

Social Justice and Social Security Committee

SSI cover note

3rd Meeting, (Session 6), 27 January 2022

Title of Instrument: [The Social Security Information-sharing \(Scotland\) Amendment Regulations 2022](#)

Laid Date: 17 December 2021

Reporting deadline: 11 February 2022

Type of instrument: Affirmative

Parliamentary procedure:

The affirmative procedure is outlined in paper 1.

Background

1. The Session 5 Social Security Committee considered the Social Security Information-sharing (Scotland) Regulations 2021 ('the 2021 Regulations') at its meeting on 4 March 2021.
2. The 2022 Regulations amend the 2021 Regulations to provide additional legal gateways for information sharing. These are necessary to ensure that Scottish individuals who are entitled to Adult Disability Payment will be able to continue to access the full range of other benefits and welfare services that those on the UK equivalent benefit (Personal Independence Payment) would have access to by virtue of their disability benefit award.
3. Further information is contained in the [Policy Note](#) (Annexe A). A draft [Data Protection Impact Assessment](#), [Child Rights and Wellbeing Impact Assessment](#), [Fairer Scotland Duty Impact Assessment](#), [Island Communities Impact Assessment](#), [Equality Impact Assessment](#) and [Business and Regulatory Impact Assessment](#) have also been prepared by the Scottish Government in relation to this instrument.

Delegated Powers and Law Reform Committee consideration

4. The DPLR Committee considered the instrument at its meeting on [11 January 2022](#) and made no recommendations in relation to the instrument.

SJSS Committee consideration and themes for discussion

5. The [Policy Note](#) highlights that information regarding entitlement will be shared when someone applies for a disability benefit. Individuals will be given the opportunity to opt out of this information being shared.
6. When the 2021 Regulations were discussed by the previous Social Security Committee, the then Cabinet Secretary reassured the Committee that:
“individuals will always be given a choice before sensitive data, such as details about a medical condition, are shared. We will always get explicit authorisation of the individual before requesting supporting information about them from a health board, general practitioner practice or local authority, and that is enshrined in the regulations.” - [Social Security Committee Official Report, 4 March 2021, col 22](#)
7. **The Committee may wish to explore whether this reassurance still applies to the 2022 Regulations and whether an individual could still receive ADP if consent was not given.**

For decision

8. **The Committee must decide whether or not to agree the motion, and then report to Parliament accordingly, by 11 February 2022.**
9. **The Committee is also invited to delegate responsibility for the drafting and publication of a short, factual report to the Convener and Clerk.**

POLICY NOTE**THE SOCIAL SECURITY INFORMATION-SHARING (SCOTLAND)
AMENDMENT REGULATIONS 2022****SSI 2022/XXX**

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 85(2)(g) and (5) of the Social Security (Scotland) Act 2018. Regulations made under section 85(2)(g) and (5) attract the affirmative procedure.

Purpose of the instrument

The instrument ('the Amendment Regulations') will amend the Social Security Information-sharing (Scotland) Regulations 2021 ('the 2021 Regulations') to provide additional legal gateways for information sharing that are necessary for the upcoming launch of Scottish Adult Disability Payment in 2022. The new legal gateways will ensure Scottish individuals who are entitled to Adult Disability Payment will be able to continue to access the full range of other benefits and welfare services that those on the UK equivalent benefit (Personal Independence Payment) would have access to by virtue of their disability benefit award.

Essentially the Amendment Regulations will update the prescribed functions for which information may be shared to cover additional sharing that will be required for seamless delivery of Adult Disability Payment. This includes adding a new prescribed function that allows local authorities to request social security information to enable them to accurately assess an individual's income, which is necessary for determining how much the individual should contribute towards the cost of local authority-funded social care services provided to that individual. The instrument will also add integration authorities as a prescribed person with whom social security information may be shared, allowing for information sharing to continue in situations where a prescribed local authority function has been delegated by a local authority to an integration authority.

