19 of the 2018 Act.

### **Function of the First-tier Tribunal in relation to assistance provided for by regulations made under section 45 of the 2018 Act**

5. If regulations made under section 45 of the 2018 Act provide for a right of appeal against a determination of entitlement to assistance by way of a top up of a reserved benefit, it shall be the duty of the First-tier Tribunal to review that determination where an individual brings such an appeal.

### **Scope of review by the First-tier Tribunal**

6. The First-tier Tribunal may consider all aspects of a determination which it is called upon to review in accordance with regulation 4 or 5, and not only the particular aspect(s) challenged by the individual appealing against the determination.

St Andrew's House,  
Edinburgh  
Date

*Name*  
Authorised to sign by the Scottish Ministers

## **EXPLANATORY NOTE**

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

The Tribunals (Scotland) Act 2014 created a new structure for tribunals in Scotland dealing with devolved matters under the judicial leadership of the Lord President of the Court of Session as head of the Scottish Tribunals. It provided for a First-tier Tribunal and an Upper Tribunal for Scotland, with these being known, collectively, as the Scottish Tribunals. Generally, the First-tier Tribunal will deal with cases in the first instance to which a general right of appeal will lie to the Upper Tribunal. The 2014 Act provided for the First-tier Tribunal to be divided into chambers in order to deal with the various matters falling within the jurisdiction of the Scottish Tribunals.

These Regulations establish a new chamber of the First-tier Tribunal for Scotland, to be known as the First-tier Tribunal for Scotland Social Security Chamber. The new chamber will have responsibility for dealing with appeals against determinations made by the Scottish Ministers on entitlement to social security assistance of the types described in Chapter 2 of Part 2 of the Social Security (Scotland) Act 2018. It will have responsibility, also, for dealing with any appeals in relation to claims for top up assistance by individuals entitled to receive reserved benefits, should regulations make provision for such assistance, and carrying a right of appeal. The Social Security Chamber will have power to consider all aspects of a determination that is the subject of an appeal, and not only the particular aspects which are challenged.

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D R A F T   S C O T T I S H   S T A T U T O R Y   I N S T R U M E N T S

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**2018 No.**

**TRIBUNALS AND INQUIRIES**

**The First-tier Tribunal for Scotland (Chambers) Amendment  
Regulations 2018**

*Made* - - - -

*Coming into force* - - 2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 20(2) and 80 of the Tribunals (Scotland) Act 2014<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 11(1) of that Act, they have obtained the approval of the Lord President for the making of these Regulations and have consulted such other persons as they considered appropriate.

In accordance with section 79(2)(a) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may cited as the First-tier Tribunal for Scotland (Chambers) Amendment Regulations 2018 and come into force on 2018.

(2) In these Regulations, “the 2016 Regulations” means the First-tier Tribunal for Scotland (Chambers) Regulations 2016<sup>(2)</sup>.

**Amendment of the 2016 Regulations**

**2.**—(1) The 2016 Regulations are amended in accordance with paragraph (2).

(2) In regulation 2—

(a) after sub-paragraph (d) omit “and”;

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<sup>(1)</sup> 2014 asp 10.  
<sup>(2)</sup> S.S.I. 2016/ 341.

- (b) after sub-paragraph (e) insert—  
“; and  
(f) the Social Security Chamber.”.

St Andrew's House,  
Edinburgh  
2018

Authorised to sign by the Scottish Ministers

## **EXPLANATORY NOTE**

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

The First-tier Tribunal for Scotland Social Security Chamber (Establishment and Functions) Regulations 2018 establish a new chamber of the First-tier Tribunal for Scotland, dealing with appeals against determinations by the Scottish Ministers of entitlement to social security assistance of the types described in Chapter 2 of Part 2 of the Social Security (Scotland) Act 2018 and, potentially, of entitlement to assistance under section 45 of that Act, should regulations be made to provide for this. These Regulations amend the First-tier Tribunal for Scotland (Chambers) Regulations 2016 to add the name of the new chamber to the list in regulation 2 of chambers into which the First-tier Tribunal for Scotland is divided.



2018 No.

**TRIBUNALS AND INQUIRIES****The First-tier Tribunal for Scotland Social Security Chamber  
(Procedure) Regulations 2018***Made* - - - - 2018*Laid before the Scottish Parliament* 2018*Coming into force* - - 2018

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<sup>(1)</sup> 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 considered appropriate.

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018 and the Rules contained in the schedule may be cited as the First-tier Tribunal for Scotland Social Security Chamber Rules of Procedure 2018.

(2) These Regulations come into force on 2018.

**Application of the Rules set out in the schedule**

**2.** The Rules in the schedule apply, unless provided otherwise, to any proceedings before the First-tier Tribunal for Scotland Social Security Chamber.

Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh  
2018

<sup>(1)</sup> 2014 asp 10.

# SCHEDULE

Regulation 2

## THE FIRST-TIER TRIBUNAL FOR SCOTLAND SOCIAL SECURITY CHAMBER RULES OF PROCEDURE 2018

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## PART 1

### Introduction

#### **Interpretation**

**1. In these Rules—**

“the 2014 Act” means the Tribunals (Scotland) Act 2014<sup>(1)</sup>;

“the 2018 Act” means the Social Security (Scotland) Act 2018<sup>(2)</sup>;

“the 2016 Regulations” means the Scottish Tribunals (Time Limits) Regulations 2016<sup>(3)</sup>;

“appellant” means the person who starts proceedings (whether by notifying an appeal, applying for permission to appeal or otherwise) or a person substituted as an appellant under rule 9 (addition, substitution and removal of parties);

“chairing member” means the chairing member of the First-tier Tribunal;

“Convention Right” has the meaning given to it in section 1 of the Human Rights Act 1998<sup>(4)</sup>;

“decision maker” means the maker of a decision or determination against which an appeal to the First-tier Tribunal is brought;

“document” means anything in which information is recorded in any form, and an obligation under these Rules to provide or allow access to a document or a copy of a document for any purpose means, unless the First-tier Tribunal directs otherwise, an obligation to provide or allow access to such document or copy in a legible form or a form which can easily be made into a legible form;

“electronic communication” has the meaning given to it by section 15(1) of the Electronic Communications Act 2000<sup>(5)</sup>;

“the First-tier Tribunal” means the First-tier Tribunal for Scotland Social Security Chamber;

“hearing” means an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication;

“party” means a person who is an appellant or a respondent in proceedings before the First-tier Tribunal;

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<sup>(1)</sup> 2014 asp 10.

<sup>(2)</sup> 2018 asp

<sup>(3)</sup> S.S.I. 2016/231.

<sup>(4)</sup> 1998. c.42.

<sup>(5)</sup> 2000 c.7.

“practice direction” means a direction given under section 74 of the 2014 Act;

“the prescribed time period” means the period prescribed by the Scottish Ministers by virtue of section 24(5) of the 2018 Act for the making by them of a re-determination of an individual’s entitlement to a type of social security assistance described in Chapter 2 of Part 2 of the 2018 Act;

“representative” means a lay representative or a legal representative;

“respondent” means—

- (a) the decision maker in relation to a decision or determination against which an appeal to the First-tier Tribunal is brought; or
- (b) a person substituted or added as a respondent under rule 9 (addition, substitution and removal of parties);

“review” means the internal review provided for by section 43(1) of the 2014 Act (review of decisions); and

“the Upper Tribunal” means the Upper Tribunal for Scotland.

### **Overriding objective and parties’ obligation to co-operate with the First-tier Tribunal**

**2.**—(1) The overriding objective of these Rules is to enable the First-tier Tribunal to deal with cases fairly and justly, and having regard to the Scottish Social Security Charter prepared and published in accordance with section 2 of the 2018 Act.

(2) Dealing with a case in accordance with the overriding objective includes—

- (a) dealing with the case in ways which are transparent, proportionate to the importance of the case, the complexity of the issues, the anticipated expenses and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings and are treated fairly with dignity and respect;
- (d) using any special expertise of the First-tier Tribunal effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The First-tier Tribunal must seek to give effect to the overriding objective when it—

- (a) exercises any power under these Rules; or
- (b) interprets any rule or practice direction.

(4) Parties must, insofar as reasonably possible—

- (a) help the First-tier Tribunal to further the overriding objective; and
- (b) co-operate with the First-tier Tribunal generally.

### **Mediation**

**3.** The First-tier Tribunal should seek, where appropriate—

- (a) to bring to the attention of the parties the availability of mediation for the resolution of the dispute; and
- (b) if the parties wish, and providing it is compatible with the overriding objective, to facilitate the use of mediation.

### **Delegation to staff**

**4.**—(1) Staff of the Scottish Courts and Tribunals Service with appropriate legal qualifications may, with the approval of the Chamber President, carry out functions of a judicial nature permitted or required to be undertaken by the First-tier Tribunal, provided the functions are of a preliminary or an incidental nature.

(2) The approval referred to at paragraph (1) may apply generally to the carrying out of specified functions by members of staff of a specified description in specified circumstances.

