



Social Security (Scotland) Act 2018

2018 asp 9

PROSPECTIVE

PART 2

GIVING OF ASSISTANCE BY SCOTTISH MINISTERS

CHAPTER 1

ASSISTANCE TO BE GIVEN ACCORDING TO DETERMINATION OF ENTITLEMENT

24 Duty to give assistance

The Scottish Ministers must give an individual whatever assistance of a type described in Chapter 2 the individual is entitled to be given under a determination of the individual's entitlement to assistance.

25 Meaning of “determination of entitlement”

- (1) References in this Part to a determination of an individual's entitlement to assistance are to a determination made—
- (a) by the Scottish Ministers—
 - (i) under section 37, or
 - (ii) (following a request for a re-determination) under section 43,
 - (b) by the First-tier Tribunal for Scotland—
 - (i) under section 49 in an appeal against a determination made by the Scottish Ministers, or
 - (ii) (subsequent to such an appeal) under its Tribunals Act powers,
 - (c) by the Upper Tribunal for Scotland under its Tribunals Act powers (subsequent to an appeal against, or following a review of, a decision of the First-tier Tribunal),

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- (d) by the Court of Session under its Tribunals Act powers (in an appeal against a decision of the Upper Tribunal), or
- (e) by the Supreme Court of the United Kingdom—
 - (i) in an appeal under section 40 of the Court of Session Act 1988 against a decision of the Court of Session, or
 - (ii) on a reference made by the Court of Session under schedule 6 of the Scotland Act 1998.
- (2) In this section, “Tribunals Act powers” means powers under Part 6 (review or appeal of decisions) of the Tribunals (Scotland) Act 2014.

26 Individual's right to stop receiving assistance

- (1) An individual may request that the Scottish Ministers cancel a determination of the individual's entitlement to assistance.
- (2) On being requested to do so under subsection (1), the Scottish Ministers must cancel a determination—
 - (a) with immediate effect, or
 - (b) with effect from a later date specified in the request.
- (3) An individual is not entitled, and is not to become entitled, to be given assistance by a determination after it has been cancelled.
- (4) A request under subsection (1) must be made in such form as the Scottish Ministers require.
- (5) The Scottish Ministers must publicise any requirements for the time being set under subsection (4).

27 Later determination supersedes earlier

- (1) The latest determination of an individual's entitlement to a particular type of assistance in respect of a given period or event supersedes any earlier determination insofar as it deals with the individual's entitlement to that type of assistance in respect of the same period or event.
- (2) Accordingly the individual is not entitled, and is not to become entitled, to be given any assistance in respect of that period or event by the earlier determination insofar as it has been superseded.

CHAPTER 2

TYPES OF ASSISTANCE TO BE GIVEN

28 Carer's assistance

- (1) Carer's assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 24 to an individual who provides, or has provided, care to another individual who has a disability.
- (2) The Scottish Ministers are to make regulations prescribing—

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- (a) the eligibility rules that are to be applied to determine whether an individual is entitled to carer's assistance, and
 - (b) what carer's assistance an individual who is entitled to it is to be given.
- (3) Schedule 2 makes provision about the exercise of the power conferred by subsection (2).

29 Cold-spell heating assistance

- (1) Cold-spell heating assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 24 to an individual to meet, or help towards meeting, the individual's heating costs during a period of cold weather.
- (2) The Scottish Ministers are to make regulations prescribing—
- (a) the eligibility rules that are to be applied to determine whether an individual is entitled to cold-spell heating assistance, and
 - (b) what cold-spell heating assistance an individual who is entitled to it is to be given.
- (3) Schedule 3 makes provision about the exercise of the power conferred by subsection (2).

30 Winter heating assistance

- (1) Winter heating assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 24 to an individual to meet, or help towards meeting, the individual's heating costs during the winter months.
- (2) The Scottish Ministers are to make regulations prescribing—
- (a) the eligibility rules that are to be applied to determine whether an individual is entitled to winter heating assistance, and
 - (b) what winter heating assistance an individual who is entitled to it is to be given.
- (3) Schedule 4 makes provision about the exercise of the power conferred by subsection (2).

31 Disability assistance

- (1) Disability assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 24 to an individual on account of the individual having—
- (a) a disability arising from a physical or mental impairment, or
 - (b) a terminal illness.
- (2) The Scottish Ministers are to make regulations prescribing—
- (a) the eligibility rules that are to be applied to determine whether an individual is entitled to disability assistance, and
 - (b) what disability assistance an individual who is entitled to it is to be given.
- (3) Schedule 5 makes provision about the exercise of the power conferred by subsection (2).

