

Social Security (Scotland) Bill

1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 11	Schedule 1
Section 12	Schedule 2
Section 13	Schedule 3
Section 14	Schedule 4
Section 15	Schedule 5
Section 16	Schedule 6
Section 17	Schedule 7
Sections 18 to 57	Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

George Adam

77 In section 1, page 1, line 9, at end insert—

<() the delivery of social security is a public service,>

Alison Johnstone

Supported by: Mark Griffin

1 In section 1, page 1, line 11, at end insert—

<() the Scottish social security system is to contribute to reducing poverty in Scotland,>

Jeane Freeman

4 In section 1, page 1, leave out lines 12 and 13

Mark Griffin

102 In section 1, page 1, line 13, at end insert—

<() equality of outcome for persons who have one or more protected characteristics (within the meaning of section 4 of the Equality Act 2010) is to be embedded in the Scottish social security system,>

Mark Griffin

78 In section 1, page 1, line 15, at end insert—

<() the Scottish social security system is to be designed with aims which include reducing the number of disabled people living in poverty,>

Jeane Freeman

- 5 In section 1, page 1, line 17, after <which> insert <—
()>

Jeane Freeman

- 6 In section 1, page 1, line 17, after <first> insert <, and
() promote the goals of equality and non-discrimination>

Pauline McNeill

- 113 In section 1, page 1, line 18, at end insert—
<() the Scottish social security system has a role in promoting improved health and
mental wellbeing for all individuals accessing the system.>

After section 1

Adam Tomkins

- 57 After section 1, insert—
<Effect of the principles
(1) A court or tribunal in civil or criminal proceedings may take the Scottish social security principles into account when determining any question arising in the proceedings to which the principles are relevant.
(2) Breach of the principles does not of itself give rise to grounds for any legal action.>

Mark Griffin

- 138 After section 1, insert—
<The Scottish social security principles: duty on the Scottish Ministers
The Scottish Ministers must, in exercising their functions under this Act, have regard to the Scottish social security principles.>

Jeane Freeman

- 7* After section 1, insert—
<Scottish Ministers' duty to promote take-up

Scottish Ministers' duty to promote take-up

The Scottish Ministers must—

- 5 (a) keep under consideration what steps they could take to ensure that individuals are given what they are eligible to be given under the Scottish social security system, and
(b) if the Ministers consider it appropriate to do so, take any of the steps identified by that consideration.>

Mark Griffin

- 7A* As an amendment to amendment 7, line 4, leave out from <must> to <take> in line 4 and insert <have—

- (a) a duty>

Mark Griffin

7B* As an amendment to amendment 7, leave out lines 8 and 9 and insert—

<(b) a role in encouraging individuals to apply for the other social security assistance that they are eligible to be given.

- (2) In this section, “other social security assistance” means social security schemes other than those listed in exceptions 1 to 10 in Section F1 of Part 2 of schedule 5 of the Scotland Act 1998.>

Jeane Freeman

8 After section 1, insert—

<Recognition of importance of independent advice and advocacy

- (1) In fulfilling their duty under section (*Scottish Ministers’ duty to promote take-up*)(a), the Scottish Ministers must have regard to the role that—

- (a) independent advice, and
- (b) independent advocacy,

can play in ensuring that individuals are given what they are eligible to be given under the Scottish social security system.

- (2) The steps taken by the Scottish Ministers under section (*Scottish Ministers’ duty to promote take-up*)(b) must include steps in relation to providing, or ensuring the provision of, information about—

- (a) independent advice, and
- (b) independent advocacy,

for individuals applying for, or receiving, assistance through the Scottish social security system.

- (3) For the purposes of this section, advice and advocacy are independent if they are provided by a person other than the Scottish Ministers.>

Jeane Freeman

9 After section 1, insert—

<Right to advocacy

- (1) Every individual with a mental disorder has a right of access to independent advocacy in connection with the determination of the individual’s entitlement to be given assistance under the Scottish social security system.

- (2) It is the duty of the Scottish Ministers to ensure that independent advocacy services are available to the extent necessary for that right to be exercised by the individuals who have it.

- (3) In this section—

“advocacy services” means services of support and representation that are made available for the purpose of enabling an individual to whom they are provided to have as much control of, or capacity to influence, the decisions that determine the individual’s entitlement to be given assistance under the Scottish social security system as is, in the circumstances, appropriate,

“mental disorder” has the meaning given in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

- (4) For the purposes of this section, advocacy services are independent if they are provided by a person other than the Scottish Ministers.>

Jeremy Balfour

58 After section 1, insert—

<Information and advice

- (1) An individual applying, or considering applying, for assistance through the Scottish social security system is entitled to independent information and advice about in particular—
- (a) how to apply to the Scottish Ministers for assistance,
 - (b) the process for determining an individual’s entitlement to assistance,
 - (c) the types of assistance to which the individual may be entitled,
 - (d) income maximisation,
 - (e) the content of the charter.
- (2) The information and advice must be accessible to, and proportionate to the needs of, the individuals to whom it is provided.
- (3) The Scottish Ministers must take steps to ensure the availability of information and advice to individuals applying, or considering applying, for assistance.
- (4) The Scottish Ministers may delegate the functions set out in this section to another person.
- (5) For the purposes of this section, information and advice are independent if they are provided by a person other than the Scottish Ministers.>

Jeremy Balfour

59 After section 1, insert—

<Independent advocacy services

- (1) An individual who has applied for assistance through the Scottish social security system is entitled to independent advocacy services.
- (2) On receiving an application for assistance from an individual, the Scottish Ministers are to—
- (a) notify the individual of the individual’s entitlement to independent advocacy services,
 - (b) provide information about independent advocacy services available to the individual.
- (3) The Scottish Ministers may delegate a function set out in subsection (2) to another person.

- (4) The Scottish Ministers may by regulations make further provision about independent advocacy services, in particular—
 - (a) the type of organisation that may provide such services,
 - (b) the type of support that may be provided,
 - (c) the duration of that support.
- (5) The Scottish Ministers must ensure that independent advocacy services are adequately resourced and available to individuals applying for assistance.
- (6) In this section, “advocacy services” means services of support and representation that are made available for the purpose of enabling an individual to whom they are provided to have as much control of, or capacity to influence, the decisions that determine the individual’s entitlement to be given assistance under the Scottish social security system as is, in the circumstances, appropriate.
- (7) For the purposes of this section, advocacy services are independent if they are provided by a person other than the Scottish Ministers.>

Ruth Maguire

112 After section 1, insert—

<Recognition of importance of inclusive communication

- (1) In fulfilling their duty under section (*Scottish Ministers’ duty to promote take-up*)(a), the Scottish Ministers must have regard to the importance of communicating in an inclusive way.
- (2) In subsection (1), “communicating in an inclusive way” means communicating in a way that ensures individuals who have difficulty communicating (in relation to speech, language or otherwise) can receive information and express themselves in ways that best meet each individual’s needs.>

Mark Griffin

114 After section 1, insert—

<Income maximisation strategy

- (1) The Scottish Ministers must, within one year of this section coming into force, publish a strategy designed to encourage individuals to apply for the social security assistance that they are entitled to be given.
- (2) The strategy must set out—
 - (a) the types of assistance in relation to which the Scottish Ministers are to set a target for the uptake of the assistance,
 - (b) the target for the uptake of each type of assistance mentioned in paragraph (a),
 - (c) the target for the uptake in Scotland of all social security assistance.
- (3) In preparing the strategy, the Scottish Ministers must consult such persons as they consider appropriate.
- (4) The persons consulted must include individuals who have received social security assistance.
- (5) As soon as practicable after the strategy has been published under subsection (1), the Scottish Ministers must lay a copy before the Scottish Parliament.

