



Social Security (Scotland) Act 2018

2018 asp 9

PART 1

TENETS AND OVERSIGHT

Principles

1 The Scottish social security principles

The Scottish social security principles are—

- (a) social security is an investment in the people of Scotland,
- (b) social security is itself a human right and essential to the realisation of other human rights,
- (c) the delivery of social security is a public service,
- (d) respect for the dignity of individuals is to be at the heart of the Scottish social security system,
- (e) the Scottish social security system is to contribute to reducing poverty in Scotland,
- (f) the Scottish social security system is to be designed with the people of Scotland on the basis of evidence,
- (g) opportunities are to be sought to continuously improve the Scottish social security system in ways which—
 - (i) put the needs of those who require assistance first, and
 - (ii) advance equality and non-discrimination,
- (h) the Scottish social security system is to be efficient and deliver value for money.

2 Effect of the principles

- (1) The Scottish social security principles are set out in section 1 so that—
 - (a) they can be reflected in the Scottish social security charter as required by section 15(3), and
 - (b) the Scottish Commission on Social Security can have regard to them as required by section 97(6).

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- (2) A court or tribunal in civil or criminal proceedings may take the Scottish social security principles into account when determining any question arising in the proceedings to which the principles are relevant.
- (3) Breach of the principles does not of itself give rise to grounds for any legal action.

Promotion of take-up

3 Scottish Ministers' duty to promote take-up

The Scottish Ministers must—

- (a) keep under consideration what steps they could take to ensure that individuals are given what they are eligible to be given through the Scottish social security system, and
- (b) if the Ministers consider it appropriate to do so, take any of the steps identified by that consideration.

4 Recognition of importance of inclusive communication

- (1) In fulfilling their duty under section 3(a), the Scottish Ministers must have regard to the importance of communicating in an inclusive way.
- (2) In subsection (1), “communicating in an inclusive way” means communicating in a way that ensures individuals who have difficulty communicating (in relation to speech, language or otherwise) can receive information and express themselves in ways that best meet each individual’s needs.

5 Recognition of importance of accessible information

- (1) In fulfilling their duty under section 3(a), the Scottish Ministers must have regard to the importance of providing information in a way that is accessible for individuals who have a sensory, physical or mental disability.
- (2) The steps taken by the Scottish Ministers under section 3(b) must include steps in relation to ensuring that—
 - (a) the information this Act requires the Scottish Ministers to give to an individual is given in a format that is accessible to the individual, and
 - (b) all information which this Act requires the Scottish Ministers to make publicly available is available in formats that are accessible to individuals who have a sensory, physical or mental disability.

6 Recognition of importance of independent information, advice and advocacy

- (1) In fulfilling their duty under section 3(a), the Scottish Ministers must have regard to the role that—
 - (a) independent information and advice, and
 - (b) independent advocacy,
 can play in ensuring that individuals are given what they are eligible to be given through the Scottish social security system.

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- (2) The steps taken by the Scottish Ministers under section 3(b) must include steps in relation to providing, or ensuring the provision of, information about—
 - (a) independent information and advice, and
 - (b) independent advocacy,for individuals applying for, or receiving, assistance through the Scottish social security system.
- (3) The steps taken by the Scottish Ministers under section 3(b) must include steps in relation to ensuring the availability of independent information and advice (that is accessible to, and proportionate to the needs of, the individuals to whom it is given) about the Scottish social security system, and the following matters in particular—
 - (a) how to apply for assistance,
 - (b) the process by which entitlement to assistance is determined,
 - (c) the types of assistance available,
 - (d) income maximisation,
 - (e) the content of the Scottish social security charter.
- (4) For the purposes of this section, information, advice and advocacy are independent if they are provided by a person other than the Scottish Ministers.

7 Recognition of importance of available data

In fulfilling their duty under section 3(a), the Scottish Ministers must have regard to the possibility that information obtained for the purpose of determining an individual's eligibility for one type of assistance might be used to identify the individual's eligibility for other types of assistance.

8 Strategy to promote take-up

- (1) The Scottish Ministers are to prepare a strategy to promote take-up in accordance with this section and section 9.
- (2) A strategy to promote take-up is to set out—
 - (a) the Scottish Ministers' best estimate of the extent to which, at the time the strategy is prepared, all individuals who are eligible to be given assistance through the Scottish social security system are being given the assistance they are eligible to be given,
 - (b) the steps under section 3(b) that the Ministers intend to take during the strategy's lifetime.
- (3) Having prepared a strategy to promote take-up, the Scottish Ministers must—
 - (a) lay it before the Scottish Parliament, and
 - (b) make it publicly available by such means as they consider appropriate.

