



# Social Security (Scotland) Act 2018

## 2018 asp 9

### PART 2

#### GIVING OF ASSISTANCE BY SCOTTISH MINISTERS

### CHAPTER 3

#### DETERMINING ENTITLEMENT

##### *Determination by the Scottish Ministers*

#### 37 Duty to make determination

The Scottish Ministers are to make a determination of an individual's entitlement to a type of assistance described in Chapter 2—

- (a) on receiving an application for that type of assistance from the individual, or
- (b) when required to do so by regulations under section 52.

#### Commencement Information

- II** S. 37 in force at 22.10.2018 by [S.S.I. 2018/298](#), [reg. 2\(1\)\(g\)](#) (with [reg. 3](#)) (as amended (10.12.2019) by [S.S.I. 2019/406](#), [regs. 1, 2\(2\)](#))

#### 38 Application for assistance

- (1) An application for assistance must be—
  - (a) made to the Scottish Ministers in such form, and
  - (b) accompanied by such evidence,as the Scottish Ministers require.
- (2) The Scottish Ministers must publicise any requirements for the time being set under subsection (1).
- (3) Once—

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- (a) an individual has applied for a particular type of assistance in respect of a period or (as the case may be) event, and
  - (b) the Scottish Ministers have made a determination of the individual's entitlement to that type of assistance in respect of the period or event,
- the individual cannot make another application for that type of assistance in respect of the period or event.
- (4) Despite subsection (3), an individual may make another application for a particular type of assistance in respect of an event if the latest determination of the individual's entitlement to that type of assistance in respect of the event states that the individual may make another application.
- (5) If the Scottish Ministers reject something purporting to be an application for assistance, they must inform the individual concerned of—
- (a) the decision to do that,
  - (b) the reasons for it, and
  - (c) the individual's right to appeal under section 61.

**Commencement Information**

**I2** S. 38 in force at 22.10.2018 by [S.S.I. 2018/298, reg. 2\(1\)\(g\)](#) (with [reg. 3](#)) (as amended (10.12.2019) by [S.S.I. 2019/406, regs. 1, 2\(2\)](#))

**39 Withdrawal of application**

- (1) An individual who has made an application for assistance may request that the Scottish Ministers disregard it.
- (2) If an individual requests that an application be disregarded—
- (a) the Scottish Ministers are not to make a determination of the individual's entitlement to any type of assistance on the basis of the application, and
  - (b) accordingly, their duty to do so under section 37 ceases to apply.
- (3) A request under subsection (1) must be made in such form as the Scottish Ministers require.
- (4) The Scottish Ministers must publicise any requirements for the time being set under subsection (3).

**Commencement Information**

**I3** S. 39 in force at 22.10.2018 by [S.S.I. 2018/298, reg. 2\(1\)\(g\)](#) (with [reg. 3](#)) (as amended (10.12.2019) by [S.S.I. 2019/406, regs. 1, 2\(2\)](#))

**40 Notice of determination**

- (1) Having made a determination under section 37 of an individual's entitlement to assistance, the Scottish Ministers must inform the individual—
- (a) of the determination,
  - (b) of the reasons for it,

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- (c) of the individual's right under section 41 to request that the Scottish Ministers re-determine the individual's entitlement to the assistance,
  - (d) that the individual will have the right under section 46 to appeal to the First-tier Tribunal against the determination should the Scottish Ministers fail to deal with a request for a re-determination within the period allowed for re-determination, and
  - (e) if relevant, that the individual has the right to request a copy of an assessment report under section 60.
- (2) The Scottish Ministers must fulfil their duty under subsection (1) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

#### Commencement Information

- I4** S. 40 in force at 22.10.2018 by S.S.I. 2018/298, reg. 2(1)(g) (with reg. 3) (as amended (10.12.2019) by S.S.I. 2019/406, regs. 1, 2(2))