## PART 2

### General Powers and Provisions

#### Case management powers

**5.**—(1) Subject to the provisions of the 2014 Act and these Rules, the First-tier Tribunal may regulate its own procedure.

(2) The First-tier Tribunal may give an order in relation to the conduct and disposal of proceedings at any time, including an order amending, suspending or setting aside an earlier order.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the First-tier Tribunal may—

- (a) extend or shorten the time for complying with any rule, practice direction or order;
- (b) conjoin or take concurrently two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case (whether in accordance with rule 20 (lead cases) or otherwise);
- (c) permit or require a party to amend a document;
- (d) permit or require a party or another person to provide documents, information, evidence or submissions to the First-tier Tribunal or a party;
- (e) deal with an issue in the proceedings as a preliminary issue;
- (f) hold a hearing to consider any matter, including a case management issue;
- (g) decide the form of any hearing;
- (h) adjourn or postpone a hearing;
- (i) require a party to produce a file of documents for a hearing;
- (j) sist proceedings;
- (k) transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings and—
  - (i) because of a change of circumstances since the proceedings were started, the First-tier Tribunal no longer has jurisdiction in relation to the proceedings; or
  - (ii) the First-tier Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case;
- (l) suspend the effect of its own decision pending the determination by the First-tier Tribunal or the Upper Tribunal, as the case may be, of an application for permission to appeal against, and any appeal or review of, that decision.

#### Procedure for applying for and giving orders

**6.**—(1) The First-tier Tribunal may give an order on the application of one or more of the parties or on its own initiative.

(2) An application for an order may be made—

- (a) by sending or delivering a written application to the First-tier Tribunal; or
- (b) orally during the course of a hearing.

(3) An application for an order must include the reasons for making that application.

(4) Unless the First-tier Tribunal considers that there is good reason not to do so, the Tribunal must send written notice of any order to every party to the case.

(5) If a party sent notice of the order under paragraph (4) wishes to challenge the order, they may do so by applying for another order which amends, suspends or sets aside the first order.

### **Failure to comply with rules etc**

7.—(1) An irregularity resulting from a failure to comply with any requirement in these Rules, a practice direction or an order does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or an order, the First-tier Tribunal may take such action as it considers just, which may include—

- (a) waiving the requirement;
- (b) requiring the failure to be remedied; or
- (c) exercising its power under rule 8 (dismissal of a party's case).

### **Dismissal of a party's case**

8.—(1) The First-tier Tribunal must dismiss the whole or a part of the proceedings if the Tribunal—

- (a) does not have jurisdiction in relation to the proceedings or that part of them; and
- (b) does not exercise its power under rule 5(3)(k) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

(2) The First-tier Tribunal may dismiss the whole or a part of the proceedings if—

- (a) the appellant has failed to comply with an order which stated that failure by the appellant to comply with the order could lead to the dismissal of the proceedings or part of them; or
- (b) the appellant has failed to co-operate with the First-tier Tribunal to such an extent that the First-tier Tribunal cannot deal with the proceedings fairly and justly.

(3) The First-tier Tribunal may not dismiss the whole or a part of the proceedings under paragraph (1) or (2)(b) without first giving the appellant an opportunity to make representations in relation to the proposed dismissal.

(4) If the proceedings, or part of them, have been dismissed under paragraph (2)(a), the appellant may apply for the proceedings, or part of them, to be reinstated.

(5) An application under paragraph (4) must be made in writing and received by the First-tier Tribunal within 31 days after the date on which the Tribunal sent notification of the dismissal to the appellant.

### **Addition, substitution and removal of parties**

9.—(1) The First-tier Tribunal may make an order adding, substituting or removing a party if—

- (a) the wrong person has been named as a party; or
- (b) the addition, substitution or removal has become necessary because of a change in circumstances since the start of proceedings.

(2) If the First-tier Tribunal makes an order under paragraph (1) it may make such consequential orders as it considers appropriate.

(3) A person who is not a party may make a written application to the First-tier Tribunal to be added or substituted as a party under this rule.

(4) If the First-tier Tribunal refuses an application under paragraph (3) it must consider whether to permit the person who made the application to provide submissions or evidence to the First-tier Tribunal.

### **Orders for expenses**

10.—(1) Subject to paragraph (2), the First-tier Tribunal may pay, or may make an order for expenses against a party to cover, travelling and such other allowances (including compensation for loss of remunerative time) as the Tribunal may determine are to be payable to any person required to attend a hearing in connection with proceedings before the First-tier Tribunal.

(2) The First-tier Tribunal must pay necessary expenses of attendance to any person required to attend a hearing in order to produce a medical report compiled in accordance with rule 26.

(3) An order for expenses made under paragraph (1) may be enforced as if it were a registered decree arbitral being a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

## **Representatives**

**11.**—(1) A party may be represented in any proceedings by a representative whose details must be communicated to the First-tier Tribunal prior to the hearing.

(2) If the First-tier Tribunal receives notice that a party has appointed a representative under paragraph (1), it must send a copy of that notice to each other party to the proceedings.

(3) A person who receives due notice of the appointment of a representative—

(a) must provide to the representative any document which is required to be provided to the represented party, and need not provide the document to the represented party; and

(b) may assume that the representative is and remains authorised as such until they receive written notification that this is not so from the representative or represented party.

(4) A party may show any document or communicate any information about the proceedings to that party's representative without contravening any prohibition or restriction on disclosure of the document or information.

(5) Where a document or information is disclosed under paragraph (4), the representative is subject to any prohibition or disclosure in the same way that the party is.

(6) Anything permitted or required to be done under these Rules, a practice direction or an order may be done by a lay representative, except signing of an affidavit or a precognition.

(7) The First-tier Tribunal may order that a lay representative is not to represent a party if—

(a) it is of the opinion that the lay representative is an unsuitable person to act as a lay representative (whether generally or in the proceedings concerned); or

(b) it is satisfied that such an order would be in the interests of the efficient administration of justice.

## **Supporters**

**12.**—(1) A party who is an individual may be accompanied by another person to act as a supporter.

(2) A supporter may assist the party by—

(a) providing moral support;

(b) helping to manage tribunal documents and other papers;

(c) taking notes of the proceedings;

(d) quietly advising on—

(i) points of law and procedure; and

(ii) issues which the party might wish to raise with the tribunal.

(3) The party may show any document or communicate any information about the proceedings to that party's supporter without contravening any prohibition or restriction on disclosure of the document or information.

(4) Where a document or information is disclosed under paragraph (3), the supporter is subject to any prohibition or restriction on disclosure in the same way that the party is.

(5) A supporter may not represent the party.

(6) The First-tier Tribunal may order that a person is not to act as a supporter of a party if—

(a) it is of the opinion that the supporter is an unsuitable person to act as a supporter (whether generally or in the proceedings concerned); or

(b) it is satisfied that such an order would be in the interests of the efficient administration of justice.

## **Interpreters**

**13.** Where an interpreter is appointed to assist a party to a case, the interpreter must be independent of all parties to the case and any representatives or supporters of the parties.

## **Calculating time**

**14.**—(1) An act required by these Rules, a practice direction or an order to be done on or by a particular day must be done before 5pm on that day.

(2) If the time specified by these Rules, a practice direction or an order for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

(3) In this rule “working day” means any day except a Saturday or Sunday or a bank holiday in Scotland under section 1 of the Banking and Financial Dealings Act 1971.

## **Sending and delivery of documents**

**15.**—(1) Any document to be provided to the First-tier Tribunal under these Rules, a practice direction or an order may be sent by pre-paid post, by fax or by electronic communication to, or be delivered by hand at, the address of the First-tier Tribunal or such other address as the First-tier Tribunal may notify.

(2) Subject to paragraph (3), if a party or representative provides an email address or other details for the electronic transmission of documents to them, that party or representative must accept delivery of documents by that method.

(3) If a party informs the First-tier Tribunal that a particular form of communication (other than post or delivery by hand) should not be used to provide documents to that party, that form of communication must not be so used.

(4) The First-tier Tribunal and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving notification to the contrary.

## **Disclosure of documents and information**

**16.** The First-tier Tribunal may at any stage of the proceedings, on its own initiative or on application by one or more of the parties, make an order with a view to prohibiting or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person.

## **Evidence and submissions**

**17.**—(1) Without restriction on the general powers in rule 5 (case management powers), the First-tier Tribunal may give orders as to—

- (a) issues on which it requires evidence or submissions;
- (b) the nature of any such evidence or submissions;
- (c) whether the parties are permitted or required to provide expert evidence;
- (d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
- (e) the manner in which any evidence or submissions are to be provided, which may include an order for them to be given—
  - (i) orally at a hearing; or
  - (ii) by written submissions or witness statement; and
- (f) the time at which any evidence or submissions are to be provided.

