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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 273**

**TRIBUNALS AND INQUIRIES**

**The First-tier Tribunal for Scotland Social  
Security Chamber (Procedure) Regulations 2018**

*Made* - - - - *11th September 2018*  
*Laid before the Scottish*  
*Parliament* - - - - *13th September 2018*  
*22nd November*  
*Coming into force* - - *2018*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 43(3)(b) and 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 22nd November 2018.

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

2. The Rules in the schedule apply to any proceedings before the First-tier Tribunal for Scotland Social Security Chamber when exercising functions conferred on the Tribunal by the Social Security (Scotland) Act 2018<sup>(2)</sup> or by regulations made under that Act.

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(1) 2014 asp 10.  
(2) 2018 asp 9.

St Andrew's House,  
Edinburgh  
11th September 2018

*S SOMERVILLE*  
A member of the Scottish Government

## 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.—(1)** In these Rules—

“the 2014 Act” means the Tribunals (Scotland) Act 2014<sup>(3)</sup>;

“the 2018 Act” means the Social Security (Scotland) Act 2018<sup>(4)</sup>;

“the 2016 Regulations” means the Scottish Tribunals (Time Limits) Regulations 2016<sup>(5)</sup>;

“appellant” means the person who starts proceedings (whether by notifying an appeal, or applying for permission to appeal) or a person substituted as an appellant under rule 8 (addition, substitution and removal of parties);

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

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

“the Convention Rights” has the meaning given to it in section 1 of the Human Rights Act 1998<sup>(6)</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>(7)</sup>;

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(3) 2014 asp 10.

(4) 2018 asp 9.

(5) S.S.I. 2016/231.

(6) 1998 c.42.

(7) 2000 c.7; section 15(1) was amended by the Communications Act 2003 (c. 21), schedule 17, paragraph 158.

- “excluded decision” means a decision falling under section 51 of the 2014 Act;
- “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;
- “legal member” means an individual holding membership of the First-tier Tribunal for Scotland in accordance with section 15(2) of the 2014 Act;
- “party” means a person who is (or was at the time that the First-tier Tribunal disposed of the proceedings) an appellant or a respondent in proceedings before the First-tier Tribunal;
- “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 43(5) of the 2018 Act for the re-determination by them of an individual’s entitlement to a type of social security assistance described in Chapter 2 of Part 2 of the 2018 Act;
- “process decision” means a decision made under section 38, 41(3) or 42 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 8 (addition, substitution and removal of parties);

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

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

(2) For the purposes of these Rules, where information is sent—

- (a) via the postal service to the last known address held for an individual; or
- (b) by email to the last known email address held for the individual,

the individual is presumed to have received the information 48 hours after it is sent, unless the contrary is shown.

### **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.

(2) Dealing with a case fairly and justly 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 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.

### **Delegation to staff**

**3.—**(1) Staff of the Scottish Courts and Tribunals Service 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 in paragraph (1) may apply generally to the carrying out of specified functions by members of staff of a specified description in specified circumstances.

(3) Where the First-tier Tribunal sends notice of a decision made by a member of staff pursuant to an approval under paragraph (1) to a party, that party may, within the period of 14 days beginning with the day on which the party is presumed to have received the notice, make a written application to the First-tier Tribunal for that decision to be considered afresh by a member of the First-tier Tribunal.

## **PART 2**

### **General Powers and Provisions**

#### **Case management powers**

**4.—**(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;
- (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**

**5.—**(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 each party to the case.

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

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

**6.—**(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 7 (dismissal of a party's case).

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

**7.—**(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 4(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;
- (b) the appellant has failed to co-operate with the First-tier Tribunal to such an extent that the First-tier Tribunal considers that it cannot deal with the proceedings fairly and justly; or
- (c) where relevant, there is no possibility of the eligibility criteria being met for the particular form of assistance to which the proceedings relate.

(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.

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(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, where the appellant can satisfy the Tribunal that the appellant has good reason to apply for reinstatement.

