

SOCIAL SECURITY (SCOTLAND) BILL POLICY POSITION PAPER

RE-DETERMINATIONS AND APPEALS

Ocotber 2017

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Introduction

This paper is one of a series of papers in which the Scottish Government wishes to set out and (where appropriate) provide an update on its position on various matters relating to the Social Security (Scotland) Bill (the Bill). The purpose of this paper is to set out the Scottish Government's current policy position on its proposals for dispute resolution process for challenging entitlement decisions, which are referred to as re-determinations and appeals.

Our Position

The proposals set out in sections 23 to 29 of the Bill are the result of careful consideration of the views from the large scale and widespread consultation carried out in summer 2016. The Scottish Government is aware that some stakeholders are supportive of these proposals whereas some have expressed concerns on how they will operate in practice. The Scottish Government is committed to co-designing with the people of Scotland a system for dispute resolution that adheres to our principles for social security. We will build on the excellent process of engaging with the people across Scotland to understand their concerns and design and build a system that meets the needs of the user.

Our process will have clearly published procedures and timescales with meaningful redress should those procedures and timescales not be adhered to by the social security agency. Our approach to decision making will place the individual at the heart of everything by engaging with them to seek out any further evidence to help focus on getting the decision right first time and having processes in place to put things right quickly where there has been an error. Where an individual wishes to challenge a decision, they will first request a re-determination, which will be carried out by the social security agency within specified timeframes that will be set out in regulations.

If an individual disagrees with the re-determination outcome, or it is taking an unreasonable time, then they will have a right to take their dispute to the First-tier Tribunal (FtT). The Tribunals (Scotland) Act 2014 allows for separate entitlement Chambers to be created in the Scottish Tribunals, that are administered by Scottish Courts and Tribunals Service (SCTS). It is the intention of Scottish Ministers to set up a new Chamber in the Scottish Tribunals that will hear appeals for devolved benefits.

The Re-determination Stage

The detailed service design and modelling work to co-design the new processes for challenging decisions as part of the development of the new social security system (working with Experience Panels, users and stakeholders) is still to be undertaken. That said, our intention in having the re-determination stage is not to discourage appeals, but to focus on getting the decisions right thereby removing the need for an appeal. The intention of how the re-determination process will operate will include the following features:

Independent re-run

During the re-determination process, the initial decision by the social security agency will be put aside and will be a complete re-run of the decision process, carried out by an official in another part of the social security agency. The Bill provides for a decision that will be retaken, as new, from first principles. The officer dealing with the re-determination will take an interactive approach and keep the individual informed throughout the process.

To ensure the approach and culture of the agency places the individual at the heart of everything it does, there will be extensive and on-going training for re-determination officers. This will support quality and consistency of decision making. It will also provide a more supportive environment as part of the inquisitive approach that re-determinations officers will undertake to ensure an evidenced based decision is reached quickly, effectively and considers the individual's concern in each case.

Simple process

The re-determination process will allow the individual to ask for a re-determination without having to supply further evidence, but the agency will take into consideration any new evidence which they want to provide. Our intention is to ensure any request for a re-determination can be made simply, in a manner that is convenient for the individual without the need for complicated forms. The involvement of users in the service design process will help us to understand how to design the process of asking for a re-determination which is easy to navigate and understood by users. But if the individual gives grounds for why they consider the initial determination to be incorrect, then those will of course be considered.

Clear procedures and timescales

The re-determination process will have clearly published procedures and timescales in place, to ensure that decisions are made quickly. The Scottish Government will set out the timescales for requesting a re-determination and the time limit for the agency to carry out a re-determination in regulations. We want to ensure that the timescales are appropriate so that it does not lead to service delivery failure or individuals having to wait long periods before having the option to access a tribunal, should that be required.

We will also allow for consideration of late requests - beyond the timescales set out in regulations and up to a maximum of 12 months from the date of the determination - if the individual can set out good reasons why they were not able to request a re-determination sooner. To further strengthen the access to justice, any decision to refuse a late request to be raised would carry a right of an appeal to the FtT. This will ensure the Scottish system is fair and in line with a rights based approach.

Meaningful re-dress

The optimum outcome for the individual will be to have any mistakes corrected by the social security agency as quickly as possible. We will work with users to understand their needs and co-design our processes to deliver this optimum outcome, wherever possible. It is simply not conceivable that a tribunal decision could correct any mistake on behalf of the individual as quickly as the agency could. Therefore, the individual's interests are best served by giving the agency the immediate opportunity to put right any errors.

The re-determination process will also provide meaningful re-dress if the re-determination is not completed within set timescales. People will then have a right to take their case to a tribunal immediately, if they do not wish to wait for the re-determination. This redress is not available in the DWP system where an individual has to await the Mandatory Reconsideration and receive the notification before they are allowed to seek re-dress with the tribunal. Our process seeks to avoid unnecessary barriers.

Short term assistance

The Bill makes clear that we are protecting individuals' rights. If payments are being made (i.e. if the determination being challenged is a decision to reduce the payment level of a continuing payment), the Bill makes provision in section 18 which will allow payments to continue at their original level in the form of short-term assistance. The Scottish Government recognises that stakeholders have welcomed the inclusion of short-term assistance to be available but have highlighted concerns on how the short-term assistance may not protect underlying entitlement to other benefits.

As part of the further development of policy, consideration will be given to how the short-term assistance may operate to provide that dependent entitlements are also safeguarded.

Appeal to the Tribunal

It is intended that the re-determination will ensure that the individual's entitlement is correctly calculated. However, if the individual is dissatisfied with the re-determination outcome, they will be able to decide whether to take their claim to the FtT, where it will follow the tribunal's process for challenging the decision.

Some stakeholders have expressed concern that the two stage process should be streamlined into a single stage by placing a responsibility on the agency to forward the appeal to the FtT. This would apply to anyone that receives a negative decision unless they opt out, as is the case in the process used by local authorities for Housing Benefit appeals.

We have considered this proposal but deemed it inappropriate as our system is built differently from Housing Benefit appeals and is not directly comparable. The automatic forwarding of appeals would place a significant administrative burden on the agency. It would also take away an individual's right to choose, as they would not have the option to decide how they want to proceed at the conclusion of the re-determination stage.

Conclusion

We have made a clear commitment to co-designing the new processes for challenging decisions as part of the development of the new social security system. Our service design process will be user centric; working with users on an on-going basis to design and test processes to ensure they are accessible and efficient. Once those processes are designed, the Scottish Government is further committed to using outcomes of re-determinations and appeals to improve decision making and embed a culture of continuous improvement.

Scottish Government
Social Security Directorate
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All enquiries in relation to this paper should be sent to:

*Naeem Bhatti
Head of Complaints, Re-determinations and Appeals Policy,
Atlantic Quay,
150 Broomielaw,
Glasgow, G2 8LU
Naeem.bhatti@gov.scot*



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