### *Re-determination by the Scottish Ministers*

#### **41 Right to request re-determination**

- (1) An individual may request that the Scottish Ministers re-determine the individual's entitlement to a particular type of assistance after being informed (in accordance with section 40) of a determination by the Ministers of the individual's entitlement to that type of assistance.
- (2) A request for a re-determination is valid only if the conditions set out in the following subsections are satisfied—
- (a) subsection (3), and
  - (b) subsection (4) [<sup>F1</sup>(read with section 52A)].
- (3) The condition referred to in subsection (2)(a) is satisfied if the request is made in such form as the Scottish Ministers require.
- (4) The condition referred to in subsection (2)(b) is satisfied if—
- (a) the request is made before the end of the period prescribed by the Scottish Ministers in regulations, or
  - (b) in a case where the request is made after that period has ended—
    - (i) the individual has a good reason for not requesting a re-determination sooner (see section 42), and
    - (ii) the request is made before the end of the day that falls one year after the day on which the individual is informed (in accordance with section 40) of the determination [<sup>F2</sup>(but see section 52A)].
- (5) The Scottish Ministers must publicise any requirements for the time being set under subsection (3).
- (6) If the Scottish Ministers decide that something purporting to be a request for a re-determination does not satisfy the condition in subsection (3), they must inform the individual concerned of—
- (a) the decision,

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- (b) the reasons for it, and
- (c) the individual's right to appeal under section 61.

#### Textual Amendments

- F1** Words in s. 41(2)(b) inserted (7.4.2020) by [Coronavirus \(Scotland\) Act 2020 \(asp 7\), s. 17\(1\), sch. 7 para. 2\(a\)](#) (with ss. 11-13)
- F2** Words in s. 41(4)(b)(ii) inserted (7.4.2020) by [Coronavirus \(Scotland\) Act 2020 \(asp 7\), s. 17\(1\), sch. 7 para. 2\(b\)](#) (with ss. 11-13)

#### Commencement Information

- I5** S. 41 in force at 22.10.2018 by [S.S.I. 2018/298, reg. 2\(1\)\(g\)](#) (with [reg. 3](#)) (as amended (10.12.2019) by [S.S.I. 2019/406, regs. 1, 2\(2\)](#))

## 42 Late request for re-determination

- (1) It is for—
- (a) the Scottish Ministers, or
  - (b) on appeal under section 61, the First-tier Tribunal for Scotland,
- to decide whether, for the purpose of section 41(4)(b), an individual has a good reason for not requesting a re-determination sooner.
- (2) Having made a decision under subsection (1), the Scottish Ministers must inform the individual concerned—
- (a) of the decision, and
  - (b) if the decision is that the individual has no good reason for not requesting a re-determination sooner, of—
    - (i) the reasons for the decision, and
    - (ii) the individual's right to appeal under section 61.

#### Commencement Information

- I6** S. 42 in force at 22.10.2018 by [S.S.I. 2018/298, reg. 2\(1\)\(g\)](#) (with [reg. 3](#)) (as amended (10.12.2019) by [S.S.I. 2019/406, regs. 1, 2\(2\)](#))

## 43 Duty to re-determine

- (1) On being requested under section 41 to re-determine an individual's entitlement to a particular type of assistance, the Scottish Ministers are to make a determination of the individual's entitlement to that type of assistance.
- (2) The Scottish Ministers must aim to make the determination within the period allowed for re-determination.
- (3) If the Scottish Ministers fail to make the determination within the period allowed for re-determination—
- (a) their duty to make the determination ends (but they may still make it), and
  - (b) section 45 applies.

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- (4) If the Scottish Ministers make the determination (whether or not within the period allowed for re-determination), section 44 applies.
- (5) The period allowed for re-determination is to be prescribed by the Scottish Ministers in regulations.
- (6) The reference in subsection (1) to a request under section 41 is to a request that is valid according to subsection (2) of that section.

#### Commencement Information

**I7** S. 43 in force at 22.10.2018 by S.S.I. 2018/298, **reg. 2(1)(g)** (with **reg. 3**) (as amended (10.12.2019) by S.S.I. 2019/406, **regs. 1, 2(2)**)

#### 44 Notice of re-determination

- (1) Having made a determination under section 43 of an individual's entitlement to a particular type of assistance, the Scottish Ministers must—
  - (a) inform the individual—
    - (i) of the determination,
    - (ii) of the reasons for it,
    - (iii) of the individual's right to appeal to the First-tier Tribunal under section 46 against the determination,
    - (iv) if relevant, that the individual has the right to request a copy of an assessment report under section 60, and
  - (b) provide the individual with a form that the individual can complete and submit to the Scottish Ministers in order to bring an appeal against the determination.
- (2) The Scottish Ministers must fulfil their duty under subsection (1)(a) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