(5) An application under paragraph (4) must be made in writing and received by the First-tier Tribunal within the period of 31 days beginning with the day on which notification of the dismissal sent to the appellant under paragraph (9) is presumed to have been received by the appellant.

(6) An application under paragraph (4) must set out the reasons on which the appellant relies in applying for reinstatement.

(7) This rule applies to a respondent as it applies to an appellant except that—

- (a) a reference to the dismissal of the proceedings is to be read as a reference to the barring of the respondent from taking further part in the proceedings; and
- (b) a reference to an application for the reinstatement of proceedings which have been dismissed is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings.

(8) If the respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the First-tier Tribunal need not consider any response or other submission made by the respondent.

(9) The First-tier Tribunal must notify each party in writing that dismissal has taken place.

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

**8.—**(1) The First-tier Tribunal may give 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 gives 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.

#### **Representatives**

**9.—**(1) A party may be represented in any proceedings by a representative whose details may be communicated to the First-tier Tribunal prior to any 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 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, in addition to providing the document to the represented party; and
- (b) may assume that the representative is and remains authorised as such until the person receives written notification that this is not so from the representative or represented party.

(4) Notwithstanding paragraphs (1) to (3), a party may be represented at a hearing by a person other than any person whose details have been communicated to the First-tier Tribunal.



(5) 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.

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

### **Supporters**

**10.** A party who is an individual may be accompanied by another person, who is not a representative, to act as a supporter.

### **Interpreters**

**11.** Where an interpreter is appointed to assist the First-tier Tribunal, the interpreter must be independent of all parties to the case and of any representatives or supporters.

### **Calculating time**

**12.—(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<sup>(8)</sup>.

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

**13.—(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 the address specified for receipt by the First-tier Tribunal.

(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) should not be used to provide documents to that party, that form of communication must not be so used by the Tribunal or any other party.

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

(5) 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**

**14.** 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

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(8) 1971 c.80.

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**

**15.**—(1) Without restriction on the general powers in rule 4 (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 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 civil proceedings 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**

**16.**—(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, make provision for the person's necessary expenses of attendance to be paid, and state who is to pay them;
  - (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 in civil proceedings in a Scottish court.

### **Withdrawal**

**17.**—(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 notice of 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) a respondent,

where the appellant or respondent can satisfy the First-tier Tribunal that the appellant or respondent has good reason to apply for reinstatement.

(5) An application under paragraph (4) must be received by the First-tier Tribunal within 31 days of the earlier of—

- (a) the day on which the applicant for reinstatement is presumed to have received the notification sent under paragraph (7) that the withdrawal has taken effect; or
- (b) if the applicant for reinstatement was present at the hearing when the case was withdrawn orally under paragraph (1)(b), the day of that hearing.

(6) An application under paragraph (5) must set out the reasons on which the applicant relies in seeking reinstatement.

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

### **Chairing member and voting**

**18.** 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, who is to have a casting vote.

### **Recording of hearings**

**19.**—(1) Subject to paragraph (2), all hearings of the First-tier Tribunal must be recorded digitally.

(2) In the event of a failure of equipment, a written record of proceedings must be produced by the legal member.

## 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**

**20.**—(1) This rule applies where an individual brings an appeal under section 46 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) Where in this rule, and in rule 21 (response of the decision maker to a notice of appeal against a determination of entitlement), reference is made to a “notice of appeal”, this means the form provided by the Scottish Ministers under section 44 (or as the case may be section 45) of the 2018 Act, on notifying of the outcome of 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 section 43 of the 2018 Act, following a request for re-determination; or
- (b) is informed of the appellant’s right to appeal against the original determination made under section 37 of the 2018 Act, 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;
- (f) any views of the appellant on whether the matter should be dealt with at a hearing or without a hearing; and
- (g) where the notice of appeal is received after the end of the period of 31 days beginning with the day on which the appellant is informed of the determination, but less than one year after that day, 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 a notice and any documents under paragraph (7), the Scottish Ministers must send—