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32 Early years assistance

- (1) Early years assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 24 to help towards meeting some of the costs associated with having, or expecting to have, a child in the family.
- (2) The Scottish Ministers are to make regulations prescribing—
 - (a) the eligibility rules that are to be applied to determine whether an individual is entitled to early years assistance, and
 - (b) what early years assistance an individual who is entitled to it is to be given.
- (3) Schedule 6 makes provision about the exercise of the power conferred by subsection (2).

33 Employment-injury assistance

- (1) Employment-injury assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 24 to an individual on account of the individual, or another individual, having suffered an injury, or contracted a disease, in the course of employment.
- (2) The Scottish Ministers are to make regulations prescribing—
 - (a) the eligibility rules that are to be applied to determine whether an individual is entitled to employment-injury assistance, and
 - (b) what employment-injury assistance an individual who is entitled to it is to be given.
- (3) Schedule 7 makes provision about the exercise of the power conferred by subsection (2).

34 Funeral expense assistance

- (1) Funeral expense assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 24 to an individual to meet, or help towards meeting, funeral expenses.
- (2) The Scottish Ministers are to make regulations prescribing—
 - (a) the eligibility rules that are to be applied to determine whether an individual is entitled to funeral expense assistance, and
 - (b) what funeral expense assistance an individual who is entitled to it is to be given.
- (3) Schedule 8 makes provision about the exercise of the power conferred by subsection (2).

35 Housing assistance

- (1) Housing assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 24 to an individual to meet, or help towards meeting, housing costs.
- (2) The Scottish Ministers are to make regulations prescribing—
 - (a) the eligibility rules that are to be applied to determine whether an individual is entitled to housing assistance, and

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- (b) what housing assistance an individual who is entitled to it is to be given.
- (3) Schedule 9 makes provision about the exercise of the power conferred by subsection (2).

36 Short-term assistance

- (1) Short-term assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 24 to an individual on a short-term basis.
- (2) The Scottish Ministers are to make regulations prescribing—
 - (a) the eligibility rules that are to be applied to determine whether an individual is entitled to short-term assistance, and
 - (b) what short-term assistance an individual who is entitled to it is to be given.
- (3) Schedule 10 makes provision about the exercise of the power conferred by subsection (2).

CHAPTER 3

DETERMINING ENTITLEMENT

Determination by the Scottish Ministers

37 Duty to make determination

The Scottish Ministers are to make a determination of an individual's entitlement to a type of assistance described in Chapter 2—

- (a) on receiving an application for that type of assistance from the individual, or
- (b) when required to do so by regulations under section 52.

38 Application for assistance

- (1) An application for assistance must be—
 - (a) made to the Scottish Ministers in such form, and
 - (b) accompanied by such evidence,as the Scottish Ministers require.
- (2) The Scottish Ministers must publicise any requirements for the time being set under subsection (1).
- (3) Once—
 - (a) an individual has applied for a particular type of assistance in respect of a period or (as the case may be) event, and
 - (b) the Scottish Ministers have made a determination of the individual's entitlement to that type of assistance in respect of the period or event,the individual cannot make another application for that type of assistance in respect of the period or event.
- (4) Despite subsection (3), an individual may make another application for a particular type of assistance in respect of an event if the latest determination of the individual's

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entitlement to that type of assistance in respect of the event states that the individual may make another application.

- (5) If the Scottish Ministers reject something purporting to be an application for assistance, they must inform the individual concerned of—
- (a) the decision to do that,
 - (b) the reasons for it, and
 - (c) the individual's right to appeal under section 61.

39 Withdrawal of application

- (1) An individual who has made an application for assistance may request that the Scottish Ministers disregard it.
- (2) If an individual requests that an application be disregarded—
 - (a) the Scottish Ministers are not to make a determination of the individual's entitlement to any type of assistance on the basis of the application, and
 - (b) accordingly, their duty to do so under section 37 ceases to apply.
- (3) A request under subsection (1) must be made in such form as the Scottish Ministers require.
- (4) The Scottish Ministers must publicise any requirements for the time being set under subsection (3).

