



Welfare Rights Conference 2024

First-tier Tribunal for Scotland Social Security Chamber – current processes and future changes

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Processes and tactics in the First-tier Tribunal Social Security Chamber

The first part of this workshop consists of a session on current processes in the First-tier Tribunal for Scotland Social Security Chamber ('FtTS' below). It will be led by the Chamber President and the Operations Manager for the Scottish Courts and Tribunals Service, and include a discussion of tactics aimed at appeal representatives.

Future changes to redeterminations and appeals rules

At the time of writing, the Scottish government proposed to change a number of rules about redeterminations and appeals. The changes are contained in the Social Security (Amendment) (Scotland) Bill ('the Bill' below). For more information see [the Bill homepage on the Scottish parliament website](#).

Warning: the Bill must pass through two different amendment stages and then the provisions must be commenced by regulations before it becomes law. The information in these materials should not be relied upon when advising clients. See CPAG's *Welfare Rights Bulletin* and the online *Welfare Benefits and Tax Credits Handbook* for the detail of the finalised changes (once they are made).

Changes to time limits

ss3-4 of the Bill propose to repeal some provisions in the Social Security (Scotland) Act 2018 ('the Act' below – [the Act is available at legislation.gov.uk](#)). These currently allow for late claims for benefit, redetermination requests or appeals if the lateness is 'due to coronavirus'. s4 of the Bill will replace this with new rules allowing a redetermination request or appeal to be admitted later than the current absolute one-year time limit in any 'exceptional circumstances'. Such circumstances are not defined in the law, but if Social Security Scotland (SSS) does not accept them on a redetermination request there will be a right to appeal this 'process decision' to the First-tier Tribunal for Scotland ('FtTS' below).

Changes to redeterminations

s5 of the Bill will amend the Act to allow an individual to withdraw a redetermination request if they later change their mind. In the current proposals a withdrawn request cannot be reinstated, although the claimant may be able to make a further redetermination request against the same determination. This may be helpful as in some situations a claimant can get more benefit by awaiting a further determination than they can be requesting a redetermination (for example many claimants transferred to ADP from DWP benefits after reporting a change to DWP).

At present if SSS fails to carry out a redetermination within the period allowed, the claimant must be notified of their right to appeal (s45 of the Act). The law currently allows (but does not require) SSS to carry out a later redetermination. This can cause confusion and potentially even the loss of appeal rights.

s6 of the Bill will require that a redetermination is always carried out after the time limit unless the claimant has already exercised their right of appeal. If the claimant

does appeal, but later withdraws their appeal, the duty to redetermine arises again. Although in this situation the claimant would be able to withdraw their redetermination request (see above).

Changes to appeals

At present once the claimant appeals, SSS cannot make a further determination and so 'lapse' the appeal (prevent it from going ahead) even if they are of the view that the appeal should succeed. s7 of the Bill proposes to introduce a new power to make a new determination after the claimant has appealed if:

- the appeal has not yet been decided by the FtTS; *and*
- the previous determination was too low 'due to an error'; *and*
- the claimant agrees to the new determination being made.

Changes to the tribunal rules must then cause the appeal proceedings to end.

Claimants will be able to request a redetermination of the new determination.

s8 of the Bill seeks to 'clarify' what the FtTS can decide in an appeal against a 'process decision' to reject a claim for benefit or a redetermination request. It provides that the decision if the appeal succeeds can be that further information is required for a claim or redetermination request to be in the required form. SSS can then request this information again and make a further process decision if it is not provided.

New review and appeal rights regarding liability for overpayments

s9 of the Bill modifies the Act to provide that SSS must make a 'decision' (a new power, **not** part of a determination of entitlement) about liability to repay an overpayment in all cases. s10 of the Bill also sets out situations in which an individual or their 'representative' is liable to repay an overpayment. Once SSS make such a decision, s13 of the Bill creates a right to request a 'review' of such a decision, and then appeal to the FtTS if it is not changed. Save the different terminology and the fact of being a separate legal process, the law about reviews and appeals is identical to the law about redeterminations and appeals against determinations of entitlement (as amended by the proposals listed above). It remains to be seen whether in practice it will be possible to request a redetermination and review together, and then make a single appeal against both the decision and the determination of entitlement.

Recovery from compensation payments

Part 7 of the Bill introduces a new power to recovery social security assistance from compensation payments (similar to that of the DWP's Compensation Recovery Unit, which may yet deliver the service on behalf of SSS). There is a new right for the 'compensator' or 'injured person' to request a reconsideration of a certificate of recoverable assistance, and then to appeal if still unhappy. It is expected that, like appeals in relation to DWP compensation recovery, this will be a situation that advisers are rarely involved in.

Information for audit

Part 6 of the Bill introduces a new power to request information for audit purposes from someone who is entitled to assistance under the Act. Whilst an individual can ask that a request for information is withdrawn, at the time of writing there is **no** right of challenge if the request is not withdrawn. If requested information is not provided, an award can be suspended in consequence. Existing powers (in s54 of the Act) also give SSS the power to make a determination that someone is not entitled due to a failure to respond to a request for information. But once this happens there is a right to request a redetermination.