

SOCIAL SECURITY (SCOTLAND) ACT 2018

EXPLANATORY NOTES

OVERVIEW

Part 2 (Giving of Assistance by Scottish Ministers)

Chapter 1 (Assistance to be given according to determination of entitlement)

Who determines entitlement?

37. In summary, a determination of entitlement will be made in the first instance by the Scottish Ministers under section 37. If the individual whose entitlement has been determined is dissatisfied with that determination, section 41 allows the individual to request the Scottish Ministers to reconsider it under section 43. If the individual remains dissatisfied with the Scottish Ministers' determination, or if the Scottish Ministers fail to make the determination within the period permitted, the individual can appeal to the First-tier Tribunal for Scotland under section 46. At the end of such an appeal, the First-tier Tribunal may make a determination of the individual's entitlement. These parts of the process are set out in Chapter 3 of Part 2 and are discussed in more detail below.
38. By conferring jurisdiction on the First-tier Tribunal to deal with entitlement to assistance under Part 2, the Act attracts the review and appeal provisions contained in Part 6 of the Tribunals (Scotland) Act 2014 ("the Tribunals Act"). Part 6 of the Tribunals Act empowers the First-tier Tribunal to review its own decisions and provides for onward appeals from the First-tier Tribunal to the Upper Tribunal for Scotland and from the Upper Tribunal to the Court of Session. It provides that at each appeal stage, the appellate body (be it the Upper Tribunal or the Court of Session) has the same powers to dispose of the appeal as the body whose decision is under appeal. Which, in this context, means that on appeal a determination of entitlement may be made by the Upper Tribunal or the Court of Session or, ultimately, by the UK Supreme Court (which has the power to hear appeals against decisions of the Court of Session and can also consider references from that Court). Section 25 of the Act confirms that this is the position.