

## Appeals to the First-tier Tribunal

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### Introduction

1. This chapter is relevant to individuals who have applied for Child Disability Payment (CDP) or Adult Disability Payment (ADP) who want to appeal one of the following:

- a re-determination
- a determination, where a re-determination has not been made in the time allowed
- a process decision.

2. Social Security Scotland can make a decision about the process of applying for a benefit. A process decision can be about either:

- whether an individual has made a valid application for assistance or a request for a re-determination of their entitlement
- whether an individual has a good reason for asking for a late re-determination.

3. The First-tier Tribunal for Scotland Social Security Chamber is referred to as the First-tier Tribunal in this chapter.

4. The First-tier Tribunal is independent and, before making a decision on an appeal, it must both:

- listen to both sides involved in the appeal
- consider all the facts and evidence.

5. The First-tier Tribunal can agree with and uphold the decision made by Social Security Scotland. If it does not agree with the decision, it can make its own decision about the individual's entitlement to the benefit.

## **Right to Appeal to the First-tier Tribunal**

6. An individual has the right to appeal to the First-tier Tribunal against a re-determination of their entitlement to assistance<sup>1</sup>.

7. There may be cases where the re-determination is not completed within 56 calendar days of the request for the re-determination being made. In these cases, Social Security Scotland notifies the individual that it has failed to make the re-determination in the time allowed, and gives the individual a form to complete if the individual wants to appeal.

8. The individual has the right to complete the appeal form and return it to Social Security Scotland if they do not want to wait for the re-determination to be carried out<sup>2</sup>.

### **Example: an individual's right to appeal when a re-determination is not made in time**

Otis does not agree with the determination made by Social Security Scotland on his application for ADP. He asks for a re-determination 30 days after he receives the original notification.

Social Security Scotland has to make a re-determination within 56 calendar days of receiving the request from Otis. Social Security Scotland have not yet made the re-determination 56 days after they receive Otis's request and notify him of that fact.

Otis now has the right to submit an appeal form to Social Security Scotland because it has not made a re-determination within 56 days.

Social Security Scotland sends Otis's completed appeal form to the First-tier Tribunal along with the information it used to make the determination.

9. See the chapter on re-determinations for more information about both:

- late requests for re-determinations
- what counts as a good reason for a late request for a re-determination.

10. An individual also has the right to appeal against Social Security Scotland's process decisions<sup>3</sup>. This means that an individual has the right to appeal a decision that does not accept that the individual has:

- made a valid application for assistance
- made a valid request for a re-determination of their entitlement
- a “good reason” for requesting a re-determination after 42 calendar days of the original determination.

### **Example: an individual’s right to appeal a process decision**

Mia’s mother does not agree with the determination made by Social Security Scotland on her daughter’s application for CDP. She asks for a re-determination 60 days after she receives the original notification. Mia’s mother explains that she forgot about the 42 day time limit to apply for a re-determination.

Social Security Scotland does not accept that Mia’s mother has a good reason for requesting it after 42 days. Mia and her mother have the right to apply directly to the First-tier Tribunal to appeal this decision.

1 SS(S) Act 2018, s.46(1)(a)

2 SS(S) Act 2018, s.46(1)(b)

3 SS(S) Act 2018, s.61

### **Appealing a process decision**

11. Individuals who are appealing against a process decision must send their notice of appeal directly to the First-tier Tribunal. They can do this by:

- completing the Process Decision Appeal Form which is on the First-tier Tribunal (Social Security Chamber) website<sup>1</sup>
- returning it to the First-tier Tribunal by post or by email.

<sup>1</sup>[Appeal about the process \(socialsecuritychamber.scot\)](https://www.socialsecuritychamber.scot.nhs.uk/pead)

12. An individual appealing a process decision has 31 calendar days from the date they are informed of the decision to request an appeal<sup>2</sup>.

13. The First-tier Tribunal can consider a request for an appeal against a process decision if the individual submits it after 31 calendar days. The First-tier Tribunal must be satisfied that there is a good reason for the late application before it gives permission to allow the appeal in this case<sup>3</sup>.

14. No appeal request can be considered after a year has passed from the date the individual is informed of the process decision<sup>4</sup>.

15. The decision of the First-tier Tribunal in an appeal against a process decision or whether to give permission for a late appeal to be brought is final, meaning it cannot be appealed further<sup>5</sup>.

