

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

2024 No.

SOCIAL SECURITY

**The Social Security Information-sharing
(Scotland) Amendment Regulations 2024**

Made - - - - 2024
Coming into force - - 16th January 2024

The Scottish Ministers make the following Regulations in exercise of the power conferred by sections 85(5) and 95 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 this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security Information-sharing (Scotland) Amendment Regulations 2024 and come into force on 16 January 2024.

(2) In these Regulations “the 2021 Regulations” means the Social Security Information-sharing (Scotland) Regulations 2021⁽²⁾.

Amendment of the 2021 Regulations

2. In regulation 4 of the 2021 Regulations (use of information supplied by the Scottish Ministers)

(a) after paragraph (1)(b), insert—

“(c) where regulation 4A applies, a local authority for use for the purposes of the functions of the local authority specified in paragraph (3A),

(d) where regulation 4B applies, a local authority for use for the purposes of the functions of the local authority specified in paragraph (3B),

(e) where regulation 4C applies, the Public Guardian for use for the purposes of the function of the Public Guardian specified in paragraph (3C),”

(1) 2018 asp 9.

(2) S.S.I. 2021/178, as amended by S.S.I. 2022/56.

(b) after paragraph (3), insert—

“(3A) The specified functions referred to in paragraph (1)(c) are—

- (a) the duty to promote social welfare under section 12 of the Social Work (Scotland) Act 1968(3) (general social welfare services of local authorities),
- (b) the duty to children looked after by local authorities under section 17 of the Children (Scotland) Act 1995(4) (duty of local authority to child looked after by them),
- (c) the duty to safeguard and promote the welfare of children who are in need under section 22 of the Children (Scotland) Act 1995(5) (promotion of welfare of children in need),
- (d) the duty to make inquiries about a person’s well-being, property or financial affairs under section 4 of the Adult Support and Protection (Scotland) Act 2007(6) (council’s duty to make inquiries),
- (e) the power to make an application for a child assessment order under section 35 of the Children’s Hearings (Scotland) Act 2011(7) (child assessment orders),
- (f) the duty to provide information to the Principal Reporter under section 60 of the Children’s Hearings (Scotland) Act 2011 (local authority’s duty to provide information to Principal Reporter).

(3B) The specified functions referred to in paragraph (1)(d) are—

- (a) the duty to make inquiries about a person’s property or financial affairs under section 4 of the Adult Support and Protection (Scotland) Act 2007 (council’s duty to make inquiries),
- (b) the duty to investigate any circumstances made known to the local authority in which the personal welfare of an adult seems to them to be at risk under section 10(1)(d) of the Adults with Incapacity (Scotland) Act 2000(8) (functions of local authorities).

(3C) The specified function referred to in paragraph (1)(e) is the duty to investigate circumstances where the property or financial affairs of an adult appear to be at risk under section 6(2)(d) of the Adults with Incapacity (Scotland) Act 2000(9) (the Public Guardian and his functions).”.

3. After regulation 4 of the 2021 Regulations (use of information supplied by the Scottish Ministers), insert—

“Use of information supplied under regulation 4(1)(c)

4A.—(1) This regulation applies where—

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- (3) 1968 c. 49. Section 12 was amended by paragraph 15 of schedule 4 of the Children (Scotland) Act 1995 (c. 36), section 66(1) and paragraph 10(5) of schedule 9 of the National Health Service and Community Care Act 1990 (c. 19), section 120(1) of the Immigration and Asylum Act 1999 (c. 33) and section 3 of the Community Care and Health (Scotland) Act 2002 (asp 5).
 - (4) 1995 c. 36. Section 17 was amended by paragraph 9(4)(b) of schedule 2 of the Adoption and Children (Scotland) Act 2007 (asp 4), paragraph 2 of schedule 5 of the Children’s Hearings (Scotland) Act 2011 (asp 1), section 13 of the Children (Scotland) Act 2020 (asp 16) and paragraph 9(3) of schedule 1 of S.S.I. 2013/211.
 - (5) Section 22 was amended by para 6(j) of schedule 1 of the Tax Credits Act 1999 (c. 10), paragraph 50 of schedule 3 of the Tax Credits Act 2002 (c. 21), paragraph 14 of schedule 3 of the Welfare Reform Act 2007 (c. 5) and regulation 5 of S.S.I. 2013/137.
 - (6) 2007 asp 10.
 - (7) 2011 asp 1. Section 35 was modified by paragraph 2(2)(b) of schedule 3 of the Coronavirus (Scotland) Act 2020 (asp 7) which has been repealed by regulation 2(a) of S.S.I. 2021/93 on March 30, 2021.
 - (8) 2000 asp 4.
 - (9) Section 6 was amended by section 67 and paragraph 5(a) of the Adult Support and Protection (Scotland) Act 2007 and paragraph 4(2) of schedule 1(1) of S.S.I. 2015/157.

