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SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. 178**

**SOCIAL SECURITY**

**The Social Security Information-sharing (Scotland) Regulations 2021**

*Made* - - - - 24th March 2021

*Coming into force* - - 26th July 2021

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 85(2)(g) and (5) and 95 of the Social Security (Scotland) Act 2018(1) and all other powers enabling them to do so.

In accordance with section 96(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Social Security Information-sharing (Scotland) Regulations 2021 and come into force on 26 July 2021.

(2) In these Regulations—

“the 1978 Act” means the National Health Service (Scotland) Act 1978(2),

“the 2018 Act” means the Social Security (Scotland) Act 2018,

“the Public Guardian” is to be construed in accordance with section 6 of the Adults with Incapacity (Scotland) Act 2000(3) (the Public Guardian and his functions).

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**Commencement Information**

**II** [Reg. 1](#) in force at 26.7.2021, see [reg. 1\(1\)](#)

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(1) [2018 asp 9](#). The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 ([asp 10](#)). These Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(2) [1978 c.29](#).

(3) [2000 asp 4](#). Section 6 was amended by section 67 and paragraph 5(a) of schedule 1 of the Adult Support and Protection (Scotland) Act 2007 ([asp 10](#)) and [S.S.I. 2015/157](#).

## Specification of persons who may be required to supply information

2.—(1) The persons described in paragraph (2) are specified for the purposes of section 85(2)(g) of the 2018 Act (persons who may be required to supply information).

(2) The persons are—

- (a) any supplier of vehicles approved by the Scottish Ministers under an accreditation scheme run by Ministers to supply vehicles for the benefit of individuals who are entitled to the higher rate of the mobility component of Child Disability Payment in accordance with regulation 13 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021<sup>(4)</sup> (mobility requirements: higher rate mobility component),
- [<sup>F1</sup>(aa) any supplier of vehicles approved by the Scottish Ministers under an accreditation scheme run by the Scottish Ministers to supply vehicles for the benefit of individuals who are entitled to the enhanced rate of the mobility component of Adult Disability Payment in accordance with regulation 6 of the Disability Assistance for Working Age People (Scotland) Regulations 2022 (mobility component),]
- (b) the contractor under a general medical services contract within the meaning of section 17J of the 1978 Act<sup>(5)</sup> (Health Boards' power to enter into general medical services contracts),
- (c) the contractor under an arrangement under section 2C(2) of the 1978 Act<sup>(6)</sup> (functions of Health Boards: primary medical services),
- (d) the provider under an agreement under section 17C(1)(a) of the 1978 Act<sup>(7)</sup> (agreement for provision of primary medical services), <sup>F2</sup>...
- (e) the Public Guardian [<sup>F3</sup>and
- (f) an integration authority as defined in section 59 of the Public Bodies (Joint Working) (Scotland) Act 2014<sup>(4)</sup>.]

### Textual Amendments

- F1** Reg. 2(2)(aa) inserted (21.3.2022) by [The Social Security Information-sharing \(Scotland\) Amendment Regulations 2022 \(S.S.I. 2022/56\)](#), regs. 1(1), **2(a)**
- F2** Word in reg. 2(2) omitted (21.3.2022) by virtue of [The Social Security Information-sharing \(Scotland\) Amendment Regulations 2022 \(S.S.I. 2022/56\)](#), regs. 1(1), **2(b)**
- F3** Reg. 2(2)(f) and word inserted (21.3.2022) by [The Social Security Information-sharing \(Scotland\) Amendment Regulations 2022 \(S.S.I. 2022/56\)](#), regs. 1(1), **2(c)**

### Commencement Information

- I2** Reg. 2 in force at 26.7.2021, see [reg. 1\(1\)](#)

## Supplying information to receive information in return

3.—(1) Paragraph (2) applies where the Scottish Ministers require information to be supplied under section 85(1) of the 2018 Act (requirement to supply information) by—

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(4) [S.S.I. 2021/174](#).

