

Change of circumstances: change in mobility or care needs

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Introduction

1. This chapter is about one of the events that trigger an unscheduled review. The chapter on [\[LINK\]](#) unscheduled reviews what an unscheduled review is. A case manager must make an unscheduled review when they become aware (whether or not notified by the individual or their representative) that there has been a change of circumstance which would either:

- potentially result in an alteration to the amount of Adult Disability Payment (ADP) that an individual is entitled to
- make it likely that an individual is no longer entitled to ADP.

2. This chapter is specifically about change in the individual's care or mobility needs as a result of their disability. The chapter on Special Rules for Terminal Illness applies if the change is that an individual is diagnosed with a terminal illness.

3. The 'tell us about a change' section of the Unscheduled Reviews chapter explains the duty on individuals to inform Social Security Scotland about changes in their circumstances. The notice of determination notifies individuals and their representatives that they are under a duty to tell Social Security Scotland if:

- the individual's condition gets better or worse
- the level of help and care they need changes
- if appropriate, the support they need with their mobility changes.

4. This duty also applies to anyone acting on the individual's behalf, such as an appointee. The operational guidance on third-party representatives gives more guidance [\[LINK\]](#) on applying the rules, in the majority of cases, where the individual is represented by a third-party representative. Where this chapter mentions "the individual", this also includes someone acting on the individual's behalf.

Examples of typical changes in mobility or daily living needs

5. Changes in the level of the individual's need that could lead to an unscheduled review include:
- an increase in daily living needs due to developing a new condition or disability, or a worsening of their condition or impact of the disability
 - a decrease in daily living needs due to an improvement in their condition or the impact of the disability
 - the individual receives medical treatment which reduces or stops the individual's needs
 - An increase in mobility needs due to a worsening of their condition or impact of the disability
 - A decrease in mobility needs due to an improvement in their condition or impact of the disability

This list is not exhaustive.

6. Once the review is complete, the case manager:
- makes a determination on the individual's entitlement to ADP, taking into account the change in circumstances, and
 - sends the individual the notice of this new determination.

Example: A reported increase in needs does not result in an increase in award

Mark lives alone and is living with the effects of dementia. He is currently entitled to the standard rate of the daily living component of ADP. Mark had previously scored 1D (needs prompting to be able to either prepare or cook a simple meal) in the descriptor 'Preparing and cooking a meal', as he requires prompting from his partner to prepare and cook a simple meal.

Mark's partner contacts Social Security Scotland and reports that because there is a slight deterioration in Mark's memory he now cooks with a microwave as even with prompting to cook his meals he tends to forget about his meal.

Social Security Scotland carry out an unscheduled review as a result of the change of circumstances from Mark's partner. This could possibly change the level of Mark's award.

The Case manager determines that Mark's award will remain the same. This is because, while Mark now requires a microwave to prepare a simple meal, he still also requires prompting from his partner to make a meal. This would mean the relevant descriptor would remain at 1D and Mark would remain entitled to the standard rate of the daily living component of ADP.

7. Case managers can extend the review date of an individual's award as part of their determination, if appropriate. This is true even if an individual's needs have not changed.

8. A case manager should only set an award review date earlier if they receive new information that justifies doing this.

Example: An award rate does not change but the review period is changed

Sally has been experiencing pain, swelling and stiffness in her knees and hips for around 2 years. This has been affecting her movement when carrying out a wide range of daily activities. Sally was awarded the standard rate of mobility 15 months ago.

The review period was set at 2 years initially which was November this year. Sally sends in a new piece of supporting information from her GP which confirms:

- Sally has been diagnosed with rheumatoid arthritis
- Sally has been undergoing early treatment for the condition with the hope this will prevent further damage to her joints in the medium term

The case manager considers the information provided and has a case discussion with a practitioner, who helps provide more information about rheumatoid arthritis and the effects of early treatment.

The case manager determines that Sally should remain on the lower rate of the mobility component of ADP but the review period should be extended for 4 years to account for the stabilising effects of the early treatment.

