



# Social Security (Scotland) Act 2018

## 2018 asp 9

### PART 2

#### GIVING OF ASSISTANCE BY SCOTTISH MINISTERS

#### CHAPTER 4

#### FURTHER PROVISION ABOUT DETERMINING ENTITLEMENT

*F1* ...

#### Textual Amendments

- F1** S. 84C: s. 53 and cross-heading renumbered as s. 84C and cross-heading (26.7.2021) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), **ss. 9(2)**, 18(2)(3) (with s. 10); S.S.I. 2021/232, **reg. 2(c)**

**<sup>F2</sup>53** **Duty to inform about possible eligibility**

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#### Textual Amendments

- F2** S. 84C: s. 53 and cross-heading renumbered as s. 84C and cross-heading (26.7.2021) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), **ss. 9(2)**, 18(2)(3) (with s. 10); S.S.I. 2021/232, **reg. 2(c)**

#### Commencement Information

- I1** S. 53 in force at 22.10.2018 by [S.S.I. 2018/298](#), **reg. 2(1)(h)** (with [reg. 3](#)) (as amended (10.12.2019) by [S.S.I. 2019/406](#), **regs. 1**, **2(2)**)

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### *Obtaining information to make determination*

#### **54 Obligation to provide information on request**

(1) When—

[<sup>F3</sup>(a) the Scottish Ministers are either—

(i) determining an individual's entitlement to assistance (whether under section 37 or 43), or

(ii) considering whether regulations under section 52 require them to make a determination of an individual's entitlement to assistance without receiving an application, and

(b) they require further information in order to satisfy themselves about any matter material to the making of the determination of entitlement or (as the case may be) to their consideration of whether they are required to make a determination without receiving an application,]

they may request that the individual provide them with the information within such period as they specify.

[<sup>F4</sup>(1A) If—

(a) the Scottish Ministers are either—

(i) determining the individual's entitlement to a type of assistance that the individual has ongoing entitlement to, or

(ii) considering whether regulations under section 52 require them to make a determination of the individual's entitlement to assistance without receiving an application,

(b) the individual fails to provide the requested information by the end of the period specified under subsection (1), and

(c) it is the first time that the individual has failed to provide the Scottish Ministers with the requested information within a specified period since they began making the determination or considering the matter mentioned in paragraph (a)(ii),

the Scottish Ministers may issue a decision to suspend the assistance to the individual in accordance with regulations under section 51(2)(aa).

(1B) Where the Scottish Ministers issue such a decision, they must, at the same time, request that the individual provide them with the information within such further period as they specify.]

(2) If the individual fails to provide the requested information by the end of the [<sup>F5</sup>the period specified under subsection (1) or (1B)] the Scottish Ministers may, without further consideration, proceed to make the determination on the basis that the eligibility rules prescribed in the applicable regulations are not satisfied in the individual's case (see section 50).

(3) For the avoidance of doubt, the information which the Scottish Ministers may request an individual to provide under subsection (1) includes the results of an assessment, including one which the individual has not undergone at the time the request is made.

[<sup>F6</sup>(4) The reference in subsection (1A)(a) to an individual having ongoing entitlement to a type of assistance is to an individual being entitled to be given the type of assistance in question under section 24 under a determination made on the basis that the individual has ongoing entitlement to that type of assistance.]

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### Textual Amendments

- F3** S. 54(1)(a)(b) substituted (26.7.2021) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\), ss. 12\(3\)\(a\)](#), 18(2)(3); S.S.I. 2021/232, reg. 2(f)
- F4** S. 54(1A)(1B) inserted (26.7.2021) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\), ss. 12\(3\)\(b\)](#), 18(2)(3); S.S.I. 2021/232, reg. 2(f)
- F5** Words in s. 54(2) substituted (26.7.2021) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\), ss. 12\(3\)\(c\)](#), 18(2)(3); S.S.I. 2021/232, reg. 2(f)
- F6** S. 54(4) inserted (26.7.2021) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\), ss. 12\(3\)\(d\)](#), 18(2)(3); S.S.I. 2021/232, reg. 2(f)

### Commencement Information

- I2** S. 54 in force at 22.10.2018 by [S.S.I. 2018/298, reg. 2\(1\)\(h\)](#) (with [reg. 3](#)) (as amended (10.12.2019) by [S.S.I. 2019/406, regs. 1, 2\(2\)](#))

