

SOCIAL SECURITY (SCOTLAND) ACT 2018

EXPLANATORY NOTES

OVERVIEW

Part 1 (Tenets and Oversight)

Scottish social security principles (sections 1 and 2)

10. [Section 1](#) sets out the Scottish social security principles. These eight principles are to inform the Scottish social security charter (which is provided for by sections 15 to 19) and the work of the Scottish Commission on Social Security in scrutinising regulations (see discussion of section 97).
11. [Section 2](#) makes those purposes clear, and provides that courts and tribunals can take cognisance of the principles, but also makes clear that breach of them is not, of itself, legally actionable.

Scottish Ministers' duty to promote take-up (sections 3 to 7)

12. [Section 3](#) places the Scottish Ministers under a duty to keep under consideration what they can do to provide people with the assistance they are entitled to receive from the Scottish social security system (as defined by section 23) and to take steps to achieve that aim. This duty is connected to the requirement created by section 8 for the Scottish Ministers to have a strategy to promote the take-up of assistance.
13. [Sections 4 to 7](#) are directly connected to the duty section 3 creates. Each requires the Scottish Ministers to keep a particular consideration in mind when fulfilling their section 3 duty to consider how to ensure take-up of assistance.
14. [Section 4](#) requires that particular consideration be given to the importance of communicating in an inclusive way, recognising that for some individuals communication difficulties may present a barrier to the take-up of assistance.
15. [Section 5](#) requires that particular consideration be given to the importance of accessible communications, recognising that some individuals will need to be given information in special formats (for example blind people may need information in braille). Furthermore, section 5 directs the Scottish Ministers to take steps to ensure that:
 - where the Act requires that information be given to a particular individual, the information must be given in a format that suits the individual's needs. An example of such a requirement to give an individual would be the duty created by section 53 to advise about eligibility for other assistance that it appears the individual may be eligible to receive.
 - where the Act requires that information be given to the public at large, Ministers must provide the information in a range of formats.
16. [Section 6](#) requires the Scottish Ministers to consider how information, advice and advocacy, provided by persons other than Ministers themselves, can contribute to ensuring take up of assistance under the Scottish social security system. Section 6

describes steps Ministers must take, such as to provide information about these matters to persons seeking or receiving assistance and to provide for independent information and advice to be available.

17. Information that the Scottish Ministers obtain for the purpose of one type of assistance may be relevant for another type of assistance. For example, a person applying for early years assistance (see section 32) might mention that they have difficulty communicating which might entitle the person to disability assistance (see section 31). Section 7 directs Ministers to have regard to this possibility in relation to their duty under section 3 to promote take-up of assistance.

Strategy to promote take-up (sections 8 and 9)

18. **Section 8** obliges the Scottish Ministers to have a strategy to promote the take-up of assistance. The strategy must estimate the extent of take-up of the assistance provided for by the Scottish social security system and explain what steps Ministers will take to ensure individuals receive what they are eligible to receive. The strategy must be published. Section 9 sets timescales for preparation and review of the strategy. That section also requires consultation with specific persons as part of its preparation and review, in addition to other persons whom Ministers consider it appropriate to consult.

Right to advocacy and service standards (sections 10 and 11)

19. **Section 10** creates a right to advocacy for individuals who, due to a disability, require an advocate to help them when their entitlement to assistance is being determined. Subsection (2) places a duty on the Scottish Ministers to ensure that independent advocacy services are sufficiently available to allow everyone who has that right to make use of it. In this context, advocacy services are independent if they are provided by someone other than the Scottish Ministers. This right to advocacy is separate from, and additional to, the right all individuals will have to be accompanied by a supporter that is provided for in section 59 during any discussion or assessment of the individual's entitlement to assistance under Part 2.
20. **Section 11** requires the Scottish Ministers to set standards that advocacy service providers must adhere to, as part of any agreements for provision of independent advocacy services. The standards will be set out in regulations and may, for example, provide for independent advocates to have undergone training and for the quality of the service provided to be assessed.

Restriction on private-sector involvement in assessments (section 12)

21. In order to access assistance under the Scottish social security system a person may have to undergo an assessment. Section 12 prevents someone being required to undergo such an assessment by a person who is not working in the public sector (as defined by subsections (2) and (3)).
22. While section 12 prevents a person from being required to undergo an assessment by a person not working in the public sector, it does not preclude the Scottish Government from taking an assessment report prepared by a private-sector body into consideration in determining someone's entitlement to assistance should they wish the government to do so.
23. It may be an eligibility condition for receiving Scottish social security assistance that a person is eligible for assistance through other schemes. For example, being in receipt of a UK Government disability benefit may be an eligibility criterion for receiving winter heating assistance (see section 30). Subsections (4) and (5) of section 12 clarify that the restriction on the use of non-public sector assessments established by subsection (1) does not preclude eligibility for Scottish social security assistance being made to depend on eligibility for other forms of assistance which may have required assessment by a person not working in the public sector.

Assessors to be suitably qualified (section 13)

24. **Section 13** places a duty on the Scottish Ministers, when arranging assessments of an individual's physical condition or mental health, to ensure that the assessor is appropriately qualified. Regulations may set out how the assessor's suitability is to be determined, which might (for example) include requirements relating to the training or experience that an assessor must have to be regarded as qualified to assess the effects of particular disabilities.

