

DELEGATED POWERS AND LAW REFORM COMMITTEE

**1st Meeting, 2022 (Session 6)
Tuesday, 11 January 2022**

Instrument Responses

Social Security Information-sharing (Scotland) Amendment Regulations 2022 (2021/Draft)

On 22nd December 2021 the Scottish Government was asked:

Regulation 3 of the instrument amends Regulation 4 of the Social Security Information-Sharing (Scotland) Regulations 2021 (the “Social Security Information-Sharing Regulations”) by inserting in paragraph (3)(e) after “4(2)(ad)” new text “or 4(2)(ae)”. The Policy Note explains that, amongst other things, the instrument amends Regulation 4 of the 2021 Regulations to refer to an additional criterion which will be included in the Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000 (SSI 2000/59) with the effect that Adult Disability Payment will become a qualifying benefit for a blue badge, so this amendment to Regulation 4 of the Social Security Information-Sharing Regulations will enable the Scottish Ministers to share appropriate information with local authorities. It further states that a forthcoming instrument, the Disability Assistance for Working Age People (Consequential Amendments) Regulations 2022, will amend SSI 2000/59 to add this criterion.

However the terms of the footnote (b) on page 2 of the instrument indicates that the forthcoming draft instrument will insert a new Regulation 4(2)(ae) into SSI 2021/178, the Social Security Information-Sharing Regulations.

1. Please clarify whether the new text “4(2)(ae)” inserted into regulation 4 of the Social Security Information-Sharing Regulations refers to a forthcoming amendment to those Regulations as the footnote suggests, or to an amendment to the criteria for eligibility for blue badges in the Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000.
2. Is there a need for corrective action, and if so, what action is proposed and by when?

The Scottish Government responded on 5 January 2022:

1. The new text “4(2)(ae)” inserted into regulation 4 of the Social Security Information-Sharing Regulations 2021 refers to an amendment to the criteria for eligibility for blue badges in the Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000 that will be made by regulation 6(2) of the Disability Assistance for Working Age People (Consequential and Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations

2022. There is therefore an error in footnote (b) on page 2 of the instrument which should refer to SSI 2000/59 instead of SSI 2021/178.

2. We acknowledge that an error has been made in the footnote rather than the instrument itself and propose to use a correction slip to fix the footnote. This will be requested as soon as reasonably practical.

Consumer Scotland (Designated Regulators) Regulations 2021 (2021/465)

On 17 December 2021 the Scottish Government was asked:

The instrument makes provision under a power contained in the Consumer Scotland Act 2020. The relevant section (section 9) is commenced by SSI 2021/464 and comes into force on 1 April 2022. The instrument therefore uses powers that are not in force at the time of making the instrument.

In accordance with section 4 of the Interpretation and Legislative Reform (Scotland) Act 2010, a power to make a statutory instrument may be exercised during the pre-commencement period if it is necessary or expedient to do so for the purpose of bringing the Act into force or giving full effect to the Act at or after the time when the provision conferring the power comes into force.

In the absence of any explanation, please explain why the anticipatory exercise of the power is considered necessary or expedient under section 4 of the 2010 Act.

The Scottish Government responded on 22 December 2021:

The anticipatory exercise of the power in section 9 of the Consumer Scotland Act 2020 (“the Act”) is considered expedient because it enables the Act to come into operation more conveniently and effectively than would be the case if the specification of designated regulators had to await the coming into operation of the Act. Relying on the anticipatory exercise of powers in this context will allow Consumer Scotland to exercise its powers under section 9 of the 2020 Act from the date that the Act comes into operation. It is considered that this forms part of a coherent approach to bringing the Act into operation. Following precedent set in *Usher v Barlow* (1952 Ch 255) it is considered expedient to bring this instrument into force at the same time as section 9 of the Act to ensure the provision is effective in practice from the date it comes into force, and for clarification of the bodies to be viewed as designated regulators to which the provision relates. It will help provide certainty and clarity for Consumer Scotland and the two designated regulators referred to in the instrument, from the date that Consumer Scotland is established as a body corporate and is first able to exercise its functions.

Act of Sederunt (Sheriff Appeal Court Rules) 2021 (2021/468)

On 17 December 2021 the Lord Presidents Private Office was asked:

1. Rule 5.7 provides that where the rules require a party to lodge a document, it is to be lodged with the Clerk and can be lodged with them in the ways listed within this rule. Rule 5.7(2)(e) further provides that the documents can be lodged with the Clerk by electronic means, provided that parties have provided an email address in

terms of rule 13.5. Is the intention that a party is permitted to lodge a document with the Clerk by electronic means as long as an email address has been provided in terms of rule 13.5 by all parties to the proceedings? Is it sufficiently clear which “parties” must have provided an email address in order for it to be competent under rule 5.7(2)(e) to lodge a document with the Clerk by electronic means?

2. Part 3 of the rules is titled “Initiation and progress of an appeal”. Chapter 6 is the first chapter in this part of the rules and is also titled “Initiation and progress of an appeal”. Is it potentially confusing for the reader that the title of Chapter 6 is identical to the title of Part 3?

