

CORONAVIRUS (SCOTLAND) ACT 2020

EXPLANATORY NOTES

DETAIL ABOUT PROVISIONS

Schedule 7 - Other measures in response to coronavirus

Social security

252. Paragraphs 1 to 5 of schedule 7 make provision to modify, and modify the effect of, certain provisions of the Social Security (Scotland) Act 2018 (“the 2018 Act”) that relate to statutory timescales that are likely to be affected by the coronavirus.
253. Paragraph 2 modifies section 41 of the 2018 Act, which provides for the right to request re-determination of a decision made by Social Security Scotland. Section 41(2) provides that a request for a re-determination is valid only where certain conditions are satisfied, and subsection (4) of that section sets out the condition that the request must be made within specified timescales.
254. Paragraph 3 modifies section 48 of the 2018 Act, which provides the statutory timescales for bringing an appeal under section 46 of that Act against a determination made by the Scottish Ministers, so that they are also to be read with new section 52A.
255. Paragraph 4 inserts two new sections into the 2018 Act. Those are section 52A (re-determination and appeal deadlines) and section 52B (applications for assistance).
256. New section 52A(1) provides that where a person has requested a re-determination after the deadline set out in regulations under section 41 of the 2018 Act the request will be valid, even if received after the end of the period of a year after the day on which the individual was informed of the original determination, where it is considered that the request was made late for a good reason that is related to coronavirus.
257. New section 52A(2) provides that an appeal may be brought under section 46 of the 2018 Act at any time after the expiry of the 31 day period set out in section 48(2) (a), including after the deadline of one year set out in section 48(1)(c), if the First-tier Tribunal gives permission on the basis that there is a good reason for the application not being made sooner which is related to coronavirus.
258. New section 52A(3) provides that any provision of the Scottish Tribunal Rules that would have the effect of precluding an appeal from being brought under section 52A(2) (for example any time limit for giving a notice of appeal) is to be disregarded to the extent it would have that effect.
259. New section 52B applies in respect of any provisions in regulations made under Chapter 2 of the 2018 Act that make a person’s eligibility for assistance conditional on their application being made by a particular time or ahead of a certain event. In accordance with subsection (2), the person who is determining the applicant’s eligibility may treat the application as having been made by the required timescale if the person is satisfied that the reason for the application not being made ahead of the deadline or event is related to coronavirus.

*These notes relate to the Coronavirus (Scotland) Act
2020 (asp 7) which received Royal Assent on 6 April 2020*

260. Section 52B(3) makes clear the relaxation on the requirements described above includes those that set out that entitlement to assistance is conditional on a person's age at the time of making an application. That means that where an individual is unable due to the impact of coronavirus to apply for assistance at a time when they satisfy the age-related requirement (e.g. the requirement to be aged under the age of 19 on the day an application for Young Carer Grant is made) they will be entitled to apply late and have their entitlement determined as though the application had been made when those age-related requirements were satisfied.
261. Paragraph 5 modifies section 43 of the 2018 Act in two ways. Subsection (2) is modified so as to read "...the determination as soon as reasonably practicable." A new subsection (5A) is also inserted. Section 43 sets out a duty to re-determine applications where this is requested by the individual, and subsection (5) of that section provides that the period allowed for re-determination is to be prescribed by the Scottish Ministers in regulations. The effect of the modification made by paragraph 5 is that the periods prescribed in those regulations are to be read as though extended by 9 weeks. This has the effect of giving Social Security Scotland longer to make a re-determination as a result of disruption caused by the Coronavirus.