## 55 Requirement to justify assessment requests

- (1) This section applies to a request for information from an individual under section 54(1) if fulfilling the request would require the individual to undergo an assessment.
- (2) When making the request, the Scottish Ministers must inform the individual why they consider requiring the individual to undergo an assessment to be the only practicable way to obtain the information.
- (3) If the individual would have to undergo a face-to-face assessment in order to fulfil the request, when making the request the Scottish Ministers must also inform the individual what consideration they have given to—
  - (a) any preference the individual has expressed to them concerning where and how assessments are carried out,
  - (b) whether the assessment could be carried out another way,
  - (c) what distance (if any) they expect the individual will have to travel in order to attend the assessment,
  - (d) the extent to which travelling to attend the assessment may—
    - (i) cause the individual distress, or
    - (ii) adversely affect the individual's health.
- (4) In subsection (3), “face-to-face assessment” means an assessment involving—
  - (a) the individual, and
  - (b) the assessor,
 being physically in the same place at the same time.

### Commencement Information

- I3** S. 55 in force at 17.1.2022 by [S.S.I. 2021/474, reg. 2\(d\)](#)

## 56 Duty to notify change of circumstances

- (1) The Scottish Ministers may place a duty to notify them about a change in circumstances on a person to whom subsection (3), (4) or (5) applies.

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- (2) The Scottish Ministers place a duty under subsection (1) on a person by informing the person—
- (a) of the changes in circumstances which the person has a duty to notify them about,
  - (b) of the way in which the person is to notify them, and
  - (c) that failing to notify them about a change in any of those circumstances in that way may be an offence under section 72.
- (3) This subsection applies to an individual who is to be given assistance under section 24 under a determination made on the basis that the individual has ongoing entitlement to the type of assistance in question.
- (4) This subsection applies to a person acting on behalf of an individual to whom subsection (3) applies in relation to any application for the assistance or the determination of the individual's entitlement.
- (5) This subsection applies to a person to whom payments are to be made under section 24 by way of assistance to another person under a determination made on the basis that that other person has ongoing entitlement to the type of assistance in question.

**Commencement Information**

- I4** S. 56 in force at 22.10.2018 by [S.S.I. 2018/298, reg. 2\(1\)\(i\)](#) (with [reg. 3](#)) (as amended (10.12.2019) by [S.S.I. 2019/406, regs. 1, 2\(2\)](#))

**57 Lifting of duty to notify change of circumstances**

- (1) A duty to notify the Scottish Ministers about a change of circumstances placed on a person under section 56 ceases to apply when—
- (a) it is lifted under subsection (2), or
  - (b) it stops being the case that a change in any of the circumstances to which the duty relates can affect someone's entitlement to be given assistance under section 24.
- (2) The Scottish Ministers may lift a duty placed on a person under section 56 by informing the person that the duty is lifted.
- (3) Under subsection (2), the Scottish Ministers may lift a duty as it relates to some or all of the changes in circumstances which the person has a duty to notify them about.

**Commencement Information**

- I5** S. 57 in force at 22.10.2018 by [S.S.I. 2018/298, reg. 2\(1\)\(i\)](#) (with [reg. 3](#)) (as amended (10.12.2019) by [S.S.I. 2019/406, regs. 1, 2\(2\)](#))

*Appointees*

**F7 58 Appointment of person to act on behalf of individual**

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### Textual Amendments

- F7** S. 58 repealed (24.1.2022) by Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18), ss. 2(2), 18(2)(3); S.S.I. 2021/442, reg. 2(a) (with reg. 3)

### *Support during discussions and assessments*

## 59 Right to support

- (1) The Scottish Ministers must comply with an individual's wish to have another person (“a supporter”) present during any discussion or assessment relating to the individual's entitlement to a type of assistance described in Chapter 2, unless the wish is unreasonable.
- (2) The Scottish Ministers' duty under subsection (1) includes ensuring that any person acting on their behalf complies with such a wish, unless the wish is unreasonable.
- (3) The role of a supporter is to support the individual in question during the discussion or (as the case may be) assessment, and includes making representations on the individual's behalf.
- (4) Nothing in this section is to be read as requiring the Scottish Ministers to provide or pay for a supporter.

### Commencement Information

- I6** S. 59 in force at 22.10.2018 by S.S.I. 2018/298, reg. 2(1)(i) (with reg. 3) (as amended (10.12.2019) by S.S.I. 2019/406, regs. 1, 2(2))

### *Access to reports*

## 60 Right to reports used in determining entitlement

- (1) If an individual requests it, the Scottish Ministers must give the individual a copy of any assessment report held by the Ministers that they took into account in making a determination of the individual's entitlement to assistance.
  - (2) Subsection (1) does not require the Scottish Ministers to provide an individual with information that they are exempt from the obligation to provide to the individual under Article 15 of the [F8UK GDPR] (whether by virtue of an enactment or otherwise).
- [F9(3) In subsection (2), “the UK GDPR” has the meaning given in section 3(10) of the Data Protection Act 2018.]

