

SCHEDULE 2

Procedural Matters: Carer's Allowance Supplement

PART 3

Appeals

Right to appeal to First-tier Tribunal against determination

- 9.**—(1) An individual may appeal to the First-tier Tribunal for Scotland—
- (a) against a determination under paragraph 6 of the individual's entitlement to a carer's allowance supplement, or
 - (b) in a case where sub-paragraph (2) applies, against the determination under regulation 5 referred to in that sub-paragraph.
- (2) This sub-paragraph applies where—
- (a) having been informed of a determination under regulation 5 of the individual's entitlement to a carer's allowance supplement, the individual has made a request for a re-determination under paragraph 4, and
 - (b) the Scottish Ministers have failed to make a determination under paragraph 6 in consequence of that request within the period described in paragraph 6(2).

Initiating an appeal

10.—(1) To bring an appeal against a determination, an individual must submit to the Scottish Ministers the form provided under paragraph 7(1)(b) or (as the case may be) paragraph 8(1)(b) in relation to the determination.

- (2) On receiving a form submitted under sub-paragraph (1), the Scottish Ministers must send—
- (a) the form, and
 - (b) the information held by them that they used to make the determination in question,

to the First-tier Tribunal.

(3) Having complied with sub-paragraph (2), the Scottish Ministers must inform the individual to whom the determination in question relates that they have done so.

(4) In this paragraph, references to a form include a copy of a form.

(5) For the avoidance of doubt, the form that the Scottish Ministers provide under paragraph 7 or 8 need not be a physical form.

Deadline for appealing

- 11.**—(1) An appeal under paragraph 9—
- (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 sub-paragraph (1)(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 sub-paragraph (1)—

Status: This is the original version (as it was originally made).

- (a) “the relevant event” means—
 - (i) in the case of an appeal against a determination under paragraph 6, the individual to whom the determination relates being informed of it in accordance with paragraph 7(1),
 - (ii) in the case of an appeal against a determination under regulation 5, the individual to whom the determination relates being informed (in accordance with paragraph 8(1)) 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 paragraph 10(1).
- (3) The First-tier Tribunal may give permission under sub-paragraph (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.
- (4) In sub-paragraph (2)(b), “Scottish Tribunal Rules” has the meaning given by section 68(2) of the Tribunals (Scotland) Act 2014(1).

First-tier Tribunal’s power to determine entitlement

12. In an appeal under paragraph 9 against a determination of an individual’s entitlement to a carer’s allowance supplement, the First-tier Tribunal may—

- (a) uphold the determination, or
- (b) make its own determination of the individual’s entitlement to a carer’s allowance supplement.

Appeal to First-tier Tribunal against process decisions

13.—(1) An individual may appeal to the First-tier Tribunal for Scotland against a decision by the Scottish Ministers—

- (a) to reject something purporting to be an application for a carer’s allowance supplement (see paragraph 1)),
- (b) that something purporting to be a request for a re-determination does not satisfy the condition in paragraph 4(4),
- (c) that an individual has no good reason for not requesting a re-determination sooner (see paragraph 5).

(2) An appeal under this paragraph—

- (a) may be brought without the First-tier Tribunal’s permission within the period of 31 days beginning with the day the individual was informed of the decision in accordance with these Regulations,
- (b) may be brought only with the First-tier Tribunal’s permission after the period mentioned in sub-paragraph (2)(a),
- (c) may not be brought after the end of the period of one year beginning with the day the individual was informed of the decision in accordance with these Regulations.

(3) The First-tier Tribunal may give permission under sub-paragraph (2)(b) for an appeal to be made only if it is satisfied that there is a good reason for the appeal not having been made sooner.

(4) A decision by the First-tier Tribunal about—

- (a) the outcome of an appeal under this paragraph, or

(1) 2014 asp 10.

(b) whether to give permission under sub-paragraph (2)(b) for an appeal to be brought, is final.

(5) Accordingly (and without prejudice to the generality of sub-paragraph (4)), any such decision by the First-tier Tribunal may be neither—

- (a) reviewed under section 43 of the Tribunals (Scotland) Act 2014, nor
- (b) appealed against under section 46 of that Act.

Presumption for purposes of paragraphs 1, 3, 4, 5, 7, 8 and 10

14.—(1) Sub-paragraph (2) applies in relation to the references in paragraphs 1, 3, 4, 5, 7, 8, and 10 to an individual being informed of something by the Scottish Ministers in accordance with a provision of these Regulations.

(2) Where, in order to fulfil their duty to inform an individual of something, the Scottish Ministers send information—

- (a) through the postal service to the last known address the Scottish Ministers have for the individual, or
- (b) by email to the email address most recently provided to the Scottish Ministers by the individual for the purposes of these Regulations,

the individual is to be taken to have received the information 48 hours after it is sent by the Scottish Ministers unless the contrary is shown.

Amendment of the Social Security Appeals (Expenses and Allowances) (Scotland) Regulations 2018

15.—(1) The Social Security Appeals (Expenses and Allowances) (Scotland) Regulations 2018(2) are amended in accordance with paragraph (2).

(2) In regulation 3(1) (payment of expenses) for the words from “by” in the second place where it appears to “before” substitute “by the Social Security (Scotland) Act 2018(3), by regulations made under that Act or by the Carer’s Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020(4), before”.

(2) S.S.I. 2018/275.

(3) 2018 asp 9.

(4) S.S.I. 2020/475.