

Appeals to the First-tier Tribunal

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Introduction

This chapter is relevant to individuals with an award of Scottish Adult Disability Living Allowance (Scottish Adult DLA) 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.

1. Social Security Scotland can make a decision about the process of reviewing an individual's award. A process decision can be about either:

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

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

3. 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.

4. The First-tier Tribunal can agree with and uphold the determination made by Social Security Scotland. If it does not agree with the determination, it can make its own determination of the individual's entitlement to the benefit. This means that the individual's award could increase, decrease or stay the same.

Right to Appeal to the First-tier Tribunal

5. An individual has the right to appeal to the First-tier Tribunal against a re-determination of their entitlement to assistance¹.

6. 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.

7. 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 out².

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 review of Scottish Adult DLA. 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.

8. See the chapter on re-determinations [LINK to Re-determinations and Appeals chapter] for more information about both:

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

9. An individual also has the right to appeal against Social Security Scotland's process decisions³. This means that an individual has the right to appeal a decision that does not accept that the individual has:

- 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, but within 12 months.

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

Kay does not agree with the Scottish Adult DLA transfer determination made by Social Security Scotland. They ask for a re-determination 60 days after they receive the transfer determination. Kay explains that they forgot about the 42 day time limit to apply for a re-determination.

Social Security Scotland does not accept that Kay has a good reason for requesting it after 42 days. Kay has 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

10. 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) website¹
- returning it to the First-tier Tribunal by post or by email.

¹[Appeal about the process \(socialsecuritychamber.scot\)](https://socialsecuritychamber.scot.nhs.uk/appeal-about-the-process)

11. An individual appealing a process decision has 31 calendar days from the date they are informed of the decision to request an appeal².

12. 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 case³.

13. No appeal request can be considered after a year has passed from the date the individual is informed of the process decision⁴.

14. 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 further⁵.

2 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 22(3)

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

15. An individual can appeal by completing the appeal form¹, 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.

16. 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.

17. 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.

18. The notice of appeal must include all of the following information²:

- 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)

19. 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.

20. Once it receives the notice of appeal, Social Security Scotland must prepare and send all of the following to the First-tier Tribunal³.

- the individual's notice of appeal

- any accompanying documents the individual provides to Social Security Scotland when they submit their appeal form
- a copy of the individual's application, if the individual was first awarded pursuant to an application
- a copy of the determination that is being appealed

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

22. Social Security Scotland must write to the individual and tell them that they have sent the individuals' notice of appeal to the First-tier Tribunal.

23. 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 Scotland⁴. 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 (Rules of Procedure) 2018, rule 20(5)

³ The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 20(7) and 20(8) and SS(S) Act 2018, s.47(2)

⁴ The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 21(1)

Deadlines for appealing

24. An individual appealing a re-determination has 31 calendar days beginning with date they are informed of the outcome to request an appeal¹.

25. There are cases where a determination has not been re-determined within 56 calendar days allowed for it. These individuals have 31 calendar days beginning with the date they are notified that Social Security Scotland have failed to make a re-determination within the period allowed, to request an appeal².

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

27. 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.

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

29. Social Security Scotland must send the re-determination outcome or the notification that a re-determination has not been sent on time either³:

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

that Social Security Scotland has for the individual.

30. The First-tier Tribunal will consider an application 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 not applying sooner before it gives permission to allow the appeal to proceed in this case⁴.

31. No appeal request can be considered after a year has passed from the date the individual is notified of the re-determination, or from the date individual is notified that they can appeal against the determination because Social Security Scotland has not completed the re-determination, within 56 days.⁵

32. An appeal is brought when the completed appeal form is received by 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.

33. 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, or even if it appears that there is something wrong with the appeal⁶.

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 is presumed to have received 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 (Rules of Procedure) 2018, rule 20(9)(a)*

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

⁶ *The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 20(7) and 20(10)*

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

34. 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 or more of the parties, that disclosure of the information would be likely to cause serious harm to the physical or mental health of the recipient or some other person
- 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, having regard to the interests of justice, that it is proportionate to give such a direction¹.

35. 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. [LINK TO DMG CHAPTER ON SPECIAL RULES FOR TERMINAL ILLNESS]

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

37. 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.

38. 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 withheld². [LINK TO [About harmful information | Social Security Scotland](#)]

39. 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 party³. This could be the party’s appointee for example.

