

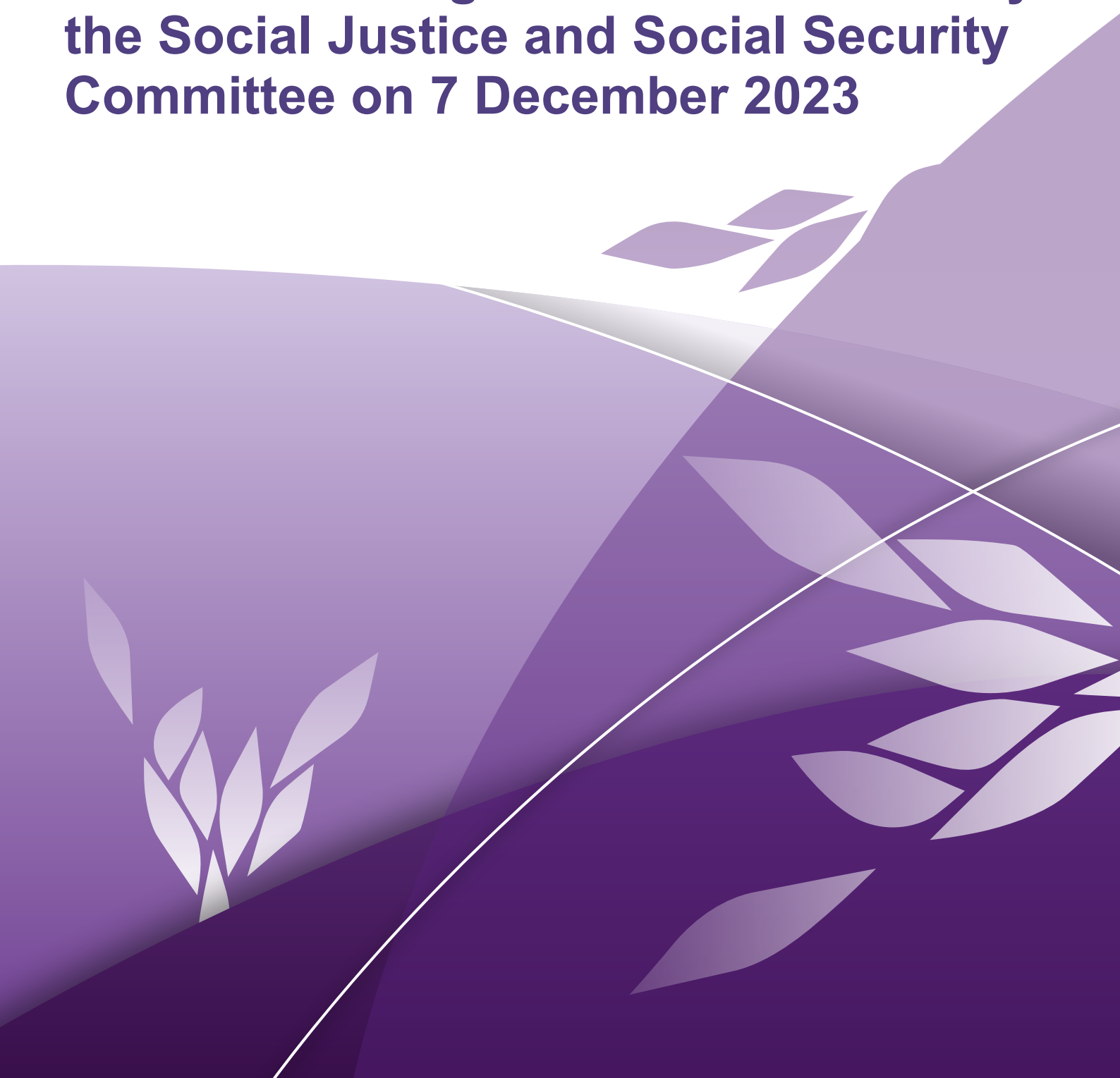


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## **Social Justice and Social Security Committee**

# **Subordinate Legislation considered by the Social Justice and Social Security Committee on 7 December 2023**



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# Social Justice and Social Security Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Social Justice excluding matters relating to housing and tenants' rights.



[sjss.committee@parliament.scot](mailto:sjss.committee@parliament.scot)

# Committee Membership



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Scottish National Party



**Deputy Convener**  
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Scottish National Party



**Jeremy Balfour**  
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and Unionist Party



**Marie McNair**  
Scottish National Party



**Paul O'Kane**  
Scottish Labour

# Introduction

1. This report sets out the Social Justice and Social Security Committee's consideration of [Social Security Information-sharing \(Scotland\) Amendment Regulations 2024](#) at its meeting on 7 December 2023 (32<sup>nd</sup> meeting, 2023). [The minutes of the meeting](#) have been published on the Committee's webpage. [The Official Report](#) of the meeting is available on the Scottish Parliament's website.

