



# Social Security (Scotland) Act 2018

## 2018 asp 9

### PART 2

#### GIVING OF ASSISTANCE BY SCOTTISH MINISTERS

### CHAPTER 3

#### DETERMINING ENTITLEMENT

##### *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).
- (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.

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*Status: This is the original version (as it was originally enacted).*

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

#### **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.

#### **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.
- (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.

#### **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.

#### **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
  - (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.