

## **Business and Regulatory Impact Assessment**

### **Title of proposal**

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

### **Purpose and intended effect**

### **Objective**

1. The Social Security Information-sharing (Scotland) Regulations 2021 ensure that Social Security Scotland has the necessary powers to require or share information with other persons, so that the organisation can effectively administer the system of devolved social security in Scotland. These regulation set out who can be required to provide Social Security Scotland with information, and the persons that Social Security Scotland may provide information to and for what purpose.

### **Background**

2. The Social Security Information-sharing (Scotland) Regulations 2021 contain a number of provisions which will support the continued effective implementation of the Social Security (Scotland) Act 2018 ('the 2018 Act'), by making provision in relation to the sharing of information regarding the social security functions of the Scottish Ministers under the 2018 Act.

3. In the case of persons who may use social security information supplied by the Scottish Ministers, for a substantive purpose, they set out the function of the person in connection with which the information may be used. These include a number of functions of local authorities, such as establishing liability to pay local taxes and entitlement to blue badge and housing benefit.

4. The business and regulatory impact assessment undertaken for the 2018 Act is therefore relevant and these Regulations making relatively minor changes to that framework. In general, any additional business and regulatory impact identified is minor

5. The regulations make provision to allow Scottish Ministers to require the following persons to supply Ministers with information for use in connection with carrying out their social security functions under the 2018 Act:

- suppliers of vehicles under the Scottish Government's Accessible Vehicles and Equipment scheme;
- GP practices;
- the Public Guardian (Scotland).

6. The regulations also make provision to allow information held by Scottish Ministers in connection with carrying out their social security functions to be used by other persons for the purposes of:

- the provision of vehicles under the Scottish Government’s Accessible Vehicles and Equipment Scheme;
- the discharge by a local authority of a number of duties, namely:
  - deciding what assistance to provide to an individual applying for funding from the Scottish Welfare Fund; in the form of a Community Crisis Grant or a Community Care Grant,
  - deciding what level of Discretionary Housing Payment to provide to an individual who applies, including assessing the correct level of top-up funding when mitigating the so-called ‘bedroom tax’ and benefit cap;
  - establishing whether an individual is entitled to a Blue Badge;
  - administering the national concessionary travel scheme or, as the case may be, a local travel concession scheme run by the relevant local authority.

## **Rationale for Government Intervention**

7. The Scottish Public Finance Manual sets out that Scottish Government business areas undertaking expenditure must satisfy themselves that there is statutory authority for the activity giving rise to the expenditure, and that the expenditure is wholly in line with the relevant enabling statute. Therefore Social Security Scotland has a responsibility to ensure that its resources are used economically, efficiently and effectively. Social security benefits are an investment in the people of Scotland and should be administered effectively.

8. The persons specified in the Regulations may be required to supply data to the Scottish Ministers: (i) in relation to an individual’s application; (ii) to support individuals who apply for social security assistance and wish for the supporting information necessary for their application to be supplied by the person on their behalf, in an open, transparent and client-led way; and (iii) to verify information for the prevention or identification of error.

## **Consultation**

### *Within Government*

9. The Social Security Directorate within Scottish Government has, and continues to, engage with all Directorates involved in the development and delivery of social security in Scotland. This includes: Directorates for Housing and Social Justice, Digital, Local Government and Communities; Director General Economy, Director General Health & Social Care, Director General Learning and Justice and Director General Finance. Officials within the Social Security Directorate also maintain regular engagement with counterparts in Department for Work and Pensions (DWP), HM Revenues & Customs and HM Treasury regarding the devolution of disability assistance.

10. The Scottish Government social security programme has its own governance arrangements and is aligned to the wider Scottish Government and Devolution arrangements at both official and Ministerial level in order to ensure appropriate decision making, monitoring and control. The social security programme is delivery-focused, tasked with establishing the new Social Security Scotland agency and the

safe and secure transition of the devolved benefits. The Programme Board that oversees the delivery of the social security programme includes representation from a range of senior officials across Scottish Government, DWP, and non-executive Directors who provide insight and critical challenges.

### *Public Consultation*

11. In July 2016 the Scottish Government launched a public consultation to support the development of a framework that would become the Social Security (Scotland) Bill. This received more than 200 responses to questions relating to disability benefits with an even split between organisational and individual responses.

12. In particular comments were invited on a partial Equality Impact Assessment which represented the Scottish Government's work on the impact of social security policy on people with protected characteristics prior to the consultation. 521 formal written responses were submitted, of which 241 were from organisations and 280 from individual respondents. Of the 241 organisational responses, 81 were received from stakeholder groups relating to children/young people, equalities and human rights, disability and long term conditions and carers.

13. The independent analysis of the responses along with the Scottish Government response were published on 22 February 2017. In addition, the Equality Impact Assessment that was published alongside the Social Security (Scotland) Bill was used to inform the partial Equality Impact Assessment for these Regulations.