- 2 *The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 22(3)*  
3 *The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 22(5)(a)*  
4 *The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 22(5)(b)*  
5 *SS(S) Act 2018, s.61(4)(a)*

## **How an individual can appeal to the First-tier Tribunal against a determination or re-determination.**

16. An individual can appeal by completing the appeal form<sup>1</sup>, also called a 'notice of appeal'. They should receive this with their re-determination letter or the letter telling them that a re-determination has not been made in the time allowed. They send it by post to Social Security Scotland in the pre-paid envelope provided.

17. An individual can also contact Social Security Scotland by telephone and talk to an adviser about any support they might need to complete the appeal form.

18. An adviser can help the individual to complete the appeal form over the phone. They can also make an appointment for the individual to get face to face support in their local area or in their home. The adviser can only help them to understand and complete the form. They cannot advise the individual on what to write.

19. The notice of appeal must include all of the following information<sup>2</sup>:

- the name and address of the individual who is appealing, known as "the appellant"
- the name and address of the individual's representative, if they have one
- a postal or email address for sending documents to the individual
- the determination the individual is appealing against
- the reasons for appealing
- the reasons why the notice of appeal was not submitted sooner (if applicable)

20. Social Security Scotland should do all it can to help individuals who want to appeal by:

- providing information about the process
- providing the right form to make an appeal
- signposting to organisations who can support the individual with the process.

21. Once it receives the notice of appeal, Social Security Scotland must prepare and send the following to the First-tier Tribunal<sup>3</sup>.

- the individual's notice of appeal
- the information Social Security Scotland used to make the original determination and the re-determination, if a re-determination has taken place.

22. Operational guidance sets out what must be sent to the First-tier Tribunal.

23. Social Security Scotland must write to the individual and tell them that they have sent this to the First-tier Tribunal.

24. If the First-tier Tribunal accepts a notice of appeal as having enough information to be valid, it must tell the individual and Social Security Scotland<sup>4</sup>. Where the First-tier Tribunal considers the notice of appeal to be invalid, it will notify the individual.

*1 SS(S) Act 2018, s.47*

*2 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 20(5)*

*3 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 20(7) and 20(8)*

*4 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 21(1)*

## **Deadlines for appealing**

25. An individual appealing a re-determination has 31 calendar days from the date they are informed of the outcome to request an appeal<sup>1</sup>.

26. There are cases where a determination has not been re-determined within 56 calendar days allowed for it. These individuals have 31 calendar days from the date they are notified that Social Security Scotland have failed to make a re-determination within the period allowed, to request an appeal<sup>2</sup>.

27. An individual is presumed to have received the re-determination outcome 48 hours after it is sent to them by Social Security Scotland.

28. Similarly, an individual is presumed to have received the notification that a re-determination has not been made within the period allowed 48 hours after it is sent to them by Social Security Scotland.

29. In both cases this is unless the individual can show that they received it later.

30. Social Security Scotland must send the re-determination outcome or the notification that a re-determination has not been sent on time either<sup>3</sup>:

- by post to the most recent address
- by email to the most recent email address

that Social Security Scotland has for the individual.

31. The First-tier Tribunal can consider a request for an appeal if the individual submits it after 31 calendar days. The First-tier Tribunal must be satisfied that there is a good reason for the late application before it gives permission to allow the appeal in this case<sup>4</sup>.

32. No appeal request can be considered after a year has passed from the date the individual is notified of the re-determination, or the failure of Social Security Scotland to complete a re-determination, within 56 days.<sup>5</sup>

33. An appeal is brought when the completed appeal form is returned to Social Security Scotland. Any period between Social Security Scotland:

- receiving the appeal form from the individual
- sending it to the First-tier Tribunal

is not counted in relation to these timescales.

34. Social Security Scotland must forward the individual's notice of appeal to the First-tier Tribunal, even if they receive it after the deadlines for appealing have passed<sup>6</sup>.

**Example: deadline for requesting an appeal where a re-determination is not made in the time allowed**

56 days after Anya asks for a re-determination, Social Security Scotland:

- has not yet made a re-determination
- notifies her by letter that Anya now has the right to submit an appeal to the First-tier Tribunal because a re-determination was not made within 56 days.

Anya has 31 calendar days to request an appeal, starting on the day she receives the notification. It is presumed that Anya was notified 48 hours after Social Security Scotland sent the letter to the postal address that Anya provided.

