

Business and Regulatory Impact Assessment

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

Purpose And Intended Effect

The Social Security Information-sharing (Scotland) Amendment Regulations 2024 will provide Social Security Scotland with an explicit and bespoke legal gateway to make referrals where they identify, in the course of their operations, certain people at risk of harm to relevant local authorities, and (where a client has a Power of Attorney (POA) or a Guardian in place to act for them) to the Office of the Public Guardian.

Background, Objectives and Rationale

The Scottish Government is very much aware that Social Security Scotland supports some of the most vulnerable people in society.

Social Security Scotland's charter outlines our commitment to refer a client to other organisations, services or forms of help where we believe they could help improve a client's wellbeing or financial circumstances.¹ This is particularly important when we understand how some clients need extra support in order to safely and fairly access Social Security Scotland's services.

However, there may also be instances when Social Security Scotland's interaction with clients (or indeed other people that they come across in the course of dealing with a client) presents situations where it becomes apparent an individual may be at risk of harm. To adequately support people in this situation, Social Security Scotland must have clear and robust processes in place.

At this juncture it is important to make a distinction between cases where an individual may be at a non-emergency risk of harm and cases where there is an immediate risk to life. Where a situation is presented where a direct risk to life is identified, a clear course of action already exists - Social Security Scotland will make an immediate call to Police Scotland. The question arises therefore in relation to

¹ <https://www.socialsecurity.gov.scot/about/our-charter>

situations where Social Security Scotland believes an individual may be at risk of harm.

There are several bodies and organisations who can help with situations of perceived neglect or abuse. For example, in non-emergency situations, reporting someone who is believed to be at risk of domestic abuse to the relevant Local Authority is advised. For non-emergency situations where a child is believed to be at risk of harm it is recommended concerns be raised via contacting the appropriate Local Authority social work department. The mygov.scot website recommends immediate danger be reported to police, that 101 be called where it is believed a crime has been committed, and a report made to the Local Authority where there are suspicions of neglect or abuse.

Where a Local Authority has reason to believe someone may be at risk of harm, there are various potential duties to investigate. They can only do this if they are made aware of concerns.

The Adult Support and Protection (Scotland) Act 2007 is intended to protect adults who are unable to safeguard their own interests, placing a duty on councils to make investigations and enquiries when approached with details of an identified risk of harm.² In 2014, the Scottish Government published a Code of Practice which provided guidance to specific public bodies (such as health boards and the fire service) on processes to refer safeguarding concerns to the Local Authority.³ As Social Security Scotland came into being as an executive agency of the Scottish Government on 1 September 2018, it was not covered by the 2007 Act or the 2014 Code of Practice for third parties.

To that end, the Scottish Government will make the Social Security Information-sharing (Scotland) Amendment Regulations 2024 which will provide Social Security Scotland with an explicit and bespoke legal gateway in Scottish social security legislation to make referrals relating to risk of harm to relevant local authority social services departments, and (where a client has a Power of Attorney or a Guardian in place to act for them) to the Office of the Public Guardian. Part of this work has

² <https://www.legislation.gov.uk/asp/2007/10/contents>

³ <https://www.gov.scot/publications/adult-support-protection-scotland-act-2007-code-practice-3/>

involved engaging with policy and officials in the DG for Health and Social Care, the Mental Health and Social Care Directorate (now known as the Directorate for Social Care and National Care Service Development), and Directorate for Children and Families. As a result of this engagement, the then Directorate for Health and Social care, upon review of the Code of Practice for Adult Support and Protection in July 2022, added Social Security Scotland to the updated list of public services who may contribute to the protection of adults at risk, and who may have cause to refer concerns to the local authority.

