POLICY NOTE

The Social Security (Information for Audit) (Scotland) Regulations 2027

SSI 2027/XXX

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 51(2)(aa), 52, 79(1), 87B(4)(c), 87B(5) and 87C(1), (4) and (5) of the Social Security (Scotland) Act 2018 (the 2018 Act). Some of those powers are subject to negative procedure and others to affirmative procedure. The powers are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 and section 33(3) of that Act makes this instrument subject to the affirmative procedure.

Summary Box

This instrument applies to all assistance delivered under and by virtue of the 2018 Act. The Regulations will set out rules relating to the Scottish Ministers' powers to require that individuals provide information necessary for audit of the Scottish social security system. Including:

- the circumstances in which Scottish Ministers may require a written response to a request for information for audit purposes,
- the category of individuals who are exempt from providing information,
- the timescales that apply where an individual asks for a request to be withdrawn.
- the period within which Scottish Ministers must decide whether to withdraw a request; and
- the consequences where a withdrawal decision is not made within that period.

In addition, the instrument makes amendments to the six principal benefit regulations to enable payments to be suspended where an individual fails to comply with a request for audit information as well as how that suspension can be ended.

Policy Objectives

The Social Security (Scotland) Act 2018 is founded on the principle that the Scottish social security system should be efficient, effective and deliver value for money. As responsibility for devolved social security expenditure has expanded, it has become increasingly important that the Scottish Government and Social Security Scotland are able to accurately estimate the level of fraud and error within the benefits they administer.

Robust arrangements to estimate fraud and error and understanding the scale and causes of incorrect payments are essential for effective stewardship of public funds. They support the production of official statistics, enable improvements to service delivery, and provide assurance that expenditure remains within parliamentary authority.

Section 18 of the Social Security (Amendment) (Scotland) Act 2025 inserted new sections 87B to 87E into the 2018 Act. These provisions create a framework enabling Scottish Ministers to request information from individuals for the purpose of auditing the monetary value of fraud and error in the Scottish social security system, which will also support the subsequent correction of apparent errors and undertaking investigations into potential fraud.

This instrument makes further detailed provision under 51(2)(aa), 52, 87B(4)(c), 79(1), 87B(5) and 87C(1), (4) and (5) of the Social Security (Scotland) Act 2018 for the practical operation of the information for audit framework.

The Regulations support Social Security Scotland to carry out time-limited audit exercises by obtaining up-to-date information from a sample of individuals in order to produce statistically robust estimates of fraud and error in the social security system. They also seek to balance effective stewardship of public funds with the need to ensure individuals are treated with dignity, fairness and respect. This is achieved through targeted exemptions, safeguards for people who may face particular barriers to participation, and clear processes governing requests for information and their withdrawal.

The Regulations also include provisions to ensure audit exercises can continue to operate effectively where an individual does not engage with a request for information. This helps maintain the integrity of fraud and error estimates while also ensuring assistance continues to be paid correctly where entitlement can be confirmed.

Requiring information

Where the usual routes of engagement via video, telephone or face-to-face discussion are not reasonable for an individual to participate in, or where documentary evidence is required (for example a birth certificate), Scottish Ministers may require a response to an audit request in a written form.

The Regulations provide statutory exemptions for certain types of individuals and a withdrawal process, while additional exclusions associated with relevant administrative scenarios will be set out separately in published guidance.

Statutory exemptions in schedule 1 provide for where there is a clear justification for excluding a category of person from audit participation. One category of statutory exemption has been identified, where an individual has a terminal illness and, on the date of an audit request, is in a hospice or receiving palliative care in any setting for a progressive disease in its final stages.

The additional administrative exclusions to be set out in published operational guidance will generally relate to the administrative status of an individual's benefit case and identify circumstances where a case is not suitable for inclusion in an audit exercise. This will help ensure the audit sample remains representative while avoiding overlap with other benefit processes or statutory functions and reducing unnecessary burden on individuals. Publishing these administrative exclusions in guidance will provide flexibility to the audit process by avoiding the need to amend regulations whenever operational insight identifies the need for an appropriate change to exemptions, or where benefit rules change.

Withdrawal requests

Alongside the prescribed exemptions, the Regulations set out the timescales which are to apply to the process of an individual seeking the withdrawal of an audit request for information, and responding to that request. Individuals will have 15 working days to ask for

an audit request to be withdrawn and to explain why participation would not be appropriate in their circumstances.

This period may be extended by a further 10 working days where Scottish Ministers are satisfied that it was not reasonably practicable for the individual to meet the original 15 working day deadline. Sections 87D and 87E of the 2018 Act also provide rights to independent advocacy and support throughout the audit process.

Scottish Ministers will have 20 working days after receiving a withdrawal request to decide whether there is good reason to withdraw the request or to confirm that the individual remains required to provide the information requested. If they fail to do so the audit request for information falls away automatically, but Scottish Ministers must still notify the individual.

Suspensions

If the individual continues to fail to provide the required audit information, Scottish Ministers may then suspend payments of the benefit in question, and give a final opportunity to the individual to supply the information. In light of a continued failure to respond, suspension may be appropriate where there is uncertainty about an individual's continuing entitlement and also indicate there may be safeguarding concerns and therefore that further enquiries may be required. The policy intention is that individuals will be given more than one opportunity to respond to an audit request before suspension is contemplated, including when being given notification that a suspension may follow; full details of these administrative processes will be set out in published guidance. This will help protect public funds and minimise clients' exposure to overpayments accruing by preventing payments from continuing where they may be incorrect while entitlement is clarified.

Where an individual provides the audit information requested following a suspension, the suspension can be lifted and any assistance due to the individual during the period of suspension repaid. Where an individual continues to fail to respond to a request for audit information, it is possible that a separate request for information under section 54(1) of the 2018 Act will be made to the individual to allow the Scottish Ministers to understand whether any change in the individual's circumstances has occurred. The outcome of that request for information under s54(1) will then follow the usual statutory processes already in place.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, **The Social Security (Information for Audit) (Scotland) Regulations 2027** are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU, because each EU member state has its own social security laws. EU rules co-

ordinate these separate social security systems between member states to support freedom of movement, but this legislation is not relevant to social security co-ordination specifically.

Consultation

Before making regulations under section 87B(5), a statutory consultation entitled *'Estimating fraud and error within the Scottish social security system'* was carried out between 19 March and 10 June 2026, as required by section 87B(6).

A total of 31 responses were received from individuals, third sector organisations and local authorities. A full list of respondents who agreed to the publication of their details is available on the Scottish Government website alongside the consultation responses.

Scottish Commission on Social Security – Scrutiny of the draft Regulations

Under section 97 of the 2018 Act, the Scottish Ministers have consulted the Scottish Commission on Social Security (SCoSS). SCoSS published their scrutiny report on <date>. The Scottish Government's response was sent to SCoSS on <date>.

Impact Assessments

An Equality Impact Assessment, a Fairer Scotland Duty Assessment, a Children's Rights and Wellbeing Impact Assessment and Island Communities Impact Assessment will be laid and published alongside the regulations.

Financial Effects

The Cabinet Secretary for Social Justice and Housing confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, on local government or on business.

Scottish Government
Social Security Directorate
[date]