*1 SS(S) Act 2018, s.48(1)(a) and s.48(2)(a)(i)*

*2 SS(S) Act 2018, s.48(1)(a) and s.48(2)(a)(ii)*

*3 SS(S) Act 2018, s.62(1) and s.62(2)*

*4 SS(S) Act 2018, s.48(1)(b) and s.48(3); The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 20(9)(a)*

*5 SS(S) Act 2018, s.48(1)(c); The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 20(9)(b)*

*6 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 20(10)*

**Non-disclosure of documents and information that could cause serious harm to physical or mental health.**

35. The First-tier Tribunal may give a direction prohibiting the disclosure of a document or information to a person ("the recipient") if:

- the document or information relates to the physical or mental health of a person,
- a registered medical practitioner or a registered nurse has advised either the First-tier Tribunal, or one of more of the parties, that disclosure of the information is likely to cause serious harm to the recipient's, or some other person's, physical or mental health,
- the First-tier Tribunal is satisfied that disclosure of the harmful document or information would be likely to cause serious harm to the physical or mental health of the recipient or some other person, and
- the First-tier Tribunal is satisfied that it is in the interests of justice and proportionate to give such a direction <sup>1</sup>.

36. An example could be information about a diagnosis of malignancy. See the chapter on Special Rules for Terminal Illness for information on when a medical professional may decide not to tell a person that they are terminally ill or other information relating to their physical or mental health.

37. The First-tier Tribunal can issue a direction to prohibit the disclosure of a document or information to a person on its own initiative.

38. In addition, if either party to an appeal considers that the First-tier Tribunal should withhold information from a person because it is likely to cause serious harm to their physical or mental health, the party can make a request for the Tribunal to withhold the information.

39. The party who makes that request must provide the information to the Tribunal, request that it is not disclosed, and set out the reasons why the party thinks the information should be withheld<sup>2</sup>. Guidance on how to make such a request to the Tribunal is set out in Operational Guidance.

40. Where the Tribunal decides that information should not be disclosed to a party to the appeal who has a representative, or any other person acting on their behalf, the Tribunal can disclose the information to the representative or person acting on behalf of the party<sup>3</sup>. This could be the party's appointee for example.

41. The Tribunal must be satisfied that disclosing the information is in the interests of the party and their representative, or person acting on their behalf, won't disclose it to the party at risk of harm. The representative should not disclose the information to anyone else unless the Tribunal consents<sup>4</sup>.

*1 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 14(2)*

*2 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 14(3)*

*3 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 14(5)*

*4 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 14(6)*

## Responding to the notice of appeal

42. If the First-tier Tribunal accepts the notice of appeal as valid, it:
- notifies the individual and Social Security Scotland of this decision by letter
  - requests a formal response from Social Security Scotland.
43. Social Security Scotland has 31 calendar days from the date of the notification to send a formal response to the First-tier Tribunal<sup>1</sup>.
44. The response must include all of the following information<sup>2</sup>:
- the name and address of the individual within Social Security Scotland who is preparing the appeal response
  - the name and address of Social Security Scotland's representative. This would normally be a presenting officer.
  - a postal or email address where documents can be sent or delivered
  - the position of Social Security Scotland in relation to the individual's case
  - any views on whether or not the case should be dealt with at a hearing
  - any documents that are relevant to the case which have not already been provided to the First-tier Tribunal<sup>3</sup>.
45. Guidance on completing the appeal response can be found in Operational Guidance.
46. The First-tier Tribunal sends a copy of the response and any accompanying documents to the individual<sup>4</sup> when it receives them from Social Security Scotland.
47. The individual can both:
- send written comments
  - supply further documents
- to the First-tier Tribunal in reply to Social Security Scotland's response.
48. The individual must send these within 31 days of the day when they are presumed to have received the response from the First-tier Tribunal<sup>5</sup>.
49. An individual is presumed to have received information from the First-tier Tribunal 48 hours after it is sent to them. This is unless it can be shown that the information was received later. This is the case as long as the First-tier Tribunal sends the information to the individual either:
- by post
  - by email



to the last known address that the First-tier Tribunal has for the individual.

50. When the First-tier Tribunal receives the written comments or further documents from the individual, it must send a copy to Social Security Scotland<sup>7</sup>.