The National Performance Framework measures and keeps track of how Scotland is performing. It aims to reduce inequalities and gives equal importance to economic, environmental and social progress. It sets out national outcomes, which describe the kind of country the Scottish Government aims to create. The Social Security Information-sharing (Scotland) Amendment Regulations 2024 will positively contribute to the following National Outcomes: ⁴

- **Children and Young People:** We grow up loved, safe and respected so that we realise our full potential
- **Communities:** We live in communities that are inclusive, empowered, resilient and safe
- **Health:** We are healthy and active
- **Poverty:** We tackle poverty by sharing opportunities, wealth and power more equally

Consultation

Within Government

The Social Security Information-sharing (Scotland) Amendment Regulations 2024 have been developed in contact with a range of internal stakeholders such as the Social Security Policy Directorate; Scottish Government Legal Directorate; Social Security Scotland Agency; Social Security Programme; DG for Health and Social

⁴ <https://nationalperformance.gov.scot/>

Care; the Mental Health and Social Care Directorate; and the Directorate for Children and Families.

Public Consultation

A public consultation titled “Safeguarding Data Sharing” ran for 12 weeks between 25 March 2022 and 17 June 2022, and the analysis was published on 17 February 2023.⁵

Due to the impact of COVID-19, and the restrictions on face to face contact, stakeholder engagement events were not possible. Instead, the consultation sought the opinions of stakeholders, by promoting it throughout the Social Security Scotland and Scottish Government social media pages. The Social Security Scotland Communications and National Engagement team promoted the consultation by referring to it in their regular newsletter, to which there are over 1,700 subscribers.

The purpose of the consultation was to gather views on the approach Social Security Scotland should take to report certain circumstances to a Local Authority where it becomes apparent that an individual may be at risk of harm.

The consultation asked 6 direct questions, in addition to open-ended questions which aimed to allow participants to provide in-depth answers, specific to their own circumstances.

Respondents were broadly supportive of the proposed measures, with no responses indicating that there would be any different impact on people below the age of 18. Where feedback did flag concerns, it was primarily because the individuals or organisations felt Social Security Scotland should be able to share data with a wider range of stakeholders, in addition to local authorities.

⁵ <https://www.gov.scot/publications/safeguarding-data-sharing-consultation-2022-report-summary-responses/pages/2/>

Feedback from the consultation also highlighted several important considerations, which has influenced the design of the Safeguarding Data Sharing Regulations 2024. Some responses noted that data shared must be proportionate to the level of risk, and, the officials within Social Security Scotland must be adequately trained to achieve this crucial balance. This important point will be implemented, and further expanded upon in impact assessments relating to the operational practices resulting from these regulations.

Business

The Safeguarding Data Sharing consultation sought the opinions of all relevant stakeholders, including businesses.

Options

Option 1

Do not legislate to create explicit a legal gateway in legislation to facilitate Social Security Scotland sharing information with relevant authorities relating to safeguarding concerns.

Option 2

Primary legislation – Amending Section 5 of the Adult Support and Protection (Scotland) Act 2007 (“ASPA 2007”) through the National Care Service Bill (NCS Bill).

Option 3

Secondary legislation – amend the Social Security Information-sharing (Scotland) Regulations 2021 under section 85 (and possibly section 95) of the 2018 Act working to a coming into force date of 30 November 2023.

Option Development

It was the view of officials that it is necessary and appropriate to legislate to create an explicit legal gateway to facilitate Social Security Scotland sharing information with relevant bodies relating to safeguarding concerns. This was broadly supported by the responses to the consultation. In addition to having no specific legal gateway to safeguard some of Scotland’s most vulnerable people, Option 1 lacks the gateway to share information specifically around risks of financial harm.

Whilst Option 2 would provide a clear legal gateway for the sharing of information where there is suspected risk of harm to adults at risk this does not currently extend to children and therefore does not present a complete solution to give effect to the policy position.

The only way to create an explicit legal gateway which fully serves the policy intent is through regulations. Enshrining the responsibility of Social Security Scotland explicitly in regulations under section 85 of the Social Security (Scotland) Act 2018 will create a robust structure and clarity in process for our stakeholders in relation to our responsibilities and obligations.