(5) Section 17J was inserted by section 4 of the Primary Medical Services (Scotland) Act 2004 ([asp 1](#)) (“the 2004 Act”).

(6) Section 2C was inserted by section 1(2) of the 2004 Act. Section 2C(2) was amended by section 37(a) of the Tobacco and Primary Medical Services (Scotland) Act 2010 ([asp 3](#)).

(7) Section 17C was inserted by section 21(2) of the National Health Service (Primary Care) Act 1997 ([c.46](#)). Section 17C(1)(a) was amended by section 2(2)(a) of the 2004 Act.

(4) [S.S.I. 2021/174](#).

- (a) a Health Board constituted under section 2(1)(a) of the 1978 Act<sup>(8)</sup> (Health Boards) or a Special Health Board constituted under section 2(1)(b) of the 1978 Act<sup>(9)</sup>,
- (b) a contractor or provider of primary medical services described in regulation 2(2)(b), (c) or (d), or
- (c) a local authority,

for the purpose of determining an individual's entitlement to social security assistance in accordance with section 37 of the 2018 Act (duty to make determination).

(2) The Scottish Ministers may supply to the person such information relating to the individual as is necessary for the purpose of enabling the person to comply with the requirement under section 85(1) of the 2018 Act.

(3) Information may be supplied by the Scottish Ministers under paragraph (2) only with the authorisation of the individual to whom the information relates.

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#### Commencement Information

**I3** Reg. 3 in force at 26.7.2021, see [reg. 1\(1\)](#)

#### Use of information supplied by the Scottish Ministers

4.—(1) Information held by the Scottish Ministers for the purpose of a social security function may be supplied by Ministers under section 85(5) of the 2018 Act (specification of functions) to—

- (a) a supplier of vehicles described in regulation 2(2)(a) [<sup>F4</sup>or 2(2)(aa)] for use for the purposes of the function of that person specified in paragraph (2),
- (b) a local authority for use for the purposes of the functions of the local authority specified in paragraph (3).
- [<sup>F5</sup>(c) where regulation 4A applies, a local authority for use for the purposes of the functions of the local authority specified in paragraph (3A),
- (d) where regulation 4B applies, a local authority for use for the purposes of the functions of the local authority specified in paragraph (3B),
- (e) where regulation 4C applies, the Public Guardian for use for the purposes of the function of the Public Guardian specified in paragraph (3C),]

(2) The specified function referred to in paragraph (1)(a) is the provision of a vehicle.

(3) The specified functions referred to in paragraph (1)(b) are—

- (a) the assessment of liability to pay local taxes used to fund local authority expenditure,
- (b) the administration under section 134(1) of the Social Security Administration Act 1992<sup>(10)</sup> (arrangements for housing benefit) of housing benefit provided by virtue of a scheme under section 123(1)(d) of the Social Security Contributions and Benefits Act 1992<sup>(11)</sup> (income-related benefit),

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<sup>(8)</sup> Section 2(1)(a) was amended by paragraph 1 of schedule 7 of the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 28(a)(i) and (ii) of the National Health Service and Community Care Act 1990 (c.19), paragraph 1(2) (a) of schedule 1 of the National Health Service Reform (Scotland) Act 2004 (asp 7) and paragraph 2(2) of schedule 2 of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13).

<sup>(9)</sup> Section 2(1)(b) was inserted by section 28(a)(ii) of the National Health Service and Community Care Act 1990 (c.19). It was amended by paragraph 2(2) of schedule 2 of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13).

<sup>(10)</sup> 1992 c.5. Section 134 was substituted by paragraph 1(2) of schedule 12 of the Housing Act 1996 (c.52).

<sup>(11)</sup> 1992 c.4.

