

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

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

TRIBUNALS AND INQUIRIES

The First-tier Tribunal for Scotland Social Security
Chamber and Upper Tribunal for Scotland (Allocation
of Functions, Procedure and Composition)
(Miscellaneous Amendments) Regulations 2020

<i>Made</i>	- - - -	2020
<i>Coming into force</i>	- -	2020

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 20(2) and 38(1) and paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 11(1)(a) of that Act, they have obtained the approval of the Lord President for the making of these Regulations.

In accordance with section 11(1)(b) and (2) and paragraph 4(3) of schedule 9 of that Act, they have consulted the President of the Scottish Tribunals and such other persons as they considered appropriate.

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

Citation and commencement

1. These Regulations may be cited as the First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Allocation of Functions, Procedure and Composition) (Miscellaneous Amendments) Regulations 2020 and come into force on the day after the day on which they are made.

(1) [2014 asp 10](#).

(2) The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 ([asp 10](#)). These Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

Amendment of the First-tier Tribunal for Scotland (Allocation of Functions to the Social Security Chamber) Regulations 2018

2.—(1) The First-tier Tribunal for Scotland (Allocation of Functions to the Social Security Chamber) Regulations 2018⁽³⁾ are amended as follows.

(2) In regulation 3 (allocation of social security functions to the Social Security Chamber), for paragraph (2) substitute—

“(2) The social security functions of the First-tier Tribunal are the functions conferred on the Tribunal by—

- (a) the 2018 Act;
- (b) regulations made under the 2018 Act; and
- (c) the Carer’s Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020⁽⁴⁾.”.

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

3.—(1) The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018⁽⁵⁾ are amended as follows.

(2) In regulation 3 (application of Rules in schedule) for the words from “the 2018 Act” to the end substitute—

“—

- (a) the 2018 Act;
- (b) regulations made under the 2018 Act; or
- (c) the Carer’s Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020⁽⁶⁾.”.

Amendment of the First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018

4.—(1) The First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018⁽⁷⁾ are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)—

(a) after the definition of “the 2020 Regulations” insert—

““the Carer’s Allowance Supplement Regulations” means the Carer’s Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020⁽⁸⁾,” and

(b) in the definition of “process decision”, after sub-paragraph (b) insert—

“(c) in relation to an appeal under paragraph 13 of schedule 2 of the Carer’s Allowance Supplement Regulations, a decision made under paragraph 1(5), 4(6) or 5(2)(b) of schedule 2 of those Regulations.”.

⁽³⁾ [S.S.I. 2018/350](#). There is an amendment to these Regulations which is not relevant to this instrument.

⁽⁴⁾ [S.S.I. 2020/XX](#).

⁽⁵⁾ [S.S.I. 2018/274](#).

⁽⁶⁾ [S.S.I. 2020/XX](#).

⁽⁷⁾ [S.S.I. 2018/351](#), which was amended by [S.S.I. 2020/353](#).

⁽⁸⁾ [S.S.I. 2020/XX](#).

(3) For regulation 3 (composition of the First-tier Tribunal when deciding an appeal against a process decision) substitute—

“3. The First-tier Tribunal, when convened to decide an appeal under any of the following provisions against a process decision, must consist only of a legal member—

- (a) section 61 of the 2018 Act;
- (b) paragraph 23 of the schedule of the 2020 Regulations; or
- (c) paragraph 13 of schedule 2 of the Carer’s Allowance Supplement Regulations.”.

(4) After regulation 4 (composition of the First-tier Tribunal when deciding an appeal against a determination of entitlement to assistance) insert—

“Composition of the First-tier Tribunal when deciding an appeal against a determination of entitlement to a carer’s allowance supplement

4A. The First-tier Tribunal, when convened to decide an appeal under paragraph 9 of schedule 2 of the Carer’s Allowance Supplement Regulations against a determination by the Scottish Ministers of entitlement to a carer’s allowance supplement, must consist only of a legal member.”.

Amendment of the First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018

5.—(1) The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018⁽⁹⁾ are amended as follows.

(2) In regulation 2 (application of the Rules set out in the schedule) for the words from “the Social Security (Scotland) Act 2018” to the end substitute—

“—

- (a) the Social Security (Scotland) Act 2018⁽¹⁰⁾;
- (b) regulations made under the Social Security (Scotland) Act 2018; or
- (c) the Carer’s Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020⁽¹¹⁾.”.