Assessments only to be required where necessary (section 14)

25. One of the Scottish social security principles places respect for the dignity of individuals at the heart of the system (see section 1(d)). Some persons may consider that if the need for an assessment is not appropriately considered it may impact adversely on their dignity. Other persons may wish to have the effects of their condition assessed. Section 14 provides that an individual should only be required to undergo an assessment if it is the only practicable way to get information that is needed to make a decision about the assistance they are eligible for. If an individual states any wishes about where and how they would like an assessment to be undertaken, the Scottish Ministers must consider them.

Scottish social security charter (sections 15 to 19)

26. **Section 15** defines what the Scottish social security charter is to be. The charter is to set out what can be expected from the Scottish Ministers in designing and delivering social security, and from persons who apply for, and receive, assistance from the Scottish social security system (see section 15(2) and, for the meaning of "Scottish social security system", see section 23). The charter is to do so in a way which reflects the principles articulated in section 1 (see section 15(3)). For example, the charter will provide for how respect for the dignity of individuals will be placed at the heart of the system (the principle articulated in section 1(d)) when Ministers are exercising functions such as determining a person's entitlement to assistance.
27. **Section 16** requires the charter to be published for the first time within 6 months of that section coming into force (section 16 is to come into force on a date appointed by regulations under section 99). Section 16 also provides for consultation in development of the charter, which must include consultation with the persons listed in subsection (4). These are persons who are receiving from the UK Government the types of assistance that correspond to those which will in future be provided to people in Scotland by the Scottish Government under Part 2 of the Act. Subsection (3) requires that in consulting certain categories of people described in subsection (4), the Scottish Ministers must consult them in representative proportions based on whether they have physical or mental impairments. Subsection (5) makes clear that consultation undertaken before the Bill for the Act was passed, or section 16 was brought into force, can be taken into account in determining whether the statutory consultation duty created by section 16 has been complied with.
28. **Section 17** requires the Scottish Ministers to make the charter available to the public. This is an ongoing duty placed on Ministers. As the charter may change from time to time in accordance with section 18, the Ministers will have to ensure that the version of the charter made available to the public as required by section 17 is the current version.
29. **Section 18** requires the charter to be reviewed every five years. It requires the Scottish Ministers to include as part of the review process consultation with the Scottish Commission on Social Security (established by section 21), persons who have received assistance through the Scottish social security system (as defined by section 23) and bodies who work with, or represent, people whose finances are adversely affected by a person in the household having a protected characteristic listed in section 4 of the Equality Act 2010 (for example age, disability). After each review the

Scottish Ministers must provide a report to the Parliament explaining the consultation undertaken and what changes to the charter (if any) have been made, with reasons why changes have been made, or not made.

30. [Section 19](#) allows courts and tribunals to take the charter into account where it is relevant, and makes clear that breach of any of the expectations set in the charter is not, of itself, a ground for legal action.

Annual report ([section 20](#))

31. [Section 20](#) places a statutory duty on the Scottish Ministers to report annually to the Scottish Parliament on the performance of the Scottish social security system (as defined by [section 23](#)) during the previous financial year. As well as information about the system's performance, the report is to describe what the Scottish Ministers have done in that year to meet the expectations on them set out in the charter. The report is also to contain an assessment of how the Scottish social security system has affected the circumstances of people whose finances are affected by a person in the household having a protected characteristic listed in [section 4](#) of the Equality Act 2010 (for example age, disability).

Scottish Commission on Social Security ([sections 21 and 22](#))

32. [Section 21](#) establishes the Scottish Commission on Social Security. It also introduces [schedule 1](#), which makes provision about how the Commission is to operate, its financing and its membership. Paragraph 1 of the schedule provides that the Commission is to be independent of the Scottish Government. Paragraph 4 gives it rights of access to information.
33. [Section 22\(1\)](#) sets out the Commission's core functions. These include scrutiny of proposals for legislation, reporting on any social security matters that it is asked to report on by the Scottish Ministers or the Scottish Parliament, and reporting on the extent to which expectations in the Scottish social security charter are being met. Subsection (2) enables the Commission, when exercising any of the core functions listed in subsection (1), to have regard to any international human rights instruments that may be relevant to its work. When scrutinising proposals for legislation the Commission must have regard to such instruments and must also have regard to the Scottish social security principles articulated in [section 1](#) (see [section 97\(6\)](#)). Subsection (3) requires that when the Commission produces a report on performance of one of the functions listed in subsection (1), it has to make that report available to the public.

Meaning of "Scottish social security system" ([section 23](#))

34. [Section 23](#) defines the "Scottish social security system" as meaning, at the time of writing, the system constituted by [Parts 2 and 3](#) of the Act. Subsection (c) provides an automatic extension to the definition, should in future the Scottish Parliament make legislation that provides for a new form of social security assistance, so that such assistance would also form part of the system. For the extension to apply, it would have to be a form of assistance that the Parliament only had competence to create through the power to create new social security benefits that is contained, with limits, in the Scotland Act 1998.