- (c) the administration of the national travel concession scheme provided for by the National Bus Travel Concession Scheme for Older and Disabled Persons (Scotland) Order 2006(12),
- (d) the administration of a travel concession scheme established under section 93 of the Transport Act 1985(13) (travel concession schemes),
- (e) determining whether a person falls within the description of person prescribed for the purposes of section 21(2) of the Chronically Sick and Disabled Persons Act 1970(14) (issue of badges for display on motor vehicles to disabled persons falling within prescribed descriptions) by regulation 4(2)(ad) [<sup>F6</sup>or 4(2)(ae)] of the Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000(15) (descriptions of disabled persons),
- (f) determining whether to provide occasional financial or other assistance for the purpose described in section 2(1)(a) or (b) of the Welfare Funds (Scotland) Act 2015(16) (use of welfare funds: assistance for short term need and community care),
- (g) determining—
  - (i) whether to make discretionary housing payments under regulation 2(1) of the Discretionary Financial Assistance Regulations 2001(17) (provision of additional financial assistance towards meeting housing costs),
  - (ii) the amount of any such payments.
- [<sup>F7</sup>(h) determining whether a person applying for or receiving a welfare service is liable to contribute towards the cost of that service and if so the amount of that contribution.]
- [<sup>F8</sup>(3A) The specified functions referred to in paragraph (1)(c) are—
  - (a) the duty to promote social welfare under section 12 of the Social Work (Scotland) Act 1968 (general social welfare services of local authorities),
  - (b) the duty to children looked after by local authorities under section 17 of the Children (Scotland) Act 1995 (duty of local authority to child looked after by them),
  - (c) the duty to safeguard and promote the welfare of children who are in need under section 22 of the Children (Scotland) Act 1995 (promotion of welfare of children in need),
  - (d) the duty to make inquiries about a person’s well-being, property or financial affairs under section 4 of the Adult Support and Protection (Scotland) Act 2007 (council’s duty to make inquiries),
  - (e) the power to make an application for a child assessment order under section 35 of the Children’s Hearings (Scotland) Act 2011 (child assessment orders),
  - (f) the duty to provide information to the Principal Reporter under section 60 of the Children’s Hearings (Scotland) Act 2011 (local authority’s duty to provide information to Principal Reporter).
- (3B) The specified functions referred to in paragraph (1)(d) are—
  - (a) the duty to make inquiries about a person’s property or financial affairs under section 4 of the Adult Support and Protection (Scotland) Act 2007 (council’s duty to make inquiries),

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(12) S.S.I. 2006/107.

(13) 1985 c.67. Section 93, as it applies to Scotland, was amended by paragraph 141 of schedule 13 of the Local Government etc. (Scotland) Act 1994 (c.39), S.I. 1996/974, section 44(1) of the Local Government in Scotland Act 2003 (asp 1) and section 49(2) of the Transport (Scotland) Act 2019 (asp 17).

(14) 1970 c.44.

(15) S.S.I. 2000/59. Sub-paragraph (ad) was inserted by S.S.I. 2021/73.

(16) 2015 asp 5.

(17) S.I. 2001/1167. Regulation 2(1) was amended by S.I. 2013/1139 and S.I. 2013/458.

- (b) the duty to investigate any circumstances made known to the local authority in which the personal welfare of an adult seems to them to be at risk under section 10(1)(d) of the Adults with Incapacity (Scotland) Act 2000 (functions of local authorities).

(3C) The specified function referred to in paragraph (1)(e) is the duty to investigate circumstances where the property or financial affairs of an adult appear to be at risk under section 6(2)(d) of the Adults with Incapacity (Scotland) Act 2000 (the Public Guardian and his functions).]

[<sup>F9</sup>(4) In this regulation “welfare service” means—

- (a) housing support services, as defined in regulation 2 of the Social Security (Information-sharing in relation to Welfare Services etc.) Regulations 2012 (interpretation),
- (b) the provision of residential care, as defined in regulation 2 of the Social Security (Information-sharing in relation to Welfare Services etc.) Regulations 2012 (interpretation),
- (c) the provision of domiciliary care, as defined in regulation 5(4)(d) of the Social Security (Information-sharing in relation to Welfare Services etc.) Regulations 2012 (supply of relevant information by the Secretary of State).]

