

Mandatory Reconsideration and Direct Lodgement of Appeals



At a glance

This briefing provides information on new rules affecting social security disputes and appeals which took effect in Northern Ireland on 23 May 2016.

These important changes affect anyone challenging a social security decision made on or after 23 May 2016. However, they will potentially have the biggest impact on those in receipt of ESA or claiming ESA who receive an unfavourable decision.

The briefing is divided into two sections:

1. Mandatory Reconsideration;
2. Direct Lodgement of appeals.

Template requests for Mandatory Reconsideration and Appeal are set out in the Appendix.

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1. Mandatory Reconsideration

From 23 May 2016, Mandatory Reconsideration is the initial stage that a person must go through in challenging a social security decision notified on or after that date.

From that date, it is no longer possible to appeal against a social security decision without having first gone through Mandatory Reconsideration.

These changes apply to all social security benefits, administered by Department for Communities, apart from Housing Benefit decisions made by the Housing Executive or Land & Property Service (there is no change to the appeal process for these decisions).

They will also apply to decisions made by Child Maintenance Service from 11 July 2016.

For rules on HMRC administered benefits, see:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/464036/WTCAP.pdf

Mandatory reconsideration will potentially have the biggest impact on those in receipt of ESA or claiming ESA who receive an unfavourable decision.

Set out below are the answers to some frequently asked questions.

Note: Benefits are now administered by the Department for Communities (DfC).

▪ Will Mandatory reconsideration apply if the decision is notified earlier than 23 May 2016?

No. If the decision is earlier than 23 May 2016, the person can still lodge an appeal without going through the mandatory reconsideration initial process.

▪ What is the time limit to ask for Mandatory Reconsideration?

There is a **one month** time limit to request Mandatory Reconsideration from the date of notification of the decision. The relevant date is therefore the date on the letter containing the decision, **not** the date that it is received.

The benefits office must receive the request within the one month time limit so it is important not to delay the request.

▪ Can the one month time limit be extended?

Yes, it is possible to ask for an extension of the time limit up to an absolute time limit of 13 months. When requesting the extension, the applicant must show that special circumstances caused the delay.

The rules say that the more time has passed since the time limit the more compelling the special circumstances must be. An example of special circumstances would be ill health or some personal crisis.

Until recently, if the time was not extended then it was not possible to appeal to an appeal tribunal. A recent decision of the Upper Tribunal in England however has found that if an application for mandatory reconsideration is made late (but still within the 13 month time limit) and time is not extended, a mandatory reconsideration notice must still be issued. It is then possible to appeal the decision to an appeal tribunal.

This was not how the law was being applied previously and although this is a decision from England, it is likely that this will now be applied in Northern Ireland.

▪ **Is it necessary to ask for a written statement of reasons before requesting Mandatory Reconsideration?**

No. If the original decision does not set out a statement of reasons, the person may ask for a written statement of reasons within the month. This will extend the time limit for the mandatory reconsideration request by 14 days or such longer period as DfC takes to issue the reasons.

However, it is not necessary to request reasons before a Mandatory Reconsideration request.

▪ **How do I ask for Mandatory Reconsideration?**

The decision notice will give details of this.

It is best to ask for Mandatory Reconsideration in writing and keep a copy of the letter. Make sure that the letter is clearly marked **Mandatory Reconsideration Request** so that there can be no dispute that this is what was wanted. A template letter is attached at Appendix 1.

It is possible to ask for Mandatory Reconsideration over the phone but it is best to follow up in writing, referring to the telephone conversation.

Make sure that the request is made within the one month time limit.

▪ **Will an appeal be treated as a request for Mandatory Reconsideration?**

Under the new rules, DfC can treat an appeal as a request for Mandatory Reconsideration but it does not have to do so.

To avoid confusion, be careful to mark the letter **Mandatory Reconsideration Request**.

▪ **Will income-related ESA be paid during Mandatory Reconsideration process?**

- **If a person is challenging a decision that s/he does not have limited capability for work** then s/he will not be paid ESA during the Mandatory reconsideration process until either:

- the decision is changed; or

- the Mandatory Reconsideration decision is made, the person appeals and the Appeals Service confirms that it has received the appeal request.

Once this happens, ESA may be paid pending appeal under existing rules.

A person may claim Jobseeker's Allowance as an alternative during the Mandatory Reconsideration process if s/he is entitled.

- If a person is challenging a decision that s/he is not entitled to be included in the support group but that s/he has limited capability for work (work related activity group - WRAG) then s/he will receive ESA during the Mandatory Reconsideration process at the WRAG component rate.