#### Commencement Information

**I8** S. 44 in force at 22.10.2018 by S.S.I. 2018/298, **reg. 2(1)(g)** (with **reg. 3**) (as amended (10.12.2019) by S.S.I. 2019/406, **regs. 1, 2(2)**)

#### 45 Notice where re-determination not made timeously

- (1) Having failed to make a determination under section 43 of an individual's entitlement to a particular type of assistance within the period allowed for re-determination, the Scottish Ministers must—
  - (a) inform the individual—
    - (i) that the individual's request for a re-determination has not been dealt with within the period allowed, and
    - (ii) that the individual therefore has the right to appeal to the First-tier Tribunal against the determination under section 37 which prompted the request for a re-determination, and

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- (b) provide the individual with a form that the individual can complete and submit to the Scottish Ministers in order to bring an appeal against the determination.
- (2) The Scottish Ministers must fulfil their duty under subsection (1)(a) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

**Commencement Information**

**I9** S. 45 in force at 22.10.2018 by [S.S.I. 2018/298](#), [reg. 2\(1\)\(g\)](#) (with [reg. 3](#)) (as amended (10.12.2019) by [S.S.I. 2019/406](#), [regs. 1, 2\(2\)](#))

*Appeal against the Scottish Ministers' determination*

**46 Right to appeal to First-tier Tribunal against determination**

- (1) An individual may appeal to the First-tier Tribunal for Scotland—
- (a) against a determination under section 43 of the individual's entitlement to assistance, or
  - (b) in a case where subsection (2) applies, against the determination under section 37 referred to in that subsection.
- (2) This subsection applies where—
- (a) having been informed of a determination under section 37 of the individual's entitlement to assistance, the individual has made a request for a re-determination under section 41, and
  - (b) the Scottish Ministers have failed to make a determination under section 43 in consequence of that request within the period allowed for re-determination.

**Commencement Information**

**I10** S. 46 in force at 22.10.2018 by [S.S.I. 2018/298](#), [reg. 2\(1\)\(g\)](#) (with [reg. 3](#)) (as amended (10.12.2019) by [S.S.I. 2019/406](#), [regs. 1, 2\(2\)](#))

**47 Initiating an appeal**

- (1) In order to bring an appeal under section 46 against a determination, an individual must submit to the Scottish Ministers the form provided under section 44 or (as the case may be) 45 in relation to the determination.
- (2) On receiving a form that they provided under section 44 or 45, the Scottish Ministers must send—
- (a) the form, and
  - (b) the information held by them that they used to make the determination in question,
- to the First-tier Tribunal.
- (3) Having complied with subsection (2), the Scottish Ministers must inform the individual to whom the determination in question relates that they have done so.
- (4) In this section, references to a form include a copy of a form.

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- (5) For the avoidance of doubt, the form that the Scottish Ministers provide under section 44 or 45 need not be a physical form.
- (6) Scottish Tribunal Rules providing for the form and manner in which an appeal under section 46 is to be brought may not displace the effect of subsection (1), but this section is otherwise without prejudice to what may be provided under any power to make Scottish Tribunal Rules.

#### Commencement Information

**II1** S. 47 in force at 22.10.2018 by S.S.I. 2018/298, reg. 2(1)(g) (with reg. 3) (as amended (10.12.2019) by S.S.I. 2019/406, regs. 1, 2(2))

## 48 Deadline for appealing

- (1) An appeal under section 46—
  - (a) may be brought without the First-tier Tribunal's permission if an appeal application is made within the period of 31 days beginning with the day the relevant event occurred,
  - (b) may be brought only with the First-tier Tribunal's permission if an appeal application is made after the period mentioned in paragraph (a),
  - (c) may not be brought if an appeal application has not been made within the period of one year beginning with the day the relevant event occurred [<sup>F3</sup>(but see section 52A)].
- (2) In subsection (1)—
  - (a) “the relevant event” means—
    - (i) in the case of an appeal against a determination under section 43, the individual to whom the determination relates being informed of it in accordance with section 44,
    - (ii) in the case of an appeal against a determination under section 37, the individual to whom the determination relates being informed (in accordance with section 45) that the individual has the right to appeal against it,
  - (b) an appeal application is made when a form, that relates to the determination in question and has been completed to the extent that Scottish Tribunal Rules require, is received by the Scottish Ministers having been submitted in accordance with section 47(1).
- (3) The First-tier Tribunal may give permission under subsection (1)(b) for an appeal to be brought only if it is satisfied that there is a good reason for the application not having been made sooner.

