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Shirley-Anne Somerville MSP
Cabinet Secretary for Social Justice
Scottish Government

By email only

Draft Disability Assistance for Older People (Scotland) Regulations 2024

Dear Cabinet Secretary,

Thank you for your letter of 8 March 2024 regarding technical amendments to the short-term assistance (STA) provisions in the draft Disability Assistance for Older People (Scotland) Regulations 2024 and equivalent changes to Adult Disability Payment and Child Disability Payment. Having previously reported on the main body of the regulations,¹ we set out below our consideration of the proposed STA amendments.

In summary, we conclude that the approach to calculating the value of STA set out in the amendments does clarify the position but, as Scottish Government officials have noted, there are uncommon situations where it may give a lower amount of STA than might have been the case under the unamended provisions.

We recommend that in continuing its monitoring of STA, the Scottish Government should have regard to any differing impacts on particular communities or people with protected characteristics with a view to identifying if any mitigation is needed.

We recommend that The Decision Making Guide covers more scenarios on the value of STA, both common and less common.

We note that the collection of Social Security Scotland published statistics does not currently include STA and recommend that STA data is published.

The proposed STA amendments

STA is a type of assistance for people who are challenging a decision to reduce or stop their Pension Age Disability Payment (PADP), Adult Disability Payment (ADP) or Child Disability Payment (CDP). With STA, people continue to get the same level

¹ [Scrutiny report – The Disability Assistance for Older People \(Scotland\) Regulations 2024 - Scottish Commission on Social Security \(socialsecuritycommission.scot\)](#)

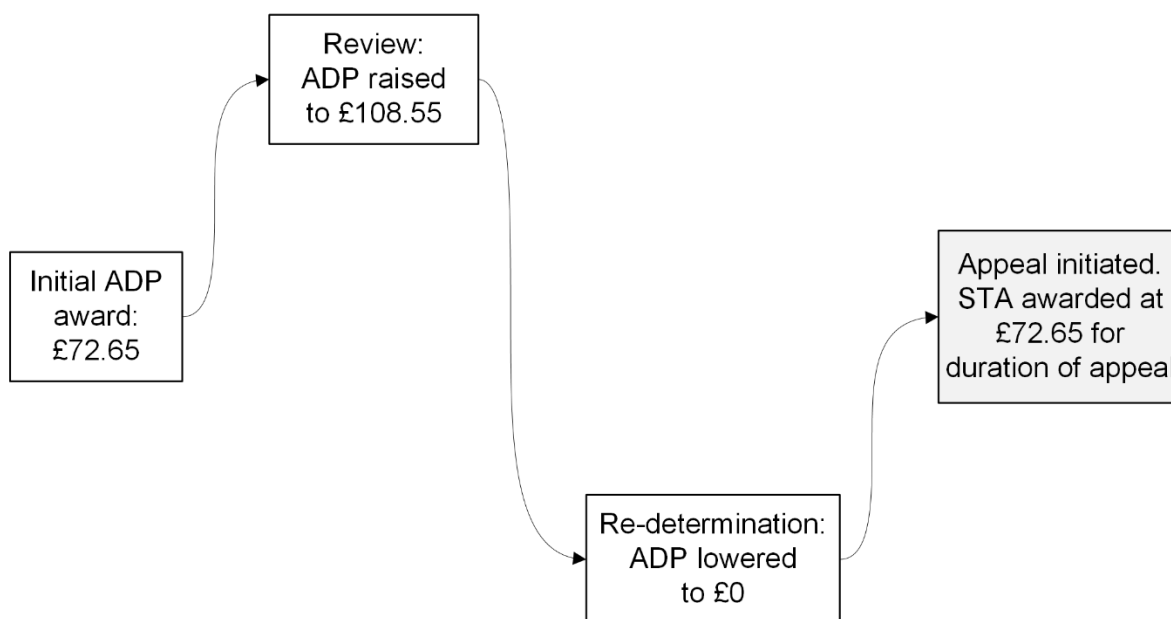
of payment as before until the re-determination or appeal is decided. The policy intention is “to ensure an individual is not discouraged from challenging that decision or from accessing administrative justice by having to manage, for a period, with a reduced income”.²

We understand that an issue with the STA rules has been identified through experience of deciding entitlement in some situations where the regulations may be out of step with the policy intent regarding the amount of STA to award. The amendments aim to make the regulations clearly in line with existing decision-making processes and the policy intention and also make sure they align with schedule 10 of the Social Security (Scotland) Act 2018 (the Act).³

Officials have pointed to the scenario when someone’s award has gone up in a review, the individual thinks it should have gone up by more and so asks for a re-determination. The re-determination brings the award down again, lower than it was originally before it was reviewed. The individual then appeals and applies for STA. This scenario is illustrated in the example below.

Example

An individual applies for and is awarded the ADP daily living component at the standard rate of £72.65 a week. The award is reviewed and goes up to the enhanced rate of £108.55. They request a redetermination asking for the mobility component. The redetermination removes the award altogether. They appeal and apply for STA.