(3) In the schedule—

- (a) in rule 1 (interpretation)—
 - (i) after the definition of “the 2020 Regulations” insert—

““the Carer’s Allowance Supplement Regulations” means the Carer’s Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020;”,
 - (ii) in the definition of “the prescribed time period”, after sub-paragraph (b) insert—

“(c) in relation to re-determination of entitlement to a carer’s allowance supplement, the period provided for in paragraph 6(2) of schedule 2 of the Carer’s Allowance Supplement Regulations.”, and
 - (iii) in the definition of “process decision” after sub-paragraph (b) insert—

⁽⁹⁾ S.S.I. 2018/273, which was amended by S.S.I. 2018/343, S.S.I. 2020/100 and S.S.I. 2020/353.

⁽¹⁰⁾ 2018 asp 9.

⁽¹¹⁾ S.S.I. 2020/XX.

- “(c) in relation to an appeal under paragraph 13 of schedule 2 of the Carer’s Allowance Supplement Regulations, a decision made under paragraph 1(5), 4(6) or 5(2)(b) of schedule 2 of those Regulations.”,
- (b) in rules 20(9) (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) and 20A(9) (notice of appeal to the First-tier Tribunal against a determination of entitlement to a Scottish child payment)(12), after the word “where” insert “a”,
- (c) after rule 20A insert—

“Notice of appeal to the First-tier Tribunal against a determination of entitlement to a carer’s allowance supplement

20B.—(1) This rule applies where an individual brings an appeal under paragraph 9 of schedule 2 of the Carer’s Allowance Supplement Regulations against a determination by the Scottish Ministers of the appellant’s entitlement to a carer’s allowance supplement.

(2) Where in this rule, and in rule 21 (response of the decision maker to a notice of appeal against a determination of entitlement) in so far as it applies to carer’s allowance supplement, reference is made to a “notice of appeal”, this means the form provided by the Scottish Ministers under paragraph 7(1)(b) (or as the case may be paragraph 8(1)(b)) of schedule 2 of the Carer’s Allowance Supplement Regulations on notifying of the outcome of a re-determination of entitlement, or of a failure to re-determine entitlement within the prescribed time period.

(3) An individual must start proceedings by submitting the notice of appeal to the Scottish Ministers along with any documents which have not so far been provided to Ministers that the appellant wishes them to submit to the First-tier Tribunal in support of the appeal.

(4) Except as provided for in paragraph (10), a notice of appeal must be received by the Scottish Ministers before the end of the period of 31 days beginning with whichever is the later of the day on which the appellant—

- (a) is informed of a determination made under paragraph 6 of schedule 2 of the Carer’s Allowance Supplement Regulations following a request for a re-determination; or
 - (b) is informed of the appellant’s right to appeal against the determination made under regulation 5 (determination of EEA resident’s entitlement to a carer’s allowance supplement) of the Carer’s Allowance Supplement Regulations as a result of the failure of the Scottish Ministers to re-determine entitlement within the prescribed time period.
- (5) The notice of appeal must state—
- (a) the name and address of the appellant;
 - (b) the name and address of the appellant’s representative (if any);
 - (c) a postal or email address where documents for the appellant may be sent or delivered;
 - (d) the determination being challenged;
 - (e) the reasons for bringing the appeal; and
 - (f) where the notice of appeal is received after the end of the period of 31 days beginning with whichever is the later of—

(12) Rule 20A was inserted by regulation 3(4) of [S.S.I. 2020/353](#).

- (i) the day on which the appellant is informed of a determination made under paragraph 6 of schedule 2 of the Carer's Allowance Supplement Regulations; or
 - (ii) the day on which the appellant is informed of the right to appeal against the determination made under regulation 5 of the Carer's Allowance Supplement Regulations, but less than one year after that day,

