

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

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2020 No.**

**TRIBUNALS AND INQUIRIES**

The First-tier Tribunal for Scotland Social Security Chamber (Procedure and Allocation of Functions) 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 sections 20(2) and 79(1)(b), and paragraph 4(2) of schedule 9 of, the Tribunals (Scotland) Act 2014<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 11(1)(a) of that Act, they have obtained the approval of the Lord President for the making of these Regulations.

In accordance with section 11(1)(b) 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)(a) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament<sup>(2)</sup>.

**Citation and commencement**

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

**Amendment of the First-tier Tribunal for Scotland (Allocation of Functions to the Social Security Chamber) Regulations 2018**

2.—(1) The First-tier Tribunal for Scotland (Allocation of Functions to the Social Security Chamber) Regulations 2018<sup>(3)</sup> are amended in accordance with paragraph (2).

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(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. 2018/350](#).

(2) In regulation 5 (chamber president) for the words from the beginning to “that Act” substitute “Until 1 April 2021”.

### **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<sup>(4)</sup> are amended as follows.

(2) In rule 7(4) (dismissal of a party’s case) for “to apply for reinstatement” substitute “for the failure to comply”.

(3) In rule 20 (notice of appeal against a determination of entitlement)—

(a) omit paragraph (5)(f),

(b) in paragraph (8)—

(i) for “a notice” substitute “the notice of appeal”, and

(ii) before sub-paragraph (a) insert—

“(za) where the individual was first awarded assistance pursuant to an application for assistance in accordance with section 37(a) of the 2018 Act<sup>(5)</sup> (duty to make determination), a copy of the application;”

(c) in paragraph (9)(b) at the end insert “of appeal”, and

(d) in paragraph (10)(a) and (b) after “notice” insert “of appeal”.

(4) In rule 22 (notice of appeal against a process decision)—

(a) omit paragraph (4)(f), and

(b) in paragraph (5)(b) at the end insert “of appeal”.

(5) Omit rule 30 (publication of decisions).

(6) For rule 32 (correction of clerical mistakes or accidental slips or omissions) substitute—

“**32.** The First-tier Tribunal may at any time correct any clerical mistake or other accidental slip or omission contained in a decision, order or any document produced by it by sending notification of the amended decision or order, or a copy of the amended document, to all parties.”.

(7) In rule 35(6) (review of a decision) for “one or more of the members” substitute “the legal member”.

(8) In rule 36 (duty to treat a request for a review as an application for permission to appeal)—

(a) in paragraph (1) for “appellant” substitute “party who requests the review”, and

(b) in paragraph (2)—

(i) for “an appellant” substitute “the party who requests the review”,

(ii) for “the appellant is” substitute “the party is”, and

(iii) for “the appellant wishes” substitute “the party wishes”.

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(4) [S.S.I. 2018/273](#), which was amended by [S.S.I. 2018/343](#).

(5) [Social Security \(Scotland\) Act 2018 \(asp 9\)](#).

St Andrew's House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend two sets of Regulations that provide for the handling of appeals by the Social Security Chamber of the First-tier Tribunal for Scotland.

Regulation 2 extends the period for which the assignment, to the Social Security Chamber, of a president who is also the president of another chamber of the First-tier Tribunal for Scotland, is permitted. This will be competent until 1 April 2021.

Regulation 3 amends the rules of procedure of the Social Security Chamber.

Regulation 3(2) clarifies that, where a case has been dismissed as a result of a failure to comply with an order, reinstatement may only be sought where there is good reason for the failure.

Regulation 3(3) removes the requirement for an appellant to give views on whether an oral hearing should be held, at the time of submitting a notice of appeal against a substantive determination of entitlement. The same approach is taken in relation to appeals against process decisions (see regulation 3(4)). Regulation 3(3) makes clear, also, that where an individual is in receipt of assistance on the basis of an application made under the Social Security (Scotland) Act 2018, a copy of the application must always be sent to the First-tier Tribunal along with any notice of appeal.

Regulation 3(5) removes the option for a decision of the Social Security Chamber to be published. Regulation 3(6) makes a consequential change in light of that.

Regulation 3(7) provides that it is the legal member who is usually to undertake a review of a decision (rather than this being a free choice as between the legal member or an ordinary member).

Regulation 3(8) amends the duty to treat a request for a review as also being an application for permission to appeal. It provides that the duty applies to review requests by the decision-maker, in addition to review requests by the person who is seeking assistance.