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Collette Stevenson MSP
Convener
Social Justice and Social Security Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

7 November 2023

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

Dear Convener

In March 2022, the then Minister for Social Security and Local Government, Ben Macpherson, wrote to the Committee to advise that a legislative gap had been identified in relation to Social Security Scotland's powers to share information with third parties to support safeguarding individuals who had been identified as being at risk of harm. In that letter, the Minister advised that an effective interim solution had been identified whilst a public consultation took place and a permanent solution was identified.

The public consultation report was published on 17 February 2023¹ and provided support for Social Security Scotland to be able to make referrals of concerns to the appropriate adult and child protection services within the relevant local authority services to allow them to assess the person's needs and ensure they receive the care and support they need. The Minister then agreed for officials to proceed with drafting legislation to facilitate this.

During the course of drafting legislation to support this, officials identified that where a person is an adult with incapacity under the Adults With Incapacity (Scotland) Act 2000 and is believed to be at risk of property or financial harm, the Public Guardian has a legal function to investigate, so we would require to refer these types of concerns to the Office of the Public Guardian, who would then engage their own multi-agency agreements set out in the Code of Practice² underpinning the Adult Support and Protection (Scotland) Act 2007 to investigate any wider concerns and formulate action plans where appropriate.

Discussions have taken place with the Information Commissioner's Office; local authorities; Health and Social Care officials; Information Governance policy leads; Social Work leads and Data Protection officials in preparing and drafting these regulations.

¹ [1. Introduction - Safeguarding data sharing: consultation report and summary of responses - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/data-sharing/consultation-report-and-summary-of-responses/consultation-report-and-summary-of-responses.pdf)

² Chapter 1: Introduction to the Act and the Code of Practice - Adult Support and Protection (Scotland) Act 2007: Code of Practice - gov.scot (www.gov.scot)

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It is of note that, although the regulations are subject to affirmative procedure they do not fall under the requirement in section 97(2) of the Social Security (Scotland) Act 2018 to provide advanced scrutiny to the Scottish Commission on Social Security (SCoSS), officials nevertheless reached out to offer SCoSS the opportunity to review and feed back on the content of the draft regulations. Given the nature of the regulations in their sharing sensitive information, and in light of an earlier consultation regarding the legislative proposal, officials also gave sight of the draft regulations to the Information Commissioner's Office.

Officials met with SCoSS to discuss the draft regulations, and they had no objections or concerns.

I therefore wanted to bring to your attention that I have submitted draft Social Security Information-Sharing (Scotland) Amendment Regulations 2024, which I can confirm have been laid today, 7 November 2023, in acknowledgement that Social Security Scotland has an important role to play in supporting the safeguarding of some of the most vulnerable people in Scotland.

Yours sincerely

SHIRLEY-ANNE SOMERVILLE

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