#### Textual Amendments

- F4** Words in [reg. 4\(1\)\(a\)](#) inserted (21.3.2022) by [The Social Security Information-sharing \(Scotland\) Amendment Regulations 2022 \(S.S.I. 2022/56\)](#), regs. 1(1), **3(a)**
- F5** [Reg. 4\(1\)\(c\)-\(e\)](#) inserted (16.1.2024) by [The Social Security Information-sharing \(Scotland\) Amendment Regulations 2024 \(S.S.I. 2024/8\)](#), regs. 1(1), **2(a)**
- F6** Words in [reg. 4\(3\)\(e\)](#) inserted (21.3.2022) by [The Social Security Information-sharing \(Scotland\) Amendment Regulations 2022 \(S.S.I. 2022/56\)](#), regs. 1(1), **3(b)**
- F7** [Reg. 4\(3\)\(h\)](#) inserted (21.3.2022) by [The Social Security Information-sharing \(Scotland\) Amendment Regulations 2022 \(S.S.I. 2022/56\)](#), regs. 1(1), **3(c)**
- F8** [Reg. 4\(3A\)-\(3C\)](#) inserted (16.1.2024) by [The Social Security Information-sharing \(Scotland\) Amendment Regulations 2024 \(S.S.I. 2024/8\)](#), regs. 1(1), **2(b)**
- F9** [Reg. 4\(4\)](#) inserted (21.3.2022) by [The Social Security Information-sharing \(Scotland\) Amendment Regulations 2022 \(S.S.I. 2022/56\)](#), regs. 1(1), **3(d)**

#### Commencement Information

- I4** [Reg. 4](#) in force at 26.7.2021, see [reg. 1\(1\)](#)

[<sup>F10</sup>Use of information supplied under regulation 4(1)(c)

**4A.**—(1) This regulation applies where—

- (a) in the exercise of their social security functions, the Scottish Ministers know or believe that a person with whom they have come into contact (“person A”) is—
  - (i) at real risk of harm,
  - (ii) has needs of care and support, and
  - (iii) as a result of those needs, is unable to protect themselves against that risk, and
- (b) the Scottish Ministers consider the supply of information is necessary to protect person A from harm.

(2) The information is to be supplied only with the explicit consent of person A unless paragraph (3) applies.

(3) This paragraph applies where—

- (a) in the circumstances, person A’s consent cannot be given,
  - (b) in the circumstances, the Scottish Ministers cannot reasonably be expected to obtain the consent of person A, or
  - (c) in the circumstances, the Scottish Ministers consider obtaining consent of person A would prejudice the protection mentioned in paragraph (1)(b).
- (4) In this regulation—
- (a) in paragraph (1)(a)(i)—
    - (i) “real risk of harm” means 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, and
    - (ii) “conduct” includes failures to act,
  - (b) in paragraph (1)(b) and in the definition of “real risk of harm”, “harm” means neglect or physical, mental or emotional harm, and
  - (c) “person” means a natural person of any age.

#### Textual Amendments

**F10** Regs. 4A-4C inserted (16.1.2024) by [The Social Security Information-sharing \(Scotland\) Amendment Regulations 2024 \(S.S.I. 2024/8\)](#), regs. 1(1), 3

#### Use of information supplied under regulation 4(1)(d)

- 4B.**—(1) This regulation applies where—
- (a) in the exercise of their social security functions, the Scottish Ministers know or believe that—
    - (i) the property or financial affairs of a person with whom they have come into contact (“person B”) are at risk,
    - (ii) person B has needs of care and support, and
    - (iii) as a result of those needs, person B is unable to protect themselves against that risk, and
  - (b) the Scottish Ministers consider the supply of information is necessary to—
    - (i) safeguard the property or financial affairs of person B, and
    - (ii) protect person B from harm.
- (2) The information is to be supplied only with the explicit consent of person B unless paragraph (3) applies.
- (3) This paragraph applies where—
- (a) in the circumstances, person B’s consent cannot be given,
  - (b) in the circumstances, the Scottish Ministers cannot reasonably be expected to obtain the consent of person B, or
  - (c) in the circumstances, the Scottish Ministers consider obtaining consent of person B would prejudice the matters mentioned in paragraph (1)(b).

