

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

Social Justice and Social Security Committee

**32nd Meeting, 2023 (Session 6), Thursday,
07 December**

Social Security Information-sharing (Scotland) Amendment Regulations 2024

Introduction

The draft [Social Security Information-sharing \(Scotland\) Amendment Regulations 2024](#) were laid on 7 November 2023, along with [Policy Note](#) and various [impact assessments](#).

This paper gives a very brief summary of the regulations and suggests potential issues for discussion with the Cabinet Secretary.

Background

[Section 85 of the Social Security \(Scotland\) Act 2018](#) sets out with whom Social Security Scotland can share information and for what purposes. Regulations can specify additional organisations and additional purposes for which it can be used.

Currently those purposes are limited to helping decide a client's entitlement to Social Security Scotland benefits, or other grants, payments and services. For example, Social Security Scotland can supply information to a local authority in order to determine eligibility to Council Tax Reduction.

“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.” ([Policy Note to 2021 Regulations](#))

The [consultation](#) on these new regulations pointed out that the current law on Scottish Social Security:

“does not provide for information sharing for the purposes of safeguarding individuals who may be at risk of harm.”

[The Data Protection Impact Assessment](#) (DPIA) states that currently, the legal basis used for sharing safeguarding concerns is [section 1A of the National Health Service \(Scotland\) Act 1978](#). This is the duty of Scottish Ministers to “promote the improvement of the physical and mental health of the people of Scotland.”

Importantly, none of this relates to emergency situations – information can always be shared if someone is in immediate danger. These regulations deal with situations where there is a suspected risk of harm identified by Social Security Scotland employees – a lower level concern than immediate danger.

What the regulations do

These regulations extend the purposes for which information can be shared with local authorities and the Office of the Public Guardian to include safeguarding concerns. The regulations would allow Social Security Scotland to share information with:

- a local authority, who could then investigate using their powers under social work legislation
- the [Office of the Public Guardian](#), who could then investigate where the property or finances of an incapable adult appear to be at risk.

Explicit consent must be obtained unless it cannot be given or cannot reasonably be obtained. [The Policy Note](#) gives examples of where it may not be reasonable or possible to gain consent such as situations of coercive control, domestic abuse, or where the individual doesn't realise they are at risk or lacks capacity to provide consent.

The DPIA points out that:

“The policy objectives the legislation is trying to meet are to balance the Government's responsibilities and obligations of keeping people safe and meeting their duty of care, along with complying with privacy and confidentiality obligations under data protection law and Article 8 ECHR”

Why is the change needed

The [public consultation](#) on these regulations pointed out that the change was needed:

“To clarify the legislative position and provide an explicit gateway for information sharing for the purposes of safeguarding individuals.”

Social Security Scotland have interim measures in place, using the legal basis of Section 1A National Health Service (Scotland) Act 1978. The DPIA explains that these new regulations would: “provide a bespoke, social security-specific legal gateway”.

Members may wish to discuss:

- 1. What training and guidance is in place to ensure that data sharing is proportionate?**
- 2. To what extent will these regulations lead to changes in practice? How will this be monitored?**
- 3. How are clients informed that their information may be used in this way?**
- 4. The regulations apply to “a person with whom they (Social Security Scotland) have come into contact” Who, other than clients would Social Security Scotland ‘come into contact’ with and how will they be informed about how their information may be used?**
- 5. Can you expand on situations where information could be shared without explicit consent?**
- 6. What other agencies have similar duties to share information in this way?**

**Camilla Kidner
SPICe
23 November 2023**