

## SCHEDULE

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

## 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.

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(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.

(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(1).

## **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 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;

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(1) 1971 c.80.

- (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—

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- (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.