
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

**The Social Security Assistance (Investigation
of Offences) (Scotland) Regulations 2020**

PART 3

Investigatory powers

Power to require information

4.—(1) Subject to regulation 5, paragraph (2) applies where an authorised officer has grounds for suspecting that a body or person—

- (a) has, or may have, possession of information, or
- (b) can access any information,

that is relevant to any matter that may be investigated.

(2) An authorised officer may, by a notice as described in regulation 6, require that body or person to provide information that the authorised officer considers relevant to one or more of the matters that may be investigated.

(3) An authorised officer must destroy any information received in response to such a notice as soon as it ceases to be needed in connection with the matters that may be investigated.

Restrictions on power to require information and on requirements to provide it

5.—(1) Other than as described in paragraph (2), no requirement under regulation 4 may be made in respect of a body—

- (a) established with the main purpose of providing advice, information or related services in relation to social security, housing or debt without cost to those who receive those services,
- (b) established for the purpose of providing legal services to the public (whether generally or individually) and which does not redistribute any profits made, but reinvests any profits for that purpose,
- (c) that is a voluntary organisation that provides temporary accommodation, information, support or advocacy services wholly or principally for persons who have suffered domestic abuse or threats of abuse, or
- (d) with whom the Scottish Ministers have an agreement for the provision of advocacy services, within the meaning of section 10(4)(a) of the Act.

(2) Paragraph (1) does not prevent a requirement being made for provision of information relating to the employment of persons by the body, or relating to the terms and conditions on which, and the frequency with which, persons have provided services to the body.

(3) No body or person is required by a notice under regulation 4 to provide any information exchanged between client and legal adviser, if a claim for legal professional privilege would be successful if made in respect of that material in any proceedings.

(4) No person is required by a notice under regulation 4 to provide any information that incriminates, or tends to incriminate, either the person or the person's spouse or civil partner.

(5) Paragraphs (3) and (4) apply whether the information is in documentary form or not.

Notices requiring information

6.—(1) A notice under regulation 4(2) must specify the period of time within which the information is to be provided.

(2) The time specified in a notice must be no fewer than a period of 10 working days beginning with the day after the day on which the notice is served.

(3) An authorised officer may vary a notice, but only to remove a requirement or to extend the time period for compliance.

(4) Where a notice is varied in accordance with paragraph (3), an authorised officer must serve the notice as varied on the body or person on whom the notice was originally served.

(5) Nothing in paragraph (3) restricts the ability of an authorised officer to serve a further notice requiring information.

(6) For the purpose of paragraph (2), a “working day” is a day other than—

- (a) a Saturday,
- (b) a Sunday, or
- (c) a bank holiday in Scotland under the Banking and Financial Dealings Act 1971⁽¹⁾.

Electronic access to information

7.—(1) Where it appears to the Scottish Ministers that—

- (a) a body or person keeps electronic records,
- (b) those records contain or are likely from time to time to contain any information that could be required under regulation 4(2), and
- (c) facilities exist under which electronic access to those records is being provided, or is capable of being provided, by that body or person to an authorised officer,

the Scottish Ministers may require that body or person to enter into arrangements under which an authorised officer is to be allowed access to such records.

(2) No requirement under this regulation may be made in respect of a body described in paragraph (1) of regulation 5, except for the purpose of access to such information as is permitted by paragraph (2) of that regulation.

(3) An authorised officer who is allowed access to records in accordance with arrangements under paragraph (1) may access them to obtain information, but only—

- (a) in accordance with the arrangements entered into under paragraph (1),
- (b) if the officer's authorisation states that it applies for the purposes of that paragraph,
- (c) to seek information that could be the subject of a requirement for information under regulation 4(2), and
- (d) to seek to obtain information that relates to a particular person.

(4) Arrangements under paragraph (1) may include requirements—

- (a) as to the electronic access to records that is to be made available to an authorised officer,

(1) 1971 c.80. Schedule 1, paragraph 2 sets out the Scottish bank holidays; it was amended by the St Andrew's Day Bank Holiday (Scotland) Act 2007 (asp 2), section 1.

- (b) as to the keeping of records of the use that is made of the arrangements,
- (c) restricting the disclosure of information about the use that is made of the arrangements,
- (d) that the Scottish Ministers consider appropriate in connection with allowing access to records by an authorised officer.

(5) An authorised officer who is allowed access in accordance with arrangements entered into under paragraph (1) is entitled to make copies of, and to take extracts from, any records, but only where they contain information which the officer would be entitled to require under regulation 4(2).

(6) Any copies or extracts made or taken in accordance with paragraph (5) must be destroyed by an authorised officer as soon as they cease to be needed in connection with all of the matters that may be investigated.

Entry and search of premises

8.—(1) An authorised officer may only enter any premises with the permission of the person occupying them or, where the premises are unoccupied, with the permission of the owner of the premises.

(2) An authorised officer may not enter any dwelling-house or any part of premises used solely as living accommodation (whether or not the occupier or owner consents to entry).

(3) An authorised officer seeking permission to enter any premises in accordance with this regulation must, if required to do so, produce the certificate containing the officer's authorisation for the purposes of these Regulations.

(4) An authorised officer may seek permission from the occupier of the premises or, where they are unoccupied, the owner, to be accompanied by such other person or persons as that officer thinks appropriate in the circumstances.

(5) An authorised officer who has entered any premises under this regulation—

- (a) may search the premises, but only if the occupier or, where they are unoccupied, the owner, gives permission to do so, and
- (b) may carry out any inquiry there,

as appears to the officer to be appropriate in connection with any one or more of the matters that may be investigated.

(6) An authorised officer who has entered any premises may in particular—

- (a) question any person whom that officer finds there,
- (b) require any such person to do either or both of the following, if reasonably required in connection with one or more of the matters that may be investigated—
 - (i) to provide that officer with information,
 - (ii) to produce documents or, if necessary, create copies of, or extracts from, documents,
- (c) take possession of and remove, or make copies of, any documents (including any copies or extracts created under paragraph (b)(ii)) which appear to that officer to contain information that is relevant to any of those matters.

(7) Where an authorised officer has removed, or made copies of, any document under paragraph (6)(c), the authorised officer must return the document, and destroy any copies that the authorised officer has made, when the document or copies cease to be needed in connection with all of the matters that may be investigated.

(8) No person may be required under paragraph (6)(b) to provide—

- (a) any information exchanged between client and legal adviser, if a claim for legal professional privilege would be successful if made in respect of that material in any proceedings, or
- (b) any information that incriminates, or tends to incriminate, either the person or the person's spouse or civil partner,

whether that information is in documentary form or not.

- (9) In this regulation "premises" includes—
 - (a) any land to which access by members of the public is restricted, and
 - (b) any fixed or moveable structure.