POLICY NOTE

THE FIRST-TIER TRIBUNAL FOR SCOTLAND SOCIAL SECURITY CHAMBER (PROCEDURE AND COMPOSITION) AMENDMENT REGULATIONS 2020

SSI 2020/XXX

1. The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by section 38(1) and paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014[1]. Regulations made under section 20(2) attract the affirmative procedure, whilst regulations made under paragraph 4(2) of schedule 9 are subject to the negative procedure. Applying section 33(3) 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 'the 2020 Regulations'.

2. The 2020 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.

Purpose of the instrument

The 2020 Regulations make amendments to the First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018[2] (S.S.I. 2018/351), to ensure that regulation 3, where only a legal member hears a process appeal under section 61 of the Social Security (Scotland) Act 2018, also applies to process appeals for the Scottish Child Payment.

The 2020 Regulations also make amendments to the First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018[3] (S.S.I. 2018/273), to ensure rules 21-22 of the rules of procedure for appeals apply to the Scottish Child Payment. In addition they add a new rule 20A which is specific to the Scottish Child Payment with regards to bringing an appeal to the First-tier Tribunal against a determination of entitlement.

The 2020 Regulations also make it explicit in existing rule 20 and the new rule 20A that, where there is a failure to make a re-determination within the prescribed time period then (unless a late re-determination takes place after that) the 31 day period for a notice of appeal to be received will run from the date on which an appellant is informed of the right to appeal against the original determination.

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[1] https://www.legislation.gov.uk/asp/2014/10/enacted
[2] http://www.legislation.gov.uk/ssi/2018/351/contents/made
[3] http://www.legislation.gov.uk/ssi/2018/273/contents/made

Policy Objectives

3. The Scottish Child Payment will open for applications from November 2020 and it is expected that payments will begin in early 2021. As the Scottish Child Payment is a top-up payment made under section 79[4] of the Social Security (Scotland) Act 2018 ('the 2018 Act') the purpose of the 2020 Regulations is to ensure that the rules of procedure of the Social Security Chamber apply fully to appeals in relation to the Scottish Child Payment and to specify the composition of the Chamber when sitting to hear Scottish Child Payment process appeals.

4. Regulation 3 of the First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018 sets out that only a legal member is required when the Social Security Chamber is convened to decide a process appeal under section 61 of the 2018 Act. Section 61 does not apply to the Scottish Child Payment but an equivalent separate provision on appeals against process decisions is included in regulation 23 of the Scottish Child Payment Regulations 2020. Regulation 3 is amended to apply this composition of a legal member only to process appeals for the Scottish Child Payment.

5. Regulation 2 of the First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018 states that the rules of procedure set out in the schedule extend to any proceedings before the Social Security Chamber when it is exercising functions conferred on it by regulations made under the 2018 Act. This would cover the Scottish Child Payment Regulations, which are made under section 79. However, rules 20-22 are specifically tied to appeals relating to assistance under Chapter 2 of Part 2 of the 2018 Act. Therefore, amendment is required to ensure that rules 20-22, or a direct equivalent, will also apply to Scottish Child Payment appeals. This is provided for in regulation 3 of the 2020 Regulations.

6. Rule 20 sets out the procedure for bringing an appeal under section 46[5] of the 2018 Act against a determination of entitlement. Rather than amend this rule to include Scottish Child Payment an equivalent new rule, rule 20A, is added that is specific to the appeal against a determination of entitlement to a Scottish Child Payment as provided for in paragraph 19 of the schedule of the Scottish Child Payment Regulations 2020. The rule sets out, for example, the time-scale for bringing an appeal, and the information and documents that are required.

7. Rule 21 sets out the procedures for the response of the Social Security Scotland decision maker to the notice of appeal submitted under rule 20 against a determination of entitlement. The rule sets out, for example, what information is required by the First-tier Tribunal from the decision-maker and that the First-tier Tribunal will provide a copy of the information to the appellant. This rule is amended to include reference to rule 20A, to ensure the rule will also apply to appeals in relation to the Scottish Child Payment. Rule 22 sets out the procedure for initiating an appeal to the First-tier Tribunal against a process decision

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[4] http://www.legislation.gov.uk/asp/2018/9/section/79
[5] http://www.legislation.gov.uk/asp/2018/9/section/46

under section 61[6] of the 2018 Act. The rule sets out, for example, the time-scale for bringing an appeal, and the information and documents that are required. This rule is amended to ensure the procedure will also apply to Scottish Child Payment process appeals as provided for in paragraph 23 of the schedule of the Scottish Child Payment Regulations 2020.

8. Regulation 3 of the 2020 Regulations also provides, at paragraph (3), for a minor technical change to existing rule 20 to make it explicit that, where there is a failure to make a re-determination within the prescribed time period, and where no late re-determination takes place after that, the 31 day period for a notice of appeal to be received will run from the date on which an appellant is informed of the right to appeal against the original determination. The effect of this change is replicated in new rule 20A(5)(f).

Consultation

9. In accordance with section 11(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.

Impact Assessments

10. 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 Social Security Chamber and Upper Tribunal for Scotland (Composition) 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. Accordingly, no further impact assessments are required in these areas.

Financial Effects

11. A Partial Business and Regulatory Impact Assessment was also 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 Social Security Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018 formed

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[6] http://www.legislation.gov.uk/asp/2018/9/section/61

part. The 2020 Regulations do not alter the outcome of that assessment. Accordingly, no further assessment is required.

Scottish Government
Social Security Directorate
7 September 2020