- (a) in the exercise of their social security functions, the Scottish Ministers know or believe that a person with whom they have come into contact (“person A”) is—
 - (i) at real risk of harm,
 - (ii) has needs of care and support, and
 - (iii) as a result of those needs, is unable to protect themselves against that risk, and
 - (b) the Scottish Ministers consider the supply of information is necessary to protect person A from harm.
- (2) The information is to be supplied only with the explicit consent of person A unless paragraph (3) applies.
- (3) This paragraph applies where—
- (a) in the circumstances, person A’s consent cannot be given,
 - (b) in the circumstances, the Scottish Ministers cannot reasonably be expected to obtain the consent of person A, or
 - (c) in the circumstances, the Scottish Ministers consider obtaining consent of person A would prejudice the protection mentioned in paragraph (1)(b).
- (4) In this regulation—
- (a) in paragraph (1)(a)(i)—
 - (i) “real risk of harm” means being subjected to conduct causing or likely to cause a person to suffer significant—
 - (aa) neglect, or
 - (bb) physical, mental or emotional harm,and includes engaging in, or being likely to engage in, conduct which causes or is likely to cause self-harm, and
 - (ii) “conduct” includes failures to act,
 - (b) in paragraph (1)(b) and in the definition of “real risk of harm”, “harm” means neglect or physical, mental or emotional harm, and
 - (c) “person” means a natural person of any age.

Use of information supplied under regulation 4(1)(d)

- 4B.—**(1) This regulation applies where—
- (a) in the exercise of their social security functions, the Scottish Ministers know or believe that—
 - (i) the property or financial affairs of a person with whom they have come into contact (“person B”) are at risk,
 - (ii) person B has needs of care and support, and
 - (iii) as a result of those needs, person B is unable to protect themselves against that risk, and
 - (b) the Scottish Ministers consider the supply of information is necessary to—
 - (i) safeguard the property or financial affairs of person B, and
 - (ii) protect person B from harm.
- (2) The information is to be supplied only with the explicit consent of person B unless paragraph (3) applies.

- (3) This paragraph applies where—
 - (a) in the circumstances, person B’s consent cannot be given,
 - (b) in the circumstances, the Scottish Ministers cannot reasonably be expected to obtain the consent of person B, or
 - (c) in the circumstances, the Scottish Ministers consider obtaining consent of person B would prejudice the matters mentioned in paragraph (1)(b).
- (4) In this regulation, “harm” means mental or emotional harm.

Use of information supplied under regulation 4(1)(e)

- 4C.—**(1) This regulation applies where—
- (a) in the exercise of their social security functions, the Scottish Ministers know or believe that—
 - (i) a person with whom they have come into contact (“person C”) is incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000(**10**), and
 - (ii) the property or financial affairs of person C are at risk, and
 - (b) the Scottish Ministers consider the supply of information is necessary to—
 - (i) safeguard the property or financial affairs of person C, and
 - (ii) protect person C from harm.
- (2) In this regulation, “harm” means mental or emotional harm.”.

- 4.** Before regulation 5 of the 2021 Regulations, insert the heading—

“Supply of information to be no more than is necessary ”.

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 amend existing provisions regarding the sharing of information in connection with the social security functions of the Scottish Ministers that are contained in the Social Security Information-sharing (Scotland) Regulations 2021 (“the 2021 Regulations”).

Regulation 2 amends regulation 4 of the 2021 Regulations to specify further purposes for which information held by the Scottish Ministers for the purpose of a social security function may be supplied to local authorities and to the Public Guardian.

Regulations 4A, 4B and 4C of the 2021 Regulations, as inserted by these Regulations, set out that the Scottish Ministers must know or believe that an objective threshold of risk of harm to the individual has been met before they share any information to be used for the new specified purposes.

Regulation 4 amends the 2021 Regulations by adding a new heading above regulation 5 of those regulations.

Impact assessments have been prepared for these Regulations and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Social Security Directorate, Victoria Quay, Edinburgh EH66 6QQ and online at www.legislation.gov.uk.