



# Social Security (Scotland) Act 2018

## 2018 asp 9

### PART 2

#### GIVING OF ASSISTANCE BY SCOTTISH MINISTERS

#### CHAPTER 4

#### FURTHER PROVISION ABOUT DETERMINING ENTITLEMENT

##### *Identifying possible eligibility*

#### **53 Duty to inform about possible eligibility**

- (1) Subsection (2) applies if, in the course of their making a determination of an individual's entitlement to assistance, it appears to the Scottish Ministers that the individual may be eligible for other assistance.
- (2) The Scottish Ministers must—
  - (a) inform the individual that the individual may be eligible for the other assistance, and
  - (b) either—
    - (i) provide the individual with information about how to apply for it, or
    - (ii) if regulations under section 52 so allow, ask the individual whether they should proceed with making a determination of the individual's entitlement to the other assistance without receiving an application.
- (3) Subsection (2)(b)(ii) does not preclude the Scottish Ministers from requesting further information under section 54(1) for the purpose of determining the individual's entitlement to the other assistance.
- (4) In this section, "other assistance" means—
  - (a) a different type of assistance described in Chapter 2 from the type of assistance that the determination mentioned in subsection (1) relates to, or
  - (b) the same type of assistance as that determination relates to, but in respect of a different period or (as the case may be) event.

*Obtaining information to make determination*

**54      Obligation to provide information on request**

- (1) When—
- (a) the Scottish Ministers are determining an individual’s entitlement to assistance (whether under section 37 or 43), and
  - (b) they require further information in order to satisfy themselves about any matter material to the making of the determination,
- they may request that the individual provide them with the information within such period as they specify.
- (2) If the individual fails to provide the requested information by the end of the specified period the Scottish Ministers may, without further consideration, proceed to make the determination on the basis that the eligibility rules prescribed in the applicable regulations are not satisfied in the individual’s case (see section 50).
- (3) For the avoidance of doubt, the information which the Scottish Ministers may request an individual to provide under subsection (1) includes the results of an assessment, including one which the individual has not undergone at the time the request is made.

**55      Requirement to justify assessment requests**

- (1) This section applies to a request for information from an individual under section 54(1) if fulfilling the request would require the individual to undergo an assessment.
- (2) When making the request, the Scottish Ministers must inform the individual why they consider requiring the individual to undergo an assessment to be the only practicable way to obtain the information.
- (3) If the individual would have to undergo a face-to-face assessment in order to fulfil the request, when making the request the Scottish Ministers must also inform the individual what consideration they have given to—
- (a) any preference the individual has expressed to them concerning where and how assessments are carried out,
  - (b) whether the assessment could be carried out another way,
  - (c) what distance (if any) they expect the individual will have to travel in order to attend the assessment,
  - (d) the extent to which travelling to attend the assessment may—
    - (i) cause the individual distress, or
    - (ii) adversely affect the individual’s health.
- (4) In subsection (3), “face-to-face assessment” means an assessment involving—
- (a) the individual, and
  - (b) the assessor,
- being physically in the same place at the same time.

**56      Duty to notify change of circumstances**

- (1) The Scottish Ministers may place a duty to notify them about a change in circumstances on a person to whom subsection (3), (4) or (5) applies.

- (2) The Scottish Ministers place a duty under subsection (1) on a person by informing the person—
  - (a) of the changes in circumstances which the person has a duty to notify them about,
  - (b) of the way in which the person is to notify them, and
  - (c) that failing to notify them about a change in any of those circumstances in that way may be an offence under section 72.
- (3) This subsection applies to an individual who is to be given assistance under section 24 under a determination made on the basis that the individual has ongoing entitlement to the type of assistance in question.
- (4) This subsection applies to a person acting on behalf of an individual to whom subsection (3) applies in relation to any application for the assistance or the determination of the individual's entitlement.
- (5) This subsection applies to a person to whom payments are to be made under section 24 by way of assistance to another person under a determination made on the basis that that other person has ongoing entitlement to the type of assistance in question.

## **57 Lifting of duty to notify change of circumstances**

- (1) A duty to notify the Scottish Ministers about a change of circumstances placed on a person under section 56 ceases to apply when—
  - (a) it is lifted under subsection (2), or
  - (b) it stops being the case that a change in any of the circumstances to which the duty relates can affect someone's entitlement to be given assistance under section 24.
- (2) The Scottish Ministers may lift a duty placed on a person under section 56 by informing the person that the duty is lifted.
- (3) Under subsection (2), the Scottish Ministers may lift a duty as it relates to some or all of the changes in circumstances which the person has a duty to notify them about.