- (a) a copy of the determination issued under section 43 of the 2018 Act, following a request that entitlement be re-determined; or
  - (b) a copy of the determination issued under section 37 of the 2018 Act, where there has been a failure to re-determine entitlement within the prescribed time period; and
  - (c) a copy of any written record of the decision under challenge.
- (9) Where 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 of the determination, 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 of the determination, the First-tier Tribunal must refuse to consider the notice.
- (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 is received after the end of the period of 31 days beginning with the day on which the appellant is informed of the determination, but less than one year after that day; or
  - (b) the notice is received one year or more after the day on which the appellant is informed of the determination.

### **Response of the decision maker to a notice of appeal against a determination of entitlement**

**21.**—(1) The First-tier Tribunal must notify each party in writing when a notice of appeal submitted under rule 20 (notice of appeal against a determination of entitlement) has been accepted as containing sufficient information to be valid.

(2) The decision maker must send or deliver to the First-tier Tribunal a response to any notice of appeal submitted under rule 20 (notice of appeal against a determination of entitlement) 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.

(3) The response must include —

- (a) the name and address of the decision maker;
- (b) the name and address of the decision maker’s representative (if any);
- (c) a postal or email 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 views of the decision maker as to whether the matter should be dealt with at a hearing or without a hearing.

(4) Unless a practice direction states otherwise, the decision maker must provide with the response copies of any documents relevant to the case which are in the decision-maker’s possession and which have not already been provided to the First-tier Tribunal.

(5) The decision maker must provide the appellant with a copy of the response and any accompanying documents not already supplied to the appellant at the same time as providing the response to the First-tier Tribunal.

(6) The appellant may make written comments to the First-tier Tribunal and supply further documents to it in reply to the decision maker’s response.

(7) Any comments or further documents referred to in paragraph (5) must be provided to the First-tier Tribunal within the period of 31 days beginning with the day on which the appellant is

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presumed to have received the response, as sent by the decision maker, and the First-tier Tribunal must send a copy to the decision maker.

### **Notice of appeal against a process decision**

**22.**—(1) This rule applies where an individual brings an appeal under section 61 of the 2018 Act against a process decision.

(2) An individual must start proceedings by sending a notice of appeal and any accompanying documents to the First-tier Tribunal.

(3) Except as provided for in paragraph (5), a notice of appeal against a process decision must be received by the First-tier Tribunal before the end of the period of 31 days beginning with the day on which the individual is informed of the decision against which the individual wishes to appeal.

(4) 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 decision being challenged;
- (e) the reasons for bringing the appeal;
- (f) any views of the appellant on whether the matter should be dealt with at a hearing or without a hearing; and
- (g) where the notice of appeal is received after the end of the period of 31 days beginning with the day on which the appellant is informed of the decision, but within less than one year of that day, reasons why the notice of appeal was not sent or delivered to the Scottish Ministers sooner.

(5) Where a notice of appeal is received after the end of the period of 31 days beginning with the day specified in paragraph (3)—

- (a) if the notice of appeal is received less than one year after that day, 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 notice of appeal is received one year or more after that day, the First-tier Tribunal must refuse to consider the notice.

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

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

- (a) the views of all parties have been sought and 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, 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 7 (dismissal of a party’s case) without a hearing.

(4) Where the First-tier Tribunal considers that the conditions set out in paragraph (1) are met, the Tribunal must proceed to determine the case without a hearing.

(5) A case determined in accordance with paragraph (4) is to be known as a “paper case.”

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

**24.** Subject to the power to exclude persons in rule 26(4) (public and private hearings), each party is entitled to attend any hearing together with any representative and supporter permitted by rules 9 (representatives) and 10 (supporters).

### **Notice of hearings**

**25.—**(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**

**26.—**(1) Subject to the following paragraphs of 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 any 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 28(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 decision notice 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**

27. 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.

