

# Death of an Individual – Scottish Adult Disability Living Allowance

## Index

- Introduction
- Verification of death
- Unscheduled review following an individual's death being verified
- Overpayments of Scottish Adult Disability Living Allowance after the death of an individual
- Arrears of Scottish Adult Disability Living Allowance due to the individual after death
- How will Social Security Scotland be able to tell if there is an Executor?
- How does Social Security Scotland decide who the most appropriate person is?
- When Social Security Scotland are unable to identify an individual to act or receive any Scottish Adult Disability Living Allowance that is due

## Introduction

1. This chapter looks at what a case manager should do if an individual entitled to Scottish Adult Disability Living Allowance (Scottish Adult DLA) dies.
2. This chapter relates to the unscheduled reviews chapter which explains both:
  - when an unscheduled review should take place
  - what a determination without application is.
3. The term 'next of kin' has no legal definition in Scotland. Therefore, this chapter refers to the Executor of the deceased individual's estate, and where there is no Executor, identifying an appointee for the deceased. Further information on the terminology used is set out in more detail in this chapter.

## Verification of death

4. There are serious implications of recording a date of death on SPM in error and when a death is reported, verification will be required to ensure that the correct date is recorded and that no awards are stopped in error.
5. The Bereavement team is responsible for verifying a death. A death may be reported by different means. The most common ways are:
  - a task will be automatically created if the client was on the Department for Work and Pensions' National Insurance number database and the reporter has notified the [Tell Us Once](#) bereavement service. Once the Department for Work and Pensions have verified and input the date of death, the information will be sent via the CIS system which will notify SPM.

- notifications may be received from the National Records of Scotland feed.
- an individual who knew the client contacts Social Security Scotland directly to report the death and provides a death certificate signed by a registrar. This must be the original document or a certified copy where it has not been possible to verify through any of the other routes above.

### **Unscheduled review following an individual's death being verified**

6. Following the date of death being verified, case managers must carry out an unscheduled review and make a determination without application when they are notified that an individual entitled to Scottish Adult DLA has died<sup>1</sup>.

*1 Scottish Adult DLA reg 43(b)*

### **Overpayments of Scottish Adult DLA after the death of an individual**

7. Social Security Scotland will not always be informed of the death of an individual immediately. This could potentially result in an overpayment.
8. An individual's estate is liable to Scottish Ministers for any sums paid after death because this assistance was given in error<sup>1</sup>. The value of the overpayment is the difference between the assistance given<sup>2</sup> and the value that should have been given if the overpayment had not happened<sup>3</sup>.

*1 SS Act 2018, s69(1)*

*2 SS Act 2018, s63(2)(a)*

*3 SS Act 2018, s63(2)(b)*

9. There may also be occasions when a delay in informing Social Security Scotland of a client's death is potentially due to fraudulent intent. If there is any suspicion of this, the case should be passed to the Fraud team who will investigate and direct enquiries.

### **Example: Social Security Scotland is notified of an individual's death on time**

Arlo has been receiving Scottish Adult DLA at the higher rate of the care component under the Special Rules for Terminal Illness (SRTI). He dies on 1 July.

Social Security Scotland is informed of Arlo's death on 5 July by the Executor of their estate. The client adviser or case manager inputs the date of death into SPM. This will prevent any further payments or notifications being issued. The case manager makes a determination without application that Arlo is no longer entitled to Scottish Adult DLA from and including 2 July, the day after their death.

Payment has already been made to Arlo, covering the period from 1 July to 7 July. Payment was made weekly in advance as it was under SRTI. The case manager determines that an overpayment has occurred from 2 July to 7 July. They will calculate the overpayment and decide whether it should be recovered. It is unlikely that in a SRTI scenario any overpayment would be recovered unless the

overpayment is substantial, however given the requirement to register a death in Scotland within 8 days, any notification would trigger action to stop payment.

Overpayments of £65 or under will be classified as a 'small overpayment' and will not be recovered.