9 Further provision about preparing strategies to promote take-up

- (1) The Scottish Ministers must prepare—
 - (a) the first strategy to promote take-up within 1 year of this section coming into force,
 - (b) the second strategy within 3 years of this section coming into force, and

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- (c) thereafter, a new strategy within 5 years of the last strategy being laid before the Parliament in accordance with section 8(3)(a).
- (2) In preparing a strategy to promote take-up, the Scottish Ministers must consult such persons as they consider appropriate.
- (3) The persons consulted must include—
 - (a) individuals who have received assistance through the Scottish social security system, and
 - (b) persons who work with or represent individuals living in households whose income is adversely affected, or whose expenditure is increased, because a member of the household has one or more protected characteristics within the meaning of section 4 of the Equality Act 2010.

Advocacy

10 Right to advocacy

- (1) Every individual to whom subsection (3) applies has a right of access to independent advocacy in connection with the determination of the individual's entitlement to be given assistance through the Scottish social security system.
- (2) It is the duty of the Scottish Ministers to ensure that independent advocacy services are available to the extent necessary for that right to be exercised by the individuals who have it.
- (3) This subsection applies to an individual if, owing to a disability, the individual requires an advocate's help to engage effectively with the process for determining entitlement to be given assistance through the Scottish social security system.
- (4) For the purposes of this section—
 - (a) “advocacy services” means services of support and representation that are made available for the purpose of enabling an individual to whom they are provided to have as much control of, or capacity to influence, the decisions that determine the individual's entitlement to be given assistance through the Scottish social security system as is, in the circumstances, appropriate,
 - (b) advocacy services are independent if they are provided by a person other than the Scottish Ministers.

11 Advocacy service standards

- (1) It must be a term of any agreement that the Scottish Ministers enter into with a person for the provision of advocacy services in connection with their duty under section 10(2), that the person undertakes to comply with the advocacy service standards.
- (2) The advocacy service standards are to be set by the Scottish Ministers in regulations and may, in particular, include provision in relation to—
 - (a) the training and experience individuals providing advocacy services must have,
 - (b) service quality,
 - (c) quality assurance processes,

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- (d) record keeping.
- (3) The advocacy service standards, or a part of them, may be set by reference to another document (whether or not prepared by the Scottish Ministers).

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.

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- (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.

Charter

15 The Scottish social security charter

- (1) A Scottish social security charter is to be prepared, published and from time to time reviewed in accordance with sections 16 to 18.
- (2) The charter is to set out what should be expected—
 - (a) from the Scottish Ministers when—
 - (i) developing social security policy, and
 - (ii) exercising the functions conferred on them by this Part and Parts 2 and 3, and
 - (b) from the individuals who apply for, and receive, assistance through the Scottish social security system.
- (3) The charter is to reflect the Scottish social security principles.

16 Preparing the first charter

- (1) The Scottish Ministers are to prepare the charter within 6 months of this section coming into force.
- (2) In preparing the charter, the Scottish Ministers must consult such persons as they consider appropriate.
- (3) The Scottish Ministers must ensure, as far as is reasonably practicable, that the persons consulted include, in particular, a representative proportion of persons such as are mentioned in subsection (4)(a)(i), (ii) and (iv) who have—
 - (a) a physical impairment,
 - (b) a mental impairment.

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- (4) The persons consulted must include—
- (a) individuals who are in receipt of—
 - (i) disability living allowance as provided for by sections 71 to 76 of the Social Security Contributions and Benefits Act 1992,
 - (ii) personal independence payment as provided for by Part 4 of the Welfare Reform Act 2012,
 - (iii) severe disablement allowance as provided for by sections 68 and 69 of the Social Security Contributions and Benefits Act 1992,
 - (iv) attendance allowance as provided for by section 64 of that Act,
 - (v) industrial injuries benefits within the meaning of Part 5 of that Act,
 - (vi) child benefit as provided for by Part 9 of that Act,
 - (vii) carer’s allowance as provided for by section 70 of that Act,
 - (viii) payments under section 138 of that Act in respect of—
 - (A) maternity expenses,
 - (B) funeral expenses,
 - (C) heating expenses, and
 - (b) persons who work with or represent individuals living in households whose income is adversely affected, or whose expenditure is increased, because a member of the household has one or more protected characteristics within the meaning of section 4 of the Equality Act 2010.
- (5) For the purpose of subsection (2), it is immaterial that anything done by way of consultation was done before the Bill for this Act was passed or after that but before this section comes into force.
- (6) The Scottish Ministers may not make the charter unless a draft of it has been laid before, and approved by resolution of, the Scottish Parliament.

17 Publication of the charter

The Scottish Ministers are to make the charter publicly available by such means as they consider appropriate.