# The Social Security Information-sharing (Scotland) Amendment Regulations 2024

2. The Social Security Information-sharing (Scotland) Amendment Regulations 2024 were laid on 7 November 2023. This instrument is subject to the affirmative procedure, which means it is for the Committee to recommend to the Parliament whether the draft regulations should be approved.
3. According to the [Policy Note](#) and [Explanatory Note](#), the instrument amends existing provisions in the Social Security Information-sharing (Scotland) Regulations 2021 regarding the sharing of information obtained by the Scottish Ministers with local authorities and the Public Guardian for further and specified purposes.
4. Social Security Scotland supports some of the most vulnerable people and makes referrals to other organisations, services or forms of help where they believe doing so could help a person's wellbeing or financial circumstances. It also interacts with people in situations where it is apparent that they may be at risk of harm.
5. The regulations extend the purposes for which information can be shared with local authorities and the Office of the Public Guardian to include safeguarding concerns. The regulations would allow Social Security Scotland to share information with:
  - a local authority, who could then investigate using their powers under social work legislation
  - the [Office of the Public Guardian](#), who could then investigate where the property or finances of an incapable adult appear to be at risk.
6. The Scottish Government highlights that none of the above relates to emergency situations and information can always be shared if someone is in immediate danger. These regulations deal with situations where there is a suspected risk of harm identified by Social Security Scotland employees – a lower level concern than immediate threat or risk to life.
7. The Policy Note specifies that explicit consent must be obtained unless it cannot be given or cannot reasonably be obtained, for example in situations of coercive control, domestic abuse, or where the individual doesn't realise they are at risk or lacks capacity to provide consent.
8. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [14 November 2023](#) and made no recommendations in relation to this instrument.

# Cabinet Secretary for Social Justice at Committee, 7 December 2023

9. At its meeting on 7 December 2023, the Social Justice and Social Security Committee heard from Shirley-Anne Somerville, Cabinet Secretary for Social Justice.
10. During discussion, Members asked about the training and guidance in place to make sure data sharing is proportionate. The Cabinet Secretary explained that as well as mandatory data protection training, the dedicated safeguarding team gets training and guidance on identifying people at risk of harm and there are processes in place for staff to act quickly and share information sensitively.
11. With regards to the practical changes the regulations will bring about, the Cabinet Secretary said that the risk of financial harm and abuse has been included as a reason for referrals. She added that it is important to recognise financial abuse as a concern for a range of demographics, for example older people and women in domestic abuse and financial control situations. She added that a clear process with a monitoring system of records has been developed to best support the most vulnerable clients.
12. Members enquired about ways in which clients get informed about how information about them is shared. The Cabinet Secretary explained that there are clear data protection and privacy notices on the Scottish Government website. She added that—
  - ” The sharing of information is an exceptionally sensitive matter, and a great deal of care must be taken to ensure that it is done lawfully. That is why those statements are made as people go through application processes. When it is not possible to ask a client for their consent for their information to be shared, the regulations still allow for that to happen. <sup>1</sup>
13. On cases where there can be no explicit consent to sharing information because of difficult circumstances for a client, the Cabinet Secretary emphasised the importance of handling information sensitively and stated that—
  - ” There is the legal ability for a concern to be handed over to the relevant authority, which can then use its own powers and usual manner of investigation to look into it. It would be for those authorities to determine what to do with that information and how to deal with the individual concerned. <sup>2</sup>
14. Members asked for clarification on how the regulations might interact with power of attorney<sup>i</sup>, especially if an individual is at risk of harm from the person holding the power of attorney. Officials said that there are provisions in the regulations for all possible abuse cases in which the holder of a power of attorney is involved with a client, whether or not they are the person causing the harm requiring a referral to the Office of the Public Guardian or a local authority.

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<sup>i</sup> **Power of attorney** is a witnessed legal agreement giving an adult legal authority to act or make decisions on another adult's behalf.



15. The Policy note states that the regulations apply to a person with whom Social Security Scotland has come into contact with and Members were interested to understand who, other than clients this could apply to and how these individuals would be informed about how their information may be used. The Cabinet Secretary said that in some situations, local delivery teams might have concerns about other household members than the one they are dealing with. It could be a parent or a carer of a child and concerns about potential mental health issues or domestic abuse. In such situations, there would be an attempt to achieve consent and the processes of the regulations would apply if consent could not be given or was deemed not appropriate.
16. Following the evidence session, the Cabinet Secretary for Social Justice moved motion [S6M-11172](#) —That the Social Justice and Social Security Committee recommends that the Social Security Information-sharing (Scotland) Amendment Regulations 2024 [draft] be approved. The motion was agreed to without division.

## **Recommendation**

17. The Social Justice and Social Security Committee recommends that the Social Security Information-sharing (Scotland) Amendment Regulations 2024 [draft] be approved.

- 1 Social Justice and Social Security Committee, Official Report, 07 December 2023, Col  
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- 2 Social Justice and Social Security Committee, Official Report, 07 December 2023, Col  
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