

Commissioner's Advice to Inspectors

Direction 7: Relevant Change

The Secretary of State directs that:

A decision maker shall not determine an application for a crisis loan or grant from the social fund made within 26 weeks of a previous application by the same person for a crisis loan or grant for the same item or service for which a payment has already been awarded or refused, unless there has been a relevant change of circumstances.

This Advice Note deals with what is meant by the phrase "a relevant change of circumstances"

1. General Approach

Direction 7 prevents the determination of applications in certain circumstances. However, the direction provides an exception. Direction 7 will not apply where there has been a relevant change of circumstances. As Direction 7 is a procedural measure, which can operate irrespective of the merits of a case, this exception to the direction should be given a generous interpretation.

2. Burden of Proof

The location of the burden of proof is determined on the basis of the principle that, "he who asserts must prove". It follows that the burden of proof rests on the Inspector to show that Direction 7 applies, and on the applicant to show that the exception applies. The Inspector must show that an application has been made within 26 weeks of a previous application by the same person for a crisis loan or grant for the same item or service for which a payment has already been awarded or refused. If the Inspector shows that Direction 7 applies, he will not be able to make a determination "unless [the applicant can show that] there has been a relevant change of circumstances".

However, Inspectors have an inquisitorial role. They should seek to make a judgment about the applicability of Direction 7 and the exception to it on the basis of all the relevant facts. In such circumstances, it would not be appropriate to think in terms of a burden of proof. Inspectors should make proper enquiries to ensure that they can reach a sound judgment on the basis of all the relevant facts.

In cases where an Inspector is not able to establish all the relevant facts, despite having made appropriate enquiries, it may not be possible to reach a sound judgment. In such cases, a decision may depend on where the burden of proof lies.

3. Circumstances that may be relevant

The exception to Direction 7 used to apply only where there had been a relevant change in the applicant's circumstances. However, the exception now operates where there has been any relevant change of circumstances. Inspectors must now consider the relevance of wider changes of circumstances, including changes in the budget or the law, as well as changes in the applicant's circumstances.

4. Principles for deciding whether a change of circumstances is relevant?

A change of circumstances will be relevant if it is relevant to either:

- the need for the particular items/services requested on the first application; or
- the reasons for refusing or awarding a payment on the first application.

The change of circumstances does not have to be radical – it could be slight. However, it does have to be relevant to one of the matters mentioned above.

5. Partially relevant changes of circumstances

A change of circumstances may be relevant to some of the items requested, but not others. For example, a change in the need for one item may or may not have a bearing on the need for other items, or on the reasons for awarding or refusing a payment in respect of the other items.

Where a change of circumstances is only relevant in relation to some of the items requested, the exception to Direction 7 will apply to those items only. Direction 7 will prevent a determination in relation to the remaining items.

6. The timing of the change

A relevant change can occur at any point between the time the previous application was treated as made and the time of the current decision on the later application. However changes that occurred before the previous application was finally decided, and which were properly taken into account in that decision, are not relevant. To regard such changes as relevant would defeat the purpose of the direction. On the other hand, the fact that a particular change in circumstances was anticipated when the decision on the previous application was made does not make it irrelevant. Provided that the change took place after the final decision was made on the first application, then it can be relevant, even if it was anticipated.

7. Changes in circumstances as opposed to new evidence about previous circumstances

There must be an actual *change* in circumstances, for the exception to Direction 7 to apply. New evidence about a pre-existing situation does not count as a change of circumstances.

In situations where the previous determination has been made in ignorance of, or was based on a mistake as to, some material fact, the Inspector will advise the Reviewing Officer that he must review the previous determination under Direction 31 (see [Commissioner's Advice on Direction 31](#)).

8. The passage of time

The passage of time is not, in itself, a change in circumstances. However in some cases changes in circumstances are likely to occur, as time passes, for example, where someone is pregnant or suffering from a terminal illness.

Cases where circumstances change slowly and predictably with the passage of time (such as pregnancy) force Inspectors to make difficult judgments as to when a relevant change is likely to have occurred. An advancement of a pregnancy by a few days is unlikely to affect the urgency of someone's need significantly. However an advancement by a few months is much more likely to amount to a relevant change.

9. Temporary changes

A change of circumstances can be relevant even if it has been temporary. For example, where a need is met temporarily (e.g. by the applicant borrowing an item, which he later has to return; or by him being awarded an item, which later breaks down or is stolen), there is likely to be a relevant change of circumstances.

Where an applicant receives an award for a particular expense but then spends the award on something else or (in the case of living expenses) spends it more quickly than the decision maker intended, the spending of the money is not, in itself, a relevant change of circumstances.

Although the spending of the money is not in itself a relevant change, the spending of the award may lead to changes in circumstances. It is likely that the applicant's needs will become more acute in living expenses cases where circumstances tend to move and change very quickly.

A temporary change in the budget or the law can also constitute a relevant change of circumstances.

To apply the exception to direction 7, any temporary change in circumstances must still be relevant to one of the matters detailed in paragraph 4, above.

10. Positive and negative changes

A change in circumstances can be relevant irrespective of whether the change is likely to strengthen or weaken the applicant's case for a payment. So an increase or a decrease in the need for an item can be relevant. Similarly, an increase or a decrease in the range of priorities for which a budget can support payments can be relevant.

11. Changes in the applicant's circumstances

A change that has a bearing on the urgency or importance of the need for an item is likely to represent a relevant change.

A change in an applicant's health or other circumstances may have a bearing on the reasons for awarding or refusing a social fund payment, for example, a decision on qualification under Directions 3 or 4, or a decision on priority.

If an applicant begins to receive a qualifying benefit this may not mean a significant change in his income. However, it may be relevant if a grant has been refused at Direction 25.

12. Changes in the budget

A new allocation at the beginning of the year, or the progressive spending of the budget over the year are not in themselves relevant changes in circumstances. Where there has been a change in the range of needs that the budget can support payments for, this may constitute a relevant change. Alternatively, if the budget is able to sustain a different level of award amounts for items this may constitute a relevant change.

Inspectors should note that a change in guidance does not itself mean there has been a change in the capacity of a budget. The guidance is evidence about what level of priority the budget can meet. Generally, Inspectors will accept this evidence, but in some cases a different view will be taken, for example, where there is a significant variance from profile.

13. Changes in the law

A change in the law^{*} may have a bearing on the reasons for awarding or refusing a payment, and may therefore be relevant. The most common changes in this category, in the social fund context, are changes to the directions. However, changes in other law, for example, primary legislation, occur from time to time, and may also be relevant.

^{*} This may be a change in primary or subordinate legislation, or a change in case law.