40 Notice of determination

- (1) Having made a determination under section 37 of an individual's entitlement to assistance, the Scottish Ministers must inform the individual—
 - (a) of the determination,
 - (b) of the reasons for it,
 - (c) of the individual's right under section 41 to request that the Scottish Ministers re-determine the individual's entitlement to the assistance,
 - (d) that the individual will have the right under section 46 to appeal to the First-tier Tribunal against the determination should the Scottish Ministers fail to deal with a request for a re-determination within the period allowed for re-determination, and
 - (e) if relevant, that the individual has the right to request a copy of an assessment report under section 60.
- (2) The Scottish Ministers must fulfil their duty under subsection (1) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

Re-determination by the Scottish Ministers

41 Right to request re-determination

- (1) An individual may request that the Scottish Ministers re-determine the individual's entitlement to a particular type of assistance after being informed (in accordance with section 40) of a determination by the Ministers of the individual's entitlement to that type of assistance.

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- (2) A request for a re-determination is valid only if the conditions set out in the following subsections are satisfied—
 - (a) subsection (3), and
 - (b) subsection (4).
- (3) The condition referred to in subsection (2)(a) is satisfied if the request is made in such form as the Scottish Ministers require.
- (4) The condition referred to in subsection (2)(b) is satisfied if—
 - (a) the request is made before the end of the period prescribed by the Scottish Ministers in regulations, or
 - (b) in a case where the request is made after that period has ended—
 - (i) the individual has a good reason for not requesting a re-determination sooner (see section 42), and
 - (ii) the request is made before the end of the day that falls one year after the day on which the individual is informed (in accordance with section 40) of the determination.
- (5) The Scottish Ministers must publicise any requirements for the time being set under subsection (3).
- (6) If the Scottish Ministers decide that something purporting to be a request for a re-determination does not satisfy the condition in subsection (3), they must inform the individual concerned of—
 - (a) the decision,
 - (b) the reasons for it, and
 - (c) the individual's right to appeal under section 61.

42 Late request for re-determination

- (1) It is for—
 - (a) the Scottish Ministers, or
 - (b) on appeal under section 61, the First-tier Tribunal for Scotland,to decide whether, for the purpose of section 41(4)(b), an individual has a good reason for not requesting a re-determination sooner.
- (2) Having made a decision under subsection (1), the Scottish Ministers must inform the individual concerned—
 - (a) of the decision, and
 - (b) if the decision is that the individual has no good reason for not requesting a re-determination sooner, of—
 - (i) the reasons for the decision, and
 - (ii) the individual's right to appeal under section 61.

43 Duty to re-determine

- (1) On being requested under section 41 to re-determine an individual's entitlement to a particular type of assistance, the Scottish Ministers are to make a determination of the individual's entitlement to that type of assistance.

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- (2) The Scottish Ministers must aim to make the determination within the period allowed for re-determination.
- (3) If the Scottish Ministers fail to make the determination within the period allowed for re-determination—
 - (a) their duty to make the determination ends (but they may still make it), and
 - (b) section 45 applies.
- (4) If the Scottish Ministers make the determination (whether or not within the period allowed for re-determination), section 44 applies.
- (5) The period allowed for re-determination is to be prescribed by the Scottish Ministers in regulations.
- (6) The reference in subsection (1) to a request under section 41 is to a request that is valid according to subsection (2) of that section.

44 Notice of re-determination

- (1) Having made a determination under section 43 of an individual's entitlement to a particular type of assistance, the Scottish Ministers must—
 - (a) inform the individual—
 - (i) of the determination,
 - (ii) of the reasons for it,
 - (iii) of the individual's right to appeal to the First-tier Tribunal under section 46 against the determination,
 - (iv) if relevant, that the individual has the right to request a copy of an assessment report under section 60, and
 - (b) provide the individual with a form that the individual can complete and submit to the Scottish Ministers in order to bring an appeal against the determination.
- (2) The Scottish Ministers must fulfil their duty under subsection (1)(a) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

45 Notice where re-determination not made timeously

- (1) Having failed to make a determination under section 43 of an individual's entitlement to a particular type of assistance within the period allowed for re-determination, the Scottish Ministers must—
 - (a) inform the individual—
 - (i) that the individual's request for a re-determination has not been dealt with within the period allowed, and
 - (ii) that the individual therefore has the right to appeal to the First-tier Tribunal against the determination under section 37 which prompted the request for a re-determination, and
 - (b) provide the individual with a form that the individual can complete and submit to the Scottish Ministers in order to bring an appeal against the determination.
- (2) The Scottish Ministers must fulfil their duty under subsection (1)(a) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

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Appeal against the Scottish Ministers' determination

46 Right to appeal to First-tier Tribunal against determination

- (1) An individual may appeal to the First-tier Tribunal for Scotland—
 - (a) against a determination under section 43 of the individual's entitlement to assistance, or
 - (b) in a case where subsection (2) applies, against the determination under section 37 referred to in that subsection.
- (2) This subsection applies where—
 - (a) having been informed of a determination under section 37 of the individual's entitlement to assistance, the individual has made a request for a re-determination under section 41, and
 - (b) the Scottish Ministers have failed to make a determination under section 43 in consequence of that request within the period allowed for re-determination.