Example: Someone's needs increase but they already receive the enhanced rate of the daily living component and enhanced rate of the mobility component

In the past year John has been awarded the enhanced rate of the daily living component and the enhanced rate of the mobility component. A review date was set for 10 years' time. John's appointee contacts Social Security Scotland to inform us that his mobility needs have increased as his condition has worsened.

The case manager is not required to review John's award as there has not been a change of circumstances that would result in a change of award.

This is because John is on the highest possible rate of the mobility component. Social Security Scotland will not carry out a review for this reason.

Making an unscheduled review because of a change of circumstance

9. Making an unscheduled review means reviewing the individual's entitlement to ADP, taking account of the change in circumstances since the last determination.

10. This involves:

- considering how their needs affect their entitlement to mobility and daily living component

- applying the backwards and forwards tests (The chapter on Backwards and Forwards Tests [LINK] explains the tests in more detail)
- working out when the change in entitlement should begin.

Applying the backwards and forwards tests

11. Individuals must satisfy the backwards and forwards tests to be entitled to a higher rate of either component of ADP when their award is reviewed.

12. The backwards test requires the individual to have met at least one of the qualifying criteria for an award for 13 weeks immediately before the date that the new award would begin. The qualifying criteria for each of the different ADP awards are set out in the chapter on the Backwards and Forwards Test [Link]. The qualifying criterion for entitlement to the daily living component of ADP are found in the ADP regulations¹.

¹ *Sch1, Part 2 – Daily Living Activities, The Disability Assistance for Working Age People (Scotland) Regulations 2022*

13. The forwards test requires the individual to be likely to continue to satisfy at least one of the qualifying criteria [LINK to qualifying criteria] for 39 weeks after the date of entitlement.

14. To apply the backwards and forwards test, the case manager needs to work out the date that the award would begin. The case manager should then check to make sure that the individual satisfies the backwards and forwards test on this date. This chapter explains what to do if the backwards test is not met on this date but the forwards test is.

15. If the individual meets the qualifying criteria for the standard or enhanced rate of the daily living component, they only need to have met at least one of the qualifying criteria in regulation 13 of the ADP regulations throughout the period that the backwards and forwards test applies to.

When the change in entitlement should begin if the individual meets the criteria for a higher award

16. Entitlement to the higher award starts on the date that an individual first meets those requirements, if:

- they report that change to Social Security Scotland within one month of it occurring¹, or
- they take more than one month but not more than 13 months to report it, and have a good reason [LINK to What is a good reason for not notifying within 1 month] for not notifying within one month².

17. For a change in circumstances to meet the qualifying criteria for a higher award, this includes both:

- satisfying at least one of the relevant qualifying criteria for a period of 13 weeks immediately before that date,
- it being likely that the individual would continue to satisfy at least one of the relevant qualifying criteria for a further 39 weeks after that date.

Example: an individual reports a change within 1 month

Mark, who has dementia, has been receiving the standard rate of the daily living component of ADP. His partner, who has been supporting him, has been aware of Mark's memory worsening and now he requires help with most daily tasks, including personal hygiene, toileting, and getting dressed, as well as cooking. The new level of needs starts on 1 January 2023. Over the next week, Mark's partner realises that Social Security Scotland should be notified of this change.

Social Security Scotland carry out an unscheduled review as a result of the change of circumstances Mark reported. It is determined that Mark should receive the higher rate of the daily living component of ADP, starting from the date he first meets the requirements for the higher award. This means the increase in award will start from the date 13 weeks after the date the increase in needs occurred. This is the 3 April 2023, because he will have satisfied the backwards test at this point. .

Example: an individual reports a change after 1 month but within 13 months, with a good reason

In the scenario above, Mark's partner became unwell and was admitted to hospital before being able to support Mark in notifying Social Security Scotland of the change. When Mark's partner returned home they supported Mark to notify Social Security Scotland but this was on 1 May 2023, several months later.

