



# Social Security (Scotland) Act 2018

## 2018 asp 9

### PART 2

#### GIVING OF ASSISTANCE BY SCOTTISH MINISTERS

#### CHAPTER 6

#### OFFENCES AND INVESTIGATIONS

##### *Offences*

#### **71 Offence of trying to obtain assistance by deceit**

- (1) A person commits an offence if—
  - (a) the person provides, or causes another person to provide, information which is false or misleading, and
  - (b) the person does so with the intention of causing an individual to be given assistance under section 24 which would not otherwise be given.
- (2) For the purpose of subsection (1), providing information includes making a statement.
- (3) A person who commits an offence under subsection (1) is liable—
  - (a) on summary conviction, to—
    - (i) imprisonment for a term not exceeding 12 months,
    - (ii) a fine not exceeding the statutory maximum, or
    - (iii) both,
  - (b) on conviction on indictment, to—
    - (i) imprisonment for a term not exceeding 5 years,
    - (ii) a fine, or
    - (iii) both.

#### **72 Offence of failing to notify**

- (1) A person commits an offence if—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) the person fails to notify the Scottish Ministers about a change in circumstances to which subsection (2) applies as soon as reasonably practicable after it occurs,
  - (b) the person does not have a reasonable excuse for failing to do so, and
  - (c) the person knew or ought to have known that the change might result in an individual ceasing to be entitled to assistance, or becoming entitled to less assistance.
- (2) For the purpose of subsection (1)(a), a change in circumstances to which this subsection applies is a change—
- (a) which the person has a duty under section 56 to notify the Scottish Ministers about, and
  - (b) which would, under a determination of an individual's entitlement, result in the individual ceasing to be entitled to assistance, or becoming entitled to less assistance.
- (3) A person is not to be regarded as having notified a change in circumstances for the purpose of subsection (1)(a) unless the person notified the Scottish Ministers about it in the way the Ministers informed the person that such notification is to be given (see section 56(2)(b)).
- (4) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction, to—
    - (i) imprisonment for a term not exceeding 12 months,
    - (ii) a fine not exceeding the statutory maximum, or
    - (iii) both,
  - (b) on conviction on indictment, to—
    - (i) imprisonment for a term not exceeding 5 years,
    - (ii) a fine, or
    - (iii) both.

### **73 Offence of causing a failure to notify**

- (1) A person commits an offence if—
- (a) the person causes another person to fail to notify the Scottish Ministers about a change in circumstances to which subsection (2) applies as soon as reasonably practicable after it occurs, and
  - (b) the person knew or ought to have known that—
    - (i) the change might result in an individual ceasing to be entitled to assistance, or becoming entitled to less assistance, and
    - (ii) the other person has a duty under section 56 to notify the Scottish Ministers about the change.
- (2) For the purpose of subsection (1)(a), a change in circumstances to which this subsection applies is a change which would, under a determination of an individual's entitlement, result in the individual ceasing to be entitled to assistance, or becoming entitled to less assistance.
- (3) A person is not to be regarded as having notified a change in circumstances for the purpose of subsection (1)(a) unless the person notified the Scottish Ministers about

---

*Status: This is the original version (as it was originally enacted).*

---

it in the way the Ministers informed the person that such notification is to be given (see section 56(2)(b)).

- (4) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction, to—
    - (i) imprisonment for a term not exceeding 12 months,
    - (ii) a fine not exceeding the statutory maximum, or
    - (iii) both,
  - (b) on conviction on indictment, to—
    - (i) imprisonment for a term not exceeding 5 years,
    - (ii) a fine, or
    - (iii) both.

#### **74 Individual culpability for offending by an organisation**

- (1) Subsection (2) applies where—
- (a) an offence under this Act or any regulations made under it is committed by a relevant organisation, and
  - (b) the commission of the offence involves the connivance or consent of, or is attributable to the neglect of—
    - (i) a responsible official of the organisation, or
    - (ii) an individual purporting to act in the capacity of a responsible official.
- (2) The responsible official (or, as the case may be, the individual purporting to act in that capacity), as well as the organisation, commits the offence.
- (3) “Relevant organisation” means—
- (a) a company,
  - (b) a partnership (including a limited liability partnership),
  - (c) another body or association.
- (4) “Responsible official” means—
- (a) in the case of a company—
    - (i) a director, secretary, manager or similar officer, or
    - (ii) where the affairs of the company are managed by its members, a member,
  - (b) in the case of a limited liability partnership, a member,
  - (c) in the case of a partnership other than a limited liability partnership, a partner,
  - (d) in the case of another body or association, a person who is concerned in the management or control of its affairs.

#### *Investigations*

#### **75 Power to make provision about investigations**

- (1) The Scottish Ministers may by regulations make provision about the investigation of offences under this Act.
- (2) Regulations under subsection (1) may, in particular—
- (a) confer powers to—

---

*Status: This is the original version (as it was originally enacted).*

---

- (i) enter and search premises (other than dwelling-houses), and
    - (ii) seize anything relevant to the investigation which is found on the premises,
  - (b) create offences relating to—
    - (i) a failure to provide information requested for the purposes of an investigation,
    - (ii) obstruction of the conduct of an investigation,
    - (iii) any breach of the regulations,
  - (c) make provision about the time limit for bringing proceedings.
- (3) The maximum penalty that may be provided for in regulations under subsection (1) is, on summary conviction, a fine not exceeding level 3 on the standard scale.

## **76 Code of practice on investigations**

- (1) The Scottish Ministers must publish a code of practice on investigations carried out by virtue of section 75.
- (2) The Scottish Ministers—
  - (a) must keep the code of practice under review,
  - (b) may from time to time revise the code of practice.
- (3) Before publishing the code of practice, the Scottish Ministers must consult publicly on a draft of the code.
- (4) The Scottish Ministers must, as soon as practicable after publication, lay before the Scottish Parliament a copy of the code of practice.
- (5) A court or tribunal in civil or criminal proceedings must take the code of practice into account when determining any question to which the code is relevant.
- (6) Breach of the code of practice does not of itself give rise to grounds for any legal action.
- (7) Subsections (2) to (6) apply in relation to a revised code of practice as they apply in relation to the first published code of practice.