40. 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 must comply with the requirement not to disclose the information to anyone else unless the Tribunal consents⁴.

¹ *The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rules 14(2)*

² *The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 14(3)*

³ *The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 14(5)*

⁴ *The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 14(6)*

Responding to the notice of appeal

41. 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.
42. Social Security Scotland has 31 calendar days from the date of the notification to send a formal response to the First-tier Tribunal¹.
43. The response must include all of the following information²:
- the name and address of the decision maker
 - the name and address of the decision maker's representative
 - 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
 - unless directed otherwise, all documents that are relevant to the case that are in Social Security Scotland's possession which have not already been provided to the First-tier Tribunal³. In practice, the Tribunal has never issued a practice direction to Social Security Scotland that all relevant documents should not be included.
- [LINK TO GUIDANCE WHEN AVAILABLE]
44. The First-tier Tribunal sends a copy of the response and any accompanying documents to the individual⁴ when it receives them from Social Security Scotland.
45. The individual can both:
- send written comments
 - supply further documents
- to the First-tier Tribunal in reply to Social Security Scotland's response.
46. The individual must send these within 31 days of the day when they are presumed to have received the response from the First-tier Tribunal⁵.
47. 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 earlier or 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 individual⁶.

48. When the First-tier Tribunal receives the written comments or further documents from the individual, it must send a copy to Social Security Scotland⁷.

1 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 21(2)

2 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 21(3)

3 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 21(4)

4 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 21(5)

5 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 21(6) and 21(7)

6 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 1(2)

7 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 21(7)

Who is in the First-tier Tribunal

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

50. For Scottish Adult DLA, 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 of¹:

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

51. Cases to decide an appeal against a process decision must consist of only one legal member².

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

52. 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, and the Tribunal considers that it is able to decide the matter without a hearing¹.

53. 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 hearing². The individual and Social Security Scotland are also known as the parties.

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

55. The First-tier Tribunal can proceed with a hearing if a party does not attend, but it must be satisfied either that³:

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

56. The First-tier Tribunal will also consider whether proceeding with the hearing is in the interests of justice⁴.

57. The First-tier Tribunal usually holds hearings in public⁵. However, it can decide to hold a hearing, or part of a hearing, in private. This is if it considers that the restricted access to the hearing is justified in any of the following:

- the interests of public order
- in order to protect a person's right to respect for their private and family life
- in order to maintain the confidentiality of sensitive information
- in order to avoid serious harm to the public interest
- in order to avoid prejudicing the interests of justice

58. 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, anyone⁶:

- whose conduct the First-tier Tribunal considers is disrupting or is likely to disrupt the hearing
- whose presence the First-tier Tribunal considers is likely to prevent another person from giving evidence or making submissions freely
- where the purpose of the hearing would be defeated by the attendance of that person. .

1 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 23(1)

2 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 25

3 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 27(a)

4 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 27(b)

5 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 26(1)

6 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 26(4)

Representatives and supporters

59. 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 the appellant chooses. For example, this could be a friend or family member.

60. The party should communicate the details of the representative to the Tribunal prior to the hearing. ¹ Where the First-tier Tribunal is notified before the hearing that a representative has been appointed, it must notify all the parties to the proceedings. ²

61. Where the First-tier Tribunal receives notice of the appointment of a representative, the Tribunal:

- must give the representative any documents which must be given to the represented party before, on or after the day the Tribunal is notified of the appointment
- may assume that the representative remains appointed unless the Tribunal receives notification that they are no longer the representative

62. 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.

63. 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 Tribunal³.

64. A party who is an individual can also bring a person along to the hearing to act as a supporter⁴. 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.

Juri is appealing the re-determination made by Social Security Scotland on his review of Scottish Adult DLA. Juri hires a solicitor to represent him in the appeal.

The First-tier Tribunal holds an oral hearing to decide the appeal. At the hearing, Juri is represented by the solicitor who speaks on his behalf. Juri also brings along his niece Hanna to be his supporter at the hearing.

1 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 9(1)

2 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 9(2)

3 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 9(4)

4 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 10

Evidence and submissions

65. The First-tier Tribunal has the power to give orders about any of the following¹:

- 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.

