

# Social Justice and Social Security Committee

## 32<sup>nd</sup> Meeting, 2023 (Session 6), Thursday 07 December 2023

### Subordinate Legislation Cover Note

|                             |   |
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| <b>Title of Instrument:</b> | <a href="#">Social Security Information-sharing (Scotland) Amendment Regulations 2024</a> |
| <b>Laid Date:</b>           | 7 November 2023   |
| <b>Reporting deadline:</b>  | 16 December 2023  |
| <b>Type of instrument:</b>  | Affirmative   |
| <b>Motion to approve:</b>   | <a href="#">S6M-11172</a>   |

### Purpose of the regulations

1. According to the [Policy Note](#) and [Explanatory Note](#) (available in the Annexe), this instrument amends existing provisions in the Social Security Information-sharing (Scotland) Regulations 2021 regarding the sharing of information obtained by the Scottish Ministers with local authorities and the Public Guardian for further, specified purposes.
2. Social Security Scotland supports some of the most vulnerable people and makes referrals to other organisations, services or forms of help where they believe doing so could help a person's wellbeing or financial circumstances. It also interacts with people in situations where it is apparent that they may be at risk of harm.
3. The Scottish Government believes that processes should be in place to allow Social Security Scotland to be able to make referrals of concerns to services within local authorities and to the Office of the Public Guardian.
4. The Scottish Government says the amendments create gateways to allow the Scottish Ministers, in connection with their social security functions, to:

- Report to a local authority a situation where they believe a person with whom they have come into contact is at real risk of harm, the person has needs of care and support, and the sharing of this information is considered necessary to protect the person from harm.
- Report to a local authority a situation where they believe the property or finances of a person with whom they have come into contact are at risk; the person has needs of care and support, and that the sharing of this information is considered necessary to safeguard the property and financial affairs of the person and protect them from mental or emotional harm.
- Report to the Public Guardian where a person with whom they have come into contact and who is incapable within the meaning of the Adults With Incapacity (Scotland) Act 2000 has demonstrated their property or financial affairs are at risk, and the Scottish Ministers consider sharing this information is necessary to safeguard the property or financial affairs of the person and protect the person from mental or emotional harm.

## **Parliamentary procedure**

5. The affirmative procedure means that an instrument cannot be made and come into force unless the Parliament has voted to approve it (rule 10.6.1 of standing orders).
6. Affirmative instruments are first looked at by the DPLR Committee before being considered by the lead committee (usually the committee that examined the Bill for the Act that the SSI is made under or whose remit is most aligned).
7. It is usual practice for the lead committee to take evidence from the relevant Scottish Minister in advance of considering the instrument. The committee can ask the Minister and any officials questions about the SSI.
8. During its formal consideration, a member of the Scottish Government proposes, by motion, that the lead committee recommend that the instrument or draft instrument be approved. The committee has up to 90 minutes to debate the motion.
9. The lead committee must report its recommendation to Parliament within 40 days of the SSI being laid. If the committee agrees the SSI should be approved, the whole of the Parliament then gets a chance to vote on it in the Chamber. If the lead committee decides the SSI should not be approved, the Parliamentary Bureau decides whether MSPs should vote on it in the Chamber.

## **Delegated Powers and Law Reform Committee consideration**

10. The DPLR Committee considered the instrument at its meeting on [14 November 2023](#) and raised no points. The official report of the meeting is available [here](#).

### **For decision**

11. **The Committee must decide whether or not to agree the motion, and then report to Parliament accordingly, by 16 December 2023.**

12. **The Committee is also invited to delegate responsibility for the drafting and publication of a short, factual report to the Convener and Clerk.**

**POLICY NOTE****THE SOCIAL SECURITY INFORMATION-SHARING (SCOTLAND)****AMENDMENT REGULATIONS 2024****SSI 2024/XXX**

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 85(5) and 95 of the Social Security (Scotland) Act 2018 (the 2018 Act). Regulations made under section 85(5) are subject to the affirmative procedure.

**Purpose of the instrument**

The instrument will amend existing provisions that are contained in the Social Security Information-sharing (Scotland) Regulations 2021 (“the 2021 Regulations”) regarding the sharing of information obtained by the Scottish Ministers in connection with their social security functions. The amendments provide that such information may be shared with local authorities and the Public Guardian for further, specified purposes. The amendments create gateways to provide as follows:

- (i) to allow the Scottish Ministers to report to the local authority a situation where they believe a person with whom they have come into contact is at real risk of harm; the person has needs of care and support, and the sharing of this information is considered necessary to protect the person from harm.
- ii) to allow the Scottish Ministers to report to the local authority a situation where they believe the property or finances of a person with whom they have come into contact are at risk; the person has needs of care and support, and that the sharing of this information is considered necessary to safeguard the property and financial affairs of the person and protect them from mental or emotional harm.
- iii) to allow the Scottish Ministers to report to the Public Guardian where a person with whom they have come into contact and who is incapable within the meaning of the Adults With Incapacity (Scotland) Act 2000 has demonstrated their property or financial affairs are at risk, and the Scottish Ministers consider sharing this information is necessary to safeguard the property or financial affairs of the person and protect the person from mental or emotional harm.

**Policy Objectives**

The Scottish Government is aware that Social Security Scotland (which is an executive agency) supports some of the most vulnerable people in Scotland. [The](#)

[Social Security Charter](#) commits to refer people to other organisations, services or forms of help where they believe doing so could help a person's wellbeing or financial circumstances.

