

*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**

<i>Made</i>	-	-	-	-	2018
					<i>22nd November</i>
<i>Coming into force</i>	-	-			2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 10(2) and (3), 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 the Scottish 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 22nd November 2018.

(2) In these Regulations—

“the 2014 Act” means the Tribunals (Scotland) Act 2014;

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

“the 2015 Regulations” means the Scottish Tribunals (Eligibility for Appointment) Regulations 2015<sup>(3)</sup>;

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

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(1) 2014 asp 10.

(2) 2018 asp 9.

(3) S.S.I. 2015/381, which was amended by S.S.I. 2017/274, and is to be further amended by S.S.I. 2018/276.

“the First-tier Tribunal” means the First-tier Tribunal for Scotland Social Security Chamber (4);

“ordinary member with disability experience” means a member of the First-tier Tribunal for Scotland who is eligible for appointment under regulation 3D of the 2015 Regulations;

“ordinary member with medical experience” means a member of the First-tier Tribunal for Scotland who is eligible for appointment under regulation 3C of the 2015 Regulations;

“process decision” means a decision made under section 38, 41(3) or 42 of the 2018 Act;

“reserved benefit” means a benefit which is to any extent a reserved matter within the meaning of schedule 5 of the Scotland Act 1998(5); and

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

### **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.—(1) The First-tier Tribunal, when convened to decide an appeal under section 46 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, must consist only of a legal member, except in the cases described in paragraphs (2) and (3).

(2) In cases involving consideration of the impact of physical condition or mental health in connection with entitlement to disability assistance, the First-tier Tribunal must consist of one legal member, one ordinary member with medical experience and one ordinary member with disability experience.

(3) In cases involving consideration of physical condition in connection with entitlement to employment–injury assistance, the First-tier Tribunal must consist of one legal member, and one ordinary member with medical experience.

### **Composition of the First-tier Tribunal when deciding an appeal against a process decision**

3. The First-tier Tribunal, when convened to decide an appeal under section 61 of the 2018 Act against a process decision, must 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 79 of the 2018 Act**

4.—(1) If regulations made under section 79 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, must consist of—

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

(2) In this regulation “ordinary member” means an ordinary member with disability experience or an ordinary member with medical experience.

(3) Where two ordinary members are allocated to a case under this regulation, one member must have disability experience and the other member must have medical experience.

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(4) The First-tier Tribunal for Scotland Social Security Chamber is brought into being by S.S.I. 2018/XX.

(5) 1998 c.46. The relevant section is F1 in Part 2 of schedule 5, which was amended by the Scotland Act 2016 (c.11), sections 22 to 28.

(4) The authority to determine the composition of the First-tier Tribunal in respect of the alternative compositions referred to in paragraph (1) is delegated to the President of the Scottish Tribunals, who may sub-delegate the authority to the Chamber President.

**Composition of the Upper Tribunal when deciding a case appealed from the First-tier Tribunal**

5.—(1) The Upper Tribunal, when deciding a case appealed from the First-tier Tribunal to the Upper Tribunal, must consist of—

- (a) a member of the Upper Tribunal acting alone;
- (b) two or three members of the Upper Tribunal;
- (c) the Chamber President (except a temporary Chamber President), acting alone or with no more than two members of the Upper Tribunal;
- (d) the President of the Scottish Tribunals, acting alone or with the Chamber President or with no more than two members of the Upper Tribunal; or
- (e) the Lord President, acting alone or with the Chamber President or with no more than two members 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) For the purposes of this regulation a member of the Upper Tribunal may be a legal member or a judicial member but may not be an ordinary member.

(4) The authority to determine the composition of the Upper Tribunal in respect of the alternative compositions referred to in paragraph (1) is delegated to the President of the Scottish Tribunals.

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

St Andrew’s House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

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## 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 appeals under specified provisions of the Social Security (Scotland) Act 2018 (“the 2018 Act”), or regulations made under that Act which create a right of appeal. They also make provision as to the composition of the Upper Tribunal for Scotland when dealing with appeals from the Social Security Chamber.

These two Tribunals were established by the Tribunals (Scotland) Act 2014. The First-tier Tribunal is divided into chambers based on the subject-matter of the cases before it. The Social Security Chamber, as brought into being by the First-tier Tribunal for Scotland (Chambers) Amendment Regulations 2018 (S.S.I. 2018/XX), is empowered to deal with appeals in relation to entitlement to assistance of the types described in Chapter 2 of Part 2 of the 2018 Act. It may 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 under section 79 of the 2018 Act to provide for such assistance, and including a right of appeal. And it is empowered to deal with appeals brought under section 61 of the 2018 Act against process decisions, including decisions as to whether something purporting to be an application for assistance should properly be classed as such. Members of the 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. This instrument sets out which member or members may deal with the various types of social security cases before the two Tribunals.

A Partial Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Social Security Directorate.