the reasons why the notice of appeal was not sent or delivered to the Scottish Ministers sooner.
- (6) A notice of appeal and any accompanying documents may be sent by pre-paid post, by fax, or by electronic communication to such address as may be specified for receipt by the Scottish Ministers.
- (7) The Scottish Ministers must forward to the First-tier Tribunal any notice of appeal and accompanying documents submitted to them, regardless of whether the requirements set out in paragraph (5) are met, or the extent to which they are met, and inform the appellant when this has been done.
- (8) At the same time as forwarding the notice of appeal and any documents under paragraph (7), the Scottish Ministers must send—
 - (a) a copy of any application for a carer's allowance supplement that has been made by the appellant under regulation 5 of the Carer's Allowance Supplement Regulations;
 - (b) a copy of—
 - (i) the determination issued under paragraph 6 of schedule 2 of the Carer's Allowance Supplement Regulations following a request that entitlement be re-determined; or
 - (ii) the determination issued under regulation 5 of the Carer's Allowance Supplement Regulations, where there has been a failure to re-determine entitlement within the prescribed time period and the determination under regulation 5 is being appealed; and
 - (c) a copy of any written record of the decision under challenge.
- (9) Where a notice of appeal is received by the Scottish Ministers after the end of the period of 31 days beginning with the later of the days specified in paragraph (4)—
 - (a) if the notice of appeal is received before the end of the period of one year beginning with the day on which the appellant is informed of a determination made under paragraph 6 of schedule 2 of the Carer's Allowance Supplement Regulations or, as the case may be, of the right to appeal against the determination made under regulation 5 of the Carer's Allowance Supplement Regulations, 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 to the Scottish Ministers sooner; or
 - (b) if the notice of appeal is received after the end of the period of one year beginning with the day on which the appellant is informed of a determination made under paragraph 6 of schedule 2 or, as the case may be, of the right to appeal against the determination made under regulation 5, the First-tier Tribunal must refuse to consider the notice of appeal.
- (10) The Scottish Ministers must forward a notice of appeal to the First-tier Tribunal even if one of the following situations applies—

- (a) the notice of appeal is received after the end of the period of 31 days beginning with the later of the days specified in paragraph (4) but less than one year after that day; or
- (b) the notice of appeal is received one year or more after the later of the days specified in paragraph (4).”;
- (d) in rule 21 (response of the decision maker to a notice of appeal against a determination of entitlement), for paragraphs (1) and (2) substitute—
 - “(1) The First-tier Tribunal must notify each party in writing when a notice of appeal submitted under any of the following provisions has been accepted as containing sufficient information to be valid—
 - (a) rule 20 (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);
 - (b) rule 20A (notice of appeal to the First-tier Tribunal against a determination of entitlement to a Scottish child payment); or
 - (c) rule 20B (notice of appeal to the First-tier Tribunal against a determination of entitlement to a carer’s allowance supplement).
 - (2) The decision maker must send or deliver to the First-tier Tribunal a response to any notice of appeal submitted under rule 20, 20A or 20B before the expiry of the period of 31 days beginning with the day on which the decision maker received notification from the First-tier Tribunal that the notice of appeal had been accepted as containing sufficient information to be valid.”;
- (e) in rule 22 (notice of appeal against a process decision) for paragraph (1) substitute—
 - “(1) This rule applies where an individual brings an appeal under any of the following provisions against a process decision—
 - (a) section 61 of the 2018 Act;
 - (b) paragraph 23 of the schedule of the 2020 Regulations; or
 - (c) paragraph 13 of schedule 2 of the Carer’s Allowance Supplement Regulations.”.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend four sets of Regulations which together provide for the handling of appeals by the Social Security Chamber of the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland. In relation to the Social Security Chamber, they expand the functions of the Chamber so as to include dealing with appeals relating to determinations of entitlement and process decisions for carer's allowance supplement under the Carer's Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020. They also make amendments to the First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018 and the First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018, to enable the full package of tribunal procedure and composition regulations to apply in relation to appeals before the Chamber concerning determinations of entitlement and process decisions for carer's allowance supplement in the same way as they apply to appeals concerning assistance under Chapter 2 of Part 2 of the Social Security (Scotland) Act 2018 ("the 2018 Act"). In relation to the Upper Tribunal, they provide for the social security rules of procedure to apply to appeals relating to carer's allowance supplement, in the same way as other social security appeals.

Regulation 2 deals with the allocation to the Social Security Chamber of the function of dealing with appeals relating to carer's allowance supplement.

Regulation 3 expands the application of the social security rules of procedure of the Upper Tribunal, so that they cover appeals relating to carer's allowance supplement.

Regulation 4 provides for the composition of the Social Security Chamber when dealing with appeals against substantive determinations of entitlement to carer's allowance supplement, and process decisions concerning applications for and requests for re-determination of entitlement to carer's allowance supplement.

Regulation 5(3)(c) inserts a new rule in the rules of procedure of the Social Security Chamber in relation to the giving of notice of appeal against a determination of entitlement to a carer's allowance supplement. This replicates the effect of rule 20 of the rules of procedure in relation to appeals against determinations of entitlement to assistance under Chapter 2 of Part 2 of the 2018 Act.

Regulation 5(3)(d) and (e) extends the existing rules of procedure of the Social Security Chamber in relation to the response of the decision maker to a notice of appeal against a determination of entitlement, and the giving of notice of an appeal against a process decision, to appeals concerning carer's allowance supplement.