- (6) In this section, “social security assistance” means—
- (i) assistance given through the Scottish social security system,
 - (ii) social security schemes other than those listed in exceptions 1 to 10 in Section F1 of Part 2 of schedule 5 of the Scotland Act 1998.>

Mark Griffin

115 After section 1, insert—

<Review of strategy

- (1) The Scottish Ministers must review the strategy—
 - (a) within 2 years of its being published in accordance with section (*Income maximisation strategy*)(1),
 - (b) thereafter, within 5 years of the last review.
- (2) Following a review, the Scottish Ministers must—
 - (a) set out the progress made within the review period towards—
 - (i) meeting the target for each type of assistance mentioned in section (*Income maximisation strategy*)(2),
 - (ii) meeting the target for the uptake in Scotland of all social security assistance,
 - (b) publish—
 - (i) a revised strategy, or
 - (ii) a statement indicating that they consider that the strategy should not be revised.
- (3) Subsections (2) to (4) of section (*Income maximisation strategy*) apply to a revised strategy as they apply to the strategy published under subsection (1) of that section.
- (4) As soon as practicable after a revised strategy has been published under subsection (2)(b)(i), the Scottish Ministers must lay a copy before the Scottish Parliament.
- (5) In this section, “review period” means—
 - (a) the period of 2 years beginning with the day on which the strategy under section (*Income maximisation strategy*)(1) is published,
 - (b) in respect of a revised strategy, the period of 5 years beginning with the day on which the previous strategy was published.>

Mark Griffin

139 After section 1, insert—

<Accessibility of information

- (1) Every individual has a right to request and be given, where practicable, the information mentioned in subsection (2) in a form which is accessible to, and proportionate to the needs of, that individual.
- (2) The information mentioned in subsection (1) is—
 - (a) a copy of the charter,
 - (b) a form to apply for assistance,

- (c) a notice of determination,
- (d) a form to request a re-determination,
- (e) a notice of re-determination,
- (f) a form to bring an appeal against a determination,
- (g) any guidance issued under, or in connection with, this Act,
- (h) any other document which the Scottish Ministers are required to publish in accordance with this Act.>

Alison Johnstone

140 After section 1, insert—

<Right to consideration of entitlement to other assistance

An individual who applies for any type of assistance under this Act has the right to be considered for all other assistance to which, in the opinion of the Scottish Ministers, the individual might be entitled to receive through the Scottish social security system.>

Jeane Freeman

10 After section 1, insert—

<Restriction of private-sector involvement

Restriction on private-sector involvement in assessments

- (1) An individual may not be required, in order to be given assistance under the Scottish social security system, to undergo an assessment of physical condition or mental health that is carried out by another individual who is not acting in the course of employment by a public body.
- (2) In subsection (1), “public body” means any of the following—
 - (a) a Minister of the Crown,
 - (b) a person established by an enactment,
 - (c) a body comprised solely of persons described by this subsection,
 - (d) a body corporate that has no members other than (either or both)—
 - (i) persons described by this subsection,
 - (ii) persons acting on behalf of persons described by this subsection.
- (3) Subsection (1) does not preclude its being made a requirement for being given assistance under the Scottish social security system that an individual be—
 - (a) in receipt of, or
 - (b) eligible or entitled to receive,
 other assistance, despite entitlement to that other assistance depending on the fulfilment of a requirement that subsection (1) would preclude from being imposed in relation to assistance under the Scottish social security system.
- (4) In subsection (3), “other assistance” means assistance other than assistance under the Scottish social security system.>

Section 2

Pauline McNeill

- 141 In section 2, page 1, line 21, at beginning insert <The Scottish Ministers are, by regulations, to set out and from time to time revise>

Pauline McNeill

- 142 In section 2, page 2, line 21, leave out from <is> to end of line 22

Jeane Freeman

- 11 In section 2, page 2, line 1, leave out <their functions in the Scottish social security system> and insert <the functions conferred on them by this Part and Parts 2 and 3>

Jeremy Balfour

- 60 In section 2, page 2, line 1, at end insert—
<() from any body established by the Scottish Ministers with the purpose of exercising functions in the Scottish social security system, and>

Section 3

Pauline McNeill

- 143 In section 3, page 2, line 6, leave out <publish the charter> and insert <lay before the Scottish Parliament draft regulations which set out the first charter>

Pauline McNeill

- 144 In section 3, page 2, line 8, leave out first <the> and insert <draft regulations setting out the first>

Jeremy Balfour

- 145 In section 3, page 2, line 9, at end insert—
<() The Scottish Ministers must ensure, as far as is reasonably practicable, that the persons consulted include, in particular, a representative proportion of persons such as are mentioned in paragraphs (a), (b) and (d) of subsection (3) who have—
(a) a physical impairment,
(b) a mental impairment.>

Mark Griffin

- 103 In section 3, page 2, line 10, after <include> insert <—
(a)>

Mark Griffin

- 104 In section 3, page 2, line 18, at end insert—
<() child benefit under section 141 of the Social Security Contributions and Benefits Act 1992,>

Mark Griffin

- 105** In section 3, page 2, line 23, at end insert <and
(b) persons and organisations who work with or represent individuals living in households whose income is adversely affected, or whose expenditure is increased, because a member of the household has one or more protected characteristics (within the meaning of section 4 of the Equality Act 2010).>

Jeane Freeman

- 12** In section 3, page 2, line 23, at end insert—
<() For the purpose of subsection (2), it is immaterial that anything done by way of consultation was done before the Bill for this Act was passed or after that but before this section comes into force.>

Section 4

Pauline McNeill

- 146** In section 4, page 2, line 25, at beginning insert <Where the Scottish Parliament has approved draft regulations setting out the first charter or a revised charter,>

Section 5

Jeane Freeman

- 13** In section 5, page 2, line 32, leave out from <such> to end of line 33 and insert—
<() the Scottish Commission on Social Security, and
() any other persons they consider appropriate.>

