

Draft Regulations laid before the Scottish Parliament under section 96(2) of the Social Security (Scotland) Act 2018 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

SOCIAL SECURITY

**The Social Security Assistance (Investigation
of Offences) (Scotland) Regulations 2020**

<i>Made</i>	- - - -	2020
<i>Coming into force</i>	- -	2020

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 75(1) of the Social Security (Scotland) Act 2018⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 96(2) of that Act a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

PART 1

Introductory and interpretation

Citation and commencement

1. These Regulations may be cited as the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020 and come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

“the Act” means the Social Security (Scotland) Act 2018,

“authorised officer” means an individual authorised by the Scottish Ministers under regulation 3 to conduct investigations, under an authorisation which is for the time being in force in relation to that individual, and

“matters that may be investigated” means the matters described in regulation 3(7).

PART 2

Authorisations

Investigations: authorised officers

3.—(1) An individual is authorised by the Scottish Ministers for the purposes of these Regulations if, and only if, the Scottish Ministers grant an authorisation in accordance with this regulation in respect of the individual in relation to one or more of the matters that may be investigated (see paragraph (7)).

(2) An authorisation may only be granted to an individual who—

(a) is an employee of one of the following—

- (i) a Minister of the Crown,
- (ii) a person established by an enactment,
- (iii) a body comprised solely of persons described by this sub-paragraph, or
- (iv) a body corporate that has no members other than persons described by this paragraph or persons acting on behalf of persons described by this paragraph, and

(b) has undertaken such training as the Scottish Ministers consider appropriate to enable the individual to exercise the powers conferred by regulations 4, 7 and 8.

(3) An authorisation ceases to have effect if that individual's employment terminates.

(4) An authorisation—

- (a) must be contained in a certificate provided to that individual as evidence of their entitlement to exercise powers conferred by these Regulations,
- (b) may contain provision as to the period for which the authorisation is to have effect, and
- (c) may restrict the powers exercisable under the authorisation so as to limit their exercise to particular matters that may be investigated, to particular circumstances or in relation to particular types of assistance.

(5) An authorisation may be withdrawn at any time by the Scottish Ministers and ceases to have effect when the authorised officer is notified of the withdrawal.

(6) An individual who for the time being has the authorisation of the Scottish Ministers is entitled, in connection with one or more of the matters that may be investigated, to exercise any of the powers which are conferred by regulations 4, 7 and 8.

(7) The matters that may be investigated are—

(a) activity related to the possible commission of any of the following offences—

- (i) an offence under section 71 of the Act (offence of trying to obtain assistance by deceit),
- (ii) an offence under section 72 of the Act (offence of failing to notify a change in circumstances),
- (iii) an offence under section 73 of the Act (offence of causing a failure to notify a change in circumstances),

(b) in relation to the offences referred to in sub-paragraph (a), where a disease or injury has given rise to, or may give rise to, a claim for assistance under the Act, the circumstances in which that disease or injury—

- (i) occurred, or may have occurred, or
- (ii) was, or may have been, received or contracted.

- (8) In this regulation “type of assistance” means a type of assistance provided for by—
- (a) Chapter 2 of Part 2 of the Act (types of assistance to be given),
 - (b) any Regulations providing for financial assistance under section 79 of the Act (power to provide for top up).

PART 3

Investigatory powers

Power to require information

4.—(1) Subject to regulation 5, paragraph (2) applies where an authorised officer has grounds for suspecting that a body or person—

- (a) has, or may have, possession of information, or
- (b) can access any information,

that is relevant to any matter that may be investigated.

(2) An authorised officer may, by a notice as described in regulation 6, require that body or person to provide information that the authorised officer considers relevant to one or more of the matters that may be investigated.

(3) An authorised officer must destroy any information received in response to such a notice as soon as it ceases to be needed in connection with the matters that may be investigated.

Restrictions on power to require information and on requirements to provide it

5.—(1) Other than as described in paragraph (2), no requirement under regulation 4 may be made in respect of a body—

- (a) established with the main purpose of providing advice, information or related services in relation to social security, housing or debt without cost to those who receive those services,
- (b) established for the purpose of providing legal services to the public (whether generally or individually) and which does not redistribute any profits made, but reinvests any profits for that purpose,
- (c) that is a voluntary organisation that provides temporary accommodation, information, support or advocacy services wholly or principally for persons who have suffered domestic abuse or threats of abuse, or
- (d) with whom the Scottish Ministers have an agreement for the provision of advocacy services, within the meaning of section 10(4)(a) of the Act.

