POLICY NOTE

THE SOCIAL SECURITY INFORMATION-SHARING (SCOTLAND) REGULATIONS 2021

SSI 2021/XX

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 85(2)(g) and (5) and 95 of the Social Security (Scotland) Act 2018. Regulations made under section 85(2)(g) and (5) attract the affirmative procedure, while regulations under section 95 will, in this instance, attract the negative procedure. Applying section 33(1) of the Interpretation and Legislative Reform (Scotland) Act 2010, the combined use of these powers mean that the instrument is subject to the affirmative procedure.

Purpose of the instrument
The Regulations specify three additional persons for the purposes of section 85(2) of the Social Security (Scotland) Act 2018, who may be required to supply information to the Scottish Ministers for use by Ministers in carrying out their social security functions.

The Regulations further specify, for the purposes of section 85(5) of the 2018 Act, a number of functions of local authorities in connection with the fulfilment of which the Scottish Ministers may share information with those other persons.

Policy Objectives
Social Security Scotland is an Executive Agency of the Scottish Government and will eventually be making payments to 1.4 million citizens in Scotland, with a value in excess of £3 billion per year. The Scottish Government will, in coming years, be responsible for delivering benefits for disabled people, to replace the current disability benefits delivered by the Department for Work and Pensions on behalf of the UK Government. The first such benefit, Child Disability Payment, will replace Disability Living Allowance for Children (DLAC) from summer 2021.

The Scottish Government is committed to delivering a system of social security founded on core principles of fairness, dignity and respect. As part of that approach, this new social security system will rely upon the ability of Social Security Scotland to obtain information from others in order to make determinations of entitlement to benefits, and to make the application process for those benefits as simple as possible for individuals.

The persons specified in the Regulations may be required to supply data to the Scottish Ministers: (i) in relation to an individual's application; (ii) to support individuals who apply for social security assistance and wish for the supporting information necessary for their application to be supplied by the person on their behalf, in an open, transparent and client-led way; and (iii) to verify information for the prevention or identification of error.

The Regulations specify, for the purposes of section 85(2) of the Social Security (Scotland) Act 2018, three additional persons who may be required to supply information. These are GP

practices, the Public Guardian and accredited suppliers of modified vehicles for persons with disabilities. These are persons over and above those already specified on the face of section 85(2).

In particular, the newly devolved disability benefits will rely upon information supplied by health, education and social care professionals, in order to obtain a more complete picture about an individual's disability. This will include, with the agreement of the individual, assisting individual applicants to obtain existing information by contacting GP practices, NHS boards, education authorities, and local authority social work departments. It may also include co-ordinating provision of modified vehicles by accredited vehicle suppliers through a devolved Accessible Vehicle and Equipment (AVE) scheme to clients who choose to have their benefit entitlement delivered in that manner. Clients using the AVE scheme will choose which supplier they wish to purchase from and that supplier will confirm certain benefits information with Social Security Scotland so that the client can enter into a contract for a mobility vehicle with the supplier without delays.

It will also be necessary for Social Security Scotland to check the extent of the powers of guardians and those with powers of attorney who act on the behalf of a client, to ensure they have the necessary power to act in such a way. This will require information sharing between Social Security Scotland and the Office of the Public Guardian.

There will also be a need for Social Security Scotland to share information with other persons in order to allow those persons to fulfil their legal duties, and to process information about individuals in order to determine their eligibility for services, grants, concessions or discounts administered by those persons. Specifically, Scottish Local Authorities may need to confirm with Social Security Scotland whether an individual is in receipt of a certain disability benefit, and at what level, in order to deliver entitlement to the following services lawfully and in accordance with the Scottish Public Finance Manual[1]:

- assessing whether a disabled individual is eligible for council tax reduction;
- assessing what level of Housing Benefit the individual is entitled to;
- deciding what assistance to provide to an individual applying for a Crisis Grant or Community Care Grant from the Scottish Welfare Fund;
- deciding what level of Discretionary Housing Payment to provide to an individual who applies, including assessing the correct level of top-up funding when mitigating the so-called 'bedroom tax' and benefit cap;
- establishing whether an individual is entitled to a Blue Badge;
- administrating the national concessionary travel scheme or, as the case may be, a local travel concession scheme run by the relevant local authority.

