



# Social Security (Scotland) Act 2018

## 2018 asp 9

### PART 4

#### FURTHER PROVISION IN CONNECTION WITH PARTS 2 AND 3

##### *Inalienability of assistance*

#### **83 No assignation or charge**

- (1) Any assignation of or charge on, or agreement to assign or charge, an individual's entitlement to assistance under or by virtue of this Act is void.
- (2) Nothing in subsection (1) prevents the Scottish Ministers from giving the assistance to which an individual is entitled to another person if the individual (or a person acting on the individual's behalf) has agreed to that.

#### **Commencement Information**

**II** S. 83 in force at 3.9.2018 by [S.S.I. 2018/250](#), [reg. 2\(1\)](#) (with [reg. 3](#))

#### **84 Retention of right to assistance on bankruptcy etc.**

An individual's entitlement to assistance under or by virtue of this Act does not transfer to another person—

- (a) on the individual's sequestration, or
- (b) on the appointment of a judicial factor on the individual's estate under section 41 of the Solicitors (Scotland) Act 1980.

#### **Commencement Information**

**I2** S. 84 in force at 3.9.2018 by [S.S.I. 2018/250](#), [reg. 2\(1\)](#) (with [reg. 3](#))

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## *F<sup>1</sup>Investigations*

### Textual Amendments

- F1** S. 84A: s. 75 and cross-heading renumbered as s. 84A and cross-heading (11.11.2020) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), **ss. 5(4), 18(1)** (with s. 6)

### **[<sup>F1</sup>84A] Power to make provision about investigations**

- (1) The Scottish Ministers may by regulations make provision about the investigation of offences under this Act [<sup>F2</sup>or regulations under section 79].
- (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,
    - (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.

### Textual Amendments

- F2** Words in s. 84A(1) inserted (11.11.2020) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), **ss. 5(6), 18(1)** (with s. 6)

### Commencement Information

- I3** S. 75 (now renumbered as s. 84A) in force at 22.10.2018 by [S.S.I. 2018/298](#), **reg. 2(1)(m)** (with [reg. 3](#)) (as amended (10.12.2019) by [S.S.I. 2019/406](#), regs. 1, 2(2))

### **[<sup>F3</sup>84B] Code of practice on investigations**

- (1) The Scottish Ministers must publish a code of practice on investigations carried out by virtue of section [<sup>F4</sup>84A].
- (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.

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- (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.

#### Textual Amendments

- F3** S. 84B: s. 76 renumbered as s. 84B (11.11.2020) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), **ss. 5(5)**, 18(1) (with s. 6)
- F4** Word in s. 84B(1) substituted (11.11.2020) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), **ss. 5(7)**, 18(1) (with s. 6)

#### Commencement Information

- I4** S. 76 (now renumbered as s. 84B) in force at 3.9.2018 for specified purposes by [S.S.I. 2018/250](#), **reg. 2(2)** (with [reg. 3](#))
- I5** S. 76 (now renumbered as s. 84B) in force at 22.10.2018 in so far as not already in force by [S.S.I. 2018/298](#), **reg. 2(2)** (with [reg. 3](#)) (as amended (10.12.2019) by [S.S.I. 2019/406](#), **regs. 1, 2(2)**)

### *Information-sharing*

## 85 Information-sharing

- (1) The Scottish Ministers may require a person mentioned in subsection (2) to supply information held by the person to the Ministers for the purpose of a social security function.
- (2) The persons are—
  - (a) a local authority,
  - (b) a Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978 or a Special Health Board constituted under section 2(1)(b) of that Act,
  - (c) an integration joint board established by order under section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014,
  - (d) the Registrar General for Scotland,
  - (e) the Keeper of the Records of Scotland,
  - (f) the Scottish Courts and Tribunals Service,
  - (g) a person specified in regulations made by the Scottish Ministers.
- (3) Where information is supplied to the Scottish Ministers under subsection (1) for use for any purpose, they may use it for any other purposes for which information held by them for that purpose may be used.
- (4) In subsection (1), references to information held by a person include information held by another person providing services to the person.
- (5) Information held by the Scottish Ministers for the purpose of a social security function may be supplied by the Ministers to a person mentioned in subsection (2) for use for

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the purposes of such function of the person as is specified in regulations made by the Ministers.

- (6) Where information is supplied to a person under subsection (5) for use for any purpose, the person may use it for any other purposes for which information held by the person for that purpose may be used.
- (7) In subsection (5), references to information held by the Scottish Ministers include information held by a person providing services to them.
- (8) Information supplied under subsection (5) must not be supplied by the recipient of the information to any other person without the authority of the Scottish Ministers.
- (9) This section does not permit or require the provision of information in breach of a prohibition or restriction on the disclosure of information arising by virtue of an enactment or rule of law.
- (10) In this section, “social security function” means a function of the Scottish Ministers under or by virtue of this Act.