### **Example: Social Security Scotland is notified of an individual's death 8 weeks later**

Bram was receiving the lower rate of the mobility component of Scottish Adult DLA. He dies on 24 June.

Social Security Scotland are not notified of Bram's death until 19 August. The case manager carries out an unscheduled review and determines that:

- Bram is not entitled to Scottish Adult DLA from and including 25 June, the day after death
- any benefit paid to Bram covering any period after that date is overpaid.

As Bram's estate is liable for any overpayments, Social Security Scotland will make enquiries to establish whether Bram has an Executor, to ask them to repay any money overpaid from Bram's estate. The 'How will Social Security Scotland be able to tell if there is an Executor?' section of guidance is used to ensure the appropriate steps are taken to discover whether Bram has an Executor for his estate in place.

The Debt Management team will undertake all necessary action to recover overpayments, taking into account both financial and personal circumstances of the person that is deemed to have liability when agreeing how/when the overpayment will be paid back.

### **Arrears of Scottish Adult DLA due to the individual after death**

10. Sometimes an individual may die without having received all benefits due. This is most likely to happen where an individual is waiting for a change of circumstances to be processed and a determination has not yet been made.
11. In such a situation, if it is determined that an individual was (or would have been) entitled to benefit in the period before they died, there may be arrears due. Social Security Scotland must make enquiries to establish if there is an Executor of the individual's estate.
12. Where there is no Executor, the process is to identify an appropriate appointee for the deceased under the terms of the Social Security (Scotland) Act 2018<sup>1</sup>. Further detailed guidance can be found in the Client Representatives Guidance Part 5.3: Executors and appointees for the deceased<sup>2</sup>, under the heading 'making appointments for the deceased'.

<sup>1</sup> SS Act 2018, s85B(6), S85B(3)(b)

<sup>2</sup> Client Representatives Guidance Part 5.3: Executors and appointees for the deceased

### **Example: Individual dies before receiving benefit due**

Caroline is in receipt of Scottish Adult DLA under the Special Rules for Terminal Illness. Social Security Scotland is notified on 21 July that Caroline died on 19 July.

On the same day, 21 July, information from Caroline's GP is received. On 22 July the case manager determines that on the basis of this information, Caroline was entitled to the highest rate of the care component for Scottish Adult DLA from 25 June (the date of her last payment) until 19 July (the date she died).

There are therefore arrears of benefit and enquiries are made to confirm who should receive these arrears on Caroline's behalf. As previously stated, this will be either an Executor (who may be a solicitor or family member), or an appointee for the deceased where the individual does not have an Executor.

### **How will Social Security Scotland be able to tell if there is an Executor?**

13. Social Security Scotland should make enquires with the Sheriff Court to confirm who has been appointed as Executor and to obtain an inventory of any estate. The contact details for the individual's local Sheriff Court can be found here: [Find a court \(scotcourts.gov.uk\)](https://www.scotcourts.gov.uk)
14. An Executor can be nominated in the deceased's Will if they have one (an Executor-nominate), or by the Sheriff Court if they did not have a Will (Executor-dative).
15. If the Sheriff Court is unable to confirm an Executor, Social Security Scotland can make contact with known relatives of the deceased (details of which the deceased may have provided in their review form) in order to establish who is to be appointed Executor.
16. In circumstances where no Executor has been appointed (for a variety of reasons which may include the small size of an estate), the Social Security (Scotland) Act 2018<sup>1</sup> allows for appointees to be put in place to act on behalf of the entitled person in connection with their entitlement to assistance. This specifically provides for situations where the entitled person is deceased. These appointees are able to receive payments on behalf of the entitled person and it is assumed the appointee places the funds with the deceased's estate.

*1 SS Act 2018, s85B(3)(b)*

### **How does Social Security Scotland decide who the most appropriate person is?**

17. Where there is an existing Executor<sup>1</sup> they will automatically be able to act for the deceased client and will also be the person that arrears of Scottish Adult DLA are paid to, in order for them to distribute the funds in line with the deceased's will, or last wishes.