47 Initiating an appeal

- (1) In order to bring an appeal under section 46 against a determination, an individual must submit to the Scottish Ministers the form provided under section 44 or (as the case may be) 45 in relation to the determination.
- (2) On receiving a form that they provided under section 44 or 45, the Scottish Ministers must send—
 - (a) the form, and
 - (b) the information held by them that they used to make the determination in question,to the First-tier Tribunal.
- (3) Having complied with subsection (2), the Scottish Ministers must inform the individual to whom the determination in question relates that they have done so.
- (4) In this section, references to a form include a copy of a form.
- (5) For the avoidance of doubt, the form that the Scottish Ministers provide under section 44 or 45 need not be a physical form.
- (6) Scottish Tribunal Rules providing for the form and manner in which an appeal under section 46 is to be brought may not displace the effect of subsection (1), but this section is otherwise without prejudice to what may be provided under any power to make Scottish Tribunal Rules.

48 Deadline for appealing

- (1) An appeal under section 46—
 - (a) may be brought without the First-tier Tribunal's permission if an appeal application is made within the period of 31 days beginning with the day the relevant event occurred,
 - (b) may be brought only with the First-tier Tribunal's permission if an appeal application is made after the period mentioned in paragraph (a),
 - (c) may not be brought if an appeal application has not been made within the period of one year beginning with the day the relevant event occurred.

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- (2) In subsection (1)—
- (a) “the relevant event” means—
 - (i) in the case of an appeal against a determination under section 43, the individual to whom the determination relates being informed of it in accordance with section 44,
 - (ii) in the case of an appeal against a determination under section 37, the individual to whom the determination relates being informed (in accordance with section 45) that the individual has the right to appeal against it,
 - (b) an appeal application is made when a form, that relates to the determination in question and has been completed to the extent that Scottish Tribunal Rules require, is received by the Scottish Ministers having been submitted in accordance with section 47(1).
- (3) The First-tier Tribunal may give permission under subsection (1)(b) for an appeal to be brought only if it is satisfied that there is a good reason for the application not having been made sooner.

49 First-tier Tribunal's power to determine entitlement

In an appeal under section 46 against a determination of an individual's entitlement to a particular type of assistance, the First-tier Tribunal may—

- (a) uphold the determination, or
- (b) make its own determination of the individual's entitlement to the type of assistance in question.

The determination of entitlement

50 Decisions comprising determination

- (1) A determination of an individual's entitlement to a particular type of assistance consists of—
- (a) a decision about whether or not the eligibility rules prescribed in the applicable regulations are satisfied in the individual's case,
 - (b) if those rules are satisfied, a decision (taken in accordance with the applicable regulations) about what assistance of the type in question the individual is entitled to be given,
 - (c) if the determination is to be made on the basis that the individual has ongoing entitlement to the type of assistance in question (see section 51), a decision about what assistance of the type in question the determination is to entitle the individual to be given in the future, and
 - (d) if the determination is of an individual's entitlement to assistance in respect of an event, a decision about whether the individual's application for assistance in respect of the event is possibly premature.
- (2) If it is decided under subsection (1)(d) that an individual's application for assistance in respect of an event is possibly premature, the determination must include a statement that the individual may make another application for assistance in respect of the event.
- (3) An individual's application for assistance in respect of an event is possibly premature for the purpose of subsection (1)(d) if—

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- (a) the decision under subsection (1)(a) is that the eligibility rules prescribed in the applicable regulations are not satisfied in the individual's case, and
 - (b) it is possible that circumstances may change so that, in relation to the event in question, those rules will be satisfied in the individual's case.
- (4) In this section, “the applicable regulations” means the regulations made under the section in Chapter 2 that describes the type of assistance in question.

