



Social Security Administration and Tribunal Membership (Scotland) Act 2020

2020 asp 18

PART 1

SOCIAL SECURITY ADMINISTRATION

Suspension of assistance

12 Power to suspend payment of assistance

(1) The Social Security (Scotland) Act 2018 is modified as follows.

(2) In section 51—

(a) in subsection (2), the “and” at the end of paragraph (a) is repealed,

(b) after paragraph (a) insert—

“(aa) make provision, in accordance with schedule 11, about—

(i) the circumstances in which an individual who has an entitlement to assistance in respect of a period under such a determination is not to become entitled to be given some or all of that assistance at the time at which the individual otherwise would in accordance with provision under paragraph (a), and

(ii) in that event, how and when the individual is to become entitled to be given that assistance, and”.

(c) after subsection (3), insert—

“(3A) Schedule 11 makes provision about the exercise of the power conferred by subsection (2)(aa).”.

(3) In section 54—

(a) in subsection (1), for paragraphs (a) and (b) substitute—

“(a) the Scottish Ministers are either—

(i) determining an individual's entitlement to assistance (whether under section 37 or 43), or

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- (ii) considering whether regulations under section 52 require them to make a determination of an individual's entitlement to assistance without receiving an application, and
 - (b) they require further information in order to satisfy themselves about any matter material to the making of the determination of entitlement or (as the case may be) to their consideration of whether they are required to make a determination without receiving an application,”
 - (b) after subsection (1) insert—
 - “(1A) If—
 - (a) the Scottish Ministers are either—
 - (i) determining the individual's entitlement to a type of assistance that the individual has ongoing entitlement to, or
 - (ii) considering whether regulations under section 52 require them to make a determination of the individual's entitlement to assistance without receiving an application,
 - (b) the individual fails to provide the requested information by the end of the period specified under subsection (1), and
 - (c) it is the first time that the individual has failed to provide the Scottish Ministers with the requested information within a specified period since they began making the determination or considering the matter mentioned in paragraph (a)(ii),
 the Scottish Ministers may issue a decision to suspend the assistance to the individual in accordance with regulations under section 51(2) (aa).
 - (1B) Where the Scottish Ministers issue such a decision, they must, at the same time, request that the individual provide them with the information within such further period as they specify.”
 - (c) in subsection (2), for “specified period” substitute “ the period specified under subsection (1) or (1B) ”,
 - (d) after subsection (3) insert—
 - “(4) The reference in subsection (1A)(a) to an individual having ongoing entitlement to a type of assistance is to an individual being entitled to be given the type of assistance in question under section 24 under a determination made on the basis that the individual has ongoing entitlement to that type of assistance.”
- (4) After schedule 10, insert—

Changes to legislation: There are currently no known outstanding effects for the Social Security Administration and Tribunal Membership (Scotland) Act 2020, Cross Heading: Suspension of assistance. (See end of Document for details)

“SCHEDULE 11

(introduced by section 51)

SUSPENSION OF ASSISTANCE

Circumstances in which assistance may be suspended

- 1 (1) The regulations may provide for an individual's assistance to be suspended in the following circumstances only—
 - (a) under section 54(1A) the Scottish Ministers have issued a decision to suspend assistance to the individual due to a failure to provide information which the individual is yet to provide,
 - (b) where the Scottish Ministers have made arrangements (whether under section 85A, 85B or otherwise) for a person to receive the assistance on the individual's behalf, and the Ministers consider that it is necessary to suspend the assistance—
 - (i) in order to protect the individual from the risk of financial abuse,
 - (ii) because the person with whom the Ministers have made arrangements is unable to continue to receive the assistance, or
 - (iii) for any other reason specified in the regulations, or
 - (c) the individual has requested that the Scottish Ministers temporarily stop giving the assistance in question and is yet to request that they resume doing so.
- (2) For the purpose of sub-sub-paragraph (1)(b), “financial abuse” includes—
 - (a) having money or other property stolen,
 - (b) being defrauded,
 - (c) being put under pressure in relation to money or other property,
 - (d) having money or other property misused.

Safeguards: requirement to consider financial circumstances before suspension

- 2 The regulations must require the Scottish Ministers, before suspending the assistance given to an individual, to have regard to the financial circumstances of the individual.

Safeguards: right to review suspension

- 3 The regulations must confer a right on an individual whose assistance has been suspended to require the Scottish Ministers to review their decision to suspend the individual's assistance.

Safeguards: information to be given following suspension

- 4 (1) The regulations must require the Scottish Ministers to inform an individual whose assistance they have suspended—
 - (a) of their decision to suspend the individual's assistance,

Changes to legislation: There are currently no known outstanding effects for the Social Security Administration and Tribunal Membership (Scotland) Act 2020, Cross Heading: Suspension of assistance. (See end of Document for details)

- (b) of the reasons for their decision,
 - (c) of any steps which might be taken by the individual in order for the Scottish Ministers to consider ending the suspension, and
 - (d) of the individual's right in accordance with the regulations to require the Scottish Ministers to review their decision to suspend the individual's assistance.
- (2) The regulations must provide that the Scottish Ministers are to fulfil the duty described by sub-paragraph (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.

Safeguards: effect of suspension ending

- 5 The regulations must provide that when—
- (a) the suspension of an individual's assistance ends, and
 - (b) under the latest determination of the individual's entitlement to the type of assistance in question, the individual would have become entitled to be given assistance during the period of the suspension,
- the individual is immediately to be given under section 24 the assistance that the individual would have become entitled to be given under the determination during that period.

Generality of enabling power unaffected

- 6 Nothing in this schedule is to be taken to limit the provision that may be included in the regulations except to the extent stated.

Interpretation

- 7 In this schedule—
- (a) references to an individual's assistance being suspended are to an individual, by virtue of the regulations, not becoming entitled to be given some or all of the assistance in respect of a period that the individual otherwise would at the time, or times, prescribed by regulations under section 51(2)(a),
 - (b) “the regulations” means regulations under section 51(1).”.

Commencement Information

II S. 12 in force at 26.7.2021 by [S.S.I. 2021/232](#), **reg. 2(f)**

Changes to legislation:

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