

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 unscheduled reviews and determinations without application explains 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:

2.

- 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.

3. 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.

4. 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.

5. 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 on applying the rules, in the majority of cases, where the individual is represented by a third-party representative.

Examples of typical changes in mobility or daily living needs

6. 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.

7. 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, or anyone acting on their behalf, 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.

8. Case managers can extend the review date of an individual's award if new information is provided. This is true even if an individual's needs have not changed.

9. 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 been 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

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

11. 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 explains the tests in more detail)
- working out when the change in entitlement should begin.

Applying the backwards and forwards tests

12. 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.

13. The backwards test requires the individual to have met at least one of the 'qualifying criteria' for an award for 13 weeks immediately preceding 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. 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*

14. The forwards test requires the individual to be likely to continue to satisfy at least one of the qualifying criteria referred to in the link above. They need to meet at least one of the qualifying criteria for 39 weeks after the date of entitlement.

15. To apply the backwards and forwards test, the case manager needs to know the date that the award would begin. The case manager should work out the date that the award would begin, and 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.

16. 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

17. Entitlement to a higher award will begin on the date when the individual satisfies 'the requirements for a higher award' if either:

- the individual, or anyone acting on their behalf, reports 'the change' within one month of the change in their condition occurring¹

- the individual, or anyone acting on their behalf, takes more than one month but not more than 13 months to report the change in the individual's condition. The individual, or anyone acting on their behalf, also needs to have good reason for not notifying the change within one month².

¹ Regulation 45(1)(b)(i)(aa) of the ADP Regs 2022

² Regulation 45(1)(b)(i)(bb) of the ADP Regs 2022

18. The 'change' for the purpose of these rules is the change in the individual's circumstances that they are required to report under section 56 of the Social Security Scotland Act 2018.

19. The date when the individual 'first satisfies the requirements for a higher award' means the earliest date when the individual first satisfies the requirements the qualifying criteria for a higher award. This includes 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.

20. Entitlement to the higher award will begin on the date that the individual, or anyone acting on their behalf, reports the change if they takes longer than:

- 13 months to report the change¹ or
- a month to report the change without having a good reason for not reporting within one month².

21. If the individual has not yet satisfied the backwards test on the date that they report the change, entitlement begins on the date when the individual first satisfies all of the requirements for entitlement to the higher award.

22. Entitlement to the higher award will begin on the date of the determination resulting from the unscheduled review if:

- the individual, or anyone acting on their behalf, 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

23. If the individual has not yet satisfied the backwards test on the date of the determination resulting from the unscheduled review, entitlement begins on the date when the individual first satisfies all of the requirements for entitlement to the higher award.

What is a good reason for not notifying within 1 month

24. Individuals are expected to notify Social Security Scotland about relevant changes that they are required to report within one month of the change first occurring. If an individual both fails to do this or does not notify within 13 months

then this chapter explains that the date that entitlement begins will depend on whether the individual, or anyone acting on their behalf, has ‘a good reason’ for not notifying within a month.

25. An individual, or anyone acting on their behalf, 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.

26. An individual, or anyone acting on their behalf, cannot be reasonably expected to notify a change in circumstances within one month if there are special circumstances (e.g. due to hospitalisation) which justify the individual, or anyone acting on their behalf, being unable to promptly report the change.

27. 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, or anyone acting on their behalf, to notice the change.

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

28. 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, or anyone acting on their behalf, reports the change
- of the determination resulting from the unscheduled review.

29. To recap, entitlement will only start on these dates if:

- the individual, nor anyone acting on their behalf, took longer than one month, but less than 13 months to notify the change without having a good reason
- the individual, nor anyone acting on their behalf, took longer than 13 months to notify Social Security Scotland
- neither the individual, nor anyone acting on their behalf, reported the change - Social Security Scotland became aware of the change through some other means.

30. Individuals must tell Social Security Scotland about changes that they are required to report within one month of the change occurring. Whether or not fairness requires an earlier date to be applied will depend on the circumstances of each case.

31. 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, or anyone acting on their behalf
- 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

32. Entitlement to a lower rate of either component begins, or entitlement stops, on the date that the individual, or anyone acting on their behalf, 'should have notified Social Security Scotland' if the individual 'knowingly fails' to notify a change that they were required to notify

33. The date that the individual, or anyone acting on their behalf, 'should have notified Social Security Scotland' is the date when the change first occurred so long as the individual is required to tell Social Security Scotland about the change as soon as it first occurred. If the individual, or anyone acting on their behalf, is required to notify Social Security Scotland within a specified period of time after the change first occurring, then the date that they should have notified Social Security Scotland is the latest date that they can notify them about the change.

34. Entitlement to the lower award begins, or entitlement stops, on the date of the determination resulting from the unscheduled review if the individual, or anyone acting on their behalf, did not 'knowingly fail' to notify the change.

35. On the balance of probabilities, 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
- they are aware of this fact.

36. An individual, or anyone acting on their behalf, 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
- they are required to notify the change as soon as it occurred.

37. In most cases, it may take a period of time after the change occurs for the individual, or anyone acting on their behalf, to actually notice it. This is especially true where the change in the individual's condition:

- is gradual
- fluctuates.

38. An individual, or anyone acting on their behalf, cannot knowingly fail to report a change if the change is one that a person in their position cannot be reasonably expected to notice.

39. Case managers can set a later start date if they consider, *in all the circumstances*, that it would be unjust not to apply a later start date for either:

- the lower rate of either component
- no award

to begin.

40. However, the case manager must first decide if an individual has knowingly failed to notify Social Security Scotland about the change.

41. The section below 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

42. 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.

Regulation 46(2) of the ADP Regs 2022

43. Case managers should only consider applying a later start date if entitlement would otherwise begin on the date that the individual, or anyone acting on their behalf, 'should have reported the change'. This is because they have knowingly failed to report the change to Social Security Scotland.

44. 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 notice'¹

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

45. An error is the fault of the individual, or anyone acting on their behalf, 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.

46. Therefore any individual who knowingly fails to report a change of circumstances leading to a lower or no award is liable to repay the overpayment. This is unless case managers decide to set a later start date, starting from the date of the determination.

47. 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, or anyone acting on their behalf, knowingly failed to report the change): exceptional circumstances meant that they was unable to report the change. An example of this could be where a person takes advantage of a vulnerable individual by:

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

48. Case managers should seek advice if they are considering setting a later date.