#### Textual Amendments

**F3** Words in s. 48(1)(c) inserted (7.4.2020) by Coronavirus (Scotland) Act 2020 (asp 7), s. 17(1), sch. 7 para. 3 (with ss. 11-13)

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#### Commencement Information

**I12** S. 48 in force at 22.10.2018 by [S.S.I. 2018/298](#), [reg. 2\(1\)\(g\)](#) (with [reg. 3](#)) (as amended (10.12.2019) by [S.S.I. 2019/406](#), [regs. 1, 2\(2\)](#))

### 49 First-tier Tribunal's power to determine entitlement

In an appeal under section 46 against a determination of an individual's entitlement to a particular type of assistance, the First-tier Tribunal may—

- (a) uphold the determination, or
- (b) make its own determination of the individual's entitlement to the type of assistance in question.

#### Commencement Information

**I13** S. 49 in force at 22.10.2018 by [S.S.I. 2018/298](#), [reg. 2\(1\)\(g\)](#) (with [reg. 3](#)) (as amended (10.12.2019) by [S.S.I. 2019/406](#), [regs. 1, 2\(2\)](#))

#### *The determination of entitlement*

### 50 Decisions comprising determination

- (1) A determination of an individual's entitlement to a particular type of assistance consists of—
  - (a) a decision about whether or not the eligibility rules prescribed in the applicable regulations are satisfied in the individual's case,
  - (b) if those rules are satisfied, a decision (taken in accordance with the applicable regulations) about what assistance of the type in question the individual is entitled to be given,
  - (c) if the determination is to be made on the basis that the individual has ongoing entitlement to the type of assistance in question (see section 51), a decision about what assistance of the type in question the determination is to entitle the individual to be given in the future, and
  - (d) if the determination is of an individual's entitlement to assistance in respect of an event, a decision about whether the individual's application for assistance in respect of the event is possibly premature.
- (2) If it is decided under subsection (1)(d) that an individual's application for assistance in respect of an event is possibly premature, the determination must include a statement that the individual may make another application for assistance in respect of the event.
- (3) An individual's application for assistance in respect of an event is possibly premature for the purpose of subsection (1)(d) if—
  - (a) the decision under subsection (1)(a) is that the eligibility rules prescribed in the applicable regulations are not satisfied in the individual's case, and
  - (b) it is possible that circumstances may change so that, in relation to the event in question, those rules will be satisfied in the individual's case.
- (4) In this section, “the applicable regulations” means the regulations made under the section in Chapter 2 that describes the type of assistance in question.

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### Commencement Information

**I14** S. 50 in force at 22.10.2018 by S.S.I. 2018/298, **reg. 2(1)(g)** (with **reg. 3**) (as amended (10.12.2019) by S.S.I. 2019/406, **regs. 1, 2(2)**)

## 51 Determination on basis of ongoing entitlement

- (1) The Scottish Ministers may by regulations—
- (a) provide that a determination of an individual's entitlement to a specified type of assistance is to be made on the basis that the individual has ongoing entitlement to that type of assistance, and
  - (b) provide for exceptions to any provision made by virtue of paragraph (a).
- (2) Regulations making provision by virtue of subsection (1)(a) are also to—
- (a) prescribe the time, or times, at which an individual is to become entitled to be given assistance under a determination made on the basis that the individual has ongoing entitlement, <sup>F4</sup>...
  - [<sup>F5</sup>(aa) make provision, in accordance with schedule 11, about—
    - (i) the circumstances in which an individual who has an entitlement to assistance in respect of a period under such a determination is not to become entitled to be given some or all of that assistance at the time at which the individual otherwise would in accordance with provision under paragraph (a), and
    - (ii) in that event, how and when the individual is to become entitled to be given that assistance, and]
    - (b) provide that a decision about what assistance the individual is to become entitled to be given under such a determination in respect of any future period is to be taken in accordance with the applicable regulations on the strength of such assumptions as are specified.
- (3) Without prejudice to the generality of subsection (2)(b), the assumptions that may be specified include an assumption that the eligibility rules prescribed in the applicable regulations will continue to be satisfied in an individual's case for a specified duration or indefinitely.
- [<sup>F6</sup>(3A) Schedule 11 makes provision about the exercise of the power conferred by subsection (2)(aa).]
- (4) In this section—
- “the applicable regulations” means the regulations made under the section in Chapter 2 that describes the type of assistance in question,
  - “specified” means specified by regulations under this section.