51 Determination on basis of ongoing entitlement

- (1) The Scottish Ministers may by regulations—
- (a) provide that a determination of an individual's entitlement to a specified type of assistance is to be made on the basis that the individual has ongoing entitlement to that type of assistance, and
 - (b) provide for exceptions to any provision made by virtue of paragraph (a).
- (2) Regulations making provision by virtue of subsection (1)(a) are also to—
- (a) prescribe the time, or times, at which an individual is to become entitled to be given assistance under a determination made on the basis that the individual has ongoing entitlement, and
 - (b) provide that a decision about what assistance the individual is to become entitled to be given under such a determination in respect of any future period is to be taken in accordance with the applicable regulations on the strength of such assumptions as are specified.
- (3) Without prejudice to the generality of subsection (2)(b), the assumptions that may be specified include an assumption that the eligibility rules prescribed in the applicable regulations will continue to be satisfied in an individual's case for a specified duration or indefinitely.
- (4) In this section—
- “the applicable regulations” means the regulations made under the section in Chapter 2 that describes the type of assistance in question,
 - “specified” means specified by regulations under this section.

52 Determination without application

- (1) The Scottish Ministers may by regulations provide that, in such circumstances as the regulations specify, the Scottish Ministers are to make a determination of an individual's entitlement to a particular type of assistance without receiving an application.
- (2) The Scottish Ministers may by regulations make provision about the information that is to be used, and the assumptions that are to be made, in making a determination when required to do so by regulations under subsection (1).

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CHAPTER 4

FURTHER PROVISION ABOUT DETERMINING ENTITLEMENT

Identifying possible eligibility

53 Duty to inform about possible eligibility

- (1) Subsection (2) applies if, in the course of their making a determination of an individual's entitlement to assistance, it appears to the Scottish Ministers that the individual may be eligible for other assistance.
- (2) The Scottish Ministers must—
 - (a) inform the individual that the individual may be eligible for the other assistance, and
 - (b) either—
 - (i) provide the individual with information about how to apply for it, or
 - (ii) if regulations under section 52 so allow, ask the individual whether they should proceed with making a determination of the individual's entitlement to the other assistance without receiving an application.
- (3) Subsection (2)(b)(ii) does not preclude the Scottish Ministers from requesting further information under section 54(1) for the purpose of determining the individual's entitlement to the other assistance.
- (4) In this section, “other assistance” means—
 - (a) a different type of assistance described in Chapter 2 from the type of assistance that the determination mentioned in subsection (1) relates to, or
 - (b) the same type of assistance as that determination relates to, but in respect of a different period or (as the case may be) event.

Obtaining information to make determination

54 Obligation to provide information on request

- (1) When—
 - (a) the Scottish Ministers are determining an individual's entitlement to assistance (whether under section 37 or 43), and
 - (b) they require further information in order to satisfy themselves about any matter material to the making of the determination,
 they may request that the individual provide them with the information within such period as they specify.
- (2) If the individual fails to provide the requested information by the end of the specified period 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.

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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.

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.
- (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.

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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.

Appointees

58 Appointment of person to act on behalf of individual

- (1) The Scottish Ministers may appoint a person (an “appointee”)—
 - (a) to act on behalf of an individual in connection with the determination of the individual's entitlement to assistance under section 24, and
 - (b) to receive such assistance on the individual's behalf.
- (2) The Scottish Ministers may only appoint an appointee if it appears to them that either subsection (3) or (4) applies.
- (3) This subsection applies if—
 - (a) the individual is deceased, and
 - (b) there is no executor appointed on the individual's estate.
- (4) This subsection applies if, in relation to the matters mentioned in subsection (1)—
 - (a) the individual is incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000,
 - (b) there is no guardian acting or appointed under that Act,
 - (c) the individual's estate is not being administered by a judicial factor, and
 - (d) there is no other person who has authority to act on behalf of the individual and is willing to do so.
- (5) An individual who is under 16 years may not be appointed as an appointee.
- (6) Where an appointee is appointed in relation to an individual—
 - (a) the appointee can do anything that the individual could do in connection with the determination of the individual's entitlement to assistance (including making an application for assistance),
 - (b) the Scottish Ministers may request that the appointee provide them with information that they may otherwise request the individual to provide under section 54 (and subsections (2) and (3) of that section apply to that request as they apply to a request made to the individual),
 - (c) any information that would be given to the individual under or by virtue of this Part must be given to the appointee instead.
- (7) The Scottish Ministers may terminate an appointment under this section at any time.

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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.

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 GDPR (whether by virtue of an enactment or otherwise).
- (3) In subsection (2), “the GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

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,

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- (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.

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.

