

Re-determinations

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Introduction

1. This chapter is relevant to individuals who have received a decision on their Adult Disability Payment (ADP) application, known as a determination of entitlement, and want to challenge the decision by asking for a re-determination.
2. This includes both individuals who:
 - have received a determination on an application
 - are in receipt of ADP and have received a determination after having their case reviewed (a determination without application).
3. Under section 41 of the Social Security (Scotland) Act 2018 (“the Act”), an individual can ask Social Security Scotland to look again at their entitlement to ADP. This is known as a re-determination. ¹

1 Social Security (Scotland) Act 2018 s. 41

4. Re-determinations are processed within the Client Experience Team at Social Security Scotland.
5. While it is not required in regulations for Social Security Scotland to provide a Consultation Report alongside a notice of determination, unless requested, this has been adopted as standard practice (where applicable). As a result, when a client has held a consultation with a Health and Social Care Practitioner as a part of their ADP application, a copy of their consultation report will also be sent to the client.

Application for a re-determination

6. An individual receives a notice of the determination of entitlement when a determination has been made on their entitlement to ADP ¹. The notification letter will include information about the re-determination process, including the individual’s right to:
 - request a re-determination of this determination

- appeal against the determination if Social Security Scotland fails to deal with the request for a re-determination within 56 calendar days
- apply for short-term assistance (STA), if applicable, while their re-determination is considered.

Please note, information about STA will only be included if the determination has reduced or stopped ongoing entitlement to ADP, with the effect that the amount the individual receives overall is lower. STA is not available if an individual requests a re-determination for a determination that has been made on a new application.

STA is also not available where either or both components of an individual's ADP claim have been reduced to £0 because of a prolonged stay in publicly funded alternative accommodation (e.g. care homes, hospitals or in legal detention).² It is only available where ongoing entitlement is reduced or stopped. No information relating to STA will be provided in notification letters resulting from new applications neither will it be provided in letters informing clients of a reduction of either ADP component resulting from a prolonged stay in publicly funded accommodation.

1 Social Security (Scotland) Act 2018 s. 40

2 ADP Regulations 2022 Schedule 2, 1(6)

7. The notification will also include the form the individual completes and sends to Social Security Scotland to request a re-determination. They can request a re-determination by either:
 - completing the re-determination form and sending it by post to Social Security Scotland in the pre-paid envelope provided
 - contacting Social Security Scotland by telephone and an individual advisor completes the re-determination form for the individual over the phone

Time limits for requesting a re-determination

8. The individual should request a re-determination within 42 calendar days beginning with the day the individual is informed of the right to make the request.¹ A period of 48 hours is allowed after the determination is issued to the individual before the 42 calendar days starts².

ADP Regulations 54

2 Social Security (Scotland) Act 2018 s. 62(2)

9. If a request for a re-determination is made after the period of 42 calendar days, it is considered late. If Social Security Scotland consider that there is a good reason for a late request, they can accept the request for a re-determination. This can be up to a maximum of 1 year from when the individual was informed of the determination that they want to be re-determined.¹

10. Social Security Scotland may only consider late re-determination requests if both the:¹

- individual has good reason for not requesting a re-determination sooner
- request is made before the end of the day that falls 1 year after the day the individual was notified of the determination. If the request is made after 1 year, it can only be accepted where the good reason is related to coronavirus.²

1 Social Security (Scotland) Act 2018 s. 41(4)(b)

2 Social Security (Scotland) Act 2018 s. 52A

11. 'Good reason' is not defined in legislation. The individual circumstances in each case should therefore be considered carefully. If Social Security Scotland considers that the individual had good reason for the late re-determination application, both:

- the rationale should be recorded on the case
- the late request should be accepted.

It should be noted that 'good reason' is a lower standard than, for example, 'exceptional circumstances'. Examples are provided below but this list is not exhaustive.

12. If an individual cannot explain why their re-determination request was late, then Social Security Scotland should refuse to accept the request for a re-determination.

13. Where clients have received their Consultation Report after their Notice of Determination, we will accept this as good reason for a late request for a re-determination.

