

Short-term Assistance

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Introduction

1. This chapter is relevant to an individual who has received or is receiving Adult Disability Payment (ADP), and who applies for short-term assistance (STA).
2. An individual can apply for STA during a re-determination or appeal of a determination that reduced or removed their entitlement to ADP by reducing or removing their entitlement to the mobility and/or daily living component with the effect that the overall value of their payment is lower.
3. An individual can apply for STA when a new determination of entitlement by Social Security Scotland results in both:
 - an individual's overall entitlement being reduced as a result of entitlement to a component either being reduced to a lower rate or ending altogether
 - the individual asking for a re-determination or appeal.
4. Individuals who apply for ADP for the first time can only apply for STA at appeal stage. This is because it is only at that stage that the client has had 2 earlier determinations, i.e the determination made initially and then the determination made at re-determination stage which supersedes the original determination. STA is only payable where the value of entitlement at re-determination stage is lower than the value of entitlement at initial determination.
5. An individual can apply for STA when a new determination of entitlement by Social Security Scotland results in both:
 - an individual's overall entitlement being reduced as a result of entitlement to a component either being reduced to a lower rate or ending altogether
 - the individual asking for a re-determination or appeal.
6. STA is set out in section 36 of the Social Security (Scotland) Act 2018 ("the Act").

Its purpose is that an individual is not discouraged from either:

- challenging the determination to stop or reduce their ongoing entitlement
- accessing administrative justice

by having to manage with a reduced income for a period of time.

7. STA is only available once the request for a re-determination or appeal is made. STA is not payable during the period between the:
 - determination being made
 - individual deciding whether to request a re-determination or appeal.
8. Where a request for a re-determination is made, an individual can apply for STA at any time during the re-determination period up until a re-determination decision is made. Where a request for an appeal is made, an individual can apply for STA at any time during the appeal period up until an appeal decision is made.
9. STA is available until the point that the First-tier Tribunal (FtT) make a final determination. It is not available during any further appeal to the Upper Tribunal or any other higher appellate court. If the initial FtT decision is set aside after a review by the FtT of their own decision, and there is a period of time between that happening and the FtT deciding the appeal again, STA will go back into payment. Social Security Scotland will make a determination without application on the individual's entitlement to STA in this situation.
10. If an individual is unsuccessful in challenging the determination that reduced or stopped their payment they will not normally need to pay anything back. However, if it is later established that the person was overpaid STA because they did not meet its eligibility criteria, or were paid more than they were entitled to, they may be liable to repay. This includes circumstances where the individual claimed the original assistance fraudulently.

Eligibility

11. An individual becomes entitled to apply for STA when a new determination by Social Security Scotland results in their entitlement to assistance being stopped or reduced.¹

1 ADP Regulations, Schedule 2, Part 1, para 1(1)(a)(i)&(ii)

12. An individual needs to make an application for STA. Entitlement to STA begins¹:
 - Where a request for a re-determination is made, on the day the request for re-determination is received by Social Security Scotland ²
 - Where a request for an appeal is submitted on the day the request is received by Social Security Scotland ³

- on the day the First-tier Tribunal sets aside the decision by Social Security Scotland to not accept a late request for re-determination ⁴
- on the day the individual submits a late request for permission to appeal to the First-tier Tribunal. ⁵
- on the day the Tribunal sets aside their own decision on entitlement in order to make a new determination on entitlement ⁶

1 ADP Regulations, Schedule 2, Part 1, para 1(7)

2 ADP Regulations, Schedule 2, Part 1, para 1(7)(a)

3 ADP Regulations, Schedule 2, Part 1, para 1(7)(b)

4 ADP Regulations, Schedule 2, Part 1, para 1(7)(c)

5 ADP Regulations, Schedule 2, Part 1, para 1(7)(d)

6 ADP Regulations, Schedule 2, Part 1, para 1(7)(e)

13. The individual must also continue to meet the residence and presence requirements¹ to be entitled to STA. For more information please refer to the Residence and Presence chapter.