Mark Griffin

- 106** In section 5, page 2, line 34, after <include> insert <—
(a)>

Mark Griffin

- 107** In section 5, page 2, line 35, at end insert <and
(b) persons and organisations who work with or represent individuals living in households whose income is adversely affected, or whose expenditure is increased, because a member of the household has one or more protected characteristics (within the meaning of section 4 of the Equality Act 2010).>

Pauline McNeill

- 147** In section 5, page 3, line 7, at end insert <and—
<() where they have decided to make changes to the charter, lay before the Parliament draft regulations setting out a revised charter.>

After section 5

Adam Tomkins

61 After section 5, insert—

<Effect of the charter

- (1) A court or tribunal in civil or criminal proceedings may take the charter into account when determining any question arising in the proceedings to which the charter is relevant.
- (2) Breach of the charter does not of itself give rise to grounds for any legal action.>

Mark Griffin

116 After section 5, insert—

<Right to social security

Due regard to right to social security

- (1) The persons mentioned in subsection (2) must have due regard to the right to social security when—
 - (a) exercising functions under this Act,
 - (b) exercising functions under any other enactment which contains provisions exercising the powers provided for in Part 3 of the Scotland Act 2016.
- (2) The persons are—
 - (a) the Scottish Ministers,
 - (b) any other Scottish public authority.
- (3) A court or tribunal must have due regard to the right to social security when—
 - (a) interpreting the provisions of this Act,
 - (b) interpreting the scope of any other enactment which contains provisions exercising the powers provided for in Part 3 of the Scotland Act 2016,
 - (c) called to determine any question relevant to the application of the duty in subsection (1).
- (4) In this section and section (*Interpreting the right to social security*), the right to social security is to be interpreted consistently with the right to social security protected by the Covenant on Economic, Social and Cultural Rights.
- (5) For the purposes of this section and section (*Interpreting the right to social security*), the Covenant on Economic, Social and Cultural Rights is the International Covenant on Economic, Social and Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.
- (6) The Scottish Ministers may by regulations modify subsection (5) to take account of any optional protocol to the Covenant on Economic, Social and Cultural Rights which the United Kingdom—
 - (a) has ratified, or
 - (b) has signed with a view to ratification.>

Mark Griffin

117 After section 5, insert—

<Interpreting the right to social security

- (1) Where a person mentioned in section (*Due regard to right to social security*)(2) is exercising the duty under subsection (1) of that section, the person must take account of—
 - (a) the General Comments of the Committee on Economic, Social and Cultural Rights, including General Comment 19 (“The right to social security”), adopted on 23 November 2007, and
 - (b) any concluding observations of the Committee on Economic, Social and Cultural Rights in respect of the United Kingdom’s compliance with the Covenant on Economic, Social and Cultural Rights.
- (2) A court or tribunal determining a question which has arisen in connection with the duty under section (*Due regard to right to social security*)(1) must take into account—
 - (a) the General Comments of the Committee on Economic, Social and Cultural Rights, including General Comment 19 (“The right to social security”), adopted on 23 November 2007, and
 - (b) any concluding observations of the Committee on Economic, Social and Cultural Rights in respect of the United Kingdom’s compliance with the Covenant on Economic, Social and Cultural Rights,so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.
- (3) In considering whether the duty in section (*Due regard to right to social security*)(1) has been discharged, a court or tribunal must have regard to—
 - (a) the right to progressive realisation of the right to social security consistent with the maximum resources available to the Scottish Ministers,
 - (b) the core elements of the right to social security identified by General Comment 19 (“The right to social security”),
 - (c) that the right to social security should be enjoyed without discrimination.
- (4) In considering whether the duty in section (*Due regard to right to social security*)(1) has been discharged, any court or tribunal may have regard to—
 - (a) any international obligation of the United Kingdom relevant to the right to social security,
 - (b) any comparative case law on the right to social security.>

Before section 6

Alison Johnstone

14 Before section 6, insert—

<Assistance take-up targets

- (1) The Scottish Ministers must by regulations set targets for the take-up of each type of assistance described in Chapter 2 of Part 2.
- (2) The Scottish Ministers must ensure that the targets are met.

- (3) Regulations under subsection (1) may make provision about data collection.>

Section 6

Jeremy Balfour

- 62 In section 6, page 3, line 19, at end insert—

- <() information about the performance of any body established by the Scottish Ministers for the purpose of exercising functions in the Scottish social security system, and
- () a description of what any such body has done in that year to meet the expectations of that body set out in the Scottish social security charter.>

Mark Griffin

- 79 In section 6, page 3, line 19, at end insert—

- <() information on how assistance provided under this Act has reduced the number of disabled people living in poverty, and
- () information on the extent to which assistance provided under this Act has reduced the number of disabled people living in poverty.
- () For the purposes of this Act, a disabled person is considered to be living in poverty if the person’s household’s equivalised net income for the year is less than 60% of median equivalised net household income for the year.
- () In this Act—
 - () “equivalised”, in relation to household income, means adjusted to take account of variations in household size and composition,
 - () “median equivalised net household income” means the median equivalised net household income for the United Kingdom.>

Mark Griffin

- 108 In section 6, page 3, line 19, at end insert—

- <(c) an assessment of how the Scottish social security system has affected the circumstances of persons living in households whose income is adversely affected, or whose expenditure is increased, because a member of the household has one or more protected characteristics (within the meaning of section 4 of the Equality Act 2010), and
- (d) a description of the data for the purpose of monitoring equality of opportunity used in preparing the report.
- (3) The first report under this section is to include a plan setting out the Scottish Ministers’ intentions to collect and publish data for the purpose of monitoring equality of opportunity where existing data sources are not sufficient for the preparation of the report.>

After section 6

Jeane Freeman

- 15 After section 6, insert—

<**Scottish Commission on Social Security**

- (1) The Scottish Commission on Social Security is established.
- (2) The Commission is a body corporate.
- (3) Schedule (*Scottish Commission on Social Security*) makes further provision about the Commission.>

Jeane Freeman

16 Before schedule 1, insert—

<SCHEDULE

(*introduced by section (Scottish Commission on Social Security)*)

SCOTTISH COMMISSION ON SOCIAL SECURITY

5

PART 1

OPERATION AND COMPOSITION OF THE COMMISSION

CHAPTER 1

STATUS

Independence

- 10 1 (1) In performing its functions, the Scottish Commission on Social Security is not subject to the direction or control of any member of the Scottish Government.
- (2) This paragraph is subject to any contrary provision in this or any other enactment.

Exclusion of Crown status

- 2 The Commission—
- 15 (a) is not a servant or agent of the Crown, and
- (b) does not enjoy any status, immunity or privilege of the Crown.

CHAPTER 2

POWERS

General powers

- 20 3 The Commission may do anything which appears to it—
- (a) to be necessary or expedient for the purposes of, or in connection with, the performance of its functions, or
- (b) to be otherwise conducive to the performance of its functions.