### **Notice of decisions**

28.—(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 4(3)(e) (dealing with an issue as a preliminary issue).

(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 full written statement of reasons under rule 29(2) (reasons for decisions); and
- (c) once a written summary of a decision or a full statement of reasons has been issued, 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 (correcting, reviewing and appealing decisions of the First-tier Tribunal).

### **Reasons for decisions**

29.—(1) The First-tier Tribunal may give reasons for a decision which disposes of proceedings—

- (a) orally at a hearing; or
- (b) in a full written statement of reasons to each party.

(2) Unless the First-tier Tribunal has already provided a full 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 4(3)(e) (dealing with an issue as a preliminary issue).

(3) An application under paragraph (2) must be received within the period of 31 days beginning with the day on which the decision notice relating to the decision provided to the appellant by the First-tier Tribunal under rule 28 (notice of decisions) is presumed to have been received by the appellant.

(4) If a party makes an application in accordance with paragraphs (2) and (3), the First-tier Tribunal must, subject to rule 14 (disclosure of documents and information), send a full written statement of reasons to each party within the period of 31 days beginning with the day on which the Tribunal received the application or as soon as reasonably practicable after the end of that period.

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



### **Publication of decisions**

**30.**—(1) The Chamber President must make such arrangements as the Chamber President considers appropriate for the publication of decisions of the First-tier Tribunal.

(2) Decisions may be published electronically.

(3) A decision may be published in an edited form, or subject to any deletions, where the Chamber President or a legal member considers that to be appropriate bearing in mind—

- (a) the need to safeguard the welfare, wellbeing and interests of the appellant or any other person;
- (b) the need to protect the private life of any person;
- (c) any representations on the matter which any person has provided in writing to the First-tier Tribunal at any time prior to publication under the arrangements made under paragraph (1).

(4) A decision of the First-tier Tribunal must be published in such a manner as to protect the anonymity of the appellant.

## **PART 4**

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

#### **Interpretation**

**31.** 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; and

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

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

**32.** 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.

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

**33.**—(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 on 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 been submitted after the expiry of the 30 day period referred to in regulation 2(1) of the 2016 Regulations-

*Status: This is the original version (as it was originally made).*

- (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**

**34.**—(1) On receiving an application for permission to appeal, 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 notice 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**

**35.**—(1) A party may request a review of a decision (except an excluded decision) of the First-tier Tribunal on the basis of a point of law.

(2) An application for a review must—

- (a) be made in writing;
- (b) be made within the period of 14 days beginning with the day on which the decision was made or the day that the written reasons were sent to the parties (if later); and
- (c) identify the alleged point or points of law on the basis of which a review is being sought.

(3) If the First-tier Tribunal considers that the application is without merit, the First-tier Tribunal must refuse the application and 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 and seeking the views of the parties on whether the application can be determined without a hearing; and
- (b) 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 of the responses to the notice provided under paragraph (7), 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 it relates.

(7) A notice of the decision on a review under paragraph (4) must as soon as reasonably practicable be sent by the First-tier Tribunal to each party.

(8) A review by the First-tier Tribunal in terms of paragraph (1) 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.

### **Duty to treat a request for a review as an application for permission to appeal**

**36.—(1)** The First-tier Tribunal must treat a request for a review under rule 35 (review of a decision) as also being an application for permission to appeal under rule 33 (application for permission to appeal against a decision of the First-tier Tribunal), unless the appellant states expressly that they do not wish it to be so treated.

(2) Where an appellant is given notice of a review decision under rule 35(7) (notice of decision on a review to be sent as soon as reasonably practicable), the appellant is to be given the opportunity to state whether or not the appellant wishes to proceed with an appeal.

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### **EXPLANATORY NOTE**

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

The Tribunals (Scotland) Act 2014 (“the 2014 Act”) 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 2014 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, which is brought into being by the First-tier Tribunal for Scotland (Chambers) Amendment Regulations 2018 ([S.S.I. 2018/349](#)).

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 2014 Act 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.

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