*1 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 21(2)*

*2 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 21(3)*

*3 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 21(4)*

*4 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 21(5)*

*5 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, paras 21(6) and 21(7)*

*6 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 1(2)*

*7 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 21(7)*

## Who is in the First-tier Tribunal

51. The Social Security Chamber of the First-tier Tribunal has between one and three members, depending on the type of appeal.

52. For CDP and ADP, where the appeal involves consideration of the impact of the individual's physical condition or mental health in relation to an award of disability assistance, the First-tier Tribunal must consist of<sup>1</sup>:

- one legal member
- one ordinary member with medical experience
- one ordinary member with disability experience.

53. Cases to decide an appeal against a process decision must consist of only one legal member<sup>2</sup>.

*1 FtT for Scotland SSC and UT for Scotland (Composition) Regs 2018, reg 2(2)*

*2 FtT for Scotland SSC and UT for Scotland (Composition) Regs 2018, reg 3*

## Hearings

54. The First-tier Tribunal can make a decision on an appeal without holding a hearing, if both the individual and Social Security Scotland agree to this<sup>1</sup>.

55. If there is a hearing, the First-tier Tribunal must tell the individual and Social Security Scotland the time and place of the hearing, at least 14 calendar days before the hearing<sup>2</sup>. The individual and Social Security Scotland are also known as the parties.

56. The First-tier Tribunal can give less notice in urgent or exceptional circumstances, or if the parties consent to having less notice.

57. The First-tier Tribunal can continue a hearing if a party does not attend, but it must be satisfied either that<sup>3</sup>:

- the party has been told about the hearing
- reasonable steps have been taken to tell the party about the hearing.

58. The First-tier Tribunal will also consider whether continuing with the hearing is in the interests of justice<sup>4</sup>.

59. The First-tier Tribunal usually holds hearings in public<sup>5</sup>. However, it can decide to hold a hearing, or part of a hearing, in private. This is if it considers that the private hearing is in the interest of any of the following:

- public order
- justice
- the public interest
- protecting a party's right to respect for privacy and family life
- maintaining the confidentiality of sensitive information.

60. The First-tier tribunal can decide who is allowed to attend the hearing or part of it. It can exclude from the hearing, or part of it, anyone whose<sup>6</sup>:

- behaviour the First-tier Tribunal considers is disrupting or is likely to disrupt the hearing
- presence the First-tier Tribunal considers is likely to prevent another person from giving evidence or making submissions freely
- presence the First-tier Tribunal considers to be against the purpose of the hearing.

*1 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 23(1)*

*2 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 25*

*3 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 27(a)*

*4 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 27(b)*

*5 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 26(1)*

*6 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 26(4)*

## Representatives and supporters

61. Any party in the appeal can be represented by another person. A representative can be a lay or legal representative. A lay representative can be anyone who can act on the party's behalf. For example, this could be a friend or family member.

62. The First-tier Tribunal must notify all the parties to the hearing that a representative has been appointed.

63. A party who is notified that another party has a representative:

- must give the representative any document which must be given to the represented party
- can assume that the representative is authorised to represent the other party.

This is until they receive written notification that they are no longer the representative.

64. A party can tell the First-tier Tribunal both:

- that they will be represented by a representative
- who the representative is

in advance of the hearing, but they are not required to do so.

65. If there is a change, a party can decide to be represented by a different person at the hearing. This is even if they have shared the details of another representative with the First-tier Tribunal<sup>1</sup>.

66. A party who is an individual can also bring a person along to the hearing to act as a supporter<sup>2</sup>. The supporter can be a different person to the representative. The supporter can be anyone the individual chooses, for example a friend, a family member or a work colleague.

### **Example: an individual can have a representative and a supporter.**

Anthony is Sylvia's guardian. Anthony is appealing the re-determination made by Social Security Scotland on Sylvia's application for CDP. Anthony hires a solicitor to represent Sylvia in the appeal.

The First-tier Tribunal holds an oral hearing to decide the case. At the hearing, Sylvia is represented by the solicitor who speaks on her behalf. Her guardian Anthony also attends the hearing. Sylvia also brings along her Aunt Julie to be her supporter at the hearing. Neither Julie nor Anthony can speak on Sylvia's behalf.