(2) Paragraph (1) does not prevent a requirement being made for provision of information relating to the employment of persons by the body, or relating to the terms and conditions on which, and the frequency with which, persons have provided services to the body.

(3) No body or person is required by a notice under regulation 4 to provide any information exchanged between client and legal adviser, if a claim for legal professional privilege would be successful if made in respect of that material in any proceedings.

(4) No person is required by a notice under regulation 4 to provide any information that incriminates, or tends to incriminate, either the person or the person’s spouse or civil partner.

(5) Paragraphs (3) and (4) apply whether the information is in documentary form or not.

Notices requiring information

6.—(1) A notice under regulation 4(2) must specify the period of time within which the information is to be provided.

(2) The time specified in a notice must be no fewer than a period of 10 working days beginning with the day after the day on which the notice is served.

(3) An authorised officer may vary a notice, but only to remove a requirement or to extend the time period for compliance.

(4) Where a notice is varied in accordance with paragraph (3), an authorised officer must serve the notice as varied on the body or person on whom the notice was originally served.

(5) Nothing in paragraph (3) restricts the ability of an authorised officer to serve a further notice requiring information.

(6) For the purpose of paragraph (2), a “working day” is a day other than—

- (a) a Saturday,
- (b) a Sunday, or
- (c) a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(2).

Electronic access to information

7.—(1) Where it appears to the Scottish Ministers that—

- (a) a body or person keeps electronic records,
- (b) those records contain or are likely from time to time to contain any information that could be required under regulation 4(2), and
- (c) facilities exist under which electronic access to those records is being provided, or is capable of being provided, by that body or person to an authorised officer,

the Scottish Ministers may require that body or person to enter into arrangements under which an authorised officer is to be allowed access to such records.

(2) No requirement under this regulation may be made in respect of a body described in paragraph (1) of regulation 5, except for the purpose of access to such information as is permitted by paragraph (2) of that regulation.

(3) An authorised officer who is allowed access to records in accordance with arrangements under paragraph (1) may access them to obtain information, but only—

- (a) in accordance with the arrangements entered into under paragraph (1),
- (b) if the officer’s authorisation states that it applies for the purposes of that paragraph,
- (c) to seek information that could be the subject of a requirement for information under regulation 4(2), and
- (d) to seek to obtain information that relates to a particular person.

(4) Arrangements under paragraph (1) may include requirements—

- (a) as to the electronic access to records that is to be made available to an authorised officer,
- (b) as to the keeping of records of the use that is made of the arrangements,
- (c) restricting the disclosure of information about the use that is made of the arrangements,
- (d) that the Scottish Ministers consider appropriate in connection with allowing access to records by an authorised officer.

(2) 1971 c.80. Schedule 1, paragraph 2 sets out the Scottish bank holidays; it was amended by the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2), section 1.

(5) An authorised officer who is allowed access in accordance with arrangements entered into under paragraph (1) is entitled to make copies of, and to take extracts from, any records, but only where they contain information which the officer would be entitled to require under regulation 4(2).

(6) Any copies or extracts made or taken in accordance with paragraph (5) must be destroyed by an authorised officer as soon as they cease to be needed in connection with all of the matters that may be investigated.

Entry and search of premises

8.—(1) An authorised officer may only enter any premises with the permission of the person occupying them or, where the premises are unoccupied, with the permission of the owner of the premises.

(2) An authorised officer may not enter any dwelling-house or any part of premises used solely as living accommodation (whether or not the occupier or owner consents to entry).

(3) An authorised officer seeking permission to enter any premises in accordance with this regulation must, if required to do so, produce the certificate containing the officer's authorisation for the purposes of these Regulations.

(4) An authorised officer may seek permission from the occupier of the premises or, where they are unoccupied, the owner, to be accompanied by such other person or persons as that officer thinks appropriate in the circumstances.