14. If an individual receives their Notice of Determination later than their consultation report, the Notice of Determination will be the trigger from which their 42 calendar day time limit will begin. So, if an individual's Consultation Report is issued on 7th March, and their Notice of Determination is issued on 14th March, then their 42 calendar day time limit will begin on 16th March and finish on 27th April.

15. Social Security Scotland must inform the individual if a late request for a re-determination is accepted¹.

1 Social Security (Scotland) Act 2018 s. 42(2)

16. If a late request for re-determination is not accepted by Social Security Scotland, the individual must be notified of¹:

- the decision not to accept the late request for re-determination
- the reasons for this decision
- their right to appeal to the First-tier Tribunal under section 61 of the Social Security (Scotland) Act 2018 and how to request this.

1 Social Security (Scotland) Act 2018 s. 42(2)

Example: Good reason for late application

An individual submits a re-determination request 58 calendar days after being informed of the right to make the request. They advise that the re-determination was late because they were in hospital from before the determination was issued until day 57. It would be reasonable for Social Security Scotland to accept this reason for the re-determination being late.

Example: Good reason for late application

An individual submits a re-determination request 64 calendar days after being informed of the right to make the request. They tell Social Security Scotland that they required support and assistance in completing the forms to request the re-determination and had been unable to obtain that assistance until recently. The individual is being supported by a Citizens Advice Bureau who confirmed there were delays in them being able to provide the necessary support to the individual in completing the request for a re-determination. It would be reasonable for Social Security Scotland to accept this reason for the re-determination being late.

Example: Good reason for late application - Coronavirus

An individual submits a re-determination request 1 year and 3 weeks after being informed of the right to make the request. They advise that 3 weeks after receiving the determination they were diagnosed with coronavirus. This resulted in hospital admission for 3 months for treatment. Since being discharged they have struggled with the longer-term effects of the virus. It is only now that they have felt well enough to make a request for re-determination. It would be reasonable in this situation for Social Security Scotland to accept this reason for the request for re-determination being late.

Invalid re-determination requests

17. Social Security Scotland can only accept requests for a re-determination if it is received in a form that is valid¹. This means that the request must be made in the form set by Ministers and received in timescales that are defined in the ADP regulations.

1 Social Security (Scotland) Act 2018 s. 41(2)

18. In the event an invalid re-determination request is received, Social Security Scotland will take steps to contact and support the individual in providing a valid request for re-determination. In the event a valid request for re-determination is not provided the individual must be informed of:

- the decision
- the reason(s) it is invalid
- their right to appeal under section 61 of the Act¹.

1 Social Security (Scotland) Act 2018 s. 41(6)

Change of circumstances

19. There may be cases when an individual reports a change in circumstances at the same time as they request a re-determination. The way in which the Client Experience Team deal with the information will depend on the date when the change of circumstances occurred.

20. If an individual has entitlement to some level of payment and Social Security Scotland are aware of the possibility of a change in circumstances, they are obliged to both:

- carry out a determination without application
- process the re-determination request.

21. A re-determination looks at the individual's circumstances again at the date of application to re-consider the facts on which the earlier determination was based. Nothing that happens after the date of application can be considered within the re-determination assessment. This includes the individual's circumstances changing.

22. In cases where the individual has some level of entitlement and the:

- change of circumstances occurred **on or before** the application date
- individual had not included that information within their initial application
- information provided would impact the assessment of their application.

the information provided by the individual relating to the change in circumstances can be included in the assessment at re-determination.

23. In cases where the individual has some level of entitlement and the change of circumstances occurred **after** the application date, the re-determination assessment would only take into account information that was relevant to the individual's circumstances on the original application date. Where the client's

care and mobility needs have changed following the application date, this would lead to an unscheduled review.

24. In cases where the individual has no entitlement to any level of assistance and advises about a change of circumstances which happened after their original application date, Social Security Scotland will advise them that they may wish to make a new application. This would take account of all information relevant at the new date of application.

Duty to re-determine

25. Social Security Scotland must make a re-determination within 56 calendar days of either:
- a. where the request for the re-determination is received within the time allowed for making the re-determination request (42 days), the day the request is received¹, or
 - b. where the request for the redetermination was made late, the day when Social Security Scotland, or if applicable the First-tier Tribunal, decides that they will accept the request.² It is only at this point that the request is considered valid.