#### Commencement Information

**I6** S. 85 in force at 3.9.2018 by [S.S.I. 2018/250](#), [reg. 2\(1\)](#) (with [reg. 3](#))

### *F<sup>5</sup>Appointees*

#### Textual Amendments

**F5** S. 85A and cross-heading inserted (11.11.2020) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), [ss. 1\(2\)](#), [18\(1\)](#)

#### **85A Appointment of person to act on behalf of child**

- (1) The Scottish Ministers may appoint a person (an “appointee”) to act on behalf of a child in connection with the determination of the child's entitlement to assistance under section 24 or regulations under section 79.
- (2) An appointment under subsection (1) may, if the Scottish Ministers consider it appropriate, include an appointment of the person to receive such assistance on the child's behalf.
- (3) The Scottish Ministers may only appoint an appointee if it appears to them that there is no person who—
  - (a) has authority to act on behalf of the child,
  - (b) resides with, and has care of, the child, and
  - (c) is willing, and practicably able, to act on the child's behalf in relation to the matter mentioned in subsection (1).
- (4) An individual who is under 16 years may not be appointed as an appointee.
- (5) Where an appointee is appointed under subsection (1) to act on behalf of a child—
  - (a) the appointee can do anything that a person with authority (however arising) to act on behalf of the child in relation to the determination of the child's

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- entitlement to assistance could do in connection with the determination of the child's entitlement to assistance (including making an application for assistance),
- (b) the Scottish Ministers may request that the appointee provide them with information that the Ministers may otherwise request under section 54 or (as the case may be) the regulations under section 79 (and in the case of section 54, subsections (2) and (3) of that section apply to that request as they apply to a request made to the child),
  - (c) any information that would be given to the child under or by virtue of Part 2 or (as the case may be) the regulations, must be given to the appointee instead.
- (6) The Scottish Ministers may terminate an appointment under subsection (1) at any time.
- (7) In this section, “child” means an individual who is under 16 years.]

#### [<sup>F6</sup>85B Appointment of person to act in other circumstances

- (1) The Scottish Ministers may appoint a person (an “appointee”) to act on behalf of an individual in connection with the determination of the individual's entitlement to assistance under section 24 or regulations under section 79.
- (2) An appointment under subsection (1) may, if the Scottish Ministers consider it appropriate, include an appointment of the person to receive such assistance on the individual's behalf.
- (3) The Scottish Ministers may only appoint an appointee if—
  - (a) the individual is 16 years or over and the conditions in subsection (4) are met, or
  - (b) it appears to them that subsection (6) or (7) applies.
- (4) The conditions are—
  - (a) the individual indicates (in such form as the Scottish Ministers require) that the individual agrees to the appointment, and
  - (b) an appropriate person certifies (in such form as the Scottish Ministers require) that in the person's opinion—
    - (i) the individual is not incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000,
    - (ii) the individual understands the effect of the appointment,
    - (iii) the individual has not been subject to any undue influence in agreeing to the appointment, and
    - (iv) the person proposed to be appointed is suitable to act as the individual's appointee.
- (5) The Scottish Ministers are to make regulations defining “appropriate person” for the purposes of subsection (4)(b).
- (6) This subsection applies if—
  - (a) the individual is deceased, and
  - (b) there is no executor appointed on the individual's estate.
- (7) This subsection applies if, in relation to the matter mentioned in subsection (1)—
  - (a) the individual is incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000,

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- (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.
- (8) An individual who is under 16 years may not be appointed as an appointee.
- (9) Where an appointee is appointed under subsection (1) to act on behalf of an individual—
- (a) the appointee can do anything that a relevant 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 the Ministers may otherwise request under section 54 or (as the case may be) the regulations under section 79 (and in the case of section 54, 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 Part 2 or (as the case may be) the regulations, must be given to the appointee instead.
- (10) In subsection (9)(a), “relevant individual” means—
- (a) in the case of an appointment by virtue of subsection (3)(a), the individual in relation to whom the appointment is made,
  - (b) in the case of an appointment by virtue of subsection (6), an executor appointed on the individual's estate,
  - (c) in the case of an appointment by virtue of subsection (7), a person with authority (however arising) to act on behalf of the individual in relation to the determination of the individual's entitlement to assistance.
- (11) The Scottish Ministers may terminate an appointment under subsection (1) at any time.
- (12) The Scottish Ministers must—
- (a) terminate an appointment made by virtue of subsection (3)(a) if the individual withdraws agreement to it,
  - (b) consider whether to terminate an appointment made by virtue of subsection (3) (a) if requested to do so by anyone who appears to the Ministers to have an interest in the welfare or financial affairs of the individual.
- (13) The Scottish Ministers must consider whether to terminate an appointment made by virtue of subsection (6) if requested to do so by anyone who appears to the Ministers to have an interest in the financial affairs of the individual.
- (14) The Scottish Ministers must consider whether to make an appointment by virtue of subsection (7), or to terminate such an appointment, if requested to do so by—
- (a) the individual, or
  - (b) anyone else who appears to the Ministers to—
    - (i) have authority to act on behalf of the individual, or
    - (ii) have an interest in the welfare or financial affairs of the individual.
- (15) Subsection (16) applies where the Scottish Ministers are deciding whether to make an appointment by virtue of subsection (7) or to terminate such an appointment.