Access to information

- 25 4 (1) The Commission—
- (a) has a right of access at reasonable times to any relevant information that it may reasonably require for the purpose of performing its functions, and
- (b) may require any person who holds or is accountable for relevant information to provide at reasonable times any assistance or explanation that the Commission
- 30 may reasonably require for the purpose of—
- (i) performing its functions, or

(ii) exercising the right conferred by paragraph (a).

(2) In sub-paragraph (1), “relevant information” means information in the possession or under the control of—

- 35
- (a) any member of the Scottish Government,
 - (b) a local authority,
 - (c) any person, or person of such description, as is specified by the Scottish Ministers in regulations.

(3) Sub-paragraph (1) is subject to any enactment or rule of law that prohibits or restricts—

- 40
- (a) the disclosure of any information, or
 - (b) the giving of any assistance or explanation.

CHAPTER 3

PROCEDURE

Committees

45 5 (1) The Commission may establish committees and sub-committees.

(2) The membership of the Commission’s committees and sub-committees may include (but may not consist entirely of) persons who are not members of the Commission but those persons are not entitled to vote at meetings.

Regulation of procedure

50 6 The Commission may regulate its own procedure (including quorum) and that of its committees and sub-committees.

Authority to perform functions

7 (1) The Commission may authorise—

- 55
- (a) any of its members, or
 - (b) any of its committees or sub-committees,
- to perform such of its functions (and to such extent) as it may determine.

(2) The giving of authority under sub-paragraph (1) does not—

- (a) affect the Commission’s responsibility for the performance of the function, or
- (b) prevent the Commission from performing the function itself.

Validity of things done

60 8 The validity of anything done by the Commission, its committees or sub-committees is not affected by—

- (a) a vacancy in its membership,
 - (b) a defect in the appointment of a member,
 - (c) the disqualification of a person as a member after appointment.
- 65

CHAPTER 4

FINANCE

Remuneration and expenses of members

- 9 (1) The Commission's members are entitled to be paid by the Scottish Ministers such—
- 70 (a) remuneration, and
- (b) sums in respect of expenses incurred in performing their functions as members of the Commission,
- as the Ministers determine.
- (2) In sub-paragraph (1)—
- 75 (a) the reference to the Commission's members includes a person who is not a member of the Commission but is a member of one of the Commission's committees or sub-committees, and
- (b) the reference to performing functions as a member of the Commission, in the case
- 80 of a person described in paragraph (a), is to be read as though it were a reference to performing the person's functions as a member of the committee or (as the case may be) sub-committee.

Expenses of non-members

- 10 (1) A person who attends a meeting of the Commission at its request is entitled to be paid
- 85 by the Scottish Ministers such travelling and other allowances (including compensation for loss of time) as the Ministers determine.
- (2) In sub-paragraph (1) the reference to the Commission includes any of its committees or sub-committees.

Resources

- 11 The Scottish Ministers are to provide the Commission with such staff and other
- 90 resources as it requires to carry out its functions.

Accounts and audit

- 12 (1) The Commission must—
- (a) keep proper accounts and accounting records,
- (b) prepare in respect of each financial year a statement of accounts, and
- 95 (c) send a copy of the statement to the Auditor General for Scotland for auditing.
- (2) The Commission must comply with any directions which the Scottish Ministers give it in relation to the matters mentioned in sub-paragraph (1)(a) and (b).

CHAPTER 5

MEMBERSHIP OF THE COMMISSION

Number of members

- 100 13 (1) The Commission is to consist of—
- (a) a member to chair the Commission, and
- (b) at least 2 but no more than 4 other members.

- 105 (2) The Scottish Ministers may by regulations amend sub-paragraph (1)(b) by substituting a different number for any number for the time being specified there.

Appointment of members

- 14 (1) The Scottish Ministers are to appoint the Commission's members.
- (2) The Scottish Ministers may not appoint a person who is disqualified from being a member (see paragraph 17).
- 110 (3) When appointing members the Scottish Ministers must have regard to the desirability of—
- (a) securing that the Commission (taken as a whole) has experience in or knowledge of—
 - 115 (i) the formulation, implementation and evaluation of social security policies in Scotland and elsewhere in the United Kingdom,
 - (ii) research in connection with social security, and
 - (iii) the effect of disability, arising from a physical or mental impairment, on daily life,
 - 120 (b) having a member with personal experience of having a disability arising from a physical or mental impairment, and
 - (c) having as members people who have not previously been members.

Tenure and other terms and conditions

- 15 (1) A person's membership of the Commission continues until the end of the period of appointment (subject to paragraph 16(1) and (2)).
- 125 (2) In sub-paragraph (1), "the period of appointment" means the period specified by the Scottish Ministers on appointing the person as a member.
- (3) The Scottish Ministers may not specify a period of appointment that is longer than 4 years, beginning with the day that the appointment takes effect.
- 130 (4) Nothing in this paragraph prevents a person from being a member of the Commission for two or more consecutive periods of appointment.
- (5) The Scottish Ministers may determine other terms and conditions of membership, in relation to matters not covered by this schedule.

Early termination

- 135 16 (1) A member of the Commission may resign by giving notice in writing to the Scottish Ministers.
- (2) A person's membership of the Commission ends if—
- (a) the person becomes disqualified from being a member (see paragraph 17), or
 - (b) the Scottish Ministers give the person written notice that the person is removed from the Commission.
- 140 (3) The Scottish Ministers may remove a member of the Commission by virtue of sub-paragraph (2)(b) only if they consider that the member is—
- (a) unfit to continue to be a member, or
 - (b) unable to perform the member's functions.

Disqualification grounds

- 145 17 (1) A person is disqualified from being a member of the Commission if sub-paragraph (2) or (3) applies to the person.
- (2) This sub-paragraph applies to a person who is—
- (a) a member of the—
 - 150 (i) Scottish Parliament,
 - (ii) House of Commons,
 - (iii) National Assembly for Wales,
 - (iv) Northern Ireland Assembly, or
 - (v) European Parliament,
 - (b) a councillor of any local authority,
 - 155 (c) a member of the Scottish Government,
 - (d) a Minister of the Crown,
 - (e) an office-holder of the Crown in right of Her Majesty's Government in the United Kingdom,
 - (f) an office-holder in the Scottish Administration,
 - 160 (g) a civil servant.
- (3) This sub-paragraph applies to a person (subject to sub-paragraph (4)) who is or has been—
- (a) disqualified as a company director under the Company Directors Disqualification Act 1986,
 - 165 (b) disqualified as a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005,
 - (c) the subject of a disqualification under a disqualification provision analogous to either of those mentioned in paragraph (a) or (b) anywhere in the world.
- (4) Sub-paragraph (3) does not apply to a person who is or has been disqualified as mentioned in that sub-paragraph only by—
- 170 (a) section 11 of the Company Directors Disqualification Act 1986 (undischarged bankrupts),
 - (b) section 69(2)(b) of the Charities and Trustee Investment (Scotland) Act 2005 (which disqualifies undischarged bankrupts from being charity trustees), or
 - 175 (c) a provision analogous to either of those mentioned in paragraph (a) or (b) anywhere in the world.