14. In addition to engaging with over 2,400 people across Scotland who have lived experience of the benefits, through the work of the Experience Panels, the Scottish Government has also undertaken ongoing consultation with stakeholders. The views of people with lived experience have also been captured through a range of user research and stakeholder engagement activities held throughout Scotland.

15. The Social Security Directorate has been in regular consultation with public sector stakeholders, including NHS Scotland and Local Authority representatives, about the ongoing development and design of Scottish disability benefits. Working groups have been established with stakeholders where necessary for the co-ordination and governance of information sharing arrangements.

16. Formal consultation with the Information Commissioner's Office (ICO) on the potential privacy implications of the proposed regulations took place in February and December 2020. No concerns were identified about the regulations. Recommendations from the ICO about the practical implementation of privacy safeguards were welcomed and factored into service design.

### **Options**

17. When developing the provisions within the Social Security Information-sharing (Scotland) Regulations 2020, the Scottish Government gave consideration to the following options:

**Option 1** – do not bring the legislation forward on these issues;

**Option 2** – bring forward secondary legislation to address these issues to ensure the continued effective implementation of the 2018 Act.

18. The Scottish Government considered that option 2 should be selected.

### **Sectors and groups affected**

19. The DWP retains its existing powers to investigate UK reserved benefits. As devolved benefits will in the main replace their DWP equivalent, or be predicated on receipt of a reserved benefit e.g. as in the case of Scottish Child Payment, the regulations the Scottish Government has no reason to believe devolved Social Security will result in any significant change in behaviour of applicants or overall demand for supporting services.

20. It is expected that the introduction of devolved social security in Scotland will incur costs generally for welfare rights organizations who advise people on their entitlement(s) to benefits. While it is not possible to quantify these costs at this time, it is expected they would be in relation to upskilling staff in the new Scottish social security system and associated benefits. There may be an expectation that a proportion of these costs may be related to the law and operational procedures surrounding investigations.

21. Where devolved benefits are similar to those delivered by DWP, it is likely that the organisations that Social Security Scotland will request information from, are also likely to be similar. However, the Scottish Government is engaged in a rolling programme of benefit implementation where the detailed eligibility criteria of some of the benefits have yet to be defined. As a result, it not possible to anticipate all of the organisations who may in future be required to provide relevant information.

22. Organisations that fall within the scope of the regulations will be expected to comply with a request for information.

### **Benefits**

- Meets the requirements of the Scottish Public Finance Manual and is in line with the wider Scottish public sector.
- Ensures only those entitled to assistance receive it.
- Reduces the burden on potentially vulnerable applicants by enabling Social Security Scotland to obtain information in support of an application for assistance on behalf of the applicant.

### **Costs**

- Advice organisations may incur some costs initially. As new benefits bed in staff will require familiarisation with the new regulations and processes of the devolved social security system.
- There may be some administrative costs incurred by businesses or other organisations in responding to requests for specified information.

## **Scottish Firms Impact Test**

23. As set out above, it is not considered that the proposal will have any impact on Scottish business.

## **Competition Assessment**

24. The Scottish Government does not believe that the regulations will have an adverse impact on the competitiveness of Scottish companies or the third sector within the UK, Scotland or elsewhere in Europe or the rest of the world. Additionally the Scottish Government does not expect there to be any significant impact on the operational business of local authorities or health boards as a result of introducing this provision.

25. This statutory power to require information is broadly similar to that of the Department for Work and Pensions, who currently share information with other persons in connection with the administration of reserved benefits. Social Security Scotland will take over the administration of several of those benefits and therefore would not anticipate a significant increase in requests for information overall.

## **Legal Aid Impact Test**

26. Impact on legal aid budgets must be assessed in a BRIA for each new assistance provided for under the 2018 Act. These Regulations do not provide for a new type of assistance and the Scottish Government does not anticipate significant impacts on the legal aid budget as a result of the introduction of these Regulations.

27. If in the fullness of time it becomes apparent that Legal Aid budgets are significantly impacted the Scottish Government will give consideration to how this can be addressed.

## **Enforcement, sanctions and monitoring**

28. The Scottish Information Commissioner can investigate a public authority if they believe that it may be failing to comply with the terms of the Data Protection Act 2018 or the associated Code of Practice.

29. The Scottish Ministers have also committed to engaging with, and reporting regular progress to, the Islands Strategic Group to ensure that those representing the interests of island communities and others with experience of the current system, are fairly represented in the development and delivery of the Scottish social security system.

30. The 2018 Act places a duty on the Scottish Ministers to publish an annual report on the performance of the Scottish social security system. On-going engagement with key stakeholders will also provide the Scottish Government with an opportunity to monitor the impact of the policy.

31. Audit Scotland will monitor and report on the delivery of the social security system, including Social Security Scotland.

### **Summary and recommendation**

32. As part of a wider process, the 2018 Act itself and the implementation of the Act, the regulations reflect Scottish Ministers vision of a rights-based system founded on the principles of dignity, fairness and respect.

### **Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Shirley-Anne Somerville

Cabinet Secretary for Social Security and Older People

12 February 2021

### **Scottish Government Contact point:**

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