Policy Objectives

Social Security Scotland is an Executive Agency of the Scottish Government and will eventually be making payments to 1.4 million citizens in Scotland, with a value in excess of £3 billion per year. The Scottish Government is in the process of taking over responsibility for delivering new Scottish benefits for disabled people, to replace the current disability benefits delivered by the Department for Work and Pensions on behalf of the UK Government. Social Security Scotland began administering social security benefits in September 2018, and has since started paying Carer's Allowance Supplement, Pregnancy and Baby, Early Learning and School Age Payments, Best Start Foods, Funeral Support Payments, Scottish Child Payments, Child Winter Heating Assistance, the Young Carer Grant and most recently Child Disability Payment. Adult Disability Payment will replace the UK Personal Independence Payment in 2022.

The Scottish Government is committed to delivering a system of social security founded on core principles of fairness, dignity and respect. As part of that approach, this new social security system will rely upon the ability of Social Security Scotland to share information to

others to make the application process for those benefits and related welfare services as simple and as stress free as possible for individuals.

Social Security Scotland will need to share information about Adult Disability Payment recipients with other persons in order to allow those persons to fulfil their legal duties, and to process information about individuals in order to determine their eligibility for services such as blue badges and supply of Accessible Vehicles and Equipment. The new legal gateways created by this instrument are necessary to allow information-sharing for Adult Disability Payment, enabling the devolution and delivery of Scottish disability benefits to continue without any interruption or disadvantage to Scottish individuals and Scottish local authorities or integration authorities.

Accessible Vehicles and Equipment

Regulation 2 of the 2021 Regulations lists a number of persons whom may need to supply information to the Scottish Ministers. One of the categories of person is Accessible Vehicles and Equipment suppliers who can supply vehicles or equipment to individuals who are entitled to the higher mobility rate of Child Disability Payment. When Adult Disability Payment launches, Accessible Vehicle and Equipment suppliers will also be able to supply vehicles to recipients of Adult Disability Payment at the enhanced mobility rate. Since the description of Accessible Vehicle and Equipment suppliers in Regulation 2 only refers to vehicles supplied to recipients of Child Disability Payment, the Amendment Regulations will expand the description to cover Accessible Vehicle and Equipment suppliers who provide vehicles to recipients of Adult Disability Payment as well.

In addition, Regulation 4 of the 2021 Regulations lists the functions for which a prescribed person may request social security information from Scottish Ministers. The description of the Accessible Vehicle and Equipment function in Regulation 4 refers to the description of Accessible Vehicle and Equipment suppliers in Regulation 2. Since Regulation 2 is being amended as described above, Regulation 4 will also need to be amended to reflect the changes to the Accessible Vehicles and Equipment description in Regulation 2.

Blue Badge

A local authority may request social security information from Scottish Ministers for the purpose of seven functions described in Regulation 4 of the 2021 Regulations. One of these functions relates to determining whether a person is eligible for a blue badge according to the criteria set out in the Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000. These criteria will be amended by the forthcoming Disability Assistance for Working Age People (Consequential Amendments) Regulations 2022 to include Adult Disability Payment at the enhanced rate of the mobility component as a qualifying benefit for blue badge entitlement. The description of the blue badge function in Regulation 4 of the 2021 Regulations is therefore being amended to refer to this additional criterion, enabling local authorities to request social security information to determine whether a person may be entitled to a blue badge by virtue of their Adult Disability Payment award.

Local authority care charging

The launch of Adult Disability Payment introduces a new requirement for which local authorities may need to request social security information for the purpose of ascertaining

whether or not a person is liable to contribute financially towards a relevant local authority welfare service. These include housing support services, residential care services and domiciliary care services funded, in whole or in part, by the local authority. Whether the individual should contribute to the costs of these services, and how much if so, is determined by a financial assessment carried out by the local authority. In order for the local authority to accurately assess an individual's income when carrying out this assessment, they need to know what social security assistance the individual is receiving and apply any relevant disregards or adjustments based on that information. This ultimately enables the local authority to apply charges fairly and equitably, in the interest of their clients and the authority themselves.

Local authorities may only request social security information from Scottish Ministers for the functions provided in Regulation 4 of the 2021 Regulations. Since the care charging function described above is not currently included in Regulation 4, the Amendment Regulations will add a new function that describes the care charging function.