<sup>1</sup> [Dealing With a Deceased's Estate in Scotland \(scotcourts.gov.uk\)](https://www.scotcourts.gov.uk)

18. If Social Security Scotland successfully make contact with an individual who says they are the Executor for the deceased client, then that person should have a document called a Grant of Confirmation. This is the legal document issued by the Sheriff Court which gives the Executor legal authority to act. Without the Grant of Confirmation, the Executor has no legal authority to handle or deal with the deceased's estate.
19. Where Social Security Scotland has made enquiries with the Sheriff Court and found that there is no Executor, Social Security Scotland will have to decide who to appoint as an appointee for the deceased.
20. When establishing an appointee for a deceased client Social Security Scotland must ensure that there is no Executor already appointed on the individual's estate.
21. Social Security Scotland does not need to assess an appointee in the same way that it would for a living client. Guidance on 'making appointments for the deceased' should be followed. However, the term "appointee" does still apply to where there is no Executor, it is just a different type of appointee as it is a procedural appointment to allow Social Security Scotland to finalise the administration of the case.
22. A deceased client will not be open to the same safeguarding risks as a living client. This includes:
- financial exploitation
  - coercion
  - other forms of abuse
23. Therefore, a referral to Local Delivery is not required when processing an appointee for the deceased.
24. In view of this when appointing an appointee, it is simpler to mirror existing rules of intestacy as follows:
1. Spouse/civil partner
  2. Children, or their direct descendants
  3. Parents
  4. Full siblings, or their direct descendants (nieces and nephews)
  5. Half-siblings, or their direct descendants (half nieces and nephews)
  6. Grandparents
  7. Aunts & Uncles, or their direct descendants (cousins)
  8. Half Aunts & Uncles, or their direct descendants (half cousins)

More information on the rules of intestacy can be found here: [Part V. Rights Of Succession - What to do after a death in Scotland - practical advice for times of bereavement: revised 11th edition 2016 \(web only\) - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/part-v-rights-of-succession-what-to-do-after-a-death-in-scotland-practical-advice-for-times-of-bereavement-revised-11th-edition-2016-web-only/pages/12.aspx)

25. A signed declaration will be required by Social Security Scotland confirming the individual being appointed is not aware of another individual who takes precedence over them when agreeing this appointment.
26. In cases of multiple beneficiaries, it is expected individuals will agree the most suitable person to be appointed, and in the event of any outstanding arrears of assistance, the appointee for the deceased pays the sum to the client's estate and apportions accordingly.

**When Social Security Scotland are unable to identify an individual to act or receive any Scottish Adult DLA that is due**

27. Where Social Security Scotland cannot find someone to act, we must process the review to its conclusion, using the information that is available. This may mean that Social Security Scotland have partial information or insufficient supporting information.
28. For example, in the event of the death of a client who is receiving disability benefits, medical records are sent back to the health board after death. This means Social Security Scotland may not be able to write to the Executor or appointee of the deceased or their GP. Where this occurs, a determination of entitlement should be made using all the available information, as well as using other decision-making tools, such as a case discussion with a practitioner and making a determination on the balance of probabilities.
29. Social Security Scotland must also be mindful of the time period that dispute rights remain valid – re-determination and appeal requests can be made up to a year after the original determination.
30. Where the determination results in a payment and Social Security Scotland are not able to find a beneficiary, arrears will be paid to the Office of King's and Lord Treasurer's Remembrancer (KLTR) via the National Ultimus Haeres Unit. If there has been a death and there are apparently no spouse, civil partner or blood relatives, we might expect it to have been reported to the Ultimus Haeres Unit already by the relevant authority. The Unit investigates to identify a beneficiary for a person's estate and takes the relevant actions to do so.
31. Social Security Scotland will be expected to have taken all reasonable steps, as set out above, to determine a beneficiary prior to referring to KLTR.

**END OF CHAPTER**