(2) The First-tier Tribunal may exclude evidence that would otherwise be admissible where—

- (a) the evidence was not, without reasonable excuse, provided within the time allowed by an order or a practice direction;



- (b) the evidence was otherwise, without reasonable excuse, provided in a manner that did not comply with an order or practice direction; or
  - (c) the Tribunal considers it would otherwise be unfair to admit the evidence.
- (3) The First-tier Tribunal may admit evidence whether or not—
- (a) the evidence would be admissible in a civil trial in Scotland; or
  - (b) the evidence was available to a previous decision maker.
- (4) The First-tier Tribunal may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

### **Citation of witnesses and orders to answer questions or produce documents**

- 18.**—(1) On the application of a party or on its own initiative, the First-tier Tribunal may—
- (a) by citation require any person to attend as a witness at a hearing at the time and place specified in the citation; or
  - (b) order any person to answer any questions or produce any documents in that person’s possession or control which relate to any issue in the proceedings.
- (2) A citation under paragraph (1)(a) must—
- (a) give the person required to attend at least 14 days’ notice of the hearing, or such other period as the First-tier Tribunal may order;
  - (b) where the person is not a party, state how expenses of attendance which have necessarily been incurred may be recovered;
  - (c) state that the person on whom the requirement is imposed may apply to the First-tier Tribunal to vary or set aside the citation or order, if the person did not have an opportunity to object to it before it was made or issued; and
  - (d) state the consequences of failure to comply with the citation or order.
- (3) No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce at a civil trial of an action in a court of law in Scotland.

### **Withdrawal**

- 19.**—(1) Subject to paragraph (2), a party may give notice of the withdrawal of the party’s case, or any part of that case—
- (a) by sending or delivering to the First-tier Tribunal a written notice of withdrawal; or
  - (b) orally at a hearing.
- (2) In the circumstances described in paragraph (3), a notice of withdrawal will not take effect unless the Tribunal consents to the withdrawal.
- (3) The circumstances referred to in paragraph (2) are where a party gives notice of withdrawal—
- (a) in a case in which the First-tier Tribunal has directed that any withdrawal will take effect only with the consent of the Tribunal; or
  - (b) at a hearing.
- (4) An application for a withdrawn case to be reinstated may be made by—
- (a) the appellant; or
  - (b) any other party to the case.
- (5) An application under paragraph (4) must be made in writing and be received by the First-tier Tribunal within 31 days after the earlier of—
- (a) the date on which the applicant was sent notice under paragraph (6) that the withdrawal had taken effect; or
  - (b) if the applicant was present at the hearing when the case was withdrawn orally under paragraph (1)(b), the date of that hearing.

(6) The First-tier Tribunal must notify each party in writing that a withdrawal has taken effect under this rule.

### **Lead cases**

**20.**—(1) This rule applies if—

- (a) two or more cases have been started before the First-tier Tribunal;
- (b) in each such case the First-tier Tribunal has not made a decision disposing of the proceedings; and
- (c) the cases give rise to common or related issues of fact or law.

(2) The First-tier Tribunal may give an order—

- (a) specifying one or more cases falling under paragraph (1) as a lead case or lead cases; and
- (b) sisting the other cases falling under paragraph (1) (“the related cases”).

(3) When the First-tier Tribunal makes a decision in respect of the common or related issues—

- (a) the First-tier Tribunal must send a copy of that decision to each party in each of the related cases; and
- (b) subject to paragraph (4), that decision is binding on each of those parties.

(4) Within 31 days after the date on which the First-tier Tribunal sent a copy of the decision to a party under paragraph (3)(a), that party may apply in writing for an order that the decision does not apply to, and is not binding on the parties to, a particular related case.

(5) The First-tier Tribunal must give orders in respect of cases which are sisted under paragraph (2)(b), providing for the disposal of or further orders in those cases.

(6) If the lead case or cases lapse or are withdrawn before the First-tier Tribunal makes a decision in respect of the common or related issues, the Tribunal must give orders as to—

- (a) whether another case or other cases are to be specified as a lead case or lead cases; and
- (b) whether any order affecting the related cases should be set aside or amended.

### **Chairing member**

**21.** Where a matter is to be decided by two or more members of the First-tier Tribunal, the chairing member is to be the legal member.

### **Recording of hearings**

**22.** Hearings of the First-tier Tribunal will be recorded digitally, unless the First-tier Tribunal gives an order that this should not be done in the particular circumstances of a case.

### **Venue for hearings**

**23.** The First-tier Tribunal is to be convened at such time and place in Scotland as the President of Tribunals may determine.

## **PART 3**

### **Procedure for cases in the First-tier Tribunal**

#### **Notice of appeal to the First-tier Tribunal against a determination of entitlement to assistance of a type provided for in Part 2 of the 2018 Act**

**24.**—(1) This rule applies where an appellant brings an appeal under section 27 of the 2018 Act against a determination by the Scottish Ministers of the appellant’s entitlement to social security assistance of a type described in Chapter 2 of Part 2 of the 2018 Act.

(2) An appellant must start proceedings by sending or delivering a notice of appeal to the First-tier Tribunal.

(3) Except as provided for in paragraph (6), a notice of appeal must be received by the First-tier Tribunal no more than 31 days after the date on which the appellant—

- (a) is informed of a determination made under section 24 of the 2018 Act, following a request for a re-determination; or
- (b) is informed of the appellant's right to appeal against the original determination made under section 19 of the 2018 Act, as a result of the failure of the Scottish Ministers to make a re-determination within the prescribed time period.

(4) The notice of appeal must be signed by the appellant and must state—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant's representative (if any);
- (c) an address where documents for the appellant may be sent or delivered;
- (d) the grounds on which the appellant relies in bringing the appeal; and
- (e) the outcome which the appellant is seeking.

(5) The appellant must provide with the notice of appeal—

- (a) a copy of—
  - (i) the notice of re-determination given by the Scottish Ministers under section 25 of the 2018 Act; or
  - (ii) the notice given under section 26 of the 2018 Act that a re-determination has not been made timeously, along with notice of the original determination given under section 19 of the 2018 Act;
- (b) any documents in support of the appellant's case which have not previously been supplied to the decision maker.

(6) Where notice of appeal is received more than 31 days after whichever of the dates specified in paragraph (3) applies—

- (a) if the appeal is received less than 1 year after that date, the First-tier Tribunal may give permission for the appeal to proceed, but only if satisfied that there was a good reason for the notice of appeal not having been sent or delivered sooner; or
- (b) if the appeal is received 1 year or more after that date, the First-tier Tribunal must refuse to consider the notice, and notify the appellant of that refusal.

(7) Where permission to appeal is required, as described in paragraph (6)(a), the appellant must be given the opportunity to provide an explanation of the reasons why notice of the appeal was not sent or delivered sooner, if reasons are not provided along with the notice of appeal.

(8) The First-tier Tribunal must send a copy of the notice of appeal and accompanying document or documents to the decision maker against whose determination the appeal is brought, as soon as reasonably practicable—

- (a) after the Tribunal receives the notice of appeal; or
- (b) where paragraph (6)(a) applies, after the Tribunal gives permission for the appeal to proceed.

### **Response of the decision maker**

**25.**—(1) When a decision maker receives a copy of a notice of appeal from the First-tier Tribunal under rule 24, the decision maker must send or deliver a response to the First-tier Tribunal as soon as practicable after the date on which the decision maker received the copy of the notice of appeal.

(2) The response must state—

- (a) the name and address of the decision maker;
- (b) the name and address of the decision maker's representative (if any);
- (c) an address where documents for the decision maker may be sent or delivered;

- (d) the position of the decision maker in relation to the appellant's case; and
  - (e) any further information required by a practice direction or order.
- (3) The response may include a request that the case be dealt with at a hearing or without a hearing.
- (4) The decision maker must provide with the response—
- (a) a copy of any written record of the decision under challenge; and
  - (b) copies of all documents relevant to the case in the decision maker's possession, unless a practice direction states otherwise.
- (5) The decision maker must provide a copy of the response and any accompanying documents to the appellant at the same time as providing the response to the First-tier Tribunal.
- (6) The appellant may make a written submission and supply further documents in reply to the decision maker's response.
- (7) Any submission or further documents under paragraph (6) must be provided to the First-tier Tribunal within 31 days after the date on which the decision maker sent the response to the appellant, and the Tribunal must send a copy to the decision maker.

### **Medical examination**

26. The First-tier Tribunal may give an order that an appellant be referred to a registered medical practitioner who is independent of all parties to the case, for examination and report, where it considers that is necessary to enable a decision to be reached in the particular case.

### **Decision with or without a hearing**

27.—(1) Subject to the following paragraphs in this rule, the First-tier Tribunal must hold a hearing before making a decision which disposes of proceedings unless—

- (a) no party has objected to the matter being decided without a hearing; and
- (b) the First-tier Tribunal considers that it is able to decide the matter without a hearing.

(2) This rule does not apply to decisions under Part 4 of these Rules (correcting, setting aside, reviewing and appealing decisions of the First-tier Tribunal).

(3) The First-tier Tribunal may dispose of proceedings, or a part of proceedings, under rule 8 (dismissal of a party's case) without a hearing.

### **Entitlement to attend a hearing**

28. Subject to the powers to exclude persons in rules 11(7) (representatives), 12(6) (supporters) and 30(4) (public and private hearings), each party is entitled to attend any hearing together with any representative and supporter permitted by rules 11 and 12.