PART 2

APPLICATION OF LEGISLATION RELATING TO PUBLIC BODIES

Ethical Standards in Public Life etc. (Scotland) Act 2000

- 180 18 In schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, after the entry relating to the Scottish Children's Reporter Administration insert—
- “The Scottish Commission on Social Security”.

Freedom of Information (Scotland) Act 2002

185 19 In schedule 1 of the Freedom of Information (Scotland) Act 2002, after paragraph 80B insert—

“80C The Scottish Commission on Social Security.”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003

190 20 In schedule 2 of the Public Appointments and Public Bodies etc. (Scotland) Act 2003, under the heading “Other Public Bodies”, in the appropriate place alphabetically, insert—

“Scottish Commission on Social Security”.

Public Services Reform (Scotland) Act 2010

195 21 In schedule 5 of the Public Services Reform (Scotland) Act 2010, after the entry relating to the Scottish Commission for Human Rights insert—

“The Scottish Commission on Social Security”.>

Jeremy Balfour

16A As an amendment to amendment 16, line 150, at end insert—

<() House of Lords,>

Jeremy Balfour

16B As an amendment to amendment 16, line 160, at end insert—

<() a member of the—

(i) First-tier Tribunal,

(ii) Upper Tribunal.>

Jeane Freeman

118 After section 6 insert—

<Commission functions

(1) The Scottish Commission on Social Security has the following functions—

(a) to scrutinise legislative proposals in accordance with section (*Further procedure for regulations about assistance*),

(b) to prepare and submit to the Scottish Ministers a report on any matter, relevant to social security, that the Ministers request the Commission to report on,

(c) to prepare and submit to the Scottish Parliament a report on any matter, relevant to social security, that the Commission is requested to report on by the Parliament after the Parliament has resolved that the request should be made,

(d) to prepare and submit to the Ministers and the Parliament, from time to time, a report containing—

(i) an assessment of the extent to which any or all of the expectations set out in the Scottish social security charter are being fulfilled, and

- (ii) recommendations for improvement where the assessment is that those expectations are not being fulfilled,
 - (e) any functions the Ministers confer on the Commission by regulations.
- (2) In performing any of the functions mentioned in subsection (1), the Commission may have regard to any relevant international human rights instruments (see also section (*Further procedure for regulations about assistance*)(4)).
 - (3) The Commission must make publicly available by such means as it considers appropriate any report that it prepares in pursuance of a function mentioned in subsection (1).
 - (4) The Commission must consider preparing a report under subsection (1)(d) if it receives evidence which suggests that expectations set out in the charter are frequently not being fulfilled.
 - (5) In subsection (2), “international human rights instruments”—
 - (a) means any international convention, treaty or other international instrument ratified by the United Kingdom, subject to—
 - (i) any amendments in force in relation to the United Kingdom for the time being, and
 - (ii) any reservations, objections or interpretative declarations by the United Kingdom for the time being in force, and
 - (b) includes, in particular, the International Covenant on Economic, Social and Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.>

Jeane Freeman

18 After section 6, insert—

<Charter-based complaints

- (1) The Scottish Ministers are to make regulations conferring on a person the function described in subsection (2).
- 5 (2) The function is investigating any complaint alleging a failure by the Scottish Ministers, in dealing with an individual’s case, to meet the expectations of them set out in the Scottish social security charter.
- (3) Regulations under this section may modify any enactment (including this Act).>

Adam Tomkins

18A As an amendment to amendment 18, line 3, leave out <a person> and insert <the Scottish Public Services Ombudsman>

Mark Griffin

148 After section 6, insert—

<Annual feedback survey

- (1) The Scottish Ministers must, as soon as practicable after the end of each financial year, carry out a survey of individuals who have applied for assistance through the Scottish social security system in that financial year.

- (2) The survey is to seek information about—
 - (a) the extent to which the determination of the individual’s entitlement to assistance met the expectations set out in—
 - (i) the Scottish social security principles,
 - (ii) the Scottish social security charter,
 - (b) the individual’s experience of the process of determining the individual’s entitlement to assistance,
 - (c) the effectiveness and appropriateness of the assistance received (where relevant),
 - (d) the quality and effectiveness of the advice and information received in support—
 - (i) of the individual’s application for assistance, and
 - (ii) at all stages of the determination of the individual’s entitlement to assistance, and
 - (e) any other matters relevant to the individual’s application for assistance.
- (3) The Scottish Ministers must, as soon as practicable after completing the carrying out of the survey under subsection (1)—
 - (a) lay the survey before the Scottish Parliament, and
 - (b) make the survey publicly available by such means as they consider appropriate.>

Mark Griffin

80 After section 6, insert—

<Independent review of the Act

- (1) The Scottish Ministers must make provision for an independent review of this Act to be carried out—
 - (a) not later than 3 years after the day on which Part 1 of this Act comes into force, and
 - (b) thereafter, at least once in each subsequent period of 5 years.
- (2) Not later than 1 year after the day on which a review under subsection (1) has been completed, the person carrying out the review must lay a report on the conclusions of the review before the Scottish Parliament.
- (3) A report under subsection (2) must—
 - (a) include an assessment of the effectiveness of the provisions of this Act,
 - (b) recommend—
 - (i) whether the provisions of this Act should be retained or repealed,
 - (ii) what steps are to be taken by the Scottish Ministers as a result of the review.
- (4) Not later than 30 days after a report under subsection (2) has been laid before the Scottish Parliament, the Scottish Ministers must lay a response to that report before the Scottish Parliament.
- (5) In responding to a report under subsection (2), the Scottish Ministers must have regard to the provisions of subsection (3).>

Section 7

Adam Tomkins

119 In section 7, page 3, line 24, at end insert—

<() by virtue of regulations made under section (*Power to create new benefits*), and>

Adam Tomkins

63 In section 7, page 3, line 25, at end insert <and

() under any enactment which contains provision exercising the power provided for in section 28 of the Scotland Act 2016 to create new benefits.>

Mark Griffin

120 In section 7, page 3, line 25, at end insert—

<() under Part 4,

() by virtue of provision by the Scottish Ministers—

(i) under section 29 of the Scotland Act 2016,

(ii) under section 30 of the Scotland Act 2016,

() under sections 53 and 54 of the Education (Scotland) Act 1980,

() by virtue of regulations made under section 73(f) of the Education (Scotland) Act 1980 to make provision for the payment of allowances or loans to or in respect of persons undertaking, or who have undertaken, courses of education,

() by virtue of regulations made under section 80 of the Local Government Finance Act 1992,

