

**Fairer Scotland Duty Assessment Not  
Required Declaration For The First-Tier  
Tribunal For Scotland Social Security  
Chamber And Upper Tribunal For Scotland  
(Rules Of Procedure)(Miscellaneous  
Amendments) Regulations 2022**

**May 2022**



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# **FAIRER SCOTLAND DUTY**

## **ASSESSMENT NOT REQUIRED DECLARATION**

### **Policy title**

The First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Rules of Procedure) (Miscellaneous Amendment) Regulations 2022

### **Directorate: Division: team**

Directorate for Social Security: Social Security Policy Division: Five Family Payments, Funeral Support and Challenge Rights

### **Policy lead responsible for taking the decision**

Nathalie Leger

### **Rationale for decision**

The policy basis of the First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Rules of Procedure) (Miscellaneous Amendment) Regulations 2022 does not constitute a strategic decision as described in 'The Fairer Scotland Duty: Interim Guidance for Public Bodies' and for this reason a full assessment is not considered necessary.

The policy will allow the First-tier Tribunal and Upper Tribunal, respectively, to issue a direction prohibiting the disclosure of a document or information to a person (“the recipient”) if a registered medical practitioner or a registered nurse has advised that the information is likely to cause serious harm to the person’s physical or mental health. The aim is to mitigate the risk of vulnerable people seeing or hearing information during an appeal that could cause serious harm to their physical or mental health.

Under section 62A of the Social Security (Scotland) Act 2018, Scottish Ministers have powers for the non-disclosure of information to a recipient if it relates to the physical or mental health of an individual and if a registered medical practitioner or a registered nurse has advised Scottish Ministers that the information is likely to cause serious mental and/or physical harm to the recipient if disclosed. The recipient could be the patient or the parent/individual with legal parental responsibilities for a child.

There is a risk that harmful information that is shared with the First-tier Tribunal or the Upper Tribunal during an appeal could be shared with the individual. Although we expect that the need to prohibit the disclosure of harmful information to a person will only occur in exceptional circumstances, the repercussions of disclosing

information that would cause serious harm to an individual could be devastating for individuals and their families.

The proposed policy is not strategic in the sense of being 'key' or 'high-level'. The policy has a limited focus on preventing harmful information being disclosed to a person and the disclosure causing that person serious harm during a social security appeal. The discretionary power given to the Tribunal by these regulations to issue a direction to prohibit disclosure of harmful information to an individual requires a high threshold, informed by medical advice, to be met. The power will therefore only be available in specific and limited circumstances. The General Medical Council's Guidance on Consent sets out that "in very exceptional circumstances" it may be appropriate for the non-disclosure of information to a patient if it would cause them serious harm. There is no evidence that the policy will affect how the Scottish Government fulfils its intended purpose over a significant period of time, or have a major impact on the way in which other tactical and day-to-day operational decisions are taken.

An EQIA has been completed assessing impacts for groups with protected characteristics. The proposed policy will be applied equally to all clients on the basis of their individual circumstances, rather than on the basis of any protected characteristics.

However, as this policy will give the First-tier Tribunal and the Upper Tribunal a discretionary power to issue a direction prohibiting disclosure of harmful information to an individual that relates to the physical or mental health of a person and could cause the individual serious harm, it is expected that people in receipt of disability assistance will be the most likely to be affected. This is because applications for disability assistance generally include consideration of a person's physical and/or mental health, while applications for other devolved benefits such as the Five Family Payments do not include consideration of a person's physical and/or mental health.

We expect that it will be more likely that adults and young people aged 16 and 17 will be impacted by this policy. This is partly because children who are eligible for disability assistance are generally not responsible for communicating with Social Security Scotland or with the Tribunal. Instead it is generally a parent, guardian or appointee who makes the application on behalf of the child and who receives communications about the child's disability benefit from Social Security Scotland and from the Tribunal.

**I confirm that the decision to not carry out a Fairer Scotland assessment has been authorised by:**

Name and job title of Deputy Director (or equivalent): Lynn Forsyth, Unit Head, Five Family Payments, Funeral Support and Challenge Rights Unit

Date authorisation given: 12 April 2022



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