<sup>1</sup> *The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 9*

## **Evidence and submissions**

67. The First-tier Tribunal has the power to give orders about any of the following<sup>1</sup>:

- issues on which it requires evidence or submissions
- the types of evidence or submissions to be provided
- whether the parties are permitted to provide expert evidence
- any limit on the number of witnesses who can be put forward
- how and by when any evidence or submissions need to be provided.

68. The First-tier Tribunal can also decide if the evidence or submissions should be made<sup>2</sup>:

- orally at a hearing
- by written submissions or witness statements.

69. The First-tier Tribunal can exclude evidence that would otherwise be admissible in any of the following situations<sup>3</sup>.

- Situations where both:
  - the evidence is not provided within the time allowed by the First-tier Tribunal
  - no reasonable excuse is provided for missing the deadline.
- Situations where both:
  - the evidence is not provided in the way that the First-tier Tribunal has said it should be provided
  - no reasonable excuse is given to explain why it wasn't provided that way.
- Situations where the First-tier Tribunal considers it would be unfair to admit the evidence.

70. The First-tier Tribunal cannot consider evidence provided after it has made a decision about the appeal.

71. The First-tier Tribunal can admit evidence in both of these situations where the evidence<sup>4</sup>:

- would or would not be admissible in civil proceedings in Scotland

- was or was not available to a previous decision maker.

*1 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 15(1)(a)-(d) and (f)*

*2 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 15(1)(e)*

*3 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 15(2)*

*4 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 15(3)*

## Witnesses

72. The First-tier Tribunal can by citation<sup>1</sup>:

- require any person to attend as a witness at a hearing at a certain time and place
- order any person to answer any questions or produce any documents which relate to any issue in the proceedings.

A citation is a formal letter.

73. The citation for a person to attend as a witness must include all of the following<sup>2</sup>:

- at least 14 calendar days' notice of the hearing or any other period of time the First-tier Tribunal sets
- information about how the witness's expenses for attending can be paid, if the witness is not a party in the case
- who is to pay the expenses for attending
- state that the person who is cited can apply to the Tribunal to have the citation varied or set aside
- the consequences of failing to comply with the citation or order.

74. No one can be compelled to either:

- give any evidence
- produce any document

that they could not be compelled to give or produce in civil proceedings in a Scottish court<sup>3</sup>.

*1 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 16(1)*

*2 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 16(2)*

## **Withdrawing or deciding to stop an appeal<sup>1</sup>**

75. The individual can withdraw part of an appeal or the entire appeal by either:

- sending or delivering a written notice of withdrawal to the First-tier Tribunal
- saying so at a hearing.

76. In most cases, the First-tier Tribunal must agree to the withdrawal for it to take effect.

77. The individual or Social Security Scotland can apply to restart a stopped case when they can satisfy the First-tier Tribunal that they have good reason for restarting it. The application to restart a case must be made within 31 days of earlier of these two dates:

- the date on which the party who applies to restart the case is presumed to have received the notification that the case had been withdrawn
- the day of the hearing when the case was stopped orally if the party who applies to restart the case was present.

## **The First-tier Tribunal's decision**

78. The First-tier Tribunal has the power to<sup>1</sup>:

- uphold the determination made by Social Security Scotland
- make its own determination of the individual's entitlement to the benefit.

79. The First-tier Tribunal may give a verbal decision at the hearing. However, in all cases it must provide all parties with a written decision notice that includes<sup>2</sup>:

- the First-tier Tribunal's decision
- notification of any right to apply for a full written statement of reasons. This is a more detailed explanation of the reasons why the First-tier Tribunal made their decision
- notification of any appeal rights and time limits.

80. The individual receives a written decision notice from the First-tier Tribunal. However, Social Security Scotland should also send the individual a letter advising them what the impact of the Tribunal's decision will be on their benefit entitlement, if

any. Guidance on completing the appeal outcome letter can be found in Operational Guidance.

*1 SS(S) Act 2018, s.49*

*2 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 28*

## **Applying for a written statement of reasons**

81. Any party to the appeal can make a written application to the First-tier Tribunal for a written statement of reasons. They have to apply within 31 days of the decision notice being presumed to have been received by the individual. An application for a written statement of reasons can be made<sup>1</sup>:

- if the First-tier Tribunal has not already sent them a written statement of reasons
- even if the reasons were given verbally at the hearing.

82. The First-tier Tribunal must then issue the written statement of reasons to both parties either:

- within 31 days of receiving the application from a party
- as soon as it is reasonably practicable after 31 days have passed.