▪ **How long does Mandatory Reconsideration take?**

There is no time frame within which DfC must carry out the Mandatory Reconsideration.

Check with the benefits office that the Mandatory Reconsideration request has been received.

If it is taking an unduly long time to process the request, consider using DfC's Complaints Procedure.

▪ **Will the Mandatory Reconsideration decision be backdated?**

Yes. If the decision is favourable it will be backdated to the date of the decision challenged and arrears will be paid minus the amount of any income replacement benefit paid in the meantime, for example JSA.

▪ **How do I challenge a Mandatory Reconsideration decision?**

Two copies of the Mandatory Reconsideration Notice will be posted to the applicant.

If a person is unhappy with the outcome of a Mandatory Reconsideration then it is possible to appeal to an independent tribunal.

A copy of the Mandatory Reconsideration Notice should be attached to the appeal.

2. Direct Lodgement of appeals

Appeals against decisions notified prior to 23 May 2016 are made to the benefits office which made the decision.

However, an appeal against a decision made on or after 23 May 2016 must be sent to The Appeals Service (TAS) and not to the office which made the decision. It should have a Mandatory Reconsideration Notice attached.

The time limits are the same as for Mandatory Reconsideration.

Set out below are the answers to some frequently asked questions.

▪ **What will happen if an appeal is lodged without a Mandatory Reconsideration Notice?**

If a Mandatory Reconsideration Notice is not attached to the appeal it will still be treated as a valid appeal. However, processing of the appeal will be delayed as TAS will still need to confirm that a Mandatory Reconsideration has taken place. It will contact the relevant benefits office to confirm this and this will result in delay in having the appeal accepted.

▪ **Will income related Employment and Support Allowance be paid pending appeal?**

- **If a person has made an appeal against a decision that s/he does not have limited capability for work and provides medical certificates**, s/he will be treated as having limited capability for work.

S/he can therefore be entitled to income related Employment and Support Allowance (ESA) if it is a first appeal and other conditions of entitlement are met.

- **If a person is appealing a decision that s/he is not entitled to be included in the support group but that s/he has limited capability for work** (work related activity group - WRAG) then s/he will receive ESA during the Mandatory Reconsideration process at the WRAG component rate.

▪ **How long will it take for the pending appeal award to be paid?**

Payments will not be made until DfC's ESA office receives confirmation from TAS that an appeal has been validly made.

TAS has stated that once it receives an appeal and is satisfied that it is valid, it will email the ESA office to confirm that an appeal has been made.

The person should then be entitled to a pending appeal award of ESA (assuming the other conditions are met.) If the person had claimed JSA in the interim, s/he will need to end her/his JSA award as it will not end automatically.

▪ **What happens when the appeal is accepted by TAS?**

Once TAS has accepted the appeal, it is forwarded to the benefits office responsible for the original decision. That office will then be required to produce an appeal response.

In Great Britain there is a 28 day time limit for the benefits office to do this but there is no equivalent time limit in Northern Ireland. When DfC's appeal response is ready, it will be sent to the person appealing and to TAS. TAS will then make arrangements for the appeal to be heard by a tribunal.

TAS will usually issue a form to the person appealing asking if s/he wants an oral hearing or a paper hearing of the appeal. It is important that the person appealing replies to this as failure to reply can result in further delay or even in an appeal being struck out.

APPENDIX

1. Mandatory Reconsideration request

To _____ (*Relevant benefit office which issued the original decision*)

Name and contact details of person _____

National insurance number _____

Benefit _____

Date of letter notifying the decision _____

Name and contact details of representative _____

Grounds for Mandatory Reconsideration request (why you disagree with the decision)

If the application is made more than one month after notification of the original decision then request an extension in the time limit for Mandatory Reconsideration and complete the sections below.

I request an extension of the one month time limit for asking for Mandatory reconsideration

Reasons why the application has merit

Details of special circumstances that caused the application to be late

Signed _____ Dated _____

2. Appeal request

The Appeals Service has provided forms for appeals against mandatory reconsideration decisions.

For appeals against decisions regarding social security benefits, download NOA1 (SS):

www.nidirect.gov.uk/publications/appeals-form-noa1ss

Forms for appeals against other Mandatory Reconsideration decisions (for example HMRC decisions and Compensation Recovery decisions) can be found on: www.nidirect.gov.uk/articles/appealing-against-a-benefits-decision

Law Centre (NI) advice line

Advisers are welcome to contact the Law Centre's social security legal advice line with queries about this and other benefits issues.

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