A local authority may choose to delegate duties for social care provision to an integration authority, which is a localised public authority that co-ordinates joined-up delivery of health and social care services on behalf of Scottish local authorities and health boards. If social care provision is delegated in this way, the integration authority may take responsibility for carrying out the income assessments described above for the purpose of determining an individual's liability for social care charges. In this scenario, it will be the integration authority rather than the local authority who needs to request social security information from Scottish Ministers. As such, the Amendment Regulations will add integration authorities as another prescribed person under Regulation 2 of the 2021 Regulations, enabling social security information to be shared with them if requested for a care charging purpose.

These updates will enable Accessible Vehicle and Equipment suppliers, local authorities and integration authorities to continue requesting information about an individual's adult disability assistance entitlements after Adult Disability Payment replaces Personal Independence Payment in Scotland in 2022. The information sharing is necessary for the continued provision of essential services such as awarding blue badges or accurately assessing an individual's income to ensure they are charged fairly for social care services. Without these amendments, individuals who receive Adult Disability Payment would experience greater difficulty than those who receive Personal Independence Payment in accessing Accessible Vehicles and Equipment, blue badges, or fair charges for social care, because the providers of those services will be unable to quickly and easily verify with Social Security Scotland whether the person is or is not entitled to Adult Disability Payment. This would create a discrepancy between the service received by those on Personal Independence Payment (whose information is held by UK Department for Work and Pensions and can be requested) and those on Adult Disability Payment (whose information is held by Social Security Scotland and could not be legally requested).

Individuals are informed at the point they apply for a disability benefit that information about their entitlement to that benefit may be shared with other persons who have a legal requirement to access that data, as prescribed in section 85 of the Social Security (Scotland) Act 2018 and the 2021 Regulations (as amended). Individuals are given the opportunity to object and so opt out of that sharing should they wish and are reminded about how their information may be used and shared whenever Social Security Scotland communicates with them formally. Information will only be shared with local authorities when the individual

applies for some form of welfare service from a local authority, or shared with accredited vehicle suppliers when the individual applies for a modified vehicle from an accredited supplier.

Limitations on what information may be shared and when are set out within Regulations 3 and 5 the 2021 Regulations and are not being amended. The restriction on supplying no more information than is necessary for the purpose for which it was requested will apply to new functions that are being introduced by the Amendment Regulations (as described above).

Consultation

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 consultation sought views on both the general principles for the administration of devolved social security benefits, as well as the sharing of information with other persons in connection with social security.

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. The independent analysis of the responses along with the Scottish Government response were published on 22 February 2017¹.

Further stakeholder engagement took place with the Convention for Scottish Local Authorities (COSLA) and individual councils throughout the development and launch of Scottish disability assistance. COSLA have been consulted on the proposed legal gateways necessary to ensure local authority and integration authority services that depend on information about adult disability benefit information can continue to be delivered seamlessly as Adult Disability Payment is launched. Their advice and feedback has been factored into the development of social security information sharing policy and the drafting of these Amendment Regulations.

Consultation with the Information Commissioner's Office on these Amendment Regulations and other instruments necessary for the launch of Adult Disability Payment took place in September and October 2021, in accordance with Article 36 of the UK General Data Protection Regulation. Consulting with the Information Commissioner's Office ensures the proposed legislation is compliant with data protection legislation and privacy-by-design principles. The Information Commissioner's Office subsequently provided written advice on the Amendment Regulations, which has been considered and factored into the drafting of the Amendment Regulations and the contents of Social Security Scotland's privacy notice.

Impact Assessments

An Equalities Impact Assessment, Island Communities Impact Assessment, Data Protection Impact Assessment, Child Rights and Wellbeing Impact Assessment and a Fairer Scotland Duty Assessment have been completed on the Amendment Regulations.

¹ <https://www.gov.scot/publications/analysis-written-responses-consultation-social-security-scotland/>

There are no significant equalities or rights impacts that require further consideration in relation to the commencement of these regulations.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The Scottish Government is unaware of any evidence to suggest that Scottish businesses will be significantly impacted by the introduction of the Amendment Regulations.

Scottish Government
Social Security Directorate

December 2021