The local authority functions listed above, along with the function of suppliers providing modified vehicles, are specified for the purposes of section 85(5) of the Social Security (Scotland) Act 2018. This sharing of information is intended to aid, for individuals, the process of obtaining other forms of benefit and concession and of being made aware of what is available. Individuals are informed at the point they apply for a disability benefit that information about their entitlement to that benefit may be shared with the parties noted above for the reasons noted above. They are given the opportunity to object and so opt out of that sharing should they wish and are reminded about how their information may be used and shared whenever Social Security Scotland communicates with them formally. Information

[1] https://www.gov.scot/publications/scottish-public-finance-manual/

will only be shared with local authorities when the individual applies for some form of benefit or concession from a local authority, or shared with accredited vehicle supplies when the individual applies for a modified vehicle from an accredited supplier. A local authority may use the information provided to work out what else a person may be entitled to, over and above the particular concession or benefit applied for.

Information-sharing limitations on the face of the Regulations

The Regulations contain provision to the effect that:

- information may only be shared with a local authority, Health Board or GP practice, for the purpose of receiving information in return, if the individual to whom the information relates has given their authorisation for that to happen. This reflects the sensitive nature of the information which may be shared with those persons. It is likely to go further than basic personal details to identify an individual, perhaps covering information given on an application form regarding the effects of a condition.

- where Scottish Ministers supply any information relating to an individual, the information supplied must always be no greater than is necessary to support the purpose for which it is to be used by the recipient. The purpose may be to provide information that has been required from them, most likely in connection with the making of a determination by Ministers of an individual's entitlement to social security assistance. Alternatively it may enable the recipient to work out an individual's entitlement to some other form of provision, such as housing benefit.

- These provisions – in regulations 3 and 5 – are made under section 95 of the Social Security (Scotland) Act 2018. They aim to ensure that information -sharing takes place within appropriate parameters, proportionate to the overarching aim of facilitating access to social security assistance, and other forms of benefit and concession flowing from entitlement to social security assistance. This is line with the right to private and family life in Article 8 of the European Convention on Human Rights.

Consultation

In July 2016 the Scottish Government launched a public consultation to support the development of a framework that would become the Social Security (Scotland) Bill. This received more than 200 responses to questions relating to disability benefits with an even split between organisational and individual responses. In particular comments were invited on a partial Equality Impact Assessment which represented the Scottish Government's work on the impact of social security policy on people with protected characteristics prior to the consultation.

521 formal written responses were submitted, of which 241 were from organisations and 280 from individual respondents. Of the 241 organisational responses, 81 were received from stakeholder groups relating to children/young people, equalities and human rights, disability and long term conditions and carers. The independent analysis of the responses along with the Scottish Government response were published on 22 February 2017[2].

[2] https://www.gov.scot/publications/analysis-written-responses-consultation-social-security-scotland/

Further consultation took place in 2020 with organisations who will be directly affected by these Regulations, such as Scottish GPs (via the Scottish General Practitioners Committee of the British Medical Association) and Local Authorities (via the Society of Local Authority Lawyers and Administrators in Scotland), to inform the legislative requirements and gain their agreement on the necessity for information sharing. Engagement with these organisations is ongoing.

Consultation with the Information Commissioner's Office (ICO) on these Regulations, in accordance with Article 36(4) of the General Data Protection Regulation (GDPR) took place on 17 December 2020. The ICO subsequently provided written advice on the Regulations, which has been considered and factored into the drafting of the Regulations and updating of the Social Security Scotland privacy notice.

Impact Assessments

An Equalities Impact Assessment, Island Communities Impact Assessment, Data Protection Impact Assessment and the Child Rights and Wellbeing Impact Assessment (CRWIA), plus a Fairer Scotland Duty Assessment have been completed on the Social Security Information-sharing (Scotland) Regulations 2021.

There are no significant equalities or rights impacts that require further consideration in relation to the commencement of these regulations.

Financial Effects

A partial Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The Scottish Government is unaware of any evidence to suggest that Scottish businesses will be significantly impacted by the introduction of the Social Security Information-sharing (Scotland) Regulations 2021.

Scottish Government
Social Security Directorate

February 2021