### **Notice of hearings**

29.—(1) The First-tier Tribunal must give each party entitled to attend a hearing reasonable notice of the time and place of any hearing (including any adjourned or postponed hearing) and any changes to the time and place of any hearing.

(2) The period of notice under paragraph (1) must be at least 14 days except that the First-tier Tribunal may give shorter notice—

- (a) with the parties' consent; or
- (b) in urgent or exceptional circumstances.

### **Public and private hearings**

30.—(1) Subject to the following paragraphs in this rule, all hearings of the First-tier Tribunal must be held in public.

(2) The First-tier Tribunal may give an order that a hearing, or part of it, is to be held in private if the First-tier Tribunal considers that restricting access to the hearing is justified—

- (a) in the interests of public order;
- (b) in order to protect a person's right to respect for their private and family life;
- (c) in order to maintain the confidentiality of sensitive information;
- (d) in order to avoid serious harm to the public interest; or
- (e) because not to do so would prejudice the interests of justice.

(3) Where a hearing, or part of it, is to be held in private, the First-tier Tribunal may determine who is permitted to attend the hearing or part of it.

(4) The First-tier Tribunal may give an order excluding from any hearing, or part of it—

- (a) any person whose conduct the First-tier Tribunal considers is disrupting or is likely to disrupt the hearing;
- (b) any person whose presence the First-tier Tribunal considers is likely to prevent another person from giving evidence or making submissions freely; or
- (c) any person where the purpose of the hearing would be defeated by the attendance of that person.

(5) The First-tier Tribunal may give an order excluding a witness from a hearing until that witness gives evidence.

(6) When publishing a decision notice referred to in rule 33(2) (notice of decisions) resulting from a hearing which was held wholly or partly in private, the First-tier Tribunal must, so far as practicable, ensure that the report does not disclose information which was referred to only in a part of the hearing that was held in private (including such information which enables the identification of any person whose affairs were dealt with in the part of the hearing that was held in private) if to do so would undermine the purpose of holding the hearing in private.

### **Hearings in a party's absence**

**31.** If a party fails to attend a hearing the First-tier Tribunal may proceed with the hearing if the Tribunal—

- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
- (b) considers that it is in the interests of justice to proceed with the hearing.

### **Consent orders**

**32.—**(1) The First-tier Tribunal may, at the request of the parties, but only if it considers it appropriate, make a consent order disposing of the proceedings and making such other appropriate provision as the parties have agreed.

(2) Notwithstanding any other provision of these rules, the First-tier Tribunal need not hold a hearing before making an order under paragraph (1), or provide reasons for the order.

### **Notice of decisions**

**33.—**(1) The First-tier Tribunal may give a decision orally at a hearing.

(2) The First-tier Tribunal must provide a decision notice to each party as soon as reasonably practicable after making a decision which finally disposes of all issues in the proceedings or of a preliminary issue dealt with following an order under rule 5(3)(e) (case management powers).

(3) A decision notice must—

- (a) state the First-tier Tribunal's decision;
- (b) where appropriate, notify each party of the right to apply for a written statement of reasons under rule 34(2); and

- (c) notify each party of the right to apply for permission to appeal to the Upper Tribunal against the decision, and the time within which, and the method by which, such an application must be made.
- (4) This rule does not apply to a decision under Part 4 of these Rules.

### **Reasons for decisions**

- 34.**—(1) The First-tier Tribunal may give reasons for a decision which disposes of proceedings—
- (a) orally at a hearing; or
  - (b) in a written statement of reasons to each party.
- (2) Unless the First-tier Tribunal has already provided a written statement of reasons under paragraph (1)(b), a party may make a written application to the Tribunal for such statement following a decision which finally disposes of—
- (a) all issues in the proceedings; or
  - (b) a preliminary issue dealt with following an order under rule 5(3)(e).
- (3) An application under paragraph (2) must be received within 31 days after the date on which the First-tier Tribunal provided to the party a decision notice relating to the decision.
- (4) If a party makes an application in accordance with paragraphs (2) and (3) the First-tier Tribunal must, subject to rule 16 (withholding information likely to cause harm), send a written statement of reasons to each party within 31 days after the date on which it received the application or as soon as reasonably practicable after the end of that period.
- (5) The First-tier Tribunal may publish any of its decisions if it considers it in the public interest to do so, with the manner of publication at the discretion of the First-tier Tribunal.
- (6) This rule does not apply to a decision under Part 4 of these Rules.

## **PART 4**

### **Correcting, setting aside, reviewing and appealing decisions of the First-tier Tribunal**

#### **Interpretation**

**35.** In this Part—

“appeal” means the exercise of a right of appeal on a point of law under section 46(1) of the 2014 Act (appeal from the Tribunal); and

“review” means the internal review provided for by section 43(1) of the 2014 Act (review of decisions).

#### **Correction of clerical mistakes or accidental slips or omissions**

**36.** The First-tier Tribunal may at any time correct any clerical mistake or other accidental slip or omission contained in a decision, order or any document produced by it, by—

- (a) sending notification of the amended decision or order, or a copy of the amended document, to all parties; and
- (b) making any necessary amendment to any information published in relation to the decision, order or document.

#### **Setting aside a decision which disposes of proceedings**

**37.**—(1) The First-tier Tribunal may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision, or the relevant part of it, if—

- (a) the First-tier Tribunal considers that it is in the interests of justice to do so; and
- (b) one of the conditions in paragraph (2) is satisfied.

(2) The conditions are-

- (a) a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or a party's representative;
- (b) a document relating to the proceedings was not sent to the First-tier Tribunal at an appropriate time;
- (c) a party, or a party's representative, was not present at a hearing related to the proceedings;
- (d) there has been some other procedural irregularity in the proceedings.

(3) A party applying for a decision, or part of a decision, to be set aside under paragraph (1) must make a written application to the First-tier Tribunal so that it is received no later than 31 days after the date on which the Tribunal sent notice of the decision to the party.

### **Application for permission to appeal against a decision of the First-tier Tribunal**

**38.**—(1) A person seeking permission to appeal against a decision of the First-tier Tribunal must make a written application to the First-tier Tribunal for permission to appeal.

(2) An application under paragraph (1) must—

- (a) identify the decision of the First-tier Tribunal to which it relates;
- (b) identify the alleged point or points of law against which the person making the application wishes to appeal; and
- (c) state the result that the party making the application is seeking.

(3) Where an application under paragraph (1) has not been submitted within the appropriate time period, applying regulation 2 of the 2016 Regulations—

- (a) the application must include a request for an extension of time and state the reasons why the application was not submitted in time; and
- (b) unless the First-tier Tribunal extends the time period, the Tribunal must not admit the application.

### **First-tier Tribunal's consideration of application for permission to appeal against its decision**

**39.**—(1) The First-tier Tribunal must decide whether to give permission to appeal on any point of law.

(2) The First-tier Tribunal must provide a record of its decision to the parties as soon as reasonably practicable.

(3) If the First-tier Tribunal refuses permission to appeal it must send with the notice of its decision-

- (a) a statement of its reasons for such a refusal; and
- (b) notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the method by which, such an application must be made.

### **Review of a decision**

**40.**—(1) The First-tier Tribunal may either at its own instance or at the request of any party review any decision made by it where it is necessary in the interests of justice to do so.

(2) An application for review under section 43(2)(b) of the 2014 Act must—

- (a) be made in writing (and copied to all other parties);
- (b) be made within 14 days of the date on which the decision was made or within 14 days of the date that the written reasons were sent to the parties (if later); and
- (c) set out why a review of the decision is necessary.

(3) If the First-tier Tribunal considers that the application is wholly without merit, the First-tier Tribunal must refuse the application and must inform the parties of the reasons for the refusal.

(4) Except where the application is rejected under paragraph (3), the First-tier Tribunal must send a notice to the parties—

- (a) setting a time limit for any response to the application by the other parties;

- (b) seeking the views of the parties on whether the application can be determined without a hearing; and
- (c) if the First-tier Tribunal considers it appropriate to do so, setting out its provisional views on the application.

(5) Except where the application is rejected under paragraph (3), the decision is to be reviewed at a hearing unless the First-tier Tribunal considers, having regard to all responses to the notice provided under paragraph (4), that a hearing is not necessary in the interests of justice.

(6) Where practicable, the review is to be undertaken by one or more of the members of the First-tier Tribunal who made the decision to which the review relates.

(7) Where the First-tier Tribunal proposes to review a decision at its own instance, it must inform the parties of the reasons why the decision is being reviewed and the decision is to be reviewed in accordance with paragraph (4).

(8) A review by the First-tier Tribunal in terms of this regulation, either at its own instance or on application of a party, does not affect the time limit of 30 days in regulation 2(1) of the 2016 Regulations for making an application for permission to appeal.

### **Signature of documents**

**41.** Where any of these Rules requires a document to be signed, that requirement shall be satisfied-

(a) if the signature is written; or

(b) in the case of a document which is communicated electronically in accordance with these Rules by the electronic signature of the individual who is required to sign it.



