

Draft Regulations laid before the Scottish Parliament under section 79(2)(c) of the Tribunals (Scotland) Act 2014 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

TRIBUNALS AND INQUIRIES

**The First-tier Tribunal for Scotland Social Security Chamber
(Procedure and Composition) Amendment Regulations 2020**

Made - - - - 2020

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 38(1) and paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 11(2) and paragraph 4(3) of schedule 9 of that Act, they have consulted the President of the Scottish Tribunals and such other persons as they considered appropriate.

In accordance with section 79(2)(c) of that Act a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament⁽²⁾.

Citation and commencement

1. These Regulations may be cited as the First-tier Tribunal for Scotland Social Security Chamber (Procedure and Composition) Amendment Regulations 2020 and come into force on the first Monday after the day on which they are made.

Amendment of the First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018

2.—(1) The First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018⁽³⁾ are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)—

(a) after the definition of “the 2015 Regulations” insert—

(1) [2014 asp 10](#).

(2) The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 ([asp 10](#)). These Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(3) [S.S.I. 2018/351](#).

““the 2020 Regulations” means the Scottish Child Payment Regulations 2020(4);”,
and

(b) for the definition of “process decision” substitute—

““process decision” means—

(a) in relation to an appeal under section 61 of the 2018 Act, a decision made under section 38, 41(3) or 42 of that Act;

(b) in relation to an appeal under paragraph 23 of the schedule of the 2020 Regulations, a decision made under paragraph 1(4), 14(5) or 15(2)(b) of the schedule of those Regulations.”.

(3) In regulation 3 (composition of the First-tier Tribunal when deciding an appeal against a process decision) after the word “Act” insert “or paragraph 23 of the schedule of the 2020 Regulations”.

Amendment of the First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018

3.—(1) The rules in the schedule of the First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018(5) are amended as follows.

(2) In rule 1 (interpretation)—

(a) after the definition of “the 2016 Regulations” insert—

““the 2020 Regulations” means the Scottish Child Payment Regulations 2020(6);”,

(b) for the definition of “the prescribed time period” substitute—

““the prescribed time period” means—

(a) in relation to re-determination of entitlement to assistance under Chapter 2 of Part 2 of the 2018 Act, the period prescribed by the Scottish Ministers by virtue of section 43(5) of the 2018 Act;

(b) in relation to re-determination of entitlement to assistance under the 2020 Regulations, the period provided for in paragraph 14(2) of the schedule of the 2020 Regulations.”.

(c) for the definition of “process decision” substitute—

““process decision” means—

(a) in relation to an appeal under section 61 of the 2018 Act, a decision made under section 38, 41(3) or 42 of that Act;

(b) in relation to an appeal under paragraph 23 of the schedule of the 2020 Regulations, a decision made under paragraph 1(4), 14(5) or 15(2)(b) of the schedule of those Regulations.”.

(3) In rule 20 (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)—

(a) for paragraph (5)(g) substitute—

(g) “(5) where the notice of appeal is received after the end of the period of 31 days beginning with whichever is the later of—

(i) the day on which the appellant is informed of a determination made under section 43 of the 2018 Act; or

(4) S.S.I. 2020/xx.

(5) S.S.I. 2018/273, which was amended by S.S.I. 2018/343 and S.S.I. 2020/100.

(6) S.S.I. 2020/xx.

- (ii) the day on which the appellant is informed of the right to appeal against the determination made under section 37 of the Act,
the reasons why the notice of appeal was not submitted sooner.”,
- (b) in paragraph (8)(b) after the words “the prescribed time period” insert “and the determination under section 37 is being appealed”, and
- (c) for paragraphs (9) and (10) substitute—
 - “(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 on which the appellant is informed of a determination made under section 43 of the 2018 Act or, as the case may be, of the right to appeal against the determination made under section 37 of the Act, 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 on which the appellant is informed of a determination made under section 43 of the 2018 Act or, as the case may be, of the right to appeal against the determination made under section 37 of the Act, the First-tier Tribunal must refuse to consider the notice of appeal.
 - (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 of appeal is received after the end of the period of 31 days beginning with the later of the days specified in paragraph (4), but less than one year after that day; or
 - (b) the notice of appeal is received one year or more after the later of the days specified in paragraph (4).”.
- (4) After rule 20 (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) insert—

“Notice of appeal to the First-tier Tribunal against a determination of entitlement to a Scottish child payment

20A.—(1) This rule applies where an individual brings an appeal under paragraph 19 of the schedule of the 2020 Regulations against a determination by the Scottish Ministers of the appellant’s entitlement to a Scottish child payment.