() under section 47 of the Children and Young People (Scotland) Act 2014, and

() under section 2 of the Welfare Funds (Scotland) Act 2015.>

After section 7

Pauline McNeill

149 After section 7, insert—

<PART

SCOTTISH SOCIAL SECURITY AGENCY

Scottish Social Security Agency

- (1) The Scottish Social Security Agency is established.
- (2) The Agency is to carry out the functions related to social security conferred on the Scottish Ministers by this Act and any other enactment.
- (3) The Agency must, in exercising its functions under this Act and any other enactment, have regard to the Scottish social security principles.
- (4) The Scottish Ministers may by regulations make provision about—
 - (a) the functions of the Agency,
 - (b) the status and structure of the Agency,

- (c) any such further provision as the Scottish Ministers may consider necessary and expedient to establish the Agency,
 - (d) any such further provision as the Scottish Ministers may consider necessary and expedient to support the management and operation of the Agency.
- (5) The Agency must, as soon as practicable after the end of each financial year—
- (a) prepare and publish a report on its activities during the year,
 - (b) lay the report before the Scottish Parliament, and
 - (c) send the report to the Scottish Ministers.>

Before section 8

Jeremy Balfour

64 Before section 8, insert—

<CHAPTER
RESIDENCE CONDITIONS

Residence conditions

- (1) An individual is not entitled to assistance of a type described in Chapter 2 unless the individual meets the conditions relating to residence and presence.
- (2) The conditions mentioned in subsection (1) are that on the day on which an individual applies for assistance, the individual—
 - (a) is present in Scotland,
 - (b) has been present in Scotland for a period of, or periods amounting in aggregate to, not less than 104 weeks out of the 156 weeks immediately preceding that day, and
 - (c) is habitually resident in Scotland.
- (3) The Scottish Ministers may by regulations make further provision about the conditions mentioned in subsection (1).
- (4) Regulations under subsection (3) may in particular make provision for transitional arrangements where an individual receiving assistance is moving to another part of the United Kingdom.>

Section 8

Adam Tomkins

121 In section 8, page 3, line 32, after <in> insert <—
(a)>

Adam Tomkins

122 In section 8, page 3, line 32, after <2> insert <, and
(b) regulations made under section (*Power to create new benefits*),>

Section 9

Jeane Freeman

- 19 In section 9, page 4, line 15, at end insert <or
() by the Supreme Court of the United Kingdom—
- (i) in an appeal under section 40 of the Court of Session Act 1988 against a decision of the Court of Session, or
 - (ii) on a reference made by the Court of Session under schedule 6 of the Scotland Act 1998.>

Schedule 1

Jeremy Balfour

- 65 In schedule 1, page 24, line 17, leave out from <either> to end of line 18

Jeane Freeman

- 20 In schedule 1, page 25, line 16, at end insert—
<Restriction on giving assistance in a form other than money
- (1) The regulations may allow carer’s assistance to be given to an individual in a form other than money only if the individual (or a person acting on the individual’s behalf) has agreed to the assistance being given in that form.
 - (2) If the regulations include provision of the kind mentioned in sub-paragraph (1), they must allow an individual (or a person acting on the individual’s behalf) to withdraw agreement to being given carer’s assistance in a form other than money at any time.
 - (3) Despite sub-paragraph (1), the regulations may provide for carer’s assistance to be given (in whole or in part) by way of deduction, at a reasonable level, from any liability the individual has to the Scottish Ministers under section 36 if the individual has unreasonably refused to agree to the assistance being given in that form.
 - (4) For the purpose of sub-paragraph (3), “reasonable level” means a level that is reasonable having regard to the financial circumstances of the individual.>

Jeane Freeman

- 21 In schedule 1, page 25, line 22, at the beginning insert <paragraph 10 in>

Schedule 2

Jeane Freeman

- 22 In schedule 2, page 27, line 22, at end insert—
<Restriction on giving assistance in a form other than money
- (1) The regulations may allow cold-spell heating assistance to be given to an individual in a form other than money only if the individual (or a person acting on the individual’s behalf) has agreed to the assistance being given in that form.

- (2) If the regulations include provision of the kind mentioned in sub-paragraph (1), they must allow an individual (or a person acting on the individual's behalf) to withdraw agreement to being given cold-spell heating assistance in a form other than money at any time.>

Jeane Freeman

- 23 In schedule 2, page 27, line 28, at the beginning insert <paragraph 8 in>

Schedule 3

Jeremy Balfour

- 66 In schedule 3, page 28, line 7, leave out paragraph 1

Jeane Freeman

- 24 In schedule 3, page 29, line 11, at end insert—

<Restriction on giving assistance in a form other than money

6A(1) The regulations may allow winter heating assistance to be given to an individual in a form other than money only if the individual (or a person acting on the individual's behalf) has agreed to the assistance being given in that form.

- (2) If the regulations include provision of the kind mentioned in sub-paragraph (1), they must allow an individual (or a person acting on the individual's behalf) to withdraw agreement to being given winter heating assistance in a form other than money at any time.>

Jeane Freeman

- 25 In schedule 3, page 29, line 15, after <schedule> insert <, apart from paragraph 6A,>

Section 14

Jeremy Balfour

- 67 In section 14, page 5, line 24, at end insert—

<() For the purposes of this section and schedule 4, a person is “terminally ill” at any time if at that time the person suffers from a progressive disease and the person's death in consequence of that disease can reasonably be expected within 2 years.>

Schedule 4

Jeremy Balfour

- 68 In schedule 4, page 30, leave out lines 3 and 4

Jeremy Balfour

- 69 In schedule 4, page 30, line 11, at end insert—

<() The regulations may provide that—

- (a) where an individual's eligibility depends on the individual having a terminal illness under paragraph 1(1)(b), and

(b) at the end of a period of 3 years beginning with the day on which the individual applied for such assistance, the individual is still living,
the Scottish Ministers must review the individual's entitlement to assistance under paragraph 1(1)(b).>

Jeremy Balfour

70 In schedule 4, page 30, line 20, leave out paragraph 4

Jeane Freeman

26 In schedule 4, page 31, line 26, at end insert—

<Restriction on giving assistance in a form other than money

11A(1) The regulations may allow disability assistance to be given to an individual in a form other than money only if the individual (or a person acting on the individual's behalf) has agreed to the assistance being given in that form.

(2) If the regulations include provision of the kind mentioned in sub-paragraph (1), they must allow an individual (or a person acting on the individual's behalf) to withdraw agreement to being given disability assistance in a form other than money at any time.

(3) Despite sub-paragraph (1), the regulations may provide for disability assistance to be given (in whole or in part) by way of deduction, at a reasonable level, from any liability the individual has to the Scottish Ministers under section 36 if the individual has unreasonably refused to agree to the assistance being given in that form.

(4) For the purpose of sub-paragraph (3), "reasonable level" means a level that is reasonable having regard to the financial circumstances of the individual.>

Jeane Freeman

27 In schedule 4, page 32, line 8, leave out <paragraph> and insert <paragraphs 11A and>

Schedule 5

Jeremy Balfour

71 In schedule 5, page 33, line 8, leave out paragraph 3

Jeane Freeman

28 In schedule 5, page 33, line 24, at end insert—

<PART

ASSISTANCE TO BE GIVEN

Restriction on giving assistance in a form other than money

(1) The regulations may allow early years assistance to be given to an individual in a form other than money only if the individual (or a person acting on the individual's behalf) has agreed to the assistance being given in that form.

