



# Social Security (Scotland) Act 2018

## 2018 asp 9

### PART 2

#### GIVING OF ASSISTANCE BY SCOTTISH MINISTERS

#### CHAPTER 5

#### RECOVERY OF VALUE OF ASSISTANCE

##### *Assistance given in error*

#### **63 Liability for assistance given in error**

- (1) An individual is liable to pay the Scottish Ministers the value of any assistance that was given to the individual due to an error (but see section 64).
- (2) For the avoidance of doubt, the individual's liability under subsection (1) is limited to the difference in value between—
  - (a) the assistance that was given, and
  - (b) the assistance (if any) that would have been given had the error not been made.
- (3) If the assistance was given in a form other than money, its value for the purposes of this section is what giving it cost the Scottish Ministers (excluding any administration costs).
- (4) In this section and section 64, references to an error are to—
  - (a) an error in the performance of a function conferred by virtue of this Part, including a decision under section 50(1) being made—
    - (i) wrongly, or
    - (ii) correctly but on the basis of—
      - (A) incorrect information, or
      - (B) an assumption which proves to be wrong,
  - (b) a new decision under section 50(1) not being made after an assumption on the basis of which an earlier decision was made has proved to be wrong.

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*Status: This is the original version (as it was originally enacted).*

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#### **64 Exclusion from liability**

- (1) An individual has no liability under section 63(1) in respect of assistance given due to an error if the error is neither—
  - (a) the individual’s fault, nor
  - (b) the kind of error that an individual could reasonably be expected to notice.
- (2) For the purpose of this section, an error is an individual’s fault if it is caused or contributed to by the individual—
  - (a) providing false or misleading information,
  - (b) failing to notify the Scottish Ministers about a change in circumstances in breach of a duty to do so under section 56, or
  - (c) causing another person to do either of those things.
- (3) In considering whether an error is of a kind that an individual could reasonably be expected to notice, the following are amongst the matters to which regard is to be had—
  - (a) the extent to which the value of the assistance given in error exceeds the value of the assistance that would have been given (if any) had the error not been made,
  - (b) whether any information given to the individual by the Scottish Ministers prior to, or immediately after, the assistance being given would have alerted a reasonable person to the fact that a decision had been, or was to be, made on the basis of incorrect information or a wrong assumption.
- (4) In—
  - (a) subsection (2)(a), the reference to providing information includes making a statement,
  - (b) subsection (3)(b), the reference to information given to the individual by the Scottish Ministers does not include information explaining why the Ministers consider the assistance to have been given in error.

#### **65 Consideration for debtor’s circumstances**

- (1) This section applies to decisions of the Scottish Ministers about—
  - (a) whether to seek to recover money owed under section 63, and
  - (b) the method by which money owed under that section is to be recovered.
- (2) In making a decision to which this section applies, the Scottish Ministers must have regard to the financial circumstances of the individual who owes the money (so far as those circumstances are known to the Ministers).

#### **66 Prescription of liability**

- (1) Schedule 1 (obligations affected by prescriptive period of five years) of the Prescription and Limitation (Scotland) Act 1973 is amended as follows.
- (2) After paragraph 1(b) insert—
  - “(ba) to any obligation to make payment to the Scottish Ministers arising from section 63 of the Social Security (Scotland) Act 2018.”.

**67 Exclusion of other rights of recovery**

- (1) An individual given assistance in error has no non-statutory obligation based on redress of unjustified enrichment to pay the value of that assistance to the Scottish Ministers.
- (2) In subsection (1)—
  - (a) “non-statutory obligation” means an obligation that arises from a rule of law rather than an enactment,
  - (b) the reference to assistance being given in error is to be construed in accordance with section 63(4).

**68 First-tier Tribunal’s jurisdiction**

The Scottish Ministers may by regulations transfer to the First-tier Tribunal for Scotland some or all of the competence and jurisdiction that a sheriff has in relation to the recovery of money owed under section 63.

**69 Liability where assistance given for period after death**

- (1) An individual’s estate is liable to pay the Scottish Ministers the value of any assistance that was given to the individual under section 24 in respect of a period after the individual’s death.
- (2) For the avoidance of doubt, assistance may be regarded as having been given to an individual for the purposes of this section despite being given after the individual’s death.

*Funeral expense assistance*

**70 Liability of deceased’s estate**

- (1) The value of funeral expense assistance given in connection with an individual’s funeral is to be treated as a funeral expense that the individual’s estate is liable to pay the Scottish Ministers.
- (2) If the assistance was given in a form other than money, its value for the purposes of this section is what giving it cost the Scottish Ministers (excluding any administration costs).