



Social Security (Scotland) Act 2018

2018 asp 9

PART 1

TENETS AND OVERSIGHT

Assessments

12 Restriction on private-sector involvement in assessments

- (1) An individual may not be required, in order to be given assistance through the Scottish social security system, to undergo an assessment of physical condition or mental health that is carried out by another individual who is not acting in the course of employment by a public body.
- (2) In subsection (1), “public body” means any of the following—
 - (a) a Minister of the Crown,
 - (b) a person established by an enactment,
 - (c) a body comprised solely of persons described by this subsection,
 - (d) a body corporate that has no members other than (either or both)—
 - (i) persons described by this subsection,
 - (ii) persons acting on behalf of persons described by this subsection.
- (3) For the purposes of this section, an individual may be regarded as carrying out an assessment in the course of employment by a body if the individual carries out the assessment pursuant to an agreement between the body and the individual; it is immaterial that the individual would not be regarded as an employee of the body for the purposes of any other enactment.
- (4) Subsection (1) does not preclude its being made a requirement for being given assistance through the Scottish social security system that an individual be—
 - (a) in receipt of, or
 - (b) eligible or entitled to receive,other assistance, despite entitlement to that other assistance depending on the fulfilment of a requirement that subsection (1) would preclude from being imposed in relation to the giving of assistance through the Scottish social security system.

- (5) In subsection (4), “other assistance” means assistance other than assistance given through the Scottish social security system.

13 Assessors to be suitably qualified

- (1) The Scottish Ministers must ensure that any assessment to which subsection (2) applies is carried out by a suitably qualified person.
- (2) This subsection applies to an assessment that—
- (a) is arranged—
 - (i) by the Scottish Ministers,
 - (ii) in connection with making a determination of what assistance an individual is eligible to be given through the Scottish social security system, and
 - (b) is an assessment of physical condition or mental health.
- (3) The Scottish Ministers may by regulations specify who is to be regarded as a suitably qualified person within the meaning of subsection (1) by reference to a person’s—
- (a) training,
 - (b) experience, or
 - (c) holding a particular position.
- (4) Regulations under subsection (3) must make different provision about who is suitably qualified to carry out an assessment depending on what the assessment is about.

14 Assessments only to be required where necessary

It is implicit in the principle (expressed in section 1(d)) that respect for the dignity of individuals is to be at the heart of the Scottish social security system that—

- (a) an individual should not be required to undergo an assessment in order to be given assistance unless that is the only practicable way to obtain the information needed to determine what assistance the individual is eligible to be given, and
- (b) the Scottish Ministers should take into consideration any preferences an individual has expressed to them about where and how any assessment is carried out.