*1 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 29(2)*

## **The First-tier Tribunal's power to review and set aside its decisions<sup>1</sup>**

83. A party can request a review of a decision made by the First-tier Tribunal on the basis of a point of law.

84. A review on a point of law can be brought when a party thinks the First-tier Tribunal made a legal mistake in making its decision. Examples of a review on a point of law could include arguments that the First-tier Tribunal:

- failed to apply the law correctly
- ignored relevant factors or took into account irrelevant factors in making its decision
- did not give adequate reasons for its decision
- did not have evidence or sufficient evidence to support their decision.

85. An application for a review must:

## OFFICIAL SENSITIVE

- be made in writing
- be made within 14 days of when the First-tier Tribunal's decision was made or of when the written reasons were sent to the parties, whichever is later
- identify the points of law on the basis of which a review is being requested.

86. The First-tier Tribunal must refuse the application if it thinks the application is without merit. It must tell the parties the reasons for refusing the application.

87. If the application is accepted as valid, the First-tier Tribunal sends a notice to the parties. The notice:

- must include a time limit for any response to the application by the other parties
- must ask the parties if they think the application can be determined without a hearing
- can include the First-tier Tribunal's provisional views on the application.

88. If the application is accepted as valid, the First-tier Tribunal reviews the decision at a hearing. This is unless the First-tier Tribunal thinks that a hearing isn't necessary in the interests of justice.

89. In a review by the First-tier Tribunal, the Tribunal can<sup>2</sup>:

- take no action
- set the decision aside. This means they cancel it.
- correct a minor or accidental error in the decision.

90. Where a decision is set aside by the First-tier Tribunal in a review it can<sup>3</sup>:

- re-decide the matter
- refer that matter to the Upper Tribunal
- make any other order that it thinks is appropriate.

91. Once the decision is reviewed, the First-tier Tribunal must tell the parties about it as soon as reasonably practicable.

*1 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 35*

*2 Tribunals (Scotland) Act 2014, s.44(1)*

*2 Tribunals (Scotland) Act 2014, s.44(2)*



## **Duty to treat a request for a review as an application for permission to appeal<sup>1</sup>**

92. The First-tier Tribunal must treat a request for a review of its decision as also being an application for permission to appeal to the Upper Tribunal.

93. The First-tier Tribunal must do this unless the party who requests the review states that they don't want it to be treated as an application for permission to appeal.

94. The party who requested the review is given notice of the review decision. At this point, the party is given the opportunity to say if they want to go ahead with an appeal.

95. See the Chapter on Appeals to the Upper Tribunal for information about applying for permission to appeal to the Upper Tribunal.

### **EXAMPLE: treating a request for a review as an application for permission to appeal.**

Social Security Scotland:

- does not agree with a decision made by the First-tier Tribunal
- requests in writing that the First-tier Tribunal reviews its decision on the basis of a point of law
- includes the point of law on the basis of which a review is being requested.

The First-tier Tribunal reviews the decision and decides to take no action. It notifies Social Security Scotland of this decision. At this point, Social Security Scotland is asked if it wants to appeal to the Upper Tribunal.

Social Security Scotland wants to go ahead and appeal the decision to the Upper Tribunal.

In these circumstances there is no need for Social Security Scotland to write to the First-tier Tribunal again to ask for permission to appeal. This is because it has previously sent the First-tier Tribunal a request for a review. Social Security Scotland only needs to confirm that it wants to go ahead with the appeal.

Their request for a review counts as a request for permission to appeal to the Upper Tribunal.

<sup>1</sup> *The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 36*

## **Appealing against a decision of the First-tier Tribunal**

96. A decision of the First-tier Tribunal can be appealed to the Upper Tribunal. The Upper Tribunal hears appeals on decisions of the chambers of the First-tier Tribunal.

97. A decision can be appealed by any party in the case but only on a point of law<sup>1</sup>.

98. An appeal of a First-tier Tribunal decision requires the permission of the First-tier Tribunal. If the First-tier Tribunal refuses its permission, the Upper Tribunal can give permission for the appeal<sup>2</sup>.

99. See the Chapter on Appeals to the Upper Tribunal for more information.

*1 Tribunals (Scotland) Act 2014, s.46(1) and s.46(2)*

*2 Tribunals (Scotland) Act 2014, s.46(3)*