POLICY NOTE

THE FIRST-TIER TRIBUNAL FOR SCOTLAND SOCIAL SECURITY CHAMBER (ALLOCATION OF FUNCTIONS) AMENDMENT REGULATIONS 2021

SSI 2021/XXX

The above instrument was made in exercise of the powers conferred by section 20(2) and 79(1)(b) of the Tribunals (Scotland) Act 2014. The instrument is subject to the affirmative procedure.

These regulations make amendments to the First-tier Tribunal for Scotland (Allocation of Functions to the Social Security Chamber) Regulations 2018 and the First-tier Tribunal for Scotland Social Security Chamber (Procedure and Allocation of Functions) Amendment Regulations 2020. These regulations have the effect of extending the period for which the temporary 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 period is extended until 31 March 2024.

Policy Objectives

Section 21(2) of the Tribunals (Scotland) Act 2014 ("the 2014 Act") prevents a Chamber President from presiding over more than one chamber of the First–tier Tribunal at the same time.

Regulation 5 of the First-tier Tribunal for Scotland (Allocation of Functions to the Social Security Chamber) Regulations 2018 ("the 2018 regulations") provided that section 21(2) of the 2014 Act will not apply in relation to the presidency of the Social Security Chamber until Scottish Ministers begin to provide a type of assistance under the Social Security (Scotland) Act 2018 that requires determination on the basis of ongoing entitlement, within the meaning of section 51 of that Act.

The First-tier Tribunal for Scotland Social Security Chamber (Procedure and Allocation of Functions) Amendment Regulations 2020 amended the 2018 regulations to extend the period for which section 21(2) of the 2014 Act is disapplied to the end of March 2021. This has the effect of removing the legal barrier which prevents the temporary assignment, to the Social Security Chamber, of a president, who is also the president of another chamber of the First-tier Tribunal for Scotland, extending beyond the end of March 2021.

It is considered appropriate to continue the effect of regulation 5 of the 2018 regulations beyond 31 March 2021. The recruitment and appointment of a Chamber President by 31 March 2021 would be extremely challenging at present due to timescales, capacity issues and competing recruitments. The extension will also allow for appropriate judicial training arrangements to be put in place for members who are recruited to the First-tier Tribunal for Scotland to deal with social security appeals.

These regulations extend the period for which section 21(2) of the 2014 Act is disapplied until 31 March 2024. This will facilitate the continuation of the period of assignment of the Temporary Chamber President. The regulations do not prevent Scottish Ministers from appointing a permanent Chamber President in consultation with the Lord President.

Consultation

To comply with section 11(1) of the 2014 Act, Scottish Ministers have obtained the approval of the Lord President for the making of these regulations and have consulted such other persons as they consider appropriate. Those persons include the President of Scottish Tribunals and members of the Judicial Reference Group.

Impact Assessments

The following impact assessments were completed in respect of the package of instruments of which the First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018 and the First-tier Tribunal for Scotland (Allocation of Functions to the Social Security Chamber) Regulations 2018 formed part:

- Equality impact assessment
- Islands Communities Screening Assessment
- Child Rights and Wellbeing Impact Assessment.

Nothing in these Regulations alters the outcome of those assessments and no further impact assessments are required in these areas.

Financial Effects

A partial Business and Regulatory Impact Assessment (BRIA) was prepared in respect of the package of instruments of which the First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018 and the First-tier Tribunal for Scotland (Allocation of Functions to the Social Security Chamber) Regulations 2018 formed part. These Regulations do not alter the outcome of that assessment and no further assessment is required.

Scottish Government

Social Security Directorate

January 2021