CHAPTER 5

RECOVERY OF VALUE OF ASSISTANCE

Assistance given in error

63 Liability for assistance given in error

- (1) An individual is liable to pay the Scottish Ministers the value of any assistance that was given to the individual due to an error (but see section 64).
- (2) For the avoidance of doubt, the individual's liability under subsection (1) is limited to the difference in value between—

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- (a) the assistance that was given, and
 - (b) the assistance (if any) that would have been given had the error not been made.
- (3) If the assistance was given in a form other than money, its value for the purposes of this section is what giving it cost the Scottish Ministers (excluding any administration costs).
- (4) In this section and section 64, references to an error are to—
- (a) an error in the performance of a function conferred by virtue of this Part, including a decision under section 50(1) being made—
 - (i) wrongly, or
 - (ii) correctly but on the basis of—
 - (A) incorrect information, or
 - (B) an assumption which proves to be wrong,
 - (b) a new decision under section 50(1) not being made after an assumption on the basis of which an earlier decision was made has proved to be wrong.

64 Exclusion from liability

- (1) An individual has no liability under section 63(1) in respect of assistance given due to an error if the error is neither—
- (a) the individual's fault, nor
 - (b) the kind of error that an individual could reasonably be expected to notice.
- (2) For the purpose of this section, an error is an individual's fault if it is caused or contributed to by the individual—
- (a) providing false or misleading information,
 - (b) failing to notify the Scottish Ministers about a change in circumstances in breach of a duty to do so under section 56, or
 - (c) causing another person to do either of those things.
- (3) In considering whether an error is of a kind that an individual could reasonably be expected to notice, the following are amongst the matters to which regard is to be had—
- (a) the extent to which the value of the assistance given in error exceeds the value of the assistance that would have been given (if any) had the error not been made,
 - (b) whether any information given to the individual by the Scottish Ministers prior to, or immediately after, the assistance being given would have alerted a reasonable person to the fact that a decision had been, or was to be, made on the basis of incorrect information or a wrong assumption.
- (4) In—
- (a) subsection (2)(a), the reference to providing information includes making a statement,
 - (b) subsection (3)(b), the reference to information given to the individual by the Scottish Ministers does not include information explaining why the Ministers consider the assistance to have been given in error.

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65 Consideration for debtor's circumstances

- (1) This section applies to decisions of the Scottish Ministers about—
 - (a) whether to seek to recover money owed under section 63, and
 - (b) the method by which money owed under that section is to be recovered.
- (2) In making a decision to which this section applies, the Scottish Ministers must have regard to the financial circumstances of the individual who owes the money (so far as those circumstances are known to the Ministers).

66 Prescription of liability

- (1) Schedule 1 (obligations affected by prescriptive period of five years) of the Prescription and Limitation (Scotland) Act 1973 is amended as follows.
- (2) After paragraph 1(b) insert—
 - “(ba) to any obligation to make payment to the Scottish Ministers arising from section 63 of the Social Security (Scotland) Act 2018.”.

67 Exclusion of other rights of recovery

- (1) An individual given assistance in error has no non-statutory obligation based on redress of unjustified enrichment to pay the value of that assistance to the Scottish Ministers.
- (2) In subsection (1)—
 - (a) “non-statutory obligation” means an obligation that arises from a rule of law rather than an enactment,
 - (b) the reference to assistance being given in error is to be construed in accordance with section 63(4).

68 First-tier Tribunal's jurisdiction

The Scottish Ministers may by regulations transfer to the First-tier Tribunal for Scotland some or all of the competence and jurisdiction that a sheriff has in relation to the recovery of money owed under section 63.

69 Liability where assistance given for period after death

- (1) An individual's estate is liable to pay the Scottish Ministers the value of any assistance that was given to the individual under section 24 in respect of a period after the individual's death.
- (2) For the avoidance of doubt, assistance may be regarded as having been given to an individual for the purposes of this section despite being given after the individual's death.

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Funeral expense assistance

70 Liability of deceased's estate

- (1) The value of funeral expense assistance given in connection with an individual's funeral is to be treated as a funeral expense that the individual's estate is liable to pay the Scottish Ministers.
- (2) If the assistance was given in a form other than money, its value for the purposes of this section is what giving it cost the Scottish Ministers (excluding any administration costs).