(5) An authorised officer who has entered any premises under this regulation—

- (a) may search the premises, but only if the occupier or, where they are unoccupied, the owner, gives permission to do so, and
- (b) may carry out any inquiry there,

as appears to the officer to be appropriate in connection with any one or more of the matters that may be investigated.

(6) An authorised officer who has entered any premises may in particular—

- (a) question any person whom that officer finds there,
- (b) require any such person to do either or both of the following, if reasonably required in connection with one or more of the matters that may be investigated—
 - (i) to provide that officer with information,
 - (ii) to produce documents or, if necessary, create copies of, or extracts from, documents,
- (c) take possession of and remove, or make copies of, any documents (including any copies or extracts created under paragraph (b)(ii)) which appear to that officer to contain information that is relevant to any of those matters.

(7) Where an authorised officer has removed, or made copies of, any document under paragraph (6)(c), the authorised officer must return the document, and destroy any copies that the authorised officer has made, when the document or copies cease to be needed in connection with all of the matters that may be investigated.

(8) No person may be required under paragraph (6)(b) to provide—

- (a) any information exchanged between client and legal adviser, if a claim for legal professional privilege would be successful if made in respect of that material in any proceedings, or
- (b) any information that incriminates, or tends to incriminate, either the person or the person's spouse or civil partner,

whether that information is in documentary form or not.

- (9) In this regulation “premises” includes—
- (a) any land to which access by members of the public is restricted, and
 - (b) any fixed or moveable structure.

PART 4

Offences under these Regulations

Obstruction etc. of an investigation

9. A person is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale if the person—

- (a) intentionally delays an authorised officer who is conducting any investigation under these Regulations,
- (b) fails to comply with any requirement imposed by or under these Regulations, unless the person has a reasonable excuse for that failure,
- (c) provides information which the person knows, or ought reasonably to have known, is to a material extent false or misleading, or
- (d) destroys information that has been required under regulation 4(2) or that may be accessed under regulation 7(3) where the person does so with the intention of avoiding compliance with that requirement or access.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the gathering of information in connection with the investigation of specific offences created by the Social Security (Scotland) Act 2018 (“the 2018 Act”).

Regulation 3 sets out the basis on which an individual may be authorised to carry out investigations in connection with the possible commission of an offence under sections 71, 72 or 73 of the 2018 Act. An individual who is so authorised may gather information and seek permission to enter and search premises, in accordance with regulations 4 to 8. Such an individual must be an employee of a public authority and is to be known as an authorised officer.

Regulation 4 empowers an authorised officer to issue a notice requiring the provision of information which a person or body is believed to have in their possession and which is thought to be relevant to one or more of the matters that may be investigated in terms of the Regulations. Any information provided in response to such a notice must be destroyed when it is no longer needed.

Regulation 5 restricts the power to require information from specified types of body, such as legal advice centres, and bodies providing advocacy services and refuges for persons fleeing domestic abuse. Persons or bodies served with a requirement need not comply with it if the material is subject to legal professional privilege or if they would incriminate themselves or their spouse or civil partner by answering.

Regulation 6 sets out procedures for service of notices and prescribes the minimum period that must be allowed for information to be provided.

Regulation 7 empowers the Scottish Ministers to require that arrangements are entered into for provision of access to records in electronic form, provided that the access to be taken is covered by the terms of the officer’s authorisation. The arrangements may only provide for access to records containing information which relates to a particular person, and which could be required under regulation 4. An authorised officer who is provided with access to records in terms of this regulation may take copies or extracts of documents, but any copies or extracts must be destroyed once there ceases to be a need to retain them.

Regulation 8 makes provision for authorised officers to enter premises. There is no right of entry. An authorised officer must request permission to enter from the occupier, or if nobody is currently occupying the premises, from the owner. If permission is given to enter premises, a further request may be made to conduct a search of them. Again, permission is needed. Access is not permitted to dwelling houses or parts of premises used solely as living accommodation even if permission is given.

Regulation 9 makes provision for offences relating to the intentional obstruction of investigations, by providing false information or by destroying information after it has been required. It also creates an offence of failure to comply with a requirement imposed under the Regulations, without reasonable excuse, and of intentionally delaying an authorised officer who is conducting an investigation.

A Partial Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Scottish Government Social Security Directorate and online at: <http://www.legislation.gov.uk/>.