

Consultation on Draft Regulations making provision in relation to Social Security Appeals

Scottish Government

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Part 2: Consultation on Draft Regulations establishing a chamber of the First-tier Tribunal for Scotland dealing with entitlement to social security and setting out its functions

Do you have any comments on the description of functions exercisable by the Social Security Chamber in considering entitlement to assistance under the Scottish social security system as described in the Social Security (Scotland) Bill? :

The description is clear, but when information for the public is developed it would be good to have an infographic or map which clarifies responsibilities as some people may be simultaneously involved in appeals about reserved and devolved benefits, which could lead to confusion.

Do you have any comments on the power of the Social Security Chamber to consider all aspects of a determination which it is called upon to review?:

All aspects of a decision should be considered, and this should benefit applicants who have not had assistance to prepare or submit their re-determination application appeal and may not be aware of the details of regulations.

People in receipt of disability-related benefits can be deterred from seeking increases in these as their condition progresses as their entitlement can be lost if an increase is sought. This could be a risk to recipients depending on the structure of future delivery of disability-related assistance in Scotland.

Part 4: Consultation on Draft Regulations setting out rules of procedure for the First-tier Tribunal for Scotland social security chamber

Do you have any comments on any of the elements of the draft rules of procedure described at paragraphs 22 – 32 in Part 4?:

We welcome the objective that the appellant should be treated fairly, justly and provided with all necessary support.

This should also include recognition of the communication needs of appellants with communication or cognitive impairment such as early-stage dementia who may need additional time to explain their case and to answer questions. Someone supported by their Power of Attorney, appointee or Guardian should still be able to be involved in proceedings as far as their capacity permits.

We agree that the “no reasonable prospect” rules should be removed as an appeal which appears to assert a weak cause may have been submitted by an appellant who has limited literacy skills and has been unable to access support.

We disagree that the appellant may be ordered to pay expenses as this could be a significant deterrent.

Hearing venues need to be accessible to people including those who have severe incontinence who may have difficulty travelling with dignity: domiciliary hearings may be most appropriate for people in this case

Do you have any comments on any other aspect of the draft rules of procedure? :

Domiciliary hearings are currently possible, but rare. In some cases, they will be the fairest way of assessing someone’s entitlement to disability-related assistance.

Would you welcome provision for supporters in cases before the Social Security Chamber to have the opportunity, with appropriate permission, to make representations during proceedings?

Yes

Please explain your answer.:

We would welcome this provision as in appropriate circumstances it could assist people who have difficulties with mental health, memory or communication to be supported to make their case by someone they trust.

Are there any other respects in which you would consider that the approach of the 2008 Rules should be departed from?

No

Part 5: Consultation on Draft Regulations setting out the composition of the First-tier Tribunal for Scotland Social Security Chamber and the Upper Tribunal for Scotland

Do you have any comments on the proposed composition of the Social Security Chamber when dealing with an appeal against a determination of entitlement as described in the Social Security (Scotland) Bill? :

We would welcome this provision as in appropriate circumstances it could assist people who have difficulties with mental health, memory or communication to be supported to make their case by someone they trust.

In particular, are you content with the default position that cases should be decided by only one member, namely the legal member, unless certain forms of assistance are under consideration?

Yes

Part 6: Draft Regulation setting out eligibility criteria for appointment of ordinary members of the First-tier Tribunal for Scotland: Medical and Disability Experience

Do you have any other comments you wish to make on the draft eligibility for appointment regulations?:

It is important that tribunal members who have experience of disability should have a good awareness and training on issues relating to other protected characteristics too and how issues intersect. For example, someone with knowledge of mental incapacity through working with younger people who have a learning disability would also need a good understanding of how dementia might affect mental capacity and communication for an older person. Older people may be living with several long-term conditions (arthritis, hearing loss, visual impairment) which contribute to their overall need for disability-related assistance.

Part 7: Consultation on Draft Regulations setting out rules of procedure to be applicable to the Upper Tribunal for Scotland when dealing with cases under the current Social Security (Scotland) Bill.

Do you have any other comments you wish to make on the draft procedure regulations for the Upper Tribunal?:

It needs to be clear whether findings and decisions relating to a devolved benefit (which may be disability assistance related) can be or should be taken into account for a reserved benefit (which may be related to the capacity for work) and vice versa.

Question 6

With reference to (a), do you have any comments, in particular, on:

- the proposal that hearings will be recorded as a matter of routine?**
- the possibility of referral for a medical examination, and the circumstances in which this may happen?**

We agree that proceedings should be recorded as a matter of routine as this protects all parties: appellants should be clear about what will happen to this sensitive and personal data after the hearing (who will have access to it and what is the retention policy).

We agree that the hearing and any medical examination should be separate: both can be stressful events and it would be easier for the appellant to prepare for the appeal if they knew that it would just be questions and answers and would not include a mental, physical or cognitive examination. The medical examination should be carried out without undue delay.

Want to find out more?

As Scotland's national charity supporting people over the age of 50, Age Scotland works to improve older people's lives and promote their rights and interests. We aim to help people love later life, whatever their circumstances. We want Scotland to be the best place in the world to grow older.

Our Policy, Communications and Campaigns team research, analyse and comment on a wide range of public policy issues affecting older people in Scotland.

Our work is guided by the views and needs of older people themselves.

Further information

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