The Scottish Government regards this journey as a single process from review to re-determination to appeal, with the role of STA being to ensure income is maintained at the level it was before the process began. So in the example above, STA ought to be £72.65 a week while the appeal is underway – i.e. topping up to the amount of the initial award before the review. However, it is not clear that the current regulations do give that result, which could lead to confusion over whether, for

² [Short Term Assistance \(STA\): policy position paper - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/short-term-assistance-sta-policy-position-paper/pages/1-1-introduction.aspx)

³ [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2018/01/01/51501a0000010001/html)

example, it might top up ADP in this example to £108.55, the higher level given in the review.

The amended regulations give the result in this example that the policy intends i.e. STA would be the level of the award before the review/re-determination/appeal process began.

We note that this scenario is not covered by explicit powers set out in paragraph 1 of schedule 10 to the Act. Instead the enabling power would be the residual one in paragraph 3 of schedule 10, which allows regulations to provide for the payment of STA in additional unforeseen circumstances.

The amendments are technical in the sense of restoring the regulations to how they already operate in practice. Nonetheless, they do materially change how the law is expressed and, at least in theory, could lead to some people losing out financially.

The Scottish Government's analysis is that the scenario where people could lose out (i.e. where a disability benefit award is increased at review and then reduced at re-determination) is 'highly uncommon'. In contrast, officials have told us that, were they to calculate STA based on the amount of the award at review instead of the amount before the review, the majority of people could be impacted negatively. They note that the policy intention is for STA to continue to pay the level of the pre-review award on the assumption that this is a longstanding award that people have based their household income on, rather than any recent fluctuations in award level.

On that basis, overall we agree that the approach taken in the amendments is better. However, there will be people requesting re-determinations up to a year after the review decision. In this time, household income would have adapted to the award given on review. These are probably uncommon situations but will apply to people with 'good reason' for not requesting a re-determination earlier, e.g. for reason of ill health or vulnerable circumstances. And with STA topping up to a lower amount than a household has been used to living on, for these people the overarching policy intention of not leaving them to manage on a reduced income will not be met.

Considering the proposed amendments in terms of the social security principles, we are pleased to note that the Scottish Government's monitoring of the system has prompted an early correction. This is in line with the promise in Our Charter that it will be a learning system and with principle (h) that the 'system is to be efficient'. As more of a technical correction than an improvement, principle (g) that 'opportunities are to be sought to continuously improve the Scottish social security system' does not obviously apply, but it nonetheless offers an opportunity to check that the correction does 'put the needs of those who require assistance first' and advances equality and non-discrimination.

In our view, overall the amended provisions can be seen as putting people's needs first in the sense that they are likely to allow for greater clarity in explaining STA to people challenging a disability assistance decision who may wish to apply for STA, as well as for more consistent decision making. The trade-off is the negative impact in some uncommon situations. However, although we think the amended regulations do more clearly provide for the intended amount of STA, they are not straightforwardly expressed. This makes it difficult for advisers to know what

entitlement to expect and for decision makers to make accurate, consistent decisions. Detailed guidance will help. **We recommend that The Decision Making Guide⁴ covers more scenarios on the value of STA, both common and less common.**

In terms of advancing equality, a policy applies to everyone but usually does not impact everyone equally. Hence the need for impact assessments to identify any potential inequalities and how they may be mitigated. In response to previous SCoSS recommendations, the Scottish Government has described its commitment to monitoring behavioural impacts of STA, unintended consequences and the extent to which STA allows people to overcome barriers to challenging decisions.⁵ **We recommend that in doing so, the Scottish Government should have regard to any differing impacts on particular communities or people with protected characteristics, with a view to identifying if any mitigation is needed. We note that the collection of Social Security Scotland published statistics⁶ does not currently include STA and recommend that STA data is published.**

Finally, we point out a drafting correction needed to the sequential numbering of Parts in the Schedule, which has 'Part 3' twice.

We hope you find this letter helpful and we welcome your feedback. We will also be sharing a copy of our response with the Convenor of the Social Justice and Social Security Committee and it will be published on our website.

Yours sincerely,



Judith Paterson
Interim Co-Chair
Scottish Commission
on Social Security



Dr Mark Simpson
Interim Co-Chair
Scottish Commission
on Social Security

CC: Convener, Social Justice and Social Security Committee

⁴ For example, [Child Disability Payment decision making guide \(www.socialsecurity.gov.scot\)](http://www.socialsecurity.gov.scot)

⁵ [Scottish Government's response to SCoSS's scrutiny report on the draft Disability Assistance for Working Age People \(Scotland\) regulations for Adult Disability Payment - \(socialsecuritycommission.scot\)](http://socialsecuritycommission.scot)

⁶ [Social Security Scotland statistics: publications - \(www.gov.scot\)](http://www.gov.scot)