(4) In this regulation, “harm” means mental or emotional harm.

**Textual Amendments**

**F10** Regs. 4A-4C inserted (16.1.2024) by [The Social Security Information-sharing \(Scotland\) Amendment Regulations 2024 \(S.S.I. 2024/8\)](#), regs. 1(1), 3

**Use of information supplied under regulation 4(1)(e)**

**4C.**—(1) This regulation applies where—

- (a) in the exercise of their social security functions, the Scottish Ministers know or believe that—
  - (i) a person with whom they have come into contact (“person C”) is incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000, and
  - (ii) the property or financial affairs of person C are at risk, and
- (b) the Scottish Ministers consider the supply of information is necessary to—
  - (i) safeguard the property or financial affairs of person C, and
  - (ii) protect person C from harm.

(2) In this regulation, “harm” means mental or emotional harm.]

**Textual Amendments**

**F10** Regs. 4A-4C inserted (16.1.2024) by [The Social Security Information-sharing \(Scotland\) Amendment Regulations 2024 \(S.S.I. 2024/8\)](#), regs. 1(1), 3

**[<sup>F11</sup>Supply of information to be no more than is necessary]**

**5.** Where the Scottish Ministers supply information under these Regulations, which relates to an individual, the information supplied must be no more than is necessary for the purpose for which it is to be used by the recipient.

**Textual Amendments**

**F11** [Reg. 5](#) cross-heading inserted (16.1.2024) by [The Social Security Information-sharing \(Scotland\) Amendment Regulations 2024 \(S.S.I. 2024/8\)](#), regs. 1(1), 4

**Commencement Information**

- I4** [Reg. 4](#) in force at 26.7.2021, see [reg. 1\(1\)](#)
- I5** [Reg. 5](#) in force at 26.7.2021, see [reg. 1\(1\)](#)

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*SHIRLEY-ANNE SOMERVILLE*  
A member of the Scottish Government

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## EXPLANATORY NOTE

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

These Regulations make provision regarding the sharing of information in connection with the social security functions of the Scottish Ministers, in accordance with section 85 of the Social Security (Scotland) Act 2018 (“the 2018 Act”).

Regulation 2 specifies, for the purposes of section 85(2) of the 2018 Act, three additional persons who may be required by the Scottish Ministers to supply information to them for the purpose of a social security function. These are GP practices, the Public Guardian and suppliers of vehicles for the benefit of individuals who are entitled to the mobility component of Child Disability Payment, at the higher rate.

Regulation 3 provides an express power for the Scottish Ministers to share information with local authorities, Health Boards and GP practices, in order to receive from them information required under section 85(1) of the 2018 Act. This reflects the substantive nature of the information which may be shared.

Regulation 4 provides that information held by the Scottish Ministers for the purpose of a social security function may be supplied by them, under section 85(5) of the 2018 Act, for the purposes of a specified function to a supplier of vehicles described in regulation 2 and to a local authority. The specified function in respect of a supplier of vehicles is the provision of a vehicle. The specified functions in relation to local authorities, include establishing entitlement to council tax reduction and other forms of concession related to local taxes, establishing entitlement to a Blue Badge, and reaching decisions on making discretionary housing payments.

Regulation 5 makes clear that no more information may be supplied than is necessary to enable a specified person to fulfil a particular function or, as the case may be, to enable them to supply the information which is required from them under section 85(1) of the 2018 Act.



**Changes to legislation:**

There are currently no known outstanding effects for the The Social Security Information-sharing (Scotland) Regulations 2021.