3. Chapter 7 is titled “Procedure before three appeal sheriffs”. Chapter 8 separately is titled “Procedure before one appeal sheriff”. Throughout chapter 7 reference is made to what the procedural appeal sheriff may do in accordance with the rules, despite the title of the chapter. Schedule 1 of the instrument sets out “Administrative provisions” with paragraph 1(1) providing the quorum of the Court for the types of business specified in sub-paragraph (3) is one appeal sheriff but more than one appeal sheriff may sit where the Court considers that to be appropriate. Paragraph 1(2) of the Schedule further provides the quorum of the Court for any other business is three appeal sheriffs but more than three appeal sheriffs may sit where the Court considers that to be appropriate and paragraph 1(3) listing the type of business referred to.

- a) Should the references throughout chapter 7 be to the appeal sheriffs?
- b) If not, is it the intention that one appeal sheriff may carry out the functions provided for in chapter 7?
- c) If that is the intention, is it sufficiently clear in what circumstances three appeal sheriffs will perform their functions in accordance with these rules and is the title suitable?

4. Chapter 30 is titled “Appeals from summary causes”. Rule 30.4 is headed “Hearing of appeal” and it has been amended to now provide that any party may apply by motion for the question of liability for expenses to be heard after the Court gives its decision on the appeal. The rule previously provided that the Court is to hear parties orally on all matters connected with the appeal, including liability for expenses and this set the context for the other provisions of the rule as applying to all hearings of the appeal. In the absence of that wording, new paragraph (1) relates to hearings on expenses only, and new paragraph (2) begins “At the hearing....”, which, in that context, could be taken to mean the hearing on expenses only.

- a) Is it intended that this rule applies to hearings on expenses only?
- b) If so it is sufficiently clear given the title of the heading? And should that rule be contained in chapter 20 expenses?

5. Chapter 33 sets out the rules for appeals under part 4 of the Age of Criminal Responsibility (Scotland) Act 2019. Other such Court rules are to be implemented through SSI 2021/452 where an issue was identified in that in those rules the reference to section 44(3) of the 2019 Act should be to section 46(3). Rule 33.1 of these Court rules also makes reference to section 44(3) of the 2019 Act which

should be to section 46(3). This error was confirmed on 14 Dec 2021, in response to a question by the Committee's legal advisers where it was further advised that same point that arises in this instrument. Is it still intended to correct the error in this instrument by amending instrument in the new year?

6. Is any corrective action proposed? If so, what action and when?

On 21 December 2021 the Lord President's Private Office responded:

1. You are correct in your understanding of the intention of rule 5.7(2)(e). A document may be lodged by electronic means as long as an email address has been provided in terms of rule 13.5 by all parties to the proceedings. The Lord President's Private Office considers that it is sufficiently clear when rule 5.7(2)(e) is read with rule 13.5 that all parties must have provided an email address in order that it is competent to lodge a document with the Clerk by electronic means. Further, this is in keeping with the operation of rules 5.2 and 5.3 providing for electronic intimation upon other parties.

2. The Lord President's Private Office considers it appropriate that the title of Chapter 6 is "Initiation and progress of an appeal" as it provides an accurate description of the content of the Chapter. We consider that the names of the Part and the Chapter being identical will not lead to confusion for the reader of the Rules.

3. a. The references to "procedural appeal sheriff" in Chapter 7 are correct;
 b. It is the intention that one appeal sheriff may carry out the functions provided for in Chapter 7;
 c. We consider that it is sufficiently clear that the appeal hearing will be before three appeal sheriffs but that the procedural appeal sheriffs may perform procedural and case management functions. The title is considered suitable as when it is read together with the title of Chapter 8 ("Procedure before one appeal sheriff") it best describes for readers of the Rules the difference between the two Chapters and the number of appeal sheriffs who will hear the appeal.

4. a. It is intended that rule 30.4 applies also to the hearing of the appeal;
 b. We consider that it is sufficiently clear given the title of the rule and reading the rule, and Chapter, as a whole. The Lord President's Private Office considers it appropriate for this rule to be located in this Chapter for ease of the readers of the Rules. This Chapter is where the provisions about appeals from summary causes are located and the structure is consistent with the structure of other Chapters dealing with special appeals. It is easier for the reader to find those specialties located in the Chapter making provision for them (cf Chapter 32; appeals to the Court of Session etc.).

5. The Lord President's Office would refer you to our Andrew Campbell's email of 14 December 2021 in relation to Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules 1999 and Sheriff Appeal Court Rules Amendment) (Age of Criminal Responsibility (Scotland) Act 2019) 2021 (SSI 2021/452). Mr Campbell advised that the Lord President's Private Office undertakes to correct this error at the earliest possible opportunity in 2022.

6. Except in relation to the matter mentioned in paragraph 5 (for which an undertaking was provided before this instrument was scrutinised), no further action will be taken as there are no other errors.