The Scottish Government acknowledges that the Social Security Information-sharing (Scotland) Amendment Regulations 2024 will continue to have an impact on Local Authorities. However, Social Security Scotland as part of an interim solution has been sharing data in anticipation of these regulations, so there is not expected to be an increase in costs. The Scottish Government is committed to safeguarding the people of Scotland, and therefore support option 3 being taken forward.

The Scottish Government as a whole has a commitment to safeguarding and public protection. Local Authorities are bound by legislation to investigate concerns of harm, so the purpose of these regulations will allow Social Security Scotland to support this government commitment, and positively impact the lives of our citizens.

Regulatory And EU Alignment Impacts

Intra-UK Trade Impacts

The introduction of the Safeguarding Data Sharing Regulations 2024 does not have scope to impact on intra-UK trade.

International Trade

The introduction of the Safeguarding Data Sharing Regulations 2024 does not have scope to impact on international trade.

EU Alignment

The introduction of the Safeguarding Data Sharing Regulations 2024 does not have scope to impact on EU alignment.

Scottish Firms Impact Test

The Social Security Information-sharing (Scotland) Amendment Regulations 2024 have been assessed as having no impact.

Competition Assessment

The Social Security Information-sharing (Scotland) Amendment Regulations 2024 has been assessed as not having an impact on the competitiveness of companies or on the third sector within Scotland, the UK, or elsewhere in Europe or the rest of the world.

- will the measure directly or indirectly limit the number or range of suppliers? No
- will the measure limit the ability of suppliers to compete? No
- will the measure limit suppliers' incentives to compete vigorously? No
- will the measure limit the choices and information available to consumers? No

Consumer Assessment

- Does the policy affect the quality, availability or price of any goods or services in a market? No
- Does the policy affect the essential services market, such as energy or water? No
- Does the policy involve storage or increased use of consumer data? No
- Does the policy increase opportunities for unscrupulous suppliers to target consumers? No
- Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these? No

- Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues? No

Digital Impact Test

Evidence collected does not suggest that the Social Security Information-sharing (Scotland) Amendment Regulations 2024 will have any adverse impacts on the current and future digital context.

- Does the measure take account of changing digital technologies and markets? Not applicable
- Will the measure be applicable in a digital/online context? Not applicable
- Is there a possibility the measures could be circumvented by digital / online transactions? No
- Alternatively will the measure **only** be applicable in a digital context and therefore may have an adverse impact on traditional or offline businesses? No
- If the measure can be applied in an offline **and** online environment will this in itself have any adverse impact on incumbent operators? No
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Legal Aid Impact Test

The Social Security Information-sharing (Scotland) Amendment Regulations 2024 does not have scope to impact on legal aid. The regulations provide a route to allow the sharing of personal information for the purpose of supporting and protecting the people we engage with and whom we believe to be at risk of harm.

Enforcement, Sanctions And Monitoring

The Social Security Information-sharing (Scotland) Amendment Regulations 2024 has no relevance to enforcement, sanctions and monitoring.

Implementation and Delivery Plan

The Safeguarding Team within Social Security Scotland which consists of qualified/registered health and social work professionals will continue to assess

safeguarding referrals of concern made by Agency staff for onward transmission under the regulations to the appropriate organisations.

Post-implementation review

The implementation of the Social Security Information-sharing (Scotland) Amendment Regulations 2024 will be reviewed at regular intervals throughout its lifecycle by Social Security Scotland and where necessary Social Security Policy.

Summary and Recommendation

The Scottish Government recommends that the Social Security Information-sharing (Scotland) Amendment Regulations 2024 are implemented to allow for a more robust structure and clarity in process when protecting people who interact with Social Security Scotland either directly or indirectly, by providing Social Security Scotland with an explicit legal gateway to make referrals relating to risk of harm to relevant local authority social services departments, and (where a client has a Power of Attorney or a Guardian in place to act for them) to the Office of the Public Guardian.

Declaration and Publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Shirley-Anne Somerville

Date: 02 November 2023

Minister's name: Shirley-Anne Somerville

Minister's title: Cabinet Secretary for Social Justice



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