CHAPTER 6

OFFENCES AND INVESTIGATIONS

Offences

71 Offence of trying to obtain assistance by deceit

- (1) A person commits an offence if—
 - (a) the person provides, or causes another person to provide, information which is false or misleading, and
 - (b) the person does so with the intention of causing an individual to be given assistance under section 24 which would not otherwise be given.
- (2) For the purpose of subsection (1), providing information includes making a statement.
- (3) A person who commits an offence under subsection (1) is liable—
 - (a) on summary conviction, to—
 - (i) imprisonment for a term not exceeding 12 months,
 - (ii) a fine not exceeding the statutory maximum, or
 - (iii) both,
 - (b) on conviction on indictment, to—
 - (i) imprisonment for a term not exceeding 5 years,
 - (ii) a fine, or
 - (iii) both.

72 Offence of failing to notify

- (1) A person commits an offence if—
 - (a) the person fails to notify the Scottish Ministers about a change in circumstances to which subsection (2) applies as soon as reasonably practicable after it occurs,
 - (b) the person does not have a reasonable excuse for failing to do so, and
 - (c) the person knew or ought to have known that the change might result in an individual ceasing to be entitled to assistance, or becoming entitled to less assistance.

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- (2) For the purpose of subsection (1)(a), a change in circumstances to which this subsection applies is a change—
- (a) which the person has a duty under section 56 to notify the Scottish Ministers about, and
 - (b) which would, under a determination of an individual's entitlement, result in the individual ceasing to be entitled to assistance, or becoming entitled to less assistance.
- (3) A person is not to be regarded as having notified a change in circumstances for the purpose of subsection (1)(a) unless the person notified the Scottish Ministers about it in the way the Ministers informed the person that such notification is to be given (see section 56(2)(b)).
- (4) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction, to—
 - (i) imprisonment for a term not exceeding 12 months,
 - (ii) a fine not exceeding the statutory maximum, or
 - (iii) both,
 - (b) on conviction on indictment, to—
 - (i) imprisonment for a term not exceeding 5 years,
 - (ii) a fine, or
 - (iii) both.

73 Offence of causing a failure to notify

- (1) A person commits an offence if—
- (a) the person causes another person to fail to notify the Scottish Ministers about a change in circumstances to which subsection (2) applies as soon as reasonably practicable after it occurs, and
 - (b) the person knew or ought to have known that—
 - (i) the change might result in an individual ceasing to be entitled to assistance, or becoming entitled to less assistance, and
 - (ii) the other person has a duty under section 56 to notify the Scottish Ministers about the change.
- (2) For the purpose of subsection (1)(a), a change in circumstances to which this subsection applies is a change which would, under a determination of an individual's entitlement, result in the individual ceasing to be entitled to assistance, or becoming entitled to less assistance.
- (3) A person is not to be regarded as having notified a change in circumstances for the purpose of subsection (1)(a) unless the person notified the Scottish Ministers about it in the way the Ministers informed the person that such notification is to be given (see section 56(2)(b)).
- (4) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction, to—
 - (i) imprisonment for a term not exceeding 12 months,
 - (ii) a fine not exceeding the statutory maximum, or
 - (iii) both,

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- (b) on conviction on indictment, to—
 - (i) imprisonment for a term not exceeding 5 years,
 - (ii) a fine, or
 - (iii) both.

74 Individual culpability for offending by an organisation

- (1) Subsection (2) applies where—
 - (a) an offence under this Act or any regulations made under it is committed by a relevant organisation, and
 - (b) the commission of the offence involves the connivance or consent of, or is attributable to the neglect of—
 - (i) a responsible official of the organisation, or
 - (ii) an individual purporting to act in the capacity of a responsible official.
- (2) The responsible official (or, as the case may be, the individual purporting to act in that capacity), as well as the organisation, commits the offence.
- (3) “Relevant organisation” means—
 - (a) a company,
 - (b) a partnership (including a limited liability partnership),
 - (c) another body or association.
- (4) “Responsible official” means—
 - (a) in the case of a company—
 - (i) a director, secretary, manager or similar officer, or
 - (ii) where the affairs of the company are managed by its members, a member,
 - (b) in the case of a limited liability partnership, a member,
 - (c) in the case of a partnership other than a limited liability partnership, a partner,
 - (d) in the case of another body or association, a person who is concerned in the management or control of its affairs.

Investigations

75 Power to make provision about investigations

- (1) The Scottish Ministers may by regulations make provision about the investigation of offences under this Act.
- (2) Regulations under subsection (1) may, in particular—
 - (a) confer powers to—
 - (i) enter and search premises (other than dwelling-houses), and
 - (ii) seize anything relevant to the investigation which is found on the premises,
 - (b) create offences relating to—
 - (i) a failure to provide information requested for the purposes of an investigation,
 - (ii) obstruction of the conduct of an investigation,

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- (iii) any breach of the regulations,
- (c) make provision about the time limit for bringing proceedings.
- (3) The maximum penalty that may be provided for in regulations under subsection (1) is, on summary conviction, a fine not exceeding level 3 on the standard scale.