14. The individual is entitled to STA if they have become resident in another part of the United Kingdom and the issue being challenged through re-determination or appeal is the determination for the 13-week period beginning when the individual stops being ordinarily resident in Scotland ²

1 ADP Regulations, Schedule 2, Part 1, para 1(1)(c)(i)

2 ADP Regulations, Schedule 2, Part 1, para. 1(1)(c)(ii)

15. There are some situations when the value of the components for ADP is reduced to £0. This happens when the individual:

- is admitted to a care home (which includes a residential educational establishment) for a period of more than 28 days. In this situation the daily living component is reduced to £0 ¹
- is aged 18 or older² and is admitted into a hospital for a period of more than 28 days. In this situation both components are reduced to £0. This does not apply where the person is under the age of 18 on the day they began the period as an in-patient. ³
- is held in legal detention for a period of 28 days. Where the individual is 18 years of age or older both components are reduced to £0. Where the individual is 16 or 17 years of age the daily living component is reduced to⁴

1 ADP Regulations 27(2)

2 ADP Regulations 28(1)

3 ADP Regulations 28(2)

4 ADP Regulations 30(3)

16. Where a person is already resident in a care home (including a residential educational establishment) on the day on which their entitlement to ADP begins, the value of the daily living component will be £0 for as long as the person resides in the care home.¹

17. Where a person is aged 18 or older is already resident in a hospital on the day on which their entitlement to ADP begins, the value of both components are reduced to £0 for as long as the person resides in the hospital.²

18. Where a person is aged 18 or older and is already in legal detention on the day on which their entitlement to ADP begins, the value of both components will be £0 for as long as the person resides in legal detention. If the person is aged 16 or 17, the value of the daily living component will be £0 for as long as the person resides in legal detention.³

1 ADP Regulations 32(2)(a)

2 ADP Regulations 32(2)(b)

3 ADP Regulations 32(2)(c)

19. The relevant component payment resumes when the individual leaves the care home (including residential educational establishment), hospital or legal detention.

20. STA is not payable when the relevant component has been reduced to £0 in the circumstances described above. This is because although the payment is reduced, the individual's entitlement has not changed.

Examples of entitlement to STA

Example: Decision on a first-time application for ADP

An individual applies for ADP for the first time and is awarded the standard rate for both components of the benefit. They disagree with Social Security Scotland's decision and request a re-determination and apply for STA. The individual would not be entitled to STA in this situation as it is their first ADP award and therefore there has been no reduction to their award.

Example: Decision to reduce ongoing payment

After a determination to reduce their ongoing entitlement, an individual requests a re-determination which is accepted. The individual applies for STA 40 days after the re-determination is requested but while the re-determination is still in progress. The individual is entitled to STA in this situation. The payment of STA will be backdated to the date the request for a re-determination was made.

Example: Re-determination request made late - ADP

An individual requests a re-determination and applies for STA. They do this more than 42 days after receiving a determination to reduce their daily living component entitlement from Enhanced to Standard. This had reduced the total value of their ongoing award. Social Security Scotland take 7 days to decide that the reason for the late request for re-determination is **not** accepted. The individual is not entitled to STA for any period in this situation as the client is not challenging a reduction to their disability benefit award, as their re-determination was not valid.

STA given in error

21. Like any other form of assistance there may be circumstances where STA is paid in error and the individual may be liable to repay Social Security Scotland. This includes where the person caused or contributed to the error, or where the error was of the kind an individual could reasonably be expected to notice.¹

1 S63 & 64 SS(S) Act 2018

22. For example they:

- misrepresented or omitted relevant information from their STA application
- claimed the original benefit fraudulently and at the time of applying knew they were not entitled to either it or STA.¹

1 S63 & 64 SS(S) Act 2018

23. Where payment of STA continues beyond the date that the individual has died, the estate of the individual is automatically liable to repay Social Security Scotland the value of that assistance.¹

1 S69 SS(S) Act 2018

Value of Short-term Assistance

24. The value of STA payable is the difference between¹:

- the value of assistance paid under the earlier determination
- and the value paid under the new determination

1 ADP Regulations, Schedule 2, Part 1, para 2(1)

Examples of calculating STA value

Please note the following rates are for illustrative purposes only and may not be accurate.

Example: Rate of STA payable - ADP

An individual is in receipt of ADP made up of the:

- enhanced rate daily living component of £110.40 per week
- enhanced rate mobility component of £77.05. per week.