66. The First-tier Tribunal can also decide if the evidence or submissions should be made²:

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

67. The First-tier Tribunal can exclude evidence that would otherwise be admissible in any of the following situations³.

- the evidence is not provided within the time allowed by the First-tier Tribunal and no reasonable excuse is provided for missing the deadline
- the evidence is provided in a way that does not comply with an order or practice direction and there is no reasonable excuse provided
- the Tribunal considers it would be unfair to admit the evidence
- no reasonable excuse is provided for missing the deadline.

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

69. The First-tier Tribunal can admit evidence where it:

- 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 (Rules of Procedure) 2018, rule 15(1)*

² *The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 15(1)(e)*

³ *The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 15(2)*

⁴ *The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 15(3)*

Witnesses

70. The First-tier Tribunal can by citation¹:

- 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.

71. The citation for a person to attend as a witness must include all of the following²:

- 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.

72. 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 court³.

1 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 16(1)

2 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 16(2)

3 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 16(3)

Withdrawing or deciding to stop an appeal¹

73. 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.

74. The individual or Social Security Scotland can apply to restart a withdrawn 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 withdrawn orally if the party who applies to restart the case was present.

1 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rule 17

The First-tier Tribunal's decision

75. The First-tier Tribunal has the power to¹:

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

76. When exercising its powers to either uphold the determination or make its own determination in an appeal, the First-tier Tribunal must not take into account circumstances which did not exist at the relevant time.² 'Relevant time' is defined as the time at which the person's entitlement fell to be determined, under the applicable regulations, by Scottish Ministers.³ The First-tier Tribunal must only consider the circumstances that applied at the relevant time when eligibility fell to be determined by Scottish Ministers for that particular benefit. This ensures that people have re-determination and appeal rights in relation to any change in their circumstances for a later period.

For example, the First-tier Tribunal could not consider:

- Medical evidence that shows the person's condition deteriorated after the determination under appeal was made, and that late deterioration impacted their entitlement

77. The First-tier Tribunal may take into account circumstances which existed but which were not known.⁴ The First-tier Tribunal may consider relevant information that was unknown, wasn't available, or wasn't provided, at the time when the original decision maker was determining the person's entitlement.

For example, the First-tier Tribunal could consider:

- a letter from a medical professional which is written at a later date, and demonstrates that someone had a particular condition at an earlier date which would impact their entitlement
- further or clarified information which is provided after the determination that led to the appeal, but which demonstrates that the individual had a different level of need than was recognised at the time when the person's entitlement fell to be determined
- medical tests for which the results are received or only communicated to the Scottish Ministers or the Tribunal after the determination that led to the appeal, but which applied to circumstances applicable at the time when the person's entitlement fell to be determined

78. 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 includes⁵:

- 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.

79. 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. [LINK TO [Add an appeal outcome to the Challenge Case | Social Security Scotland](#)]

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

2 SS(S) Act 2018, s.49 (2)(a)

3 SS(S) Act 2018, s.49 (3)

4 SS(S) Act 2018, s.49 (2)(b)

5 The First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) 2018, rules 28

Applying for a written statement of reasons

80. Any party to the appeal can make a written application to the First-tier Tribunal for a full 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 full written statement of reasons can be made¹:

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

81. The First-tier Tribunal must then issue the full 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 (Rules of Procedure) 2018, rule 29(2)

The First-tier Tribunal's power to review and set aside its decisions¹

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

83. 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.

84. An application for a review must:

- 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.

85. 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.

86. 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.

87. 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.

88. In a review by the First-tier Tribunal, the Tribunal can²:

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

89. Where a decision is set aside by the First-tier Tribunal in a review it can³:

- re-decide the matter
- refer that matter to the Upper Tribunal

- make any other order that it thinks is appropriate.

90. 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 (Rules of Procedure) 2018, rule 35

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

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

Duty to treat a request for a review as an application for permission to appeal¹

91. 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.

92. 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.

93. 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 the application for permission to appeal.

94. See the Chapter on Appeals to the Upper Tribunal [[LINK TO APPEALS TO UPPER TRIBUNAL CHAPTER](#)] for information about applying for permission to appeal to the Upper Tribunal.

Appealing against a decision of the First-tier Tribunal

95. 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.

96. A decision can be appealed by any party in the case but only on a point of law¹.

97. 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 appeal².

98. See the Chapter on Appeals to the Upper Tribunal [[LINK TO APPEALS TO UPPER TRIBUNAL CHAPTER](#)] for more information.

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

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

