



Social Security (Scotland) Act 2018

2018 asp 9

PART 2

GIVING OF ASSISTANCE BY SCOTTISH MINISTERS

CHAPTER 3

DETERMINING ENTITLEMENT

Appeal against the Scottish Ministers' determination

46 Right to appeal to First-tier Tribunal against determination

- (1) An individual may appeal to the First-tier Tribunal for Scotland—
 - (a) against a determination under section 43 of the individual's entitlement to assistance, or
 - (b) in a case where subsection (2) applies, against the determination under section 37 referred to in that subsection.
- (2) This subsection applies where—
 - (a) having been informed of a determination under section 37 of the individual's entitlement to assistance, the individual has made a request for a re-determination under section 41, and
 - (b) the Scottish Ministers have failed to make a determination under section 43 in consequence of that request within the period allowed for re-determination.

47 Initiating an appeal

- (1) In order to bring an appeal under section 46 against a determination, an individual must submit to the Scottish Ministers the form provided under section 44 or (as the case may be) 45 in relation to the determination.
- (2) On receiving a form that they provided under section 44 or 45, the Scottish Ministers must send—
 - (a) the form, and

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- (b) the information held by them that they used to make the determination in question,
to the First-tier Tribunal.
- (3) Having complied with subsection (2), the Scottish Ministers must inform the individual to whom the determination in question relates that they have done so.
- (4) In this section, references to a form include a copy of a form.
- (5) For the avoidance of doubt, the form that the Scottish Ministers provide under section 44 or 45 need not be a physical form.
- (6) Scottish Tribunal Rules providing for the form and manner in which an appeal under section 46 is to be brought may not displace the effect of subsection (1), but this section is otherwise without prejudice to what may be provided under any power to make Scottish Tribunal Rules.

48 Deadline for appealing

- (1) An appeal under section 46—
 - (a) may be brought without the First-tier Tribunal’s permission if an appeal application is made within the period of 31 days beginning with the day the relevant event occurred,
 - (b) may be brought only with the First-tier Tribunal’s permission if an appeal application is made after the period mentioned in paragraph (a),
 - (c) may not be brought if an appeal application has not been made within the period of one year beginning with the day the relevant event occurred.
- (2) In subsection (1)—
 - (a) “the relevant event” means—
 - (i) in the case of an appeal against a determination under section 43, the individual to whom the determination relates being informed of it in accordance with section 44,
 - (ii) in the case of an appeal against a determination under section 37, the individual to whom the determination relates being informed (in accordance with section 45) that the individual has the right to appeal against it,
 - (b) an appeal application is made when a form, that relates to the determination in question and has been completed to the extent that Scottish Tribunal Rules require, is received by the Scottish Ministers having been submitted in accordance with section 47(1).
- (3) The First-tier Tribunal may give permission under subsection (1)(b) for an appeal to be brought only if it is satisfied that there is a good reason for the application not having been made sooner.

49 First-tier Tribunal’s power to determine entitlement

In an appeal under section 46 against a determination of an individual’s entitlement to a particular type of assistance, the First-tier Tribunal may—

- (a) uphold the determination, or
- (b) make its own determination of the individual’s entitlement to the type of assistance in question.