



Social Security (Scotland) Act 2018

2018 asp 9

PART 3

SUPPLEMENTING ASSISTANCE UNDER OTHER ENACTMENTS

Top up of reserved benefits

79 Power to provide for top up

- (1) The Scottish Ministers may by regulations provide for financial assistance to be given to an individual who—
 - (a) is entitled to a reserved benefit, and
 - (b) appears to the Scottish Ministers to require financial assistance (in addition to any amount the individual receives by way of reserved benefit) for the purpose, or one of the purposes, for which the benefit is being provided.
- (2) The power conferred by subsection (1) includes the power to make provision about—
 - (a) determining entitlement (including specifying further eligibility rules that are to be used to determine whether an individual is entitled to the assistance),
 - (b) the amount of assistance,
 - (c) applications for assistance,
 - (d) obtaining information,
 - (e) appeals,
 - (f) assistance given in error,
 - [^{F1}(g) offences.]
- (3) In this section and section 80, “reserved benefit” means a benefit which is to any extent a reserved matter within the meaning of schedule 5 of the Scotland Act 1998.

Textual Amendments

- F1** S. 79(2)(g) inserted (11.11.2020) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), ss. 4(2), 18(1)

Changes to legislation: Social Security (Scotland) Act 2018, Cross Heading: Top up of reserved benefits is up to date with all changes known to be in force on or before 28 December 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Commencement Information

II S. 79 in force at 1.5.2020 by [S.S.I. 2020/127](#), [reg. 2\(1\)\(a\)](#)

80 Restrictions on power

- (1) Regulations under section 79 may not provide for financial assistance to be given to meet or help to meet housing costs.
- (2) Regulations under section 79 may not provide for financial assistance to be given where the need for the assistance arises solely from reduction, non-payability or suspension of a reserved benefit as a result of an individual's conduct (for example, non-compliance with work-related requirements relating to the benefit).
- (3) But subsection (2) does not prevent assistance from being given where the need for the assistance in question—
 - (a) also arises from some exceptional event or exceptional circumstances, and
 - (b) is immediate.
- [^{F2}(4) The maximum penalty that may be provided for in regulations under section 79 in respect of an offence under those regulations is—
 - (a) on summary conviction—
 - (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—
 - (i) imprisonment for a term not exceeding 5 years,
 - (ii) a fine, or
 - (iii) both.]

Textual Amendments

F2 S. 80(4) inserted (11.11.2020) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), [ss. 4\(3\)](#), [18\(1\)](#)

Commencement Information

I2 S. 80 in force at 1.5.2020 by [S.S.I. 2020/127](#), [reg. 2\(1\)\(b\)](#)

[^{F3}80A Default provision in respect of offences

- (1) Sections 71 to 73 (which establish offences) apply in connection with financial assistance given by virtue of top-up assistance regulations as they apply in connection with assistance given under section 24.
- (2) But subsection (1) is subject to any contrary provision in top-up assistance regulations.
- (3) Where they apply by virtue of subsection (1), sections 71 to 73 apply subject to the following modifications—
 - (a) a reference to assistance is to be read as a reference to financial assistance provided for by top-up assistance regulations,

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- (b) a reference to giving notice in accordance with section 56 is to be read as a reference to giving notice in accordance with top-up assistance regulations,
 - (c) sections 72(3) and 73(3) do not apply unless, in accordance with top-up assistance regulations, the Scottish Ministers have informed the person in question about the way in which notification of a change of circumstances is to be given.
- (4) For the avoidance of doubt, the reference in section 74 to an offence under this Act or any regulations made under it includes—
- (a) an offence under any of sections 71 to 73 as applied by virtue of subsection (1),
 - (b) an offence under top-up assistance regulations.
- (5) In this section, “top-up assistance regulations” means regulations under section 79.]

Textual Amendments

F3 S. 80A inserted (11.11.2020) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), ss. 4(4), 18(1)

Changes to legislation:

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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\(6\)](#)