
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the gathering of information in connection with the investigation of specific offences created by the Social Security (Scotland) Act 2018 (“the 2018 Act”).

Regulation 3 sets out the basis on which an individual may be authorised to carry out investigations in connection with the possible commission of an offence under sections 71, 72 or 73 of the 2018 Act. An individual who is so authorised may gather information and seek permission to enter and search premises, in accordance with regulations 4 to 8. Such an individual must be an employee of a public authority and is to be known as an authorised officer.

Regulation 4 empowers an authorised officer to issue a notice requiring the provision of information which a person or body is believed to have in their possession and which is thought to be relevant to one or more of the matters that may be investigated in terms of the Regulations. Any information provided in response to such a notice must be destroyed when it is no longer needed.

Regulation 5 restricts the power to require information from specified types of body, such as legal advice centres, and bodies providing advocacy services and refuges for persons fleeing domestic abuse. Persons or bodies served with a requirement need not comply with it if the material is subject to legal professional privilege or if they would incriminate themselves or their spouse or civil partner by answering.

Regulation 6 sets out procedures for service of notices and prescribes the minimum period that must be allowed for information to be provided.

Regulation 7 empowers the Scottish Ministers to require that arrangements are entered into for provision of access to records in electronic form, provided that the access to be taken is covered by the terms of the officer’s authorisation. The arrangements may only provide for access to records containing information which relates to a particular person, and which could be required under regulation 4. An authorised officer who is provided with access to records in terms of this regulation may take copies or extracts of documents, but any copies or extracts must be destroyed once there ceases to be a need to retain them.

Regulation 8 makes provision for authorised officers to enter premises. There is no right of entry. An authorised officer must request permission to enter from the occupier, or if nobody is currently occupying the premises, from the owner. If permission is given to enter premises, a further request may be made to conduct a search of them. Again, permission is needed. Access is not permitted to dwelling houses or parts of premises used solely as living accommodation even if permission is given.

Regulation 9 makes provision for offences relating to the intentional obstruction of investigations, by providing false information or by destroying information after it has been required. It also creates an offence of failure to comply with a requirement imposed under the Regulations, without reasonable excuse, and of intentionally delaying an authorised officer who is conducting an investigation.

A Partial Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Scottish Government Social Security Directorate and online at: <http://www.legislation.gov.uk/>.