## **EXPLANATORY NOTE**

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

The Tribunals (Scotland) Act 2014 creates a new structure for tribunals dealing with devolved matters under the judicial leadership of the Lord President of the Court of Session as head of the Scottish Tribunals. It provides for a First-tier Tribunal and an Upper Tribunal for Scotland, with these being known, collectively, as the Scottish Tribunals. The Act provides for the First-tier Tribunal to be divided into chambers in order to deal with the various matters falling within the jurisdiction of the Scottish Tribunals. One of those chambers is the Social Security Chamber, established by the First-tier Tribunal for Scotland Social Security Chamber (Establishment and Functions) Regulations 2018.

These Regulations provide for the rules of procedure which are to apply to the Social Security Chamber, as set out in the schedule of the Regulations. Paragraph 4 of schedule 9 of the Tribunals (Scotland) Act 2014 enables the Scottish Ministers to make Tribunal Rules until such time as the provisions conferring responsibility on the Scottish Civil Justice Council and the Court of Session for the making of Tribunal Rules are commenced.

*Draft Regulations laid before the Scottish Parliament under section 79(2)(c) of the Tribunals (Scotland) Act 2014, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2018 No.**

**TRIBUNALS AND INQUIRIES**

**The First-tier Tribunal for Scotland Social Security Chamber and  
Upper Tribunal for Scotland (Composition) Regulations 2018**

*Made* - - - - - 2018

*Coming into force* - - - - - 2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 38(1) and 40(1) of the Tribunals (Scotland) Act 2014<sup>(1)</sup> and all other powers enabling them to do so,

In accordance with section 11(2) of that Act, they have consulted the President of Tribunals.

In accordance with section 79(2)(c) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018 and come into force on 2018.

(2) In these Regulations—

“the 2018 Act” means the Social Security (Scotland) Act 2018<sup>(2)</sup>;

“the Chamber President” means the Chamber President of the First-tier Tribunal;

“the First-tier Tribunal” means the First-tier Tribunal for Scotland Social Security Chamber; and

“reserved benefit” has the meaning given in section 45(3) of the 2018 Act.

**Composition of the First-tier Tribunal when deciding an appeal against a determination of entitlement to assistance of a type provided for in Part 2 of the 2018 Act**

**2.** - The First-tier Tribunal, when convened to decide an appeal under section 27 of the 2018 Act against a determination by the Scottish Ministers of entitlement to social security assistance of a type described in Chapter 2 of Part 2 of the 2018 Act—

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<sup>(1)</sup> 2014 asp 10.

<sup>(2)</sup> 2018 asp.

- (a) in cases involving assessment of medical issues relating to entitlement to disability assistance, shall consist of one legal member and two ordinary members, of whom one shall be a registered medical practitioner and the other a person with disability experience;
- (b) in cases involving assessment of medical issues relating to entitlement to employment–injury assistance, shall consist of one legal member and one ordinary member, who shall be a registered medical practitioner; and
- (c) in all other cases, shall consist only of a legal member.

**Composition of the First-tier Tribunal when deciding an appeal against a determination of entitlement to assistance provided for by regulations made under section 45 of the 2018 Act**

3. If regulations made under section 45 of the 2018 Act provide for an appeal against a determination of entitlement to assistance by way of a top up of a reserved benefit, the First-tier Tribunal, when convened to decide such an appeal, shall consist of—

- (a) a legal member;
- (b) a legal member and one ordinary member; or
- (c) a legal member with two ordinary members.

**Composition of the Upper Tribunal when deciding an appeal from the First-tier Tribunal**

4.—(1) The Upper Tribunal for Scotland, when deciding a case appealed from the First-tier Tribunal to the Upper Tribunal, shall consist of—

- (a) a legal or judicial member of the Upper Tribunal;
- (b) the Chamber President (except a temporary Chamber President), acting either alone or with a legal or judicial member of the Upper Tribunal;
- (c) the President of the Scottish Tribunals, acting either alone or with the Chamber President or a legal member or another judicial member of the Upper Tribunal; or
- (d) the Lord President, acting either alone or with the Chamber President or a legal member or another judicial member of the Upper Tribunal.

(2) The Chamber President referred to in paragraph (1) must not have had any involvement in the case prior to the appeal of the case to the Upper Tribunal.

(3) In this regulation “judicial member of the Upper Tribunal” means a judge of the Court of Session.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
Authorised to sign by the Scottish Ministers

## **EXPLANATORY NOTE**

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

These Regulations make provision as to the composition of the Social Security Chamber of the First-tier Tribunal for Scotland when dealing with cases under specified provisions of the Social Security (Scotland) Act 2018. They also make provision as to the composition of the Upper Tribunal for Scotland when dealing with appeals from the Social Security Chamber.

The First-tier and Upper Tribunal for Scotland were established by the Tribunals (Scotland) Act 2014. The First-tier Tribunal is divided into chambers according to the subject matter of the case. The Social Security Chamber, as established by the First-tier Tribunal for Scotland Social Security Chamber (Establishment and Functions) Regulations 2018, deals with appeals in relation to entitlement to assistance of the types described in Chapter 2 of Part 2 of the Social Security (Scotland) Act 2018. It will have responsibility, also, for dealing with any appeals in relation to claims for top up assistance by individuals entitled to receive reserved benefits, should regulations be made to provide for such assistance, and carrying a right of appeal. Members of the First-tier and Upper Tier Tribunals can be ordinary members, legal members or judicial members according to criteria set out in the Tribunals (Scotland) Act 2014 and regulations made under that Act. These Regulations set out which member or members may deal with social security cases before the two Tribunals.

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 SCOTTISH STATUTORY INSTRUMENTS
 

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2018 No.

**TRIBUNALS AND INQUIRIES**
**The Scottish Tribunals (Eligibility for Appointment) Amendment  
Regulations 2018**

<i>Made</i> - - - -	2018
<i>Laid before the Scottish Parliament</i>	2018
<i>Coming into force</i> - -	2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 80 and paragraph 1(2) of schedule 3 of the Tribunals (Scotland) Act 2014<sup>(1)</sup> and all other powers enabling them to do so.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Scottish Tribunals (Eligibility for Appointment) Amendment Regulations 2018 and come into force on 2018.

(2) In these Regulations, “the 2015 Regulations” means the Scottish Tribunals (Eligibility for Appointment) Regulations 2015<sup>(2)</sup>.

**Amendment of the 2015 Regulations**

**2.**—(1) The 2015 Regulations are amended in accordance with paragraph (2).

(2) After regulation 3B insert—

**“Eligibility for appointment as an ordinary member of the First-tier Tribunal for Scotland (medical and disability experience)**

**3C.** A person is eligible for appointment as an ordinary member of the First-tier Tribunal for Scotland if the person—

(a) is a registered medical practitioner; or

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<sup>(1)</sup> 2014 asp 10.

<sup>(2)</sup> S.S.I. 2015/381, which are amended by S.S.I. 2007/274.

- (b) is experienced in dealing with the needs of persons who have a disability within the meaning of section 6 of the Equality Act 2010<sup>(3)</sup> because they work with persons with a disability, in a professional or voluntary capacity, provide care to a friend or family member who has a disability, or themselves have a disability.”.

St Andrew's House,  
Edinburgh

2018

Authorised to sign by the Scottish Ministers

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<sup>(3)</sup> 2010 c.15.

## **EXPLANATORY NOTE**

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

The Regulations amend the Scottish Tribunals (Eligibility for Appointment) Regulations 2015 to set eligibility criteria for appointment of ordinary members of the First-tier Tribunal for Scotland in respect of disability and medical experience. These members will have responsibility for deciding cases before the Social Security Chamber, as established by the First-tier Tribunal for Scotland Social Security Chamber (Establishment and Functions) Regulations 2018.

## 2018 No.

## TRIBUNALS AND INQUIRIES

The Upper Tribunal for Scotland (Social Security Rules of Procedure)  
Regulations 2018

*Made* - - - - - 2018

*Laid before the Scottish Parliament* 2018

*Coming into force* - - - 2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 4(1)(b) and (2) of schedule 9 of the Tribunals (Scotland) Act 2014<sup>(1)</sup> 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 Tribunals and such other persons as they considered appropriate.

**Citation and commencement**

1.—(1) These Regulations may be cited as the Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018 and the Rules contained in the schedule may be cited as the Upper Tribunal for Scotland Social Security Rules of Procedure 2018.

(2) These Regulations come into force on 2018.

(3) In these Regulations, “the 2018 Act” means the Social Security (Scotland) Act 2018<sup>(2)</sup>.

**Disapplication of the Upper Tribunal for Scotland Rules 2016**

2. The Upper Tribunal for Scotland (Rules of Procedure Regulations) 2016<sup>(3)</sup> do not apply to proceedings before the Upper Tribunal under the 2018 Act.

<sup>(1)</sup> 2014 asp 10.

<sup>(2)</sup> 2018 asp .

<sup>(3)</sup> In S.S.I. 2016/232. The Rules are amended by S.S.I. 2016/333.



**Application of Rules in schedule**

**3.** The Rules in the schedule of these Regulations apply to all proceedings before the Upper Tribunal under the 2018 Act.