The total value of the award is £187.45 per week.

After a review, a new determination is made, and the individual's rates change. They now receive the:

- standard rate daily living component of £73.90 per week
- standard rate mobility component of £29.20 per week.

The total value of the award after the new determination is £103.10 per week.

The individual asks for a re-determination and applies for STA. STA is payable at a rate of £84.35 per week. This is the difference between the original total value of award and the new total value of award of ADP.

STA is only payable where the total value of the new determination payment is lower than the total value of the earlier determination payment.

Example: Calculating STA following case transfer

An individual transfers from PIP to ADP and receives a first award of:

- enhanced rate mobility component of £77.05 per week
- standard daily living component of £110.40 per week.

The total value of the award is £187.45 per week.

At scheduled review, a new determination is made, and the individual's rate changes to:

- standard rate mobility component of £29.20 per week
- standard daily living component of £110.40 per week.

The total value of their award has been reduced to £101.35 per week.

The individual requests a re-determination and applies for STA. STA is payable at a rate of £86.10 per week, topping up the client's award to the overall award amount they received prior to the review.

At re-determination, a new determination is made, and the individual's award changes to:

- nil mobility
- standard daily living component of £73.90 per week.

They decide to appeal to the First-tier Tribunal and apply for STA. The individual is Eligible again for STA, as their most recent award is still lower than their longstanding award (their award prior to the scheduled review.)

The individual's first award will be used to calculate STA value. The value of STA will be calculated from their first overall award of £187.45 - £73.90 (most recent re-determination award) = £113.55 per week.

The individual will receive a top up of £113.55 per week until their appeal concludes. This means that the individual will receive the same overall award of £187.45 for the duration of their challenge.

Example: STA payable - Decision to increase one component and decrease the other

An individual asks for a re-determination after a review reduces their overall award. They apply for STA. Prior to the review, the individual previously received:

- nil daily living and
- enhanced rate mobility component at £77.05 per week.

Following their re-determination, they are awarded:

- standard rate daily living component of £73.90 per week
- nil mobility.

As STA is based on the overall award being lowered, the individual is eligible for STA. The individual would receive an award of STA at £3.15 per week (topping up the individual to their first award of £77.05 prior to their re-determination) and backdated to the date the request for a re-determination is made. An individual will receive this amount until their appeal concludes.

Example: STA not payable - Decision to increase one component and decrease the other

An individual has a first award of:

- standard rate mobility component of £29.20 per week
- nil daily living.

They request a re-determination and are awarded:

- nil mobility
- standard rate daily living component of £73.90.

The individual decides to appeal and applies for STA. In this instance, the individual is not entitled to STA as although one component was reduced, the total value of the award has increased. STA is only available where the overall payment of an award has been lowered.

Deductions

25. Where an individual has liability to Scottish Ministers for an overpayment under section 63 of the 2018 Act, STA may be paid to them in whole or in part, in the form of a deduction from that debt.¹ This means the amount of STA paid and the amount of debt owed will be reduced.

26. If the individual has agreed to repay the debt by voluntary deduction, they can choose the amount of the deduction. Where they have not agreed to repay their debt, Scottish Ministers may put in place an enforced deduction, and will set the amount at a reasonable level, taking into account their financial circumstances.

27. This deduction could be a continuation of deduction that was already in place from the benefit that has been reduced or stopped, or it could be a new voluntary or enforced deduction. To affect the deduction a new determination of entitlement to STA must be made which is subject to re-determination and appeal rights. See *Re-determination and appeal of decision on short-term assistance*.

1 ADP Regulations, Schedule 2, Part 1, para 4

Start date of entitlement

28. STA entitlement begins where the following criteria are both met:

- an individual has a reduction to their longstanding award and
- they are challenging this reduction

Payment will begin on the exact date of the challenge being validated when a request for a re-determination or where a notice of appeal is submitted. It is only once the challenge has been validated that entitlement to STA begins.

Example: Re-determination form with application for STA cannot be immediately validated

A client has an unscheduled review on 5th of November which lowers their overall award.