(2) Where in this rule, and in rule 21 (response of the decision maker to a notice of appeal against a determination of entitlement) in so far as it applies to the Scottish child payment, reference is made to a “notice of appeal”, this means the form provided by the Scottish Ministers under paragraph 17(1)(b) (or as the case may be paragraph 18(1)(b)) of the schedule of the 2020 Regulations on notifying of the outcome of a 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 paragraph 16 of the schedule of the 2020 Regulations following a request for a re-determination; or
 - (b) is informed of the appellant's right to appeal against the determination made under paragraph 3 of the schedule of the 2020 Regulations 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; and
 - (f) where the notice of appeal is received after the end of the period of 31 days beginning with whichever is the later of—
 - (i) the day on which the appellant is informed of a determination made under paragraph 16; or
 - (ii) the day on which the appellant is informed of the right to appeal against the determination made under paragraph 3, but less than one year after that day,
 the 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.
- (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 the notice of appeal and any documents under paragraph (7), the Scottish Ministers must send—
- (a) a copy of any application for a Scottish child payment that has been made by the appellant under paragraph 1(1) of the schedule of the 2020 Regulations in respect of the child to whom the determination of entitlement which is being appealed relates;
 - (b) a copy of—
 - (i) the determination issued under paragraph 16 of the schedule of the 2020 Regulations following a request that entitlement be re-determined; or
 - (ii) the determination issued under paragraph 3 of the schedule of the 2020 Regulations, where there has been a failure to re-determine entitlement within the prescribed time period and the determination under paragraph 3 is being appealed; 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 on which the appellant is informed of a determination made under paragraph 16 of the schedule of the 2020 Regulations or, as the case may be, of the right to appeal against the determination made under paragraph 3, 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 on which the appellant is informed of a determination made under paragraph 16 or, as the case may be, of the right to appeal against the determination made under paragraph 3, the First-tier Tribunal must refuse to consider the notice of appeal.

(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 of appeal is received after the end of the period of 31 days beginning with the later of the days specified in paragraph (4) but less than one year after that day; or
- (b) the notice of appeal is received one year or more after the later of the days specified in paragraph (4).”.

(5) In rule 21 (response of the decision maker to a notice of appeal against a determination of entitlement), after the words in parenthesis in each of paragraphs (1) and (2), insert the words “or rule 20A (notice of appeal to the First-tier Tribunal against a determination of entitlement to a Scottish child payment)”.

(6) In rule 22(1) (notice of appeal against a process decision) after the words “2018 Act” insert “or paragraph 23 of the schedule of the 2020 Regulations”.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend two sets of Regulations which provide for the handling of appeals by the Social Security Chamber of the First-tier Tribunal for Scotland. They enable the full package of tribunal procedure and composition regulations to apply in relation to appeals concerning the Scottish child payment, in the same way as they apply to appeals concerning entitlement to assistance under Chapter 2 of Part 2 of the Social Security (Scotland) Act 2018 (“the 2018 Act”).

Regulation 2 provides for the composition of the Chamber when dealing with appeals against process decisions concerning applications for and requests for re-determination of entitlement to the Scottish child payment.

Regulation 3(3) makes a technical amendment to clarify the effect of the existing rule 20 of the rules of procedure of the Social Security Chamber.

Regulation 3(4) inserts a new rule in the rules of procedure of the Social Security Chamber in relation to the giving of notice of appeal against a determination of entitlement to a Scottish child payment. This replicates the effect of rule 20 of the rules of procedure in relation to appeals against determinations of entitlement to assistance under Chapter 2 of Part 2 of the 2018 Act. It includes provision replicating the effect of the technical change made by regulation 3(3).

Regulation 3(5) and (6) extends the existing rules of procedure in relation to the response of the decision maker to a notice of appeal against a determination of entitlement, and the giving of notice of an appeal against a process decision, to appeals concerning the Scottish child payment.