St Andrew's House,  
Edinburgh

2018

Authorised to sign by the Scottish Ministers

## SCHEDULE

Regulation 3

### The Upper Tribunal for Scotland Social Security Rules of Procedure 2018

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## PART 1 Interpretation and Application

### **Interpretation**

#### **1. In these Rules—**

“the 2014 Act” means the Tribunals (Scotland) Act 2014<sup>(1)</sup>;

“the 2018 Act” means the Social Security (Scotland) Act 2018<sup>(2)</sup>;

“Appeal Appendix” means all the documents and authorities to be relied on for the purpose of the appeal along with an inventory;

“appellant” means—

- (a) a person who makes an appeal to the Upper Tribunal;
- (b) a person who has had an application to the First-tier Tribunal transferred to the Upper Tribunal; or
- (c) in any case, a person substituted as an appellant under rule 12 (addition, substitution and removal of parties);

“Convention rights” has the meaning given to it in section 1 of the Human Rights Act 1998<sup>(3)</sup>;

“document” means anything in which information is recorded in any form;

“excluded decision” means a decision referred to in section 51 of the 2014 Act;

“hearing” means an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication;

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<sup>(1)</sup> 2014 asp 10.

<sup>(2)</sup> 2018 asp

<sup>(3)</sup> 1998 c.42.

“party” means a person who is (or was at the time that the Upper Tribunal disposed of the proceedings) an appellant or respondent in proceedings before the Upper Tribunal;

“practice direction” means a practice direction issued in terms of section 74 of the 2014 Act;

“President” means the President of Tribunals;

“proceedings” includes, unless indicated otherwise, a part of the proceedings;

“respondent” means—

(d) in an appeal against a decision of the First-tier Tribunal, that tribunal and any person other than the appellant who was a party before the First-tier Tribunal;

(e) in proceedings transferred or referred to the Upper Tribunal from the First-tier Tribunal, a person who was a respondent in the proceedings in the First-tier Tribunal; or

(f) in any case, a person substituted or added as a respondent under rule 12 (addition, substitution and removal of parties);

“review period” means the time period between an application by a party for a review under rule 30(1), or, as the case may be, the Upper Tribunal’s decision to review a decision under that rule, and the receipt by a party of a notification under rule 31(6); and

“witness statement” means a written statement of a witness ordered by the Upper Tribunal to stand for the evidence-in-chief of the witness.

## **Application**

2. These Rules apply to all proceedings before the Upper Tribunal under the 2018 Act.

## **PART 2**

### **Role of the Upper Tribunal**

#### **Purpose of the Upper Tribunal and overriding objective**

3.—(1) The Upper Tribunal hears and decides cases transferred or referred to it from the First-tier Tribunal for Scotland and hears and decides appeals from the First-tier Tribunal.

(2) The overriding objective of these Rules is to secure that proceedings before the Upper Tribunal are handled fairly and justly, and having regard to the Scottish Social Security Charter prepared and published in accordance with section 2 of the 2018 Act.

## **PART 3**

### **Procedure for Cases in the Upper Tribunal**

#### **Notice of appeal against a decision of the First-tier Tribunal**

4.—(1) A person may lodge with the Upper Tribunal a notice of appeal against a decision of the First-tier Tribunal.

(2) A notice of appeal must —

- (a) identify the decision of the First-tier Tribunal to which it relates; and
- (b) identify the alleged error or errors of law in the decision.

(3) The appellant must provide with the notice of appeal a copy of—

- (a) any written record of the decision being challenged;
- (b) any separate written statement of reasons for that decision; and
- (c) the notice of permission to appeal or alternatively notice of refusal of permission to appeal from the First-tier Tribunal.

(4) When the Upper Tribunal receives a notice of appeal it must send a copy of the notice and any accompanying documents to each respondent.

(5) If the appellant lodges the notice of appeal with the Upper Tribunal later than the time required by paragraph (9)—

(a) the notice of appeal must:

(i) include a request for an extension of time;

(ii) explain why the notice of appeal was not provided in time; and

(iii) state why it is said to be in the interests of justice that the time be extended; and

(b) unless the Upper Tribunal extends the time for lodging a notice of appeal the Upper Tribunal may not admit the notice of appeal.

(6) The Upper Tribunal may, where the First-tier Tribunal has refused permission to appeal—

(a) refuse permission to appeal;

(b) give permission to appeal; or

(c) give permission to appeal on limited grounds or subject to conditions;

and must send a notice of its decision to each party including reasons for any refusal of permission or limitations or conditions on any grant of permission.

(7) Where the Upper Tribunal, without a hearing—

(a) refuses permission to appeal; or

(b) gives permission to appeal on limited grounds or subject to conditions,

the appellant may make a written application (within 14 days after the day of receipt of notice of the decision) to the Upper Tribunal for the decision to be reconsidered at a hearing.

(8) An application under paragraph (7) must be heard and decided by a member or members of the Upper Tribunal different from the member or members who refused permission without a hearing.

(9) Where the First-tier Tribunal sends a notice of permission or refusal of permission to appeal to a person who has sought permission to appeal, that person, if intending to appeal, must provide a notice of appeal to the Upper Tribunal within 30 days after the day of receipt by that person of the notice of permission or refusal of permission to appeal.

### **Response to the notice of appeal**

**5.—**(1) Subject to any order given by the Upper Tribunal, a respondent may provide a written response to a notice of appeal.

(2) Any response provided under paragraph (1) must be sent or delivered to the Upper Tribunal so that it is received no later than 30 days after the day on which the Upper Tribunal sent a copy of the notice of appeal to the respondent.

(3) The response must state—

(a) the name and address of the respondent;

(b) the name and address of the representative (if any) of the respondent;

(c) an address where documents for the respondent may be sent or delivered;

(d) whether the respondent opposes the appeal;

(e) the grounds on which the respondent relies, including (in the case of an appeal against the decision of the First-tier Tribunal) any grounds on which the respondent was unsuccessful in the proceedings which are the subject of the appeal, but intends to rely in the appeal; and

(f) whether the respondent consents to the case being heard without a hearing.

(4) If the respondent provides the response to the Upper Tribunal later than the time required by paragraph (2) or by an extension of time allowed under rule 8(3)(a) (power to extend time), the response must include a request for an extension of time and the reason why the response was not provided in time.

(5) When the Upper Tribunal receives the response it must send a copy of the response and any accompanying documents to the appellant.

### **Appellant's reply**

**6.**—(1) Subject to any order given by the Upper Tribunal, the appellant may provide a written reply to any response provided under rule 5 (response to the notice of appeal).

(2) Any reply provided under paragraph (1) must be sent or delivered to the Upper Tribunal so that it is received within 30 days after the day on which the Upper Tribunal sent a copy of the response to the appellant.

(3) If the appellant provides the reply to the Upper Tribunal later than the time required by paragraph (2) or by an extension of time allowed under rule 8(3)(a) (power to extend time), the reply must include a request for an extension of time and the reason why the reply was not provided in time.

(4) When the Upper Tribunal receives the reply it must send a copy of the reply and any accompanying documents to each respondent.

### **Cases transferred or referred to the Upper Tribunal**

**7.**—(1) Paragraphs (2) and (3) apply to a case transferred or referred to the Upper Tribunal from the First-tier Tribunal.

(2) In such a case—

(a) the Upper Tribunal must give orders as to the procedure to be followed in the consideration and disposal of the proceedings;

(b) the preceding rules in this Part will only apply to the proceedings to the extent provided for by such orders.

(3) If a case or matter is to be determined without notice to or the involvement of a respondent—

(a) any provision in these Rules requiring a document to be provided by or to a respondent; and

(b) any other provision in these Rules permitting a respondent to participate in the proceedings,

does not apply to that case or matter.

## **PART 4**

### **General Powers and Provisions**

#### **Case management**

**8.**—(1) Subject to the provisions of the 2014 Act and these Rules, the Upper Tribunal may regulate its own procedure.

(2) The Upper Tribunal may give an order in relation to the conduct of proceedings before it at any time, including an order amending, suspending or setting aside an earlier order.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Upper Tribunal may—

(a) extend or shorten the time for complying with any rule or order;

(b) conjoin or take concurrently two or more sets of proceedings or parts of proceedings raising common issues;

(c) specify one or more cases as a lead case or lead cases where—

(i) two or more cases are before the Upper Tribunal;

(ii) in each such case the proceedings have not been finally determined; and

(iii) the cases give rise to common or related issues of fact or law,

and sist the other cases until the common or related issues have been determined;

- (d) permit or require a party to amend a document;
- (e) permit or require a party or another person to provide documents, information, evidence or submissions to the Upper Tribunal or a party;
- (f) deal with an issue in the proceedings as a preliminary issue;
- (g) hold a hearing to consider any matter, including a case management issue;
- (h) decide the form of any hearing;
- (i) adjourn or postpone a hearing;
- (j) require a party to produce or lodge documents including but not confined to a note of argument and the Appeal Appendix;
- (k) sist proceedings;
- (l) transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings and—
  - (i) because of a change of circumstances since the proceedings were started, the Upper Tribunal no longer has jurisdiction in relation to the proceedings; or
  - (ii) the Upper Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case;
- (m) suspend the effect of its own decision pending an appeal of that decision;
- (n) in an appeal against the decision of the First-tier Tribunal, suspend the effect of that decision pending the determination of any permission to appeal or any appeal;
- (o) require the First-tier Tribunal to provide reasons for the decision, or other information or documents in relation to the decision or any proceedings before the First-tier Tribunal.