The client requests a re-determination on 11th November 2024 and applies for STA. Social Security Scotland is unable to validate the request as the declaration on the re-determination form has not been signed. Social Security Scotland contact the client on 18th November 2024 and successfully validate the re-determination request and request for STA.

The client receives STA from the 18th of November, the date in which the re-determination form was validated and the challenge began.

Example: Late re-determination request and subsequent STA application

After a scheduled review on 9th of August, an individual's award is reduced. The individual does not immediately request a re-determination.

On 25th November, they decide to challenge the determination and submit a late re-determination request, providing a good reason for lateness. Their late re-determination form is accepted as valid by Social Security Scotland on the 2nd of December.

Subsequently, the client applies for STA on the 16th of December. The client is eligible for STA as a decision has not yet been made on their re-determination.

STA can be backdated to when the re-determination request was validated by Social Security Scotland. The client is awarded STA from the 2nd of December when their re-determination form was validated and when the challenge began.

Example: Start date where STA entitlement is apportioned on first week

A client has a review which reduces their overall award from £108.55 to £72.65 per week. They request a re-determination and request STA. Social Security Scotland validate the request on Friday 18th of October.

The value of STA is calculated as £35.90 which is the difference between the:

- 'old' total value of their ongoing payment (the longstanding award of £108.55)
- 'new' total value of their ongoing payment (the current award of £72.65)

As the request for re-determination was validated on Friday 18th October, the weekly rate of STA will be calculated from this date when entitlement began. This means that the rate of STA will be an apportioned entitlement, rather than a full week of entitlement.

End of entitlement

29. An individual's entitlement to STA ends on the day:

- the individual asks for the STA payment to be cancelled ¹
- a determination is made on a re-determination request ²
- the First-tier Tribunal makes a decision ³
- the First-tier Tribunal refuses permission to make a late appeal ⁴
- the individual withdraws their application to bring an appeal against the determination of their entitlement ⁵
- their entitlement is reduced to zero as a result of going into a care home, admission to hospital, legal detainment, or enters alternate accommodation ⁶

1 ADP Regulations, Schedule 2, Part 1, para 3(2)(a)

2 ADP Regulations, Schedule 2, Part 1 para 3(2)(b)

3 ADP Regulations, Schedule 2, Part 1, para 3(2)(c)

4 ADP Regulations, Schedule 2, Part 1, para 3(2)(d)

5 ADP Regulations, Schedule 2, Part 1, para 3(2)(e)

6 ADP Regulations, Schedule 2, Part 1, para 1(6)

30. In cases where the decision of the First-tier Tribunal is set aside after a review under section 43(2) of the Tribunals (Scotland) Act 2014, and the individual has previously been awarded STA, Social Security Scotland will make a determination without application on the individual's entitlement to STA. ¹

31. In cases where the First-tier Tribunal set aside a decision by Social Security Scotland not to accept a request for a re-determination, and Social Security Scotland had also decided that the individual was not entitled to STA, Social

Security Scotland will make a determination without application on the individual's entitlement to STA²

1 ADP Regulations, Schedule 3, para 1(3)
2 ADP Regulations, Schedule 2, Part 1, para 1(4)

32. In cases where a re-determination may have gone beyond the 56-day timescale and is out-of-time, STA will be continued to be paid to an individual until the re-determination is completed.

Example: STA start date, end date and value

After a determination to reduce their total ongoing payment from £128.65 per week to £95.00 per week, on 23 April 2023 an individual both:

- requests a re-determination
- applies for STA.

The request for STA is accepted and is payable from 23 April 2023. The value of STA is £33.65 which is the difference between the:

- 'old' total value of their ongoing payment (the longstanding award)
- 'new' total value of their ongoing payment (the current award)

At re-determination on 30 May 2023, the determination to reduce the ongoing payment is upheld. The individual is notified, and STA stops being paid from 30 May 2023.

The individual submits an appeal on 15 June 2023 and requests STA. The appeal is accepted by the FtT and STA is payable from 15 June 2023. On 20 August 2023, the FtT upholds the re-determination which reduced the ongoing payment. STA stops being paid from the same date.