There are also instances where Social Security Scotland's interaction with people may present situations where it is apparent that a person may be at risk of harm and it is our view that to support people in this situation, clear and robust processes should be in place to allow Social Security Scotland to be able to make referrals of concerns to the appropriate adult and child protection services within local authority services to allow them to assess the person's needs and ensure they receive the care and support they need.

Where a person is an adult with incapacity under the Adults With Incapacity (Scotland) Act 2000 and is believed that their property or financial affairs are at risk of harm, the Public Guardian has a legal function to investigate, so we are allowing Social Security Scotland 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 Practice](#) underpinning the Adult Support and Protection (Scotland) Act 2007 to investigate any wider concerns and formulate action plans where appropriate.

It is important to note this draft instrument relates to situations where a person is reasonably believed to be a victim of harm, or is at risk of existing or continuing harm – any cases where immediate threat or endangerment to life is identified are treated differently and are reported to [Police Scotland](#).

### **EU Alignment**

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

### **How information will be shared**

The Adult Support and Protection (Scotland) Act 2007 is underpinned by a Code of Practice which points to a general form called an AP1 form which local authorities wish to be completed where a safeguarding referral is made. This is to allow their respective safeguarding teams to be alerted to as much relevant and pertinent information as possible to allow them to triage the risk to the individual quickly. Some local authorities have online portals to complete these forms, others require emails, and others accept them by phone. Full details can be found on the [Act Against Harm website](#).

Child protection referrals are treated differently within local authorities and each local authority website points to emergency Health and Social care telephone lines which are staffed 24 hours a day for referrals to be made and are triaged appropriately.

Referrals from Social Security Scotland to the Office of the Public Guardian will be

made securely via the pre-existing data sharing agreement the respective organisations already have in place.

The [Social Security Scotland Privacy Notice](#) also sets out how we collect, process and may share personal data.

### **How information will be stored**

Information relating to any referral will not be held on a person's Social Security Scotland's personal file where they have made an application for assistance, however it will be stored in a restricted access file.

The purpose of the referral is to allow the relevant local authority service to engage their functions in terms of safeguarding for the protection of vulnerable people. There is a requirement to retain the minimum amount of data regarding the referral line with data protection law in the event of social work investigations requiring Police Scotland action and evidence being required for any subsequent criminal investigation/prosecution.

### **Definitions**

In relation to the first category of sharing with Local Authorities the amendments set out the definition of "real risk of harm" as:

"...being subjected to conduct causing or likely to cause a person to suffer significant—  
(aa) neglect, or  
(bb) physical, mental or emotional harm,  
and includes engaging in, or being likely to engage in, conduct which causes or is likely to cause self-harm".

"harm" is then further defined as "neglect or physical, mental or emotional harm".

"person" means a natural person of any age.

### **Consent**

The instrument provides that Social Security Scotland will always seek to obtain client consent where possible but that there will be circumstances where this may not always be possible. The instrument sets out when sharing will be done without consent. Particularly where there is a suspicion that the person who is caring for the individual is subjecting them to harm (in cases of coercive control or domestic abuse) the individual may not be aware that they are at risk (in cases of self-neglect or self-harm) or the individual lacks capacity to be able to provide consent.

### **Guidance and training**

Support, guidance and training is given to relevant Social Security operational delivery Agency staff. The Safeguarding Team is operated by qualified health and social care professionals with a wealth of experience and relevant qualifications in

the area of health and social care. They engage with social work leads in local authorities in terms of good practice, and engage with local delivery staff on the referral process in terms of guidance and training.

### **Consultation**

A public consultation launched on 15 March 2022 with the consultation response report [published on 17 February 2023](#). The outcome of the consultation showed overarching support for the position of Social Security Scotland to be able to share information relating to safeguarding concerns.

### **Impact Assessments**

An Equality Impact Assessment, Childs Rights and Wellbeing Impact Assessment and Island Communities Impact Assessment will be published alongside this instrument. The assessments indicate Social Security Scotland being able to share information relating to safeguarding concerns will have a positive impact on a range of groups with protected characteristics and on children and young people's human rights and wellbeing.

A Data Protection Impact Assessment has also been published and shared with the ICO as part of the required consultation under Article 36(4) of the UK GDPR. 7

### **Financial Effects**

A Business and Regulatory Impact Assessment has also been completed and will be published alongside this instrument. The Scottish Government does not believe that these regulations will have any adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the United Kingdom or internationally including Europe and the rest of the world. The Scottish Government also expects that there will be no impact on the operational business of local authorities or health boards, as these regulations relate to creating an explicit legal gateway, rather than changing the existing operational process being delivered.

Social Security Policy Directorate  
Scottish Government  
November 2023

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend existing provisions regarding the sharing of information in connection with the social security functions of the Scottish Ministers that are contained in the Social Security Information-sharing (Scotland) Regulations 2021 (“the 2021 Regulations”).

Regulation 2 amends regulation 4 of the 2021 Regulations to specify further purposes for which information held by the Scottish Ministers for the purpose of a social security function may be supplied to local authorities and to the Public Guardian.

Regulations 4A, 4B and 4C of the 2021 Regulations, as inserted by these Regulations, set out that the Scottish Ministers must know or believe that an objective threshold of risk of harm to the individual has been met before they share any information to be used for the new specified purposes.

Regulation 4 amends the 2021 Regulations by adding a new heading above regulation 5 of those regulations.

Impact assessments have been prepared for these Regulations and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Social Security Directorate, Victoria Quay, Edinburgh EH66 6QQ and online at [www.legislation.gov.uk](http://www.legislation.gov.uk).