

SOCIAL SECURITY (SCOTLAND) ACT 2018

EXPLANATORY NOTES

OVERVIEW

Part 2 (Giving of Assistance by Scottish Ministers)

Chapter 6 (Offences and investigations)

105. **Section 71** creates an offence of, and penalties for, providing false or misleading information to the Scottish Ministers, with the intention of causing an individual to be given assistance that they would not otherwise be given. Subsection (2) clarifies that making a statement is a form of providing information. Subsection (3) provides penalties, which vary according to whether the offence is prosecuted under summary procedure or solemn procedure. Solemn procedure involves a jury and is used for more serious offences. The maximum penalties for trial by solemn procedure are therefore set at a higher level, by subsection (3)(b), than those for summary procedure, set by subsection (3)(a).
106. **Sections 72** and **73** create offences of, and penalties for, failing to notify a change in circumstances. Again, the maximum penalties vary according to the manner in which any offence is prosecuted.
107. **Section 72** covers a situation where an individual has been notified, under section 56, that they have a duty to tell the Scottish Ministers if their circumstances, or the circumstances of another person, change in a way that will reduce, or remove, that person's entitlement to assistance. If the person fails to tell Ministers of such a change, and knew or ought to have known that the change would affect that entitlement, and the person does not have a reasonable excuse for failing to tell Ministers about the change, then an offence is committed.
108. **Section 73** creates a similar offence where a person causes another person to fail to tell the Scottish Ministers about a change in circumstances. This reflects existing social security offences, where it can be that another person is under a duty to tell Ministers that a person's circumstances have changed, but is prevented from doing so in some way, for example by the person whose circumstances have changed concealing the change from the person who has the duty to tell Ministers about it. In that example, the person whose circumstances have changed may commit an offence under this section. As with the section 72 offence, whether an offence is committed depends on the person's knowledge, or what they might reasonably be expected to know, and the effect on entitlement.
109. **Section 74** provides that individuals within an organisation can be held responsible for an offence committed by the organisation, where there is active involvement or neglect by a "responsible official" of the organisation. Subsection (3) describes the types of organisations this applies to, and subsection (4) describes what "responsible official" means in each case.
110. **Section 75** empowers the Scottish Ministers to make regulations about the investigation of the offences that the Act creates. Regulations under section 75 can give power for

*These notes relate to the Social Security (Scotland) Act
2018 (asp 9) which received Royal Assent on 1 June 2018*

persons to enter and search premises, such as workplaces, but any use of this power cannot enable entry and search of places used only as a person's home. They can also give powers to seize documents, for example. Offences can be created by the regulations to sanction failures to provide information or obstruct investigations.

111. In relation to such investigations, section 76 places a duty on the Scottish Ministers to publish and maintain a code of practice on investigations. This is intended to provide transparency on how investigations will be conducted, and must be publicly consulted upon before it is published. It must also be kept under review, to ensure it remains up to date. Courts and tribunals are required, by subsection (5), to take the code into account where they are considering any question to which the terms of the code is relevant.
112. References in Chapter 6 to the "statutory maximum" and the "standard scale" in relation to levels of fines are to be construed in accordance with schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010. The 2010 Act defines the statutory maximum as the figure specified in section 225(8) of the Criminal Procedure (Scotland) Act 1995. At the time of writing it is £10,000. The standard scale of fines is set out in section 225(2) of that Act. Section 75(3) of the Act sets a level 3 fine as the maximum penalty that can be imposed for an offence created by regulations under that section. A level 3 fine is £1,000 at the time of writing.