(2) If the regulations include provision of the kind mentioned in sub-paragraph (1), they must allow an individual (or a person acting on the individual's behalf) to withdraw agreement to being given early years assistance in a form other than money at any time.>

Schedule 6

Jeremy Balfour

- 72 In schedule 6, page 35, line 2, leave out paragraph 5

Jeane Freeman

- 29 In schedule 6, page 36, line 9, at end insert—

<Restriction on giving assistance in a form other than money

12A(1) The regulations may allow employment-injury assistance to be given to an individual in a form other than money only if the individual (or a person acting on the individual's behalf) has agreed to the assistance being given in that form.

(2) If the regulations include provision of the kind mentioned in sub-paragraph (1), they must allow an individual (or a person acting on the individual's behalf) to withdraw agreement to being given employment-injury assistance in a form other than money at any time.

(3) Despite sub-paragraph (1), the regulations may provide for employment-injury assistance to be given (in whole or in part) by way of deduction, at a reasonable level, from any liability the individual has to the Scottish Ministers under section 36 if the individual has unreasonably refused to agree to the assistance being given in that form.

(4) For the purpose of sub-paragraph (3), "reasonable level" means a level that is reasonable having regard to the financial circumstances of the individual.>

Jeane Freeman

- 30 In schedule 6, page 36, line 27, leave out <paragraph> and insert <paragraphs 12A and>

Schedule 7

Jeremy Balfour

- 73 In schedule 7, page 37, line 27, leave out from <either> to end of line 28

Jeane Freeman

- 31 In schedule 7, page 38, line 25, at end insert—

<Restriction on giving assistance in a form other than money

12A(1) The regulations may allow funeral expense assistance to be given to an individual in a form other than money only if the individual (or a person acting on the individual's behalf) has agreed to the assistance being given in that form.

(2) If the regulations include provision of the kind mentioned in sub-paragraph (1), they must allow an individual (or a person acting on the individual's behalf) to withdraw agreement to being given funeral expense assistance in a form other than money at any time.>

Jeane Freeman

- 32 In schedule 7, page 38, line 31, after <2> insert <(apart from paragraph 12A)>

Section 18

Jeremy Balfour

74 In section 18, page 7, line 16, at end insert—

<(4A) Regulations under subsection (2) may provide for an individual to be eligible for short-term assistance where—

- (a) an individual is receiving a particular type of assistance in accordance with or under this Act (other than short-term assistance),
- (b) the individual is leaving Scotland to take up permanent residence (the “new place of residence”) in another part of the United Kingdom, and
- (c) the individual may be entitled to assistance of a similar type to the assistance referred to in paragraph (a) in the individual’s new place of residence.

(4B) Regulations may make provision about—

- (a) the eligibility rules that are to be applied to determine whether an individual is entitled to short-term assistance under subsection (4A),
- (b) the maximum period for which short-term assistance under subsection (4A) may be given in these circumstances, which may not be for a period exceeding 3 months.>

After section 18

Adam Tomkins

123 After section 18, insert—

<CHAPTER

NEW BENEFITS

Power to create new benefits

- (1) The Scottish Ministers may by regulations make further provision for a scheme which provides assistance for social security purposes to be given to or in respect of individuals providing that the conditions in subsection (2) are met.
- (2) The conditions are that the scheme—
 - (a) is supported from sums paid out of the Scottish Consolidated Fund,
 - (b) does not fall within exceptions 1 to 9 of Section F1 of Part 2 of schedule 5 of the Scotland Act 1998, and
 - (c) is not connected with reserved matters.
- (3) In subsection (2)(a), the reference to a scheme “supported from sums paid out of the Scottish Consolidated Fund” does not include a scheme—
 - (a) in respect of which sums are at some time paid out of the Scottish Consolidated Fund, but
 - (b) which is directly supported from payments out of the Consolidated Fund, the National Insurance Fund or the Social Fund, or out of money provided by Parliament.
- (4) In this section, “reserved matters” means matters falling within schedule 5 of the Scotland Act 1998.>

Adam Tomkins

124 After section 18, insert—

<Restrictions on power

- (1) Regulations under section (*Power to create new benefits*) may not provide for assistance to be given by way of pensions to or in respect of individuals who qualify by reason of old age.
- (2) Regulations under section (*Power to create new benefits*) may not provide for assistance to be given where the need for it arises solely from reduction, non-payability or suspension of a reserved benefit as a result of an individual's conduct (for example, non-compliance with work-related requirements relating to the benefit).
- (3) But subsection (2) does not prevent assistance from being given where the need for the assistance in question—
 - (a) also arises from some exceptional event or exceptional circumstances, and
 - (b) is immediate.
- (4) In this section, “reserved benefit” means a benefit which is to any extent a reserved matter within the meaning of schedule 5 of the Scotland Act 1998.>

Section 19

Adam Tomkins

125 In section 19, page 7, line 24, after <2> insert <or prescribed in regulations made under section (*Power to create new benefits*)>

Pauline McNeill

126 In section 19, page 7, line 25, at end insert—

<() where the circumstances in section (*Determination of other entitlement*) apply, or>

Section 22

Mark Griffin

81 In section 22, page 8, line 16, after <individual> insert <in writing>

Section 23

Jeane Freeman

33 In section 23, page 8, line 30, leave out subsection (2) and insert—

<(2A) A request for a re-determination is valid only if the conditions set out in the following subsections are satisfied—

- (a) subsection (2B), and
- (b) subsection (2C).

(2B) The condition referred to in subsection (2A)(a) is satisfied if the request is made in such form as the Scottish Ministers require.

(2C) The condition referred to in subsection (2A)(b) is satisfied if—

- (a) the request is made before the end of the period prescribed by the Scottish Ministers in regulations, or
- (b) in a case where the request is made after that period has ended—
 - (i) the individual has a good reason for not requesting a re-determination sooner (see section (*Late request for re-determination*)), and
 - (ii) the request is made before the end of the day that falls one year after the day on which the individual is informed (in accordance with section 22) of the determination.>

Jeane Freeman

- 34** In section 23, page 8, line 34, leave out <(2)(a)> and insert <(2B)>

After section 23

Jeane Freeman

- 35** After section 23, insert—

<Late request for re-determination

- (1) It is for—
 - (a) the Scottish Ministers, or
 - (b) on appeal under subsection (3), the First-tier Tribunal for Scotland,
 to decide whether, for the purpose of section 23(2C)(b), an individual has a good reason for not requesting a re-determination sooner.
- (2) Having made a decision under subsection (1), the Scottish Ministers must inform the individual concerned—
 - (a) of the decision, and
 - (b) if the decision is that the individual has no good reason for not requesting a re-determination sooner, of—
 - (i) the reasons for the decision, and
 - (ii) the individual’s right to appeal under subsection (3).
- (3) An individual may appeal to the First-tier Tribunal against a decision by the Scottish Ministers that the individual has no good reason for not requesting a re-determination sooner.
- (4) An appeal under subsection (3)—
 - (a) may be made without the First-tier Tribunal’s permission within 31 days of the individual being informed (in accordance with subsection (2)) of the Scottish Ministers’ decision,
 - (b) may be made more than 31 days after the individual is so informed only with the First-tier Tribunal’s permission,
 - (c) may not be made after the end of the day that falls one year after the day on which the individual is so informed.
- (5) The First-tier Tribunal may give permission under subsection (4)(b) for an appeal to be made only if it is satisfied that there is a good reason for the appeal not having been made sooner.

