

SOCIAL SECURITY (SCOTLAND) ACT 2018

EXPLANATORY NOTES

OVERVIEW

Part 2 (Giving of Assistance by Scottish Ministers)

Chapter 4 (Further provision about determining entitlement)

Obtaining information to make determination

79. [Section 54](#) provides that where Ministers are determining an individual's entitlement, they can request that the individual provide further information that they need to reach a decision. This might include results from an assessment, an example might be a medical examination to ascertain the extent of a person's injury where an application has been made for employment-injury assistance. Subsection (2) states that if information Ministers request is not provided, they may determine that the person is not entitled to assistance. Subsection (2) does not, however, preclude Ministers from making a determination of entitlement based on the information they do hold.
80. [Section 55](#) enables the Scottish Ministers to place a duty to notify them of a change of circumstances on:
- an individual receiving ongoing assistance,
 - anyone acting on behalf of such an individual (such as an appointee under [section 58](#)), or
 - anyone to whom the ongoing assistance that someone else is entitled to is being paid (for example, where a parent is receiving disability assistance on behalf of a child).
81. This power to impose a duty to notify a change of circumstances is to be used where a determination is made that a person is entitled to assistance on an ongoing basis (see [paragraphs 42 to 45](#) above). As discussed above (see [paragraph 45](#)) a decision that an individual will be entitled to a given type of assistance in the future can only be speculative at the time the decision is taken. It is therefore important for Ministers to find out as soon as possible if any of the assumptions on which the decision is premised prove false so that the person's ongoing entitlement to the type of assistance in question can be looked at again (the original decision may have been an under-estimate or an over-estimate of the true position). An example might be where an award of carer's assistance was made to a person on the basis that they would continue to care for a disabled person and therefore would receive future payments of carer's assistance. The carer might be placed under a duty to notify the fact that they have stopped providing care, since that would cause their entitlement to assistance to come to an end. As explained in [paragraph 47](#), being notified of a change in that circumstance will cause Ministers to make another determination of the individual's entitlement to carer's assistance.
82. The significance of being placed under a duty to notify a change of circumstances is that [section 72](#) makes it a criminal offence to fail to do so if, as a result, an individual obtains more assistance than they are entitled to (see discussion of [Chapter 6](#) of [Part](#)

*These notes relate to the Social Security (Scotland) Act
2018 (asp 9) which received Royal Assent on 1 June 2018*

2 below). Whether or not a failure to notify a change of circumstances amounts to an offence, if an individual receives more assistance than he or she is entitled to, the excess may be recoverable by the Scottish Ministers under Chapter 5 of Part 2 (see discussion of that Chapter below).

83. [Section 57](#) enables the Scottish Ministers to remove a duty to notify that they have placed on an individual, in whole or in part. An example might be if Ministers had determined that a person was entitled to disability assistance, had imposed a duty to notify them of a change in the person's medical condition, but in consequence of a change in the person's condition Ministers considered that the requirement was no longer necessary.