### *Appointees*

## **58 Appointment of person to act on behalf of individual**

- (1) The Scottish Ministers may appoint a person (an "appointee")—
  - (a) to act on behalf of an individual in connection with the determination of the individual's entitlement to assistance under section 24, and
  - (b) to receive such assistance on the individual's behalf.
- (2) The Scottish Ministers may only appoint an appointee if it appears to them that either subsection (3) or (4) applies.
- (3) This subsection applies if—
  - (a) the individual is deceased, and
  - (b) there is no executor appointed on the individual's estate.
- (4) This subsection applies if, in relation to the matters mentioned in subsection (1)—

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- (a) the individual is incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000,
  - (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.
- (5) An individual who is under 16 years may not be appointed as an appointee.
- (6) Where an appointee is appointed in relation to an individual—
- (a) the appointee can do anything that the 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 they may otherwise request the individual to provide under section 54 (and 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 this Part must be given to the appointee instead.
- (7) The Scottish Ministers may terminate an appointment under this section at any time.

*Support during discussions and assessments*

**59 Right to support**

- (1) The Scottish Ministers must comply with an individual's wish to have another person ("a supporter") present during any discussion or assessment relating to the individual's entitlement to a type of assistance described in Chapter 2, unless the wish is unreasonable.
- (2) The Scottish Ministers' duty under subsection (1) includes ensuring that any person acting on their behalf complies with such a wish, unless the wish is unreasonable.
- (3) The role of a supporter is to support the individual in question during the discussion or (as the case may be) assessment, and includes making representations on the individual's behalf.
- (4) Nothing in this section is to be read as requiring the Scottish Ministers to provide or pay for a supporter.

*Access to reports*

**60 Right to reports used in determining entitlement**

- (1) If an individual requests it, the Scottish Ministers must give the individual a copy of any assessment report held by the Ministers that they took into account in making a determination of the individual's entitlement to assistance.
- (2) Subsection (1) does not require the Scottish Ministers to provide an individual with information that they are exempt from the obligation to provide to the individual under Article 15 of the GDPR (whether by virtue of an enactment or otherwise).

- (3) In subsection (2), “the GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

*Right to appeal Scottish Ministers’ process decisions*

**61 Appeal to First-tier Tribunal against process decisions**

- (1) An individual may appeal to the First-tier Tribunal for Scotland against a decision by the Scottish Ministers—
- (a) to reject something purporting to be an application for assistance (see section 38),
  - (b) that something purporting to be a request for a re-determination does not satisfy the condition in section 41(3),
  - (c) that an individual has no good reason for not requesting a re-determination sooner (see section 42).
- (2) An appeal under this section—
- (a) may be brought without the First-tier Tribunal’s permission within the period of 31 days beginning with the day the individual was informed of the decision in accordance with this Act,
  - (b) may be brought only with the First-tier Tribunal’s permission after the period mentioned in paragraph (a),
  - (c) may not be brought after the end of the period of one year beginning with the day the individual was informed of the decision in accordance with this Act.
- (3) The First-tier Tribunal may give permission under subsection (2)(b) for an appeal to be made only if it is satisfied that there is a good reason for the appeal not having been made sooner.
- (4) A decision by the First-tier Tribunal about—
- (a) the outcome of an appeal under this section, or
  - (b) whether to give permission under subsection (2)(b) for an appeal to be brought,
- is final.
- (5) Accordingly (and without prejudice to the generality of subsection (4)), any such decision by the First-tier Tribunal may be neither—
- (a) reviewed under section 43 of the Tribunals (Scotland) Act 2014, nor
  - (b) appealed against under section 46 of that Act.

*Presumption about when information is received*

**62 Presumption for purposes of sections 41, 48 and 61**

- (1) Subsection (2) applies in relation to the references in sections 41, 48 and 61 to someone being informed of something by the Scottish Ministers in accordance with a provision of this Act.
- (2) Where, in order to fulfil their duty to inform an individual of something, the Scottish Ministers send information—

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- (a) through the postal service to the last known address the Scottish Ministers have for the individual, or
- (b) by email to the email address most recently provided to the Scottish Ministers by the individual for the purposes of this Act,

the individual is to be taken to have received the information 48 hours after it is sent by the Scottish Ministers unless the contrary is shown.