- (6) A decision by the First-tier Tribunal about—
 - (a) the outcome of an appeal under subsection (3), or
 - (b) whether to give permission under subsection (4)(b) for an appeal to be made, is final.
- (7) Accordingly (and without prejudice to the generality of subsection (6)), any such decision by the First-tier Tribunal may be neither—
 - (a) reviewed under section 43 of the Tribunals (Scotland) Act 2014, nor
 - (b) appealed against under section 46 of that Act.>

Section 24

Jeane Freeman

- 36 In section 24, page 9, line 14, at end insert—
 - <() The reference in subsection (1) to a request under section 23 is to a request that is valid according to subsection (2A) of that section.>

Section 25

Jeane Freeman

- 82 In section 25, page 9, line 17, after <must> insert <—
()>

Mark Griffin

- 83 In section 25, page 9, line 17, after <individual> insert <in writing>

Jeane Freeman

- 84 In section 25, page 9, line 21, at end insert—
 - <() provide the individual with a form that the individual can complete and submit to the Scottish Ministers in order to bring an appeal against the determination.>

Section 26

Jeane Freeman

- 85 In section 26, page 9, line 25, after <must> insert <—
()>

Mark Griffin

- 86 In section 26, page 9, line 25, after <individual> insert <in writing>

Jeane Freeman

- 87 In section 26, page 9, line 30, at end insert—
 - <() provide the individual with a form that the individual can complete and submit to the Scottish Ministers in order to bring an appeal against the determination.>

After section 27

Jeane Freeman

88 After section 27, insert—

<Initiating an appeal

- (1) In order to bring an appeal under section 27 against a determination, an individual must submit to the Scottish Ministers the form provided under section 25 or (as the case may be) 26 in relation to the determination.
- (2) On receiving a form that they provided under section 25 or 26, the Scottish Ministers must send—
 - (a) the form, and
 - (b) the information held by them that they used to make the determination in question,to the First-tier Tribunal.
- (3) Having complied with subsection (2), the Scottish Ministers must inform the individual to whom the determination in question relates that they have done so.
- (4) In this section, references to a form include a copy of a form.
- (5) For the avoidance of doubt, the form that the Scottish Ministers provide under section 25 or 26 need not be a physical form.
- (6) Scottish Tribunal Rules providing for the form and manner in which an appeal under section 27 is to be brought may not displace the effect of subsection (1), but this section is otherwise without prejudice to what may be provided under any power to make Scottish Tribunal Rules.>

Section 28

Jeane Freeman

89 In section 28, page 10, leave out lines 9 to 13 and insert—

- <(a) may be brought without the First-tier Tribunal's permission if an appeal application is made within the period of 31 days beginning with the day the relevant event occurred,
- (b) may be brought only with the First-tier Tribunal's permission if an appeal application is made after the period mentioned in paragraph (a),
- (c) may not be brought if an appeal application has not been made within the period of one year beginning with the day the relevant event occurred.>

Jeane Freeman

90 In section 28, page 10, line 14, after <(1)> insert <—

()>

Jeane Freeman

91 In section 28, page 10, line 20, at end insert—

<() an appeal application is made when a form, that relates to the determination in question and has been completed to the extent that Scottish Tribunal Rules require, is received by the Scottish Ministers having been submitted in accordance with section (*Initiating an appeal*)(1).>

Jeane Freeman

92 In section 28, page 10, line 22, leave out <made> and insert <brought>

Jeane Freeman

93 In section 28, page 10, line 22, leave out <appeal> and insert <application>

Jeane Freeman

37 In section 28, page 10, line 24, leave out subsection (4)

After section 29

Jeane Freeman

38 After section 29, insert—

<Presumption about when information is received

Presumption for purposes of sections 23, (*Late request for re-determination*) and 28

- (1) Subsection (2) applies in relation to the references in sections 23, (*Late request for re-determination*) and 28 to someone being informed of something by the Scottish Ministers in accordance with a provision of this Act.
- (2) Where, in order to fulfil their duty to inform an individual of something, the Scottish Ministers send information—
 - (a) through the postal service to the last known address the Scottish Ministers have for the individual, or
 - (b) by email to the email address most recently provided to the Scottish Ministers by the individual for the purposes of this Act,

the individual is to be taken to have received the information 48 hours after it is sent by the Scottish Ministers unless the contrary is shown.>

Pauline McNeill

127 After section 29, insert—

<First-tier Tribunal: ordinary members

First-tier Tribunal: eligibility for appointment of ordinary members

- (1) The Scottish Ministers must make regulations under paragraph 1(2) of schedule 3 to the Tribunals (Scotland) Act 2014 about the eligibility for appointment of ordinary members of the First-tier Tribunal convened to decide an appeal under section 27.
- (2) The regulations must provide that a person is eligible for appointment as an ordinary member of the First-tier tribunal in respect an appeal under section 27 if the person has—

- (a) experience of caring for, or providing services to, individuals—
 - (i) mentioned in section 3(3),
 - (ii) who have received assistance through the Scottish social security system,
- (b) such qualifications or training as may be specified in the regulations.>

After section 32

Jeane Freeman

39 After section 32, insert—

<Support during discussions and assessments

Right to support

- (1) The Scottish Ministers must comply with an individual’s wish to have another person (“a supporter”) present during any discussion or assessment relating to the individual’s entitlement to a type of assistance described in Chapter 2, unless the wish is unreasonable.
- (2) The Scottish Ministers’ duty under subsection (1) includes ensuring that any person acting on their behalf complies with such a wish, unless the wish is unreasonable.
- (3) The role of a supporter is to support the individual in question during the discussion or (as the case may be) assessment, and includes making representations on the individual’s behalf.
- (4) Nothing in this section is to be read as requiring the Scottish Ministers to provide or pay for a supporter.>

After section 34

Pauline McNeill

128 After section 34, insert—

<Determination of other entitlement

Where it appears to the Scottish Ministers that an individual who has applied for a particular type of assistance may be entitled to another type of assistance described in Chapter 2, the application may