

SCOTTISH GOVERNMENT POSITION PAPER

SHORT TERM ASSISTANCE

Introduction

This paper is one of a series providing an update on the Scottish Government's position on various matters relating to the development of devolved social security assistance in Scotland.

The purpose of this paper is to set out the Scottish Government's position on Short-term Assistance (STA) which will be available where a continuing payment has been reduced or stopped and that decision is subject to a request for a re-determination or an appeal.

Background

The Scottish Government has committed to and set out powers to provide STA where Social Security Scotland has made a decision to reduce or stop a continuing payment (such as disability, carer's and employment injury assistance), and that decision is subject to a request for re-determination or an appeal. 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. STA is not available in the reserved system and providing support in this way is another example of where Scottish Ministers are removing barriers to challenging decisions in the Scottish social security system.

During scrutiny of the Social Security (Scotland) Bill (the Bill), the inclusion of STA in the Bill was welcomed by stakeholders and supported by the Scottish Parliament. Provision for STA is set out in Section 36 of the Social Security (Scotland) Act (the 2018 Act), along with Schedule 10 as follows:

- STA will be available if a continuing payment has been reduced or stopped and that is subject to a challenge;
- STA will be available until the First-tier Tribunal (FtT) has made a determination;
- Where a person is eligible for STA, the value of STA will be the difference between the amount prior to the reduction and what it was reduced to; and
- Scottish Ministers can set further eligibility criteria in the regulations which an individual has to meet to be able to receive STA (Schedule 10 Part 1, para 1(1)(d)).

Policy Principles of STA

Scope of STA

The Scottish Government will make STA available for devolved assistance where on-going payments are made. This includes disability, carer's and employment injury assistance. As the Scottish Government has no control over UK Government policy, processes and decision making, STA cannot be used to support people whose reserved benefit is reduced or stopped. Similarly, people would not be able to access any passporting entitlements to the reserved system or those that are not controlled by the Scottish Government in the devolved system during the period that STA is being paid.

However, where there is a successful appeal, an individual's entitlement record would be adjusted from the point at which it was reduced/stopped or from the point as decided by the tribunal. The Scottish Government would expect they would also be eligible for any benefit that entitlement would have passported them to.

The 2018 Act also allows Scottish Ministers to provide assistance for housing costs, through Housing Assistance. However, STA will not be available for Housing Assistance as the reasons for stopping assistance would either relate to a change in a person's circumstances or that housing costs were no longer being incurred.

Availability

In line with a rights based approach, the Scottish Government believes that a person should have a right to choose whether they want STA, but that its availability will be as seamless as possible without the need to complete complicated forms. Furthermore the availability of STA will not be dependent on meeting conditions of hardship as it would be inconsistent with the policy approach to on-going types of devolved assistance which will not be subject to means-testing. The Scottish Government envisages that a request for STA would be processed when an individual requests a re-determination or an appeal and this will be explored further with users as part of the service design process.

The 2018 Act sets out that STA can only be made available once the request for a re-determination or an appeal is made and that the period between the decision being made and the individual deciding whether to dispute it, no payment would be made. STA will be available until the First-tier Tribunal (FtT) has made a determination.

Policy Principles of STA being consulted on

Residence

As the principal assistance (e.g. disability assistance for children and young people) would have required an individual to meet clearly stated residence requirements, the Scottish Government proposes that STA should not be available if the individual is no longer living or present in Scotland. Where a person leaves Scotland to take-up residence elsewhere in the UK their claim would normally be transferred from Scotland to the relevant jurisdiction, subject to meeting eligibility requirements. The Scottish Government will work closely with the DWP and NISSA (Northern Ireland's Social Security Agency) to ensure that transition between jurisdictions are as seamless as possible and that people do not experience unnecessary gaps in payments or administrative burdens.

Recovery of STA

During Stage 1 of the Bill process, an emerging consensus amongst stakeholders was that STA should not be recoverable as that may discourage individuals from pursuing an appeal if they thought they could be faced with debt or increased hardship if the appeal was not successful. As the purpose of STA is to ensure an individual is not discouraged from challenging a decision or face hardship whilst doing so, the Scottish Government proposes that STA should not be recoverable. The exception to this would be where the principal assistance has been found to have been claimed fraudulently and Social Security Scotland was not aware at the time STA was awarded. This would ensure the Scottish Government's approach of supporting individuals is balanced against its obligations under the Scottish Public Finance Manual.

Fraud investigations

During a fraud investigation, the overarching principle is a presumption of innocence and an individual's payments will not be reduced or stopped unless Social Security Scotland has investigated and obtained evidence that show, on the balance of probabilities, the assistance has been paid incorrectly. It is important that where this is the case payments are stopped as quickly as possible so as not to result in large overpayment liabilities that could be difficult to recover. Where fraud has been identified, a new determination would be made. This determination would carry re-determination and appeal rights. The Scottish Government proposes that, in these circumstances, STA would not be payable even if the individual has requested a re-determination or an appeal.

Servicing an overpayment liability

There may be situations where deductions are being made from an individual's ongoing assistance to service an overpayment liability. The Scottish Government proposes that these deductions should also apply to STA. This is to ensure the individual is not having to enter into a new agreement whilst challenging the decision and receiving STA. Otherwise, the complexity of servicing an overpayment liability whilst receiving STA is likely to place additional burdens on the individual and operational requirements on Social Security Scotland.

Process decision appeals

The 2018 Act also provides appeal rights for what are termed as process decisions. There are two types of process decision appeals that relate to re-determination. The first is provided for in Section 41(3), where the agency refuses a request for a re-determination which it views is not made validly. The other is provided for in Section 42; a late request for a re-determination which is refused by the agency as it views the reason for the late request is not valid.

Process decisions are not routed via the agency and the individual is responsible for lodging the appeal themselves with the tribunal within the timeframes that the Act sets out in Section 61. Where a late request for a re-determination is rejected by Social Security Scotland and the tribunal rules in favour of the individual, this would require Social Security Scotland to carry out a re-determination. In these situations, the Scottish Government proposes that STA would be payable from the date the tribunal overturns that decision.

Next Steps

The Scottish Government will undertake consultation to inform the detailed design and operation of how STA will operate. In the first instance this will be consulting on the policy principles proposed above.

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