### Textual Amendments

- F8** Words in s. 60(2) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), Sch. 3 para. 26(2) (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)

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**F9** S. 60(3) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 3 para. 26(3)** (with [Sch. 3 para. 112](#)); 2020 c. 1, Sch. 5 para. 1(1)

**Commencement Information**

**I7** S. 60 in force at 17.1.2022 by [S.S.I. 2021/474](#), reg. 2(e)

*Right to appeal Scottish Ministers' process decisions*

**61 Appeal to First-tier Tribunal against process decisions**

- (1) An individual may appeal to the First-tier Tribunal for Scotland against a decision by the Scottish Ministers—
  - (a) to reject something purporting to be an application for assistance (see section 38),
  - (b) that something purporting to be a request for a re-determination does not satisfy the condition in section 41(3),
  - (c) that an individual has no good reason for not requesting a re-determination sooner (see section 42).
- (2) An appeal under this section—
  - (a) may be brought without the First-tier Tribunal's permission within the period of 31 days beginning with the day the individual was informed of the decision in accordance with this Act,
  - (b) may be brought only with the First-tier Tribunal's permission after the period mentioned in paragraph (a),
  - (c) may not be brought after the end of the period of one year beginning with the day the individual was informed of the decision in accordance with this Act.
- (3) The First-tier Tribunal may give permission under subsection (2)(b) for an appeal to be made only if it is satisfied that there is a good reason for the appeal not having been made sooner.
- (4) A decision by the First-tier Tribunal about—
  - (a) the outcome of an appeal under this section, or
  - (b) whether to give permission under subsection (2)(b) for an appeal to be brought,
 is final.
- (5) Accordingly (and without prejudice to the generality of subsection (4)), any such decision by the First-tier Tribunal may be neither—
  - (a) reviewed under section 43 of the Tribunals (Scotland) Act 2014, nor
  - (b) appealed against under section 46 of that Act.

**Commencement Information**

**I8** S. 61 in force at 22.10.2018 by [S.S.I. 2018/298](#), reg. 2(1)(j) (with [reg. 3](#)) (as amended (10.12.2019) by [S.S.I. 2019/406](#), regs. 1, 2(2))

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*Presumption about when information is received*

**62 Presumption for purposes of sections 41, 48 and 61**

- (1) Subsection (2) applies in relation to the references in sections 41, 48 and 61 to someone being informed of something by the Scottish Ministers in accordance with a provision of this Act.
- (2) Where, in order to fulfil their duty to inform an individual of something, the Scottish Ministers send information—
  - (a) through the postal service to the last known address the Scottish Ministers have for the individual, or
  - (b) by email to the email address most recently provided to the Scottish Ministers by the individual for the purposes of this Act,

the individual is to be taken to have received the information 48 hours after it is sent by the Scottish Ministers unless the contrary is shown.

**Commencement Information**

- I9** S. 62 in force at 22.10.2018 by [S.S.I. 2018/298](#), [reg. 2\(1\)\(j\)](#) (with [reg. 3](#)) (as amended (10.12.2019) by [S.S.I. 2019/406](#), [regs. 1, 2\(2\)](#))

*[<sup>F10</sup>Non-disclosure of health information]*

**Textual Amendments**

- F10** S. 62A and cross-heading inserted (26.7.2021) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020](#) (asp 18), [ss. 3\(2\), 18\(2\)\(3\)](#); [S.S.I. 2021/232](#), [reg. 2\(b\)](#)

**[<sup>F10</sup>62A Non-disclosure of information about individual's health**

- (1) This section applies in relation to a duty of the Scottish Ministers arising from section 38(5), 40(1), 41(6), 42(2), 44(1) or 53(2) to inform a person (“the recipient”) of certain things in connection with the determination of an individual's entitlement to assistance.
- (2) Nothing in the duty is to be regarded as requiring the Scottish Ministers to disclose information if subsection (3) applies to it.
- (3) This subsection applies to information if—
  - (a) it relates to the physical or mental health of the individual, and
  - (b) a registered medical practitioner or a registered nurse has informed the Scottish Ministers that disclosure of the information would be likely to cause serious harm to the physical or mental health of the recipient.]

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 81(4C) inserted by [2021 asp 20 s. 2\(a\)](#)
- s. 85D inserted by [2020 asp 18 s. 2\(6\)](#)