18 Reviewing the charter

- (1) The Scottish Ministers must review the charter—
- (a) within 5 years of its being made, and
 - (b) thereafter, within 5 years of the report of the last review being laid before the Parliament in accordance with subsection (4)(b).
- (2) In carrying out a review, the Scottish Ministers must consult—
- (a) the Scottish Commission on Social Security, and
 - (b) any other persons they consider appropriate.
- (3) The persons consulted must include—
- (a) individuals who have received assistance through the Scottish social security system, and
 - (b) persons who work with or represent individuals living in households whose income is adversely affected, or whose expenditure is increased, because a

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member of the household has one or more protected characteristics within the meaning of section 4 of the Equality Act 2010.

- (4) Following a review, the Scottish Ministers must—
- (a) decide whether or not to make any changes to the charter, and
 - (b) lay before the Scottish Parliament a report setting out—
 - (i) the consultation undertaken in carrying out the review,
 - (ii) the reasons for their decision to make changes, or not make changes, to the charter, and
 - (iii) if the Ministers have decided to make changes to the charter, a draft of the charter showing the changes they intend to make.
- (5) The Scottish Ministers may not make changes to the charter unless a draft of the charter showing the changes they intend to make has been laid before, and approved by resolution of, the Scottish Parliament.

19 Effect of the charter

- (1) A court or tribunal in civil or criminal proceedings may take the Scottish social security charter into account when determining any question arising in the proceedings to which the charter is relevant.
- (2) Breach of the charter does not of itself give rise to grounds for any legal action.

Accountability

20 Annual report

- (1) As soon as practicable after the end of each financial year, the Scottish Ministers are to—
 - (a) lay before the Scottish Parliament, and
 - (b) make publicly available by such means as they consider appropriate, a report on the performance of the Scottish social security system in that year.
- (2) The report is to contain—
 - (a) information about the performance of the Scottish social security system in that year,
 - (b) a description of what the Scottish Ministers have done in that year to meet the expectations of them set out in the Scottish social security charter,
 - (c) an assessment of how the Scottish social security system has affected the circumstances of persons living in households whose income is adversely affected, or whose expenditure is increased, because a member of the household has one or more protected characteristics within the meaning of section 4 of the Equality Act 2010, and
 - (d) a description of the data for the purpose of monitoring equality of opportunity used in preparing the report.
- (3) The first report under this section is to include a plan setting out the Scottish Ministers' intentions to collect and publish data for the purpose of monitoring equality of opportunity where existing data sources are not sufficient for the preparation of the report.

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21 Scottish Commission on Social Security

- (1) The Scottish Commission on Social Security is established.
- (2) The Commission is a body corporate.
- (3) Schedule 1 makes further provision about the Commission.

22 Commission functions

- (1) The Scottish Commission on Social Security has the following functions—
 - (a) to scrutinise legislative proposals in accordance with section 97,
 - (b) to prepare and submit to the Scottish Ministers a report on any matter, relevant to social security, that the Ministers request the Commission to report on,
 - (c) to prepare and submit to the Scottish Parliament a report on any matter, relevant to social security, that the Commission is requested to report on by the Parliament after the Parliament has resolved that the request should be made,
 - (d) to prepare and submit to the Ministers and the Parliament, from time to time, a report containing—
 - (i) an assessment of the extent to which any or all of the expectations set out in the Scottish social security charter are being fulfilled, and
 - (ii) recommendations for improvement where the assessment is that those expectations are not being fulfilled,
 - (e) any functions the Ministers confer on the Commission by regulations.
- (2) In performing any of the functions mentioned in subsection (1), the Commission may have regard to any relevant international human rights instruments (see also section 97(6)).
- (3) The Commission must make publicly available by such means as it considers appropriate any report that it prepares in pursuance of a function mentioned in subsection (1).
- (4) The Commission must consider preparing a report under subsection (1)(d) if it receives evidence which suggests that expectations set out in the charter are frequently not being fulfilled.
- (5) In subsection (2), “international human rights instruments”—
 - (a) means any international convention, treaty or other international instrument ratified by the United Kingdom, subject to—
 - (i) any amendments in force in relation to the United Kingdom for the time being, and
 - (ii) any reservations, objections or interpretative declarations by the United Kingdom for the time being in force, and
 - (b) includes, in particular, the International Covenant on Economic, Social and Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

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Interpretation

23 Meaning of “Scottish social security system”

In this Part, “Scottish social security system” means the system for the Scottish Ministers giving assistance to individuals in accordance with any of the following—

- (a) Part 2,
- (b) regulations made under Part 3,
- (c) a provision of any other Act of the Scottish Parliament if it is only by virtue of exception 10 of Section F1 of Part 2 of schedule 5 of the Scotland Act 1998 that the provision does not relate to reserved matters as defined in section 127 of that Act.