This would be considered a good reason for taking longer than a month to notify, and Mark should receive the higher rate of the daily living component of ADP, starting from the date Mark first meets the requirements for the higher award. As in the above scenario, this will be on the 3 April 2023 which is 13 weeks after the date his needs increased.

18. Entitlement to the higher award starts on the date that the individual reports the change if they take longer than:

- 13 months to report the change¹ or
- a month to report the change without having a good reason [LINK to What is a good reason for not notifying within 1 month] for not reporting within one month².

19. If the individual has not yet satisfied the backwards test on the date that they report the change, entitlement starts once the backwards test is satisfied [LINK to paragraph 12 re: backwards test].

Example: an individual reports a change after 1 month but within 13 months, without a good reason

Angus has had Parkinson's disease for 4 years. He was initially receiving the standard rate of the mobility component. He experiences an increase in his symptoms, meaning he cannot reliably walk more than 20 metres, and he also requires help with many daily tasks due to the tremor in his hands. These changes are present from 1 January 2023. Angus notifies Social Security Scotland of the changes on 1 May 2023, but gives no reason for the delay, except to say he "didn't get around to it".

Social Security Scotland carry out an unscheduled review as a result of the changes Angus has reported. It is determined that Angus should receive the higher rate of the mobility component and the standard rate of the daily living component of ADP. The increase in award can only start from 1 May 2023, when Angus reported the change. The backwards test has already been met on 1 May 2023 as it has been more than 13 weeks since the change happened in January.

20. Entitlement to the higher award starts on the date of the determination resulting from the unscheduled review if:

- the individual does not report the change
- Social Security Scotland become aware of the change through some other means¹

1 Regulation 45 of the ADP Regs 2022

21. If the individual has not yet satisfied the backwards test on the date of the determination resulting from the unscheduled review, entitlement starts once the backwards test is satisfied [LINK to paragraph 12 re: backwards test].

22. If the change of circumstances is received as part of a scheduled review please refer to the scheduled reviews chapter for when the change in entitlement should begin [LINK Adult Disability Payment DMG Scheduled Reviews]

23. If the change of circumstances is received as part of a scheduled review where the individual has just transferred from Personal Independence Payment please refer to the Adult Disability Payment Case Transfer chapter for when the change in entitlement should begin [LINK Adult Disability Payment DMG Case Transfer]

24. If the change of circumstances is received for an individual who has just transferred from Personal Independence Payment due to a change of circumstances please refer to the Adult Disability Payment Case Transfer chapter for when the change in entitlement should begin [LINK Adult Disability Payment DMG Case Transfer]

What is a good reason for not notifying within 1 month

25. Individuals are expected to notify Social Security Scotland about changes that they are required to report within one month of the change first occurring. If an individual fails to do this, the date that entitlement begins will depend on whether the individual has a good reason for not notifying within a month.

26. An individual will have a good reason if either:

- it is reasonable for them to take as long as they did to notify
- they clearly intended to report the change within a reasonable time but did not due to an honest and reasonable mistake.

For a non-exhaustive list of examples of good reasons see the 'Good Cause' section in the Gathering Supporting Information DMG chapter [LINK].

27. An individual cannot be reasonably expected to notify a change in circumstances within one month if there are special circumstances (e.g. due to hospitalisation) which mean they are unable to promptly report the change.

28. There may be cases where the change in the level of needs is either:

- gradual,
- fluctuating.

In these cases, it may take longer than a month for the individual to notice the change.

Setting an earlier start date for entitlement when a change in an individual's needs leads to a higher award

29. A case manager may apply an earlier start date for an award if they consider it would be unjust not to do so. Case managers should only consider this rule if the change in entitlement would otherwise begin on the date:

- the individual reports the change [LINK to relevant paragraph]
- of the determination resulting from the unscheduled review [LINK to relevant paragraph].

30. The ability for case managers to apply an earlier date exists so that individuals are not unduly disadvantaged because:

- of circumstances beyond their control
- of genuine and reasonable mistakes made by the individual
- they reported the change as soon as they reasonably could be expected under the circumstances
- they would have reported the change on time, but someone else made Social Security Scotland aware of the change.