#### **Procedure for applying for and giving orders**

**9.**—(1) The Upper Tribunal may give an order on the application of one or more of the parties or on its own initiative.

(2) An application for an order may be made—

- (a) by sending or delivering a written application to the Upper Tribunal; or
- (b) orally during the course of a hearing.

(3) An application for an order must include the reasons for making that application.

(4) Unless the Upper Tribunal considers that there is good reason not to do so, the Tribunal must send written notice of any order to every party to the case.

(5) If a party sent notice of the order under paragraph (4) wishes to challenge the order, they may do so by applying for another order which amends, suspends or sets aside the first order.

#### **Failure to comply with rules etc.**

**10.**—(1) An irregularity resulting from a failure to comply with any requirement in these Rules, a practice direction or an order, does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or an order, the Upper Tribunal may take such action as it considers just, which may include—

- (a) waiving the requirement;
- (b) requiring the failure to be remedied; or
- (c) exercising its power under rule 11 (dismissal of a party's case).

#### **Dismissal of a party's case**

**11.**—(1) The Upper Tribunal must dismiss the whole or a part of the proceedings if the Upper Tribunal—

- (a) does not have jurisdiction in relation to the proceedings or that part of them; and
  - (b) does not exercise its power under rule 8(3)(1)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.
- (2) The Upper Tribunal may dismiss the whole or a part of the proceedings if—
- (a) the appellant has failed to comply with an order which stated that failure by the appellant to comply with the order could lead to the dismissal of the proceedings or part of them;
  - (b) the appellant has failed to co-operate with the Upper Tribunal to such an extent that the Upper Tribunal cannot deal with the proceedings fairly; or
  - (c) in proceedings which have been transferred from the First-tier Tribunal, the Upper Tribunal considers there is no reasonable prospect of the appellant’s case, or any part of it, succeeding.
- (3) The Upper Tribunal may not dismiss the whole or a part of the proceedings under paragraph (1) or (2)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed dismissal.
- (4) If the proceedings, or part of them, have been dismissed under paragraph (2)(a), the appellant may apply for the proceedings, or part of them, to be reinstated.
- (5) An application under paragraph (4) must be made in writing and received by the First-tier Tribunal within 31 days after the date on which the Tribunal sent notification of the dismissal to the appellant.

#### **Addition, substitution and removal of parties**

**12.**—(1) The Upper Tribunal may give an order adding, substituting or removing a party as an appellant or a respondent including where—

- (a) the wrong person has been named as a party; or
- (b) the addition, substitution or removal has become necessary because of a change in circumstances since the start of proceedings.

(2) If the Upper Tribunal gives an order under paragraph (1) it may give such consequential orders as it considers appropriate.

(3) A person who is not a party may make a written application to the Upper Tribunal to be added or substituted as a party under this rule.

(4) If the Upper Tribunal refuses an application under paragraph (3) it must consider whether to permit the person who made the application to provide submissions or evidence to the Upper Tribunal.

#### **Orders for expenses**

**13.**—(1) The Upper Tribunal may pay, or may make an order for expenses against a party to cover, travelling and such other allowances (including compensation for loss of remunerative time) as the Tribunal may determine are to be payable to any person required to attend a hearing in connection with proceedings before the Upper Tribunal.

(2) An order for expenses made under paragraph (1) may be enforced as if it were an extract registered decree arbitral being a warrant for execution issued by the Court of Session.

#### **Representatives**

**14.**—(1) A party may be represented in any proceedings by a legal representative or lay representative whose details must be communicated to the Upper Tribunal prior to any hearing.

(2) A party may show any document or communicate any information about the proceedings to that party’s lay representative or legal representative without contravening any prohibition or restriction on disclosure of the document or information.

(3) Where a document or information is disclosed under paragraph (2), the representative is subject to any prohibition or restriction on disclosure in the same way that the party is.

(4) Anything permitted or required to be done by a party under these Rules, a practice direction or an order may be done by a lay representative, except signing of an affidavit or a precognition.



- (5) The Upper Tribunal may order that a lay representative is not to represent a party if—
- (a) it is of the opinion that the lay representative is an unsuitable person to act as a lay representative (whether generally or in the proceedings concerned); or
  - (b) it is satisfied that to do so would be in the interests of the efficient administration of justice.

### **Supporters**

- 15.**—(1) A party who is an individual may be accompanied by another person to act as a supporter.
- (2) A supporter may assist the party by—
- (a) providing moral support;
  - (b) helping to manage tribunal documents and other papers;
  - (c) taking notes of the proceedings;
  - (d) quietly advising on—
    - (i) points of law and procedure;
    - (ii) issues which the party might wish to raise with the tribunal.
- (3) The party may show any document or communicate any information about the proceedings to that party's supporter without contravening any prohibition or restriction on disclosure of the document or information.
- (4) Where a document or information is disclosed under paragraph (3), the supporter is subject to any prohibition or restriction on disclosure in the same way that the party is.
- (5) A supporter may not represent the party.
- (6) The Upper Tribunal may order that a person is not to act as a supporter of a party if—
- (a) it is of the opinion that the supporter is an unsuitable person to act as a supporter (whether generally or in the proceedings concerned); or
  - (b) it is satisfied that to do so would be in the interests of the efficient administration of justice.

### **Calculating time**

- 16.**—(1) An act required by these Rules, a practice direction or an order to be done on or by a particular day must be done by 5 pm on that day.
- (2) If the time specified by these Rules, a practice direction or an order for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.
- (3) In this rule “working day” means any day except a Saturday, a Sunday, or a bank holiday in Scotland under section 1 of the Banking and Financial Dealings Act 1971<sup>(4)</sup>.

### **Sending and delivery of documents**

- 17.**—(1) Any document to be provided to the Upper Tribunal under these Rules, a practice direction or an order must be—
- (a) sent by pre-paid post or by document exchange, or delivered by hand, to the address of the Upper Tribunal; or
  - (b) sent or delivered by such other method as the Upper Tribunal may permit or direct.
- (2) Subject to paragraph (3), if a party provides a fax number, email address or other details for the electronic transmission of documents to them, that party must accept delivery of documents by that method.
- (3) If a party informs the Upper Tribunal and all other parties that a particular form of communication, other than pre-paid post or delivery by hand, should not be used to provide documents to that party that form of communication must not be so used.

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<sup>(4)</sup> 1971 c.80.

(4) If the Upper Tribunal or a party sends a document to a party the Upper Tribunal by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(5) The Upper Tribunal and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving written notification to the contrary.

### **Disclosure of documents and information**

**18.** The Upper Tribunal may at any stage of the proceedings, on its own initiative or on application by one or more of the parties make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person.

### **Evidence and submissions**

**19.—**(1) Without restriction on the general powers in rule 8(1) and (2) (case management powers), the Upper Tribunal may give orders as to—

- (a) subject to paragraph (4), issues on which parties may lead fresh evidence or make submissions;
- (b) the nature of any such evidence;
- (c) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;
- (d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
- (e) the manner in which any evidence or submissions are to be provided, which may include an order for them to be given—
  - (i) orally at a hearing; or
  - (ii) by written submissions or witness statement; and
- (f) the time at which any evidence or submissions are to be provided.

(2) The Upper Tribunal may exclude evidence that would otherwise be admissible where—

- (a) the evidence was not, without reasonable excuse, provided within the time allowed by an order or a practice direction;
- (b) the evidence was otherwise, without reasonable excuse, provided in a manner that did not comply with an order or a practice direction; or
- (c) it would otherwise be unfair to admit the evidence.

(3) The Upper Tribunal may consent to a witness giving, or require any witness to give, evidence on oath or affirmation, and may administer an oath or affirmation for that purpose.

(4) Fresh evidence may only be led in an appeal if the Upper Tribunal is satisfied—

- (a) that the evidence—
  - (i) could not have been obtained with reasonable diligence at the First-tier Tribunal stage;
  - (ii) is relevant and will probably have an important influence on the hearing; and
  - (iii) is apparently credible; or
- (b) that the interests of justice justify the evidence being led.

### **Citation of witnesses and orders to answer questions or produce documents**

**20.—**(1) On the application of a party or on its own initiative, the Upper Tribunal may—

- (a) by citation require any person to attend as a witness at a hearing at the time and place specified in the citation; or

- (b) order any person to answer any questions or produce any documents in that person's possession or control which relate to any issue in the proceedings.
- (2) A citation under paragraph (1)(a) must—
  - (a) give the person required to attend 14 days' notice prior to the day of the hearing or such other period as the Upper Tribunal may order;
  - (b) where the person is not a party, state (if appropriate) how expenses of attendance necessarily incurred may be recovered;
  - (c) state that the person on whom the requirement is imposed may apply to the Upper Tribunal to vary or set aside the citation or order, if the person did not have an opportunity to object to it before it was made or issued; and
  - (d) state the consequences of failure to comply with the citation or order.
- (3) A person making an application referred to in sub-paragraph (2)(c) must do so as soon as reasonably practicable after receiving notice of the citation or order.
- (4) No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce at a civil trial of an action in a court of law in Scotland.