### Textual Amendments

- F4** Word in s. 51(2)(a) repealed (26.7.2021) by Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18), **ss. 12(2)(a)**, 18(2)(3); S.S.I. 2021/232, **reg. 2(f)**
- F5** S. 51(2)(aa) inserted (26.7.2021) by Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18), **ss. 12(2)(b)**, 18(2)(3); S.S.I. 2021/232, **reg. 2(f)**
- F6** S. 51(3A) inserted (26.7.2021) by Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18), **ss. 12(2)(c)**, 18(2)(3); S.S.I. 2021/232, **reg. 2(f)**

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#### Commencement Information

**I15** S. 51 in force at 22.10.2018 by [S.S.I. 2018/298](#), [reg. 2\(1\)\(g\)](#) (with [reg. 3](#)) (as amended (10.12.2019) by [S.S.I. 2019/406](#), [regs. 1, 2\(2\)](#))

## 52 Determination without application

- (1) The Scottish Ministers may by regulations provide that, in such circumstances as the regulations specify, the Scottish Ministers are to make a determination of an individual's entitlement to a particular type of assistance without receiving an application.
- (2) The Scottish Ministers may by regulations make provision about the information that is to be used, and the assumptions that are to be made, in making a determination when required to do so by regulations under subsection (1).

#### Commencement Information

**I16** S. 52 in force at 22.10.2018 by [S.S.I. 2018/298](#), [reg. 2\(1\)\(g\)](#) (with [reg. 3](#)) (as amended (10.12.2019) by [S.S.I. 2019/406](#), [regs. 1, 2\(2\)](#))

*[<sup>F7</sup>Coronavirus: relaxation of deadlines*

#### Textual Amendments

**F7** Ss. 52A, 52B and cross-heading inserted (7.4.2020) by [Coronavirus \(Scotland\) Act 2020 \(asp 7\)](#), s. [17\(1\)](#), [sch. 7 para. 4](#) (with ss. 11-13)

## 52A Re-determination and appeal deadlines

- (1) A request for a re-determination satisfies the condition in subsection (4) of section 41, despite being made after the expiry of the period described in paragraph (b) of that subsection, if the person deciding whether the individual has a good reason for not requesting a re-determination sooner decides that the individual has a good reason that is related to coronavirus.
- (2) An appeal may be brought under section 46, despite the appeal application being made after the expiry of the period described in paragraph (c) of subsection (1) of section 48, if the First-tier Tribunal gives permission for the appeal to be brought under paragraph (b) of that section on the basis of being satisfied that the good reason for the application not being made sooner is related to coronavirus.
- (3) Any provision of Scottish Tribunal Rules that would (but for this subsection) have the effect of precluding an appeal being brought by virtue of subsection (2) is to be disregarded to the extent that it would have that effect.
- (4) In this section, “coronavirus” has the meaning given by section 1 of the Coronavirus (Scotland) Act 2020.

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## **52B Applications for assistance**

- (1) Subsection (2) applies where regulations under Chapter 2 make an individual's eligibility for assistance in respect of a period or event depend (in any way) on an application being made by a particular time.
- (2) The person determining an individual's entitlement to the assistance may treat the individual's application as having been made by that time if satisfied that the reason for its not being made sooner is related to coronavirus.
- (3) For the avoidance of doubt, regulations that make a person's age at the time of making an application material to the determination of an individual's entitlement to assistance are to be understood to make the individual's eligibility depend on the application being made by a particular time (namely the time at which the person ceases to be the specified age or fall within the specified age bracket).
- (4) In this section, “coronavirus” has the meaning given by section 1 of the Coronavirus (Scotland) Act 2020.]

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 81(4C) inserted by [2021 asp 20 s. 2\(a\)](#)
- s. 85D inserted by [2020 asp 18 s. 2\(6\)](#)