76 Code of practice on investigations

- (1) The Scottish Ministers must publish a code of practice on investigations carried out by virtue of section 75.
- (2) The Scottish Ministers—
 - (a) must keep the code of practice under review,
 - (b) may from time to time revise the code of practice.
- (3) Before publishing the code of practice, the Scottish Ministers must consult publicly on a draft of the code.
- (4) The Scottish Ministers must, as soon as practicable after publication, lay before the Scottish Parliament a copy of the code of practice.
- (5) A court or tribunal in civil or criminal proceedings must take the code of practice into account when determining any question to which the code is relevant.
- (6) Breach of the code of practice does not of itself give rise to grounds for any legal action.
- (7) Subsections (2) to (6) apply in relation to a revised code of practice as they apply in relation to the first published code of practice.

CHAPTER 7

UPDATING FOR INFLATION

77 Duty to consider effects of inflation

- (1) Before the end of each financial year, the Scottish Ministers must—
 - (a) calculate the inflation-adjusted level of each relevant figure,
 - (b) prepare a report that complies with subsection (2),
 - (c) lay a copy of the report before the Scottish Parliament, and
 - (d) make the report publicly available by such means as the Ministers consider appropriate.
- (2) A report prepared under subsection (1)(b) complies with this subsection if it—
 - (a) states what the Scottish Ministers have most recently calculated to be the inflation-adjusted level of each relevant figure,
 - (b) explains how the Ministers calculated the inflation-adjusted levels, and
 - (c) states what (if anything) the Ministers have done, or intend to do, in light of their calculations and their reasons for that decision.
- (3) In this section, “relevant figure” means—

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- (a) a figure prescribed in regulations under any section in Chapter 2 as the value, or part of the value, of the assistance that is to be given to an individual, but
 - (b) not a figure which is so prescribed to apply only in respect of periods that have ended, or events that occurred, before a particular date.
- (4) The inflation-adjusted level of a figure prescribed in regulations is to be calculated for the purposes of this Chapter as follows—

$$f \times \left(1 + \frac{i}{100} \right)$$

where—

f is the figure prescribed, and

i is the number of percentage points which the Scottish Ministers consider reflects the change in the general level of relevant prices since a copy of a report was last laid before the Scottish Parliament under subsection (1)(c).

- (5) It is for the Scottish Ministers to decide what prices are “relevant prices” in terms of subsection (4).
- (6) For the purposes of preparing the first report under subsection (1)(b), the reference in subsection (4) to the last time a copy of a report was laid before the Scottish Parliament is to be read as a reference to the date on which the figure in question was prescribed.

78 Duty to uprate carer's, disability, employment-injury and funeral expense assistance

- (1) Before the end of each financial year, having calculated in accordance with section 77 the inflation-adjusted level of each relevant figure prescribed in—
 - (a) the carer's assistance regulations,
 - (b) the disability assistance regulations,
 - (c) the employment-injury assistance regulations, and
 - (d) the funeral expense assistance regulations,the Scottish Ministers must bring forward legislation to replace any relevant figure prescribed in those regulations which is, in their opinion, materially below its inflation-adjusted level with a figure of at least that level (subject to any rounding they think appropriate).
- (2) For the purpose of subsection (1), bringing forward legislation means laying before the Scottish Parliament for approval by resolution a draft Scottish statutory instrument (or instruments) containing regulations under each power mentioned in subsection (4).
- (3) If the Scottish Parliament approves a draft instrument laid before it by the Scottish Ministers in fulfilment of their duty under subsection (1), the Ministers must make the regulations contained in the draft instrument.
- (4) In this section—
 - “carer's assistance regulations” means regulations under section 28,
 - “disability assistance regulations” means regulations under section 31,
 - “employment-injury assistance regulations” means regulations under section 33,

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Changes to legislation: *There are currently no known outstanding effects for the Social Security (Scotland) Act 2018, PART 2 . (See end of Document for details)*

“funeral expense assistance regulations” means regulations under section 34,
“relevant figure” is to be construed in accordance with section 77(3).

Status:

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Changes to legislation:

There are currently no known outstanding effects for the Social Security (Scotland) Act 2018, PART 2 .