### **Withdrawal**

- 21.**—(1) Subject to paragraph (2), a party may give notice to the Upper Tribunal of the withdrawal of the party's case, or any part of that case—
- (a) by sending or delivering to the Upper Tribunal a notice of withdrawal; or
  - (b) orally at a hearing.
- (2) Notice of withdrawal will not take effect unless the Upper Tribunal consents to the withdrawal except in relation to an application for permission to appeal.
- (3) Where a case has been withdrawn in accordance with paragraphs (1) and (2), the party which has withdrawn its case may apply to the Upper Tribunal for the case to be reinstated.
- (4) An application under paragraph (3) must be made in writing and be received by the Upper Tribunal within 31 days of the earlier of—
- (a) the date on which the applicant was sent notice under paragraph (5) that the withdrawal had taken effect; or
  - (b) if the applicant was present at the hearing when the case was withdrawn orally under paragraph (1)(b), the date of that hearing.
- (5) Unless satisfied that a party has already been notified, the Upper Tribunal must notify each party in writing that a withdrawal has taken effect under this rule.

### **Chairing member**

**22.** Where a matter is to be decided by two or more members of the Upper Tribunal, the President must determine the chairing member.

### **Venue for hearings**

**23.** The Upper Tribunal is to be convened at such time and place in Scotland as the President may determine.

## PART 5

### Hearings

#### **Decision with or without a hearing**

**24.**—(1) Subject to paragraph (2), the Upper Tribunal may make any decision without a hearing.

(2) The Upper Tribunal must have regard to any view expressed by any party when deciding whether to hold a hearing to consider any matter, and the form of any such hearing.

#### **Entitlement to attend a hearing**

**25.** Subject to rules 14(5) (representatives), 15(6) (supporters) and 27(4) (public and private hearings), each party is entitled to participate at a hearing together with any representatives and supporters permitted by rules 14 and 15.

#### **Notice of hearings**

**26.**—(1) The Upper Tribunal must give each party entitled to attend a hearing reasonable notice of the time and place of the hearing (including any adjourned or postponed hearing) and any change to the time and place of the hearing.

(2) The period of notice under paragraph (1) must be at least 14 days prior to the day of the hearing except that the Upper Tribunal may give shorter notice—

- (a) with the consent of the parties and interested parties; or
- (b) in urgent or exceptional circumstances.

#### **Public and private hearings**

**27.**—(1) Subject to the following paragraphs, all hearings must be held in public.

(2) The Upper Tribunal may give an order that a hearing, or part of it, is to be held in private if the Upper Tribunal considers that restricting access to the hearing is justified—

- (a) in the interests of public order;
- (b) in order to protect a person's right to respect for their private and family life;
- (c) in order to maintain the confidentiality of sensitive information;
- (d) in order to avoid serious harm to the public interest; or
- (e) because to hold it in public would prejudice the interests of justice.

(3) Where a hearing, or part of it, is to be held in private, the Upper Tribunal may determine who is entitled to attend the hearing or part of it.

(4) The Upper Tribunal may give an order excluding from any hearing, or part of it—

- (a) any person whose conduct the Upper Tribunal considers is disrupting or is likely to disrupt the hearing;
- (b) any person whose presence the Upper Tribunal considers is likely to prevent another person from giving evidence or making submissions freely; or
- (c) any person where the purpose of the hearing would be defeated by the attendance of that person.

(5) The Upper Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.

(6) When publishing a decision in terms of rule 30(4) (notice of decisions and reasons) following a hearing which was held wholly or partly in private, the Upper Tribunal must, so far as practicable, ensure that the decision does not disclose information which was referred to in a part of the hearing that was held in private.

### **Hearings in a party's absence**

**28.** If a party fails to attend a hearing, the Upper Tribunal may proceed with the hearing if the Upper Tribunal—

- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
- (b) considers that it is in the interests of justice to proceed with the hearing.

## **PART 6**

### **Decisions**

#### **Consent orders**

**29.**—(1) The Upper Tribunal may, at the request of the parties but only if it considers it appropriate, make a consent order disposing of the proceedings and making such other appropriate provision as the parties have agreed.

(2) Notwithstanding any other provision of these Rules, the Upper Tribunal need not hold a hearing before making an order under paragraph (1).

#### **Notice of decisions and reasons**

**30.**—(1) Subject to the remainder of this rule, the Upper Tribunal may give a decision orally at a hearing.

(2) The Upper Tribunal must provide to each party as soon as reasonably practicable after making a decision (other than a decision under Part 7) which finally disposes of all issues in the proceedings or on a preliminary issue dealt with following an order under rule 8(3)(f)—

- (a) a decision notice stating the Upper Tribunal's decision; and
- (b) notification of any rights of appeal against the decision and the time and manner in which such rights of appeal may be exercised.

(3) If the Upper Tribunal does not provide written reasons for a decision, a party may make a request for written reasons, in writing, within 14 days after the day of the decision.

(4) The Upper Tribunal may publish any of its decisions if it considers it in the public interest so to do, with the manner of publication also at the discretion of the Upper Tribunal.

#### **Reviews**

**31.**—(1) The Upper Tribunal may at its own instance or on the application of a party review a decision (except an excluded decision) made by it if it considers it necessary in the interests of justice to do so and on review it may confirm, set aside, or set aside and redecide the decision.

(2) An application under paragraph (1) shall be made in writing within 14 days after the day of the decision and must state the reasons for making the application.

(3) The Upper Tribunal must send a copy of the application to any other party involved in the proceedings within 10 working days after the day of receipt of the application.

(4) The review must be decided as soon as reasonably practicable by the Upper Tribunal, with insofar as practicable the same members that decided the case, or where this is not practicable with members selected by the President.

(5) A notice of the decision of a review under paragraph (1) must as soon as reasonably practicable be sent by the Upper Tribunal to each party.

(6) The 30 days referred to in regulation 2(2) of the Scottish Tribunals (Time Limits) Regulations 2016<sup>(5)</sup> in respect of an application to the Upper Tribunal is extended by any review period.

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<sup>(5)</sup> S.S.I. 2016/231.

## PART 7

### Appealing Decisions of the Upper Tribunal

#### Interpretation

**32.** In this Part, “appeal” means the exercise of a right of appeal under section 48(1) of the 2014 Act.

#### Application for permission to appeal a decision of the Upper Tribunal

**33.**—(1) A party seeking permission to appeal must make a written application to the Upper Tribunal.

(2) An application under paragraph (1) must—

- (a) identify the decision of the Upper Tribunal to which it relates;
- (b) identify the alleged error or errors of law in the decision; and
- (c) state in terms of section 50(4) of the 2014 Act what important point of principle or practice would be raised by a second appeal or what other compelling reason there is that shows the appeal should be allowed to proceed.

#### Upper Tribunal’s consideration of application for permission to appeal

**34.**—(1) The Upper Tribunal must consider whether to give permission to appeal in relation to the decision or part of it.

(2) The Upper Tribunal must provide a record of its decision to the parties as soon as practicable.

(3) If the Upper Tribunal refuses permission to appeal it must provide with the record of its decision—

- (a) a statement of its reasons for such a refusal; and
- (b) notification of the right to make an application to the Court of Session for permission to appeal and the time within which, and the method by which, such application must be made

(4) The Upper Tribunal may give permission to appeal on limited grounds, but must comply with paragraph (3) in relation to any grounds on which it has refused permission.

## PART 8

### Legal Aid

#### Legal aid

**35.** If a party is granted legal aid by the Scottish Legal Aid Board in respect of a case before the Upper Tribunal that party must as soon as practicable send a copy of the legal aid certificate to the Upper Tribunal.

## **EXPLANATORY NOTE**

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

These Regulations make the Upper Tribunal for Scotland Social Security Rules of Procedure 2018 regulating the practice and procedure to be followed in the Upper Tribunal for Scotland when dealing with proceedings under the Social Security (Scotland) Act 2018. All other proceedings are subject to the Upper Tribunal for Scotland Rules of Procedure 2016, unless specific rules of procedure are made which apply to the proceedings.

These Rules will apply until such time as the powers of the Scottish Civil Justice Council and the Court of Session to make Tribunal Rules (under paragraph 13(2) and (5) of schedule 9 of the Tribunals (Scotland) Act 2014) come into force and are exercised.

The Upper Tribunal, set up by section 1 of the Tribunals (Scotland) Act 2014, hears appeals and referrals to it by the First-tier Tribunal, which is divided into chambers depending on the subject-matter of the case before it. An appeal to the Upper Tribunal in terms of section 46(3) of that Act requires first the permission of the First-tier Tribunal, failing which the permission of the Upper Tribunal. An appeal may be on a point of law only in terms of section 46(2) of that Act.



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