

Re-determinations

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Introduction

1. This chapter is relevant to individuals who have received a decision on their entitlement to Scottish Adult Disability Living Allowance (Scottish Adult DLA), known as a determination of entitlement, and want to challenge the decision by asking for a re-determination.
2. This includes individuals who are in receipt of Scottish Adult DLA and have received a determination after having their case reviewed. This is called 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 Scottish Adult DLA. This is known as a re-determination¹.

1 Social Security (Scotland) Act 2018 s. 41

4. Re-determinations are processed within the Client Experience Team at Social Security Scotland.

Application for a re-determination

5. An individual receives a notice of the determination of entitlement when a determination has been made on their entitlement to Scottish Adult DLA¹. 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) while their re-determination is considered.

Please note, this information about STA will only be included if the determination has reduced or stopped a client's longstanding and ongoing entitlement to Scottish Adult DLA 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 transfer determination, but is available if the individual appeals. It is only available where longstanding and ongoing entitlement is reduced or stopped.

1 Social Security (Scotland) Act 2018 s. 40

6. 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

7. 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. A period of 48 hours is allowed after the determination is issued to the individual before the 42 calendar days starts ¹.

1 Scottish Adult DLA Regs, Reg. 49(1)

8. 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 one year from when the individual was informed of the determination that they want to be re-determined¹.

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

9. Social Security Scotland may only consider late re-determination requests if both¹:
 - the individual has good reason for not requesting a re-determination sooner
 - the request is made before the end of the day that falls one year after the day the individual was notified of the determination. If the request is made after one year, it can only be accepted where the good reason is related to coronavirus².

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

2 Social Security (Scotland) Act 2018, s. 52A (1)

10. '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.

11. 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.
12. 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)

13. 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 Act 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 when 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 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.

Invalid re-determination requests

14. 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 Scottish Adult DLA regulations.

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

15. 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

16. 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.
17. 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.
18. A re-determination looks at the individual's circumstances again at the date of earlier determination to re-consider the facts on which the earlier determination was based. Nothing that happens after the date of the earlier determination can be considered within the re-determination assessment. This includes the individual's circumstances changing.
19. In cases where the individual has some level of entitlement and:
- the change of circumstances occurred **on or before** the date of determination
 - the individual had not included that information within their review
 - the information provided would impact the assessment of their review.

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

In cases where the individual has some level of entitlement and the change of circumstances occurred **after** the original determination was made, the re-

determination assessment would only take into account information that was relevant to the individual's circumstances on the date of the original determination.

Duty to re-determine

20. Social Security Scotland must make a re-determination within 56 calendar days of receiving the request¹. This starts from the day a valid request is received.

1 Scottish Adult DLA Regs, Reg. 49(2)(a)

21. There is no provision in the regulations or the 2018 Act that allows for an individual to withdraw a request for a re-determination.

22. If the request for re-determination is late, the 56 calendar days begin on the day when the Social Security Scotland decides that they will accept the request¹. It is only at this point that the request is considered valid.

1 Scottish Adult DLA Regs, Reg. 49(2)(b)

23. 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 decision.¹

1 Scottish Adult DLA Regs, Reg. 49(2)(c)

24. 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 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; **and**
- provide the individual with an appeal form

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

25. 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 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

26. Having made a re-determination Social Security Scotland must notify the individual of¹:

- the re-determination
- the reasons for the re-determination
- their right to appeal this determination 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 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 Scottish Adult DLA 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 transfer determination. It is only available where ongoing entitlement is reduced or stopped. No information relating to STA will be provided in notification letters resulting from transfer determinations.

1 Social Security (Scotland) Act 2018 s. 44