When the change in entitlement should begin if the individual meets the criteria for a lower or no award

31. If the individual notifies about their change in circumstances within 1 month of when they could be expected to notice a change, their entitlement to the lower award starts, or their entitlement stops, on the date of the determination from the unscheduled review.

For example: Edith has been receiving the standard rate of the mobility component of ADP for mobility problems due to osteoarthritis in her right knee. She has a knee replacement operation, and after her recovery from the operation goes well, she notices she is able to walk much further than she could before. She notifies Social Security Scotland.

The case manager undertakes an unscheduled review and finds Edith is no longer entitled to the mobility component of ADP. Her entitlement to ADP stops when the case manager makes this determination.

32. If the individual knowingly fails to notify a change, their entitlement to the lower award starts, or their entitlement stops, on the date that they should have notified us.

33. The case manager must decide if an individual has knowingly failed to notify Social Security Scotland about the change.

34. An individual knowingly fails to notify Social Security Scotland about a change if:

- they do not notify Social Security Scotland about the change at the time when the notice of determination requires them to do so, and
- they are aware of this fact.

35. An individual also knowingly fails to notify Social Security Scotland about a change if it is reasonable to expect them to be aware of the fact:

- a change has occurred, and
- they are required to notify the change as soon as it occurred.

36. In most cases, it may take a period of time after the change occurs for the individual to actually notice it. This is especially true where the change in the individual's condition:

- is gradual
- fluctuates.

37. An individual cannot knowingly fail to report a change if the change is one that a person in their position cannot be reasonably expected to notice.

38. Case managers can set a later start date if they consider, , that it would be unjust not to apply a later start date for either:

- the lower rate of either component, or
- no award

to begin.

39. The 'Setting a later start date to entitlement' section contains guidance on when it may be unjust not to consider a later date for entitlement to either:

- begin for a lower award
- cease.

Setting a later start date to entitlement when a change in an individual's condition and needs leads to a lower award or the end of the award

40. A case manager may set a later start date for the change in entitlement to begin if they consider it would be unjust not to do so. The case manager may apply a later start date for the change in entitlement to begin¹.

1 Regulation 46(2) of the ADP Regs 2022

41. Case managers should only consider applying a later start date if entitlement would otherwise begin on the date that the individual should have reported the change. [LINK to paragraph 32]

42. In such cases, the individual will have been overpaid. Case managers need to consider whether the individual is actually liable to repay the overpayment. Individuals are only liable to repay overpayments if the error either:

- was the individual's fault or
- was one that an individual in their position could reasonably be expected to notice¹

1 S. 63(1) and S. 64(1) of the 2018 Act

43. An error is the fault of the individual if it was caused by them: failing to report a change of circumstances that they were required to report or causing another person to do this¹. *1 S. 64(2) of the Social Security Scotland 2018 Act*

For example: Edith has been receiving the standard rate of the mobility component of ADP for mobility problems due to osteoarthritis in her right knee. She has a knee replacement operation, and after her recovery from the operation goes well, she notices she is able to walk much further than she could before. She decides not to notify Social Security Scotland.

A case manager undertakes a scheduled review of Edith 6 months later and determines that she is no longer entitled to ADP. Her entitlement to the mobility component of ADP stops on the date Edith ought to have notified Social Security Scotland of the change. This is the date by which it is reasonable to expect that Edith was aware of the change. . This means Edith has been overpaid and may be liable to repay this.

44. It will only be in exceptional circumstances that fairness would require the case manager to set a later award. This would be where (even though the individual knowingly failed to report the change): exceptional circumstances meant that they were unable to report the change.¹

1 Regulation 46(2) of the ADP Regs 2022

For example: a person takes advantage of a vulnerable individual by:

- benefitting from the individual's award
- telling the individual not to tell Social Security Scotland about a change of circumstances so that the person would continue to benefit from a higher award.