

# **SOCIAL SECURITY (SCOTLAND) ACT 2018**

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## **EXPLANATORY NOTES**

### **OVERVIEW**

#### **Part 2 (Giving of Assistance by Scottish Ministers)**

#### **Chapter 3 (Determining entitlement)**

#### **Appeal against the Scottish Ministers' determination**

67. [Sections 46 to 49](#) provide rights of appeal to the First-tier Tribunal for Scotland against a determination by the Scottish Ministers of an individual's entitlement to assistance under section 24.
68. [Section 46\(1\)](#) provides that an appeal can only be taken to the Tribunal if either the initial determination required by section 37 has been re-determined as provided for by section 43 or if the duty to make such a re-determination has not been completed within the timescale set by regulations.
69. [Section 47](#) sets out the process for initiating an appeal. It provides that an appeal is initiated by the individual returning to the Scottish Ministers the appeal form given to the individual under section 44 or 45. On receipt of a form, the Scottish Ministers must send it, together with the information they hold and used in making the determination being appealed against, to the First-tier Tribunal for Scotland.
70. Ordinarily it is for Tribunal Rules under the Tribunals (Scotland) Act 2014 to specify what is required in order to initiate an appeal to the First-tier Tribunal. [Section 47\(6\)](#) makes clear that Tribunal Rules can make further provision about the form and manner of initiating appeals, but they cannot contradict subsection (1) (for example they may not say that an appeal cannot competently be made by returning an appeal form to the Scottish Ministers).
71. [Section 48](#) provides the timescales within which appeals to the First-tier Tribunal can be made. An appeal can be made within 31 days of the relevant event without having to get the Tribunal's permission to bring it. Beyond 31 days from the relevant event, an appeal can only be brought with the Tribunal's permission (subsection (3) sets the test by which the Tribunal will decide whether to give permission). And in no event can an appeal be taken more than a year after the relevant event. What constitutes the relevant period depends on what type of determination by the Scottish Ministers the appeal is brought against. If it is brought against a re-determination by the Scottish Ministers under section 44, the relevant event is Ministers notifying the individual of the re-determination. If it is brought against a determination under section 37 (i.e. it is brought following a failure by Ministers to make a re-determination within the period allowed by regulations under section 43(5)), the relevant event is Ministers notifying the individual that they have failed to make a re-determination within the period allowed. ([Section 62](#), which is discussed in paragraphs [88](#) and [89](#) below, creates a presumption about when information is received, which is relevant for calculating timescales under section 48.) An appeal is brought, for the purposes of section 48, when a duly completed appeal form is returned to the Scottish Ministers. Any period between the Ministers

*These notes relate to the Social Security (Scotland) Act  
2018 (asp 9) which received Royal Assent on 1 June 2018*

receiving the appeal form and sending it to the Tribunal as required by section 47(2) is therefore not counted in relation to the timescales referred to in section 48.

72. The period of 31 days is allowed for an appeal without the Tribunal's permission on the basis that it represents a month, but specifying the period in days rather than as one calendar month ensures nobody is disadvantaged by the fact of a relevant event occurring in a short calendar month (such as February).
73. The powers of the First-tier Tribunal in appeals are set out in section 49. The Tribunal can uphold the determination (in effect, refuse the appeal), or it can make a different determination of its own as to the person's entitlement to assistance.
74. As mentioned in paragraph 37 above, it follows from giving the First-tier Tribunal jurisdiction that the further rights of appeal and review set out in Part 6 of the Tribunals (Scotland) Act 2014 apply.