1 ADP Regulations 54(2)(a)

2 ADP Regulations 54 (2)(b)

26. There is no provision in the regulations or the 2018 Act that allows for an individual to withdraw a request for a re-determination.
27. If the request for re-determination is late, the 56 calendar days begin on the day when Social Security Scotland, or if applicable the First-tier Tribunal, decides that there are good reasons that the individual has not requested a redetermination sooner, they will accept the request¹. It is only at this point that the request is considered valid.

1 ADP Regulations 2022 54(2)(b)

28. If Social Security Scotland decide that the request for a re-determination is not made in such form as required, but the First-tier Tribunal later decide that the request for re-determination should be accepted, the 56 calendar days for re-determination begins on the day the First-tier Tribunal makes that decision¹.

1 ADP Regulations 2022 54(2)(c)

29. If Social Security Scotland does not make the re-determination within 56 calendar days they must inform the individual that¹:
- the re-determination has not been completed within the timescales allowed by the regulations
 - they have the immediate right of appeal to the First-tier Tribunal for Scotland against the determination made under section 37 of the Act which resulted in the request for a re-determination

- provide the individual with an appeal form

1 Social Security (Scotland) Act 2018 s. 45(1)

30. Section 43(3) of the Act allows Social Security Scotland to continue to process and finalise the re-determination if it has not been completed within 56 calendar days. Social Security Scotland may ask the individual if they would prefer to wait for the re-determination to be completed, at which point a full notification setting out the determination, the reasons for it and the individual's right to appeal that determination to the First-tier Tribunal would be sent to the individual, rather than proceed to a tribunal appeal. Social Security Scotland will advise the individual at this point of their right to proceed to appeal.

Example: Re-determination not completed within 56 calendar days

At re-determination, Social Security Scotland requests further information about an individual's case from a medical practice. The information requested does not arrive within the 56 calendar day deadline the Agency has to complete the re-determination.

Social Security Scotland gets in touch with the individual, informing them of the missed deadline, the individual's right to appeal directly to the First-tier Tribunal and provides an appeal form.

The individual decides that they would prefer that Social Security Scotland completes the re-determination before deciding whether to take the case to the Tribunal. Social Security Scotland receives the requested information on day 60, and makes the re-determination.

Example: Re-determination not completed within 56 calendar days

At re-determination, Social Security Scotland requests further information about an individual's case from a medical practice. The information requested does not arrive within the 56 calendar day deadline the Agency has to complete the re-determination.

Social Security Scotland gets in touch with the individual, informing them of the missed deadline, the individual's right to appeal directly to the First-tier Tribunal and provides an appeal form.

The individual decides initially that they would prefer that Social Security Scotland completes the re-determination before deciding whether to take the case to the Tribunal. On calendar day 85 the individual informs Social Security Scotland that they have changed their mind and would like to pursue an appeal. The individual must submit a completed appeal form to Social Security Scotland to start the appeal process.

Notice of re-determination

31. Having made a re-determination Social Security Scotland must notify the individual of ¹:

- the re-determination
- the reasons for the re-determination
- their right to appeal this determination to the First-tier Tribunal, under section 46 of the 2018 Act, by returning the appeal form enclosed with the notification, downloading the form from the Social Security Scotland website or applying by telephone.
- their right to apply for short-term assistance, if applicable, whilst their appeal is considered and how to apply for it.

Please note, this information about STA will only be included if the re-determination has upheld the determination which reduced or stopped ongoing entitlement to ADP with the effect that the amount the individual receives overall is lower. STA is not available if an individual requests an appeal after a re-determination on a new application. STA is also not available where either or both components of an individual's ADP claim have been reduced to £0 because of a prolonged stay in publicly funded alternative accommodation (e.g. care homes, hospitals or in legal detention).² It is only available where ongoing entitlement is reduced or stopped. No information relating to STA will be provided in notification letters resulting from new applications neither will it be provided in letters informing clients of a reduction of either ADP component resulting from a prolonged stay in publicly funded accommodation.

1 Social Security (Scotland) Act 2018 s. 44

2 ADP Regulations 2022 Schedule 2, 1(6)

End of chapter