POLICY NOTE

THE FIRST-TIER TRIBUNAL FOR SCOTLAND SOCIAL SECURITY CHAMBER AND UPPER TRIBUNAL FOR SCOTLAND (ALLOCATION OF FUNCTIONS, PROCEDURE AND COMPOSITION) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2020

SSI 2020/XXX

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 20(2) and 38(1), and paragraph 4(2) of schedule 9 of, the Tribunals (Scotland) Act 2014. Regulations made under sections 20(2) and 38(1) attract the affirmative procedure, while regulations made under paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014 attract the affirmative procedure. Applying section 33(1) of the Interpretation and Legislative Reform (Scotland) Act 2010, the combined use of these powers means that the instrument is subject to the affirmative procedure. For the purposes of this note, the instrument will be referred to as 'Miscellaneous Amendments Regulations.'

The Miscellaneous Amendments Regulations are subject to consultation with the President of the Scottish Tribunals and such other persons as the Scottish Ministers consider appropriate. The necessary consultation has taken place and the President of the Scottish Tribunals is content with the proposals. The Regulations also require to be approved by the Lord President before they are made. This approval has been obtained.

Purpose of the instrument

The Miscellaneous Amendments Regulations fulfil three purposes:

(a) They amend the First-tier Tribunal for Scotland (Allocation of Functions to the Social Security Chamber) Regulations 2018 (SSI 2018/350) to expand the functions of the Social Security Chamber. This will enable it to deal with appeals relating to claims for Carer's Allowance Supplement from outside the UK.

(b) They make necessary amendments to the First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018 (SSI 2018/273) and the First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Composition) Regulations 2020 (SSI 2018/351) to ensure that they apply fully to appeals before the Social Security Chamber relating to claims for Carer's Allowance Supplement from outside the UK.

(c) They modify the application of the Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018 so that they cover appeals concerning claims to Carer's Allowance Supplement from outside the UK.

Policy Objectives

Regulations are to be brought forward to provide for claims for Carer's Allowance Supplement to be made by certain people living outside the UK, and to expand the scope for applications for Young Carer Grant from outside the UK. As matters stand, an appeal right exists in relation to determinations of entitlement and process decisions for Young Carer Grant, but there are no appeal rights in relation to Carer's Allowance Supplement. The introduction of provision for claims for Carer's Allowance Supplement from outside the UK necessitates the introduction of a right of appeal for

those claims. In particular, decision-makers will need to make a determination as to whether an individual has demonstrated that they have a 'genuine and sufficient link' to Scotland, such that it is appropriate that Scottish Ministers should have responsibility for paying Carer's Allowance Supplement to them. There will be inevitable scope for challenge of such determinations.

The package of tribunals regulations governing social security appeals, both before the Social Security Chamber of the First-tier Tribunal for Scotland, and the Upper Tribunal for Scotland, are tied to matters done in exercise of functions conferred by the Social Security (Scotland) Act 2018 ('the 2018 Act'), or regulations made under the 2018 Act. While the regulations relating to claims from outside the UK are to be made partly under powers in the 2018 Act, the provisions relating to appeals for Carer's Allowance Supplement are made in reliance on the power in section 2(2) of the European Communities Act 1972. As a result, the handling of Carer's Allowance Supplement appeals does not appear to fall within the scope of the current tribunals regulations.

The Miscellaneous Amendments Regulations amend the Regulations which allocate functions to the Social Security Chamber, to include the handling of appeals in relation to Carer's Allowance Supplement claims from outside the UK. They also modify the application of the rules of procedure of both the Social Security Chamber and the Upper Tribunal for Scotland, to cover such appeals. And they expand the Composition Regulations, in relation to the Social Security Chamber, to ensure they apply fully to Carer's Allowance Supplement appeals.

In particular, regulation 5(3)(c) of the Miscellaneous Amendments Regulations provides for a new rule 20B in the rules of procedure of the Social Security Chamber, setting out the procedure for bringing an appeal against a substantive determination of entitlement to Carer's Allowance Supplement from outside the United Kingdom. This includes the information which must be provided, timescale for doing so, etc.

Regulation 5(3)(d) expands rule 21, which deals with the response of the Social Security Scotland decision maker to a notice of appeal, to include response to notice of appeal against a determination of entitlement to Carer's Allowance Supplement. And regulation 5(3)(e) applies rule 22, concerning notice of appeal against a process decision, to process appeals concerning Carer's Allowance Supplement claims from outside the UK.

Regulation 4(3) provides that appeals against substantive determinations of entitlement are to be dealt with by a legal member sitting alone. And regulation 4(4) provides for the same composition as process appeals under section 61 of the 2018 Act to apply to Carer's Allowance Supplement process appeals. In other words, they are to be dealt with by a legal member, sitting alone.

Consultation

In accordance with section 11(1)(b) and (2) and paragraph 4(3) of schedule 9 of the Tribunals (Scotland) Act 2014, the Scottish Government has consulted the President of the Scottish Tribunals and such other persons as they considered appropriate on the making of these Regulations. Those persons include members of the Judicial Reference Group, which provides advice and guidance on the operation of the Social Security Chamber. The President of the Scottish Tribunals and members of the Judicial Reference Group are content with the proposals. In accordance with section 11(1)(a) of

the Tribunals (Scotland) Act 2014, the approval of the Lord President has also been obtained.

Impact Assessments

The following impact assessments were completed in respect of the package of tribunals regulations of which the instruments amended by the Miscellaneous Amendments Regulations 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. Accordingly, no further impact assessments are required in these areas.

Financial Effects

A Partial Business and Regulatory Impact Assessment was also prepared in respect of the package of regulations of which the instruments currently being amended formed part. The Miscellaneous Amendments Regulations do not alter the outcome of that assessment. Accordingly, no further assessment is required.

Scottish Government

Social Security Directorate

11 November 2020