

## SCHEDULE

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

#### 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.

*Status: This is the original version (as it was originally made).*

(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 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.

*Status: This is the original version (as it was originally made).*

(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.

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(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.