Example: STA start date, end date and value

After a determination to reduce their total ongoing payment from £128.65 per week to £95.00 per week, on 15 February 2023 an individual both:

- requests a re-determination
- applies for STA

The request for STA is accepted and is payable from 15 February 2023. The value of STA is £33.65, which is the difference between the:

- the 'old' total value of their ongoing payment (the longstanding award)
- 'new' total value of their ongoing payment (the current award)

At re-determination on 25 March 2023, the determination to reduce the ongoing payment is upheld. The individual is notified, and STA stops being paid from 25 March 2023.

The individual both submits an appeal and requests STA on 26 April 2023. The appeal is accepted by the FtT and STA is payable from 26 April 2023. On 2 July 2023, the FtT both:

- overturns the re-determination which reduced the ongoing payment
- confirms entitlement at the original rate of £128.65 per week.

STA stops being paid from 2 July 2023.

Example: STA start and end dates when late appeal accepted

On 11 August 2023, an individual both:

- submits a late appeal against an earlier determination to reduce an ongoing payment of ADP from £95.00 per week to £68.10 per week
- applies for STA

The FtT consider the request and accepts the late appeal with payment of STA starting on 11 August 2023 at a rate of £26.90 per week which is the difference between the:

- the 'old' total value of their ongoing payment (the longstanding award)
- 'new' total value of their ongoing payment (the current award)

On 29 November 2023, the FtT decide the appeal.

STA is payable for the period between 11 August 2023 and 29 November 2023.

Example: STA start and end dates when late appeal not accepted

On 19 September 2023, an individual both:

- submits a late appeal against earlier determinations to reduce an ongoing payment of ADP from £95.00 per week to £68.10 per week
- requests STA.

On 5 October 2023 the FtT refuse permission for the late appeal.

STA is still payable in this situation for the period between 19 September 2023 and 5 October 2023.

Re-determination & Appeal of decision on Short-term Assistance

33. Determinations made in respect of payment of STA are subject to re-determination and appeal rights. The timeframes in respect of requesting a re-determination or appeal of an STA determination are the same as that which apply to Adult Disability Payment. A client has 42 calendar days to request a re-

determination and 31 days to submit an appeal.¹

34. If a request for a re-determination is made after the period of 42 calendar days it is considered late. If Social Security Scotland consider that there is a good reason for a late request, they can accept the request for a re-determination. This can be up to a maximum of one year from when the individual was informed of the determination that they want to be re-determined².

1 Social Security (Scotland) Act 2018 s.41(4)(b)

2 Social Security (Scotland) Act 2018 s.41 (4)(b)

35. Social Security Scotland may only consider late re-determination requests if both¹

1 Social Security (Scotland) Act 2018 s.41(4)(b)

- the individual has good reason for not requesting a re-determination sooner
- the request is made before the end of the day that falls one year after the day the individual was notified of the determination. If the request is made after one year, it can only be accepted where the good reason is related to coronavirus²

1 Social Security (Scotland) Act 2018 s.41

2 Social Security (Scotland) Act 2018, s.52A (1)

36. Social Security Scotland must complete a STA re-determination within 56 calendar days. [LINK TO RE-DETERMINATIONS GUIDANCE]

37. If Social Security Scotland does not make the re-determination within 56 calendar days, they must inform the individual that:

- the re-determination has not been completed within the timescales allowed by the regulations
- they have the immediate right of appeal to the First-tier Tribunal for Scotland against the determination made under section 37 of the Act which resulted in the request for a re-determination
- provide the individual with an appeal form¹

1 Social Security (Scotland) Act 2018 s. 45(1)

38. There is no provision in the regulations or the 2018 Act that allows for an individual to withdraw a request for a re-determination.

Case Transfer

39. Case transfer is the process of moving an individual's existing benefit award from the United Kingdom social security system to the new Scottish social security system.

40. If an individual disagrees with the entitlement determination made when their case is transferred they can request a re-determination. If they remain

dissatisfied at the outcome of the re-determination they can submit an appeal to the FtT.

41. An individual is not entitled to STA if they request a re-determination of the initial determination made when their case was transferred. An application for STA can be made if the client submits an appeal after the determination at re-determination stage has been made. STA is only payable where the value of entitlement at re-determination stage is lower than the value of entitlement at initial determination.

[End of chapter]