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- (16) In making the decision, the Scottish Ministers must, insofar as practicable, have regard to—
- (a) the wishes and feelings of the individual, and
  - (b) the views of anyone else who appears to the Ministers to have an interest in the welfare or financial affairs of the individual.]

#### Textual Amendments

- F6** S. 85B inserted (23.12.2020 for specified purposes, 24.1.2022 for specified purposes) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), ss. **2(4)**, 18(2)(3); S.S.I. 2020/422, regs. 2(b), 3

#### Modifications etc. (not altering text)

- C1** S. 85B applied (24.12.2020) by [The Carer's Allowance Supplement and Young Carer Grants \(Residence Requirements and Procedural Provisions\) \(EU Exit\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/475\)](#), reg. 1, **sch. 2 para. 18**

PROSPECTIVE

### *Agency arrangements*

#### **86 Agency arrangements for housing assistance**

- (1) The Scottish Ministers may by regulations provide for the functions conferred on them by virtue of Part 2 to be exercised on their behalf by local authorities, but only in relation to—
- (a) housing assistance, and
  - (b) short-term assistance that an individual is eligible to be given on account of the individual's entitlement to housing assistance being under review within the meaning of paragraph 1(1)(c) of schedule 10.
- (2) Regulations under this section may in particular—
- (a) specify the functions that local authorities are to exercise on the Scottish Ministers' behalf,
  - (b) make provision identifying the persons in relation to whom a local authority is to exercise those functions, and
  - (c) provide for any enactment (including this Act) to apply subject to such modifications as the Ministers consider appropriate in consequence of functions falling to be exercised by a local authority on the Ministers' behalf.
- (3) Regulations under this section do not affect the Scottish Ministers' responsibility for the exercise of their functions.
- (4) In subsection (1), “functions” does not include regulation-making functions.

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### *Monitoring of appeal process*

#### **87 Report to the Scottish Parliament on exercise of right to appeal**

- (1) As soon as practicable after the end of each financial year, the Scottish Ministers are to—
  - (a) lay before the Scottish Parliament, and
  - (b) make publicly available by such means as they consider appropriate, a report on the number of individuals who obtained the right to appeal to the First-tier Tribunal under section 46 and the number of individuals who exercised that right.
- (2) The first report under this section must include a plan setting out how the Scottish Ministers intend to collect this data.
- (3) In reporting to the Scottish Parliament under subsection (1), the Scottish Ministers must indicate whether, in the opinion of the Ministers, amendment of the process for determining entitlement under this Act is appropriate.

#### **Commencement Information**

**I7** S. 87 in force at 22.10.2018 by [S.S.I. 2018/298, reg. 2\(1\)\(n\)](#) (with [reg. 3](#)) (as amended (10.12.2019) by [S.S.I. 2019/406, regs. 1, 2\(2\)](#))

*[<sup>F7</sup> Assistance given in error: First-tier Tribunal's jurisdiction*

#### **Textual Amendments**

**F7** S. 87A and cross-heading inserted (11.11.2020) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\), ss. 14\(3\), 18\(1\)](#)

#### **87A Power to transfer jurisdiction from sheriff to tribunal**

- (1) 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—
  - (a) money owed under section 63, or
  - (b) money owed under regulations under Part 3.
- (2) Before laying a draft Scottish statutory instrument containing regulations under subsection (1) before the Scottish Parliament for approval by resolution, the Scottish Ministers must consult—
  - (a) the Lord President of the Court of Session,
  - (b) the President of the Scottish Tribunals,
  - (c) sheriffs principal.
- (3) The Scottish Ministers must—
  - (a) exercise the power conferred by subsection (1) at least once,
  - (b) before 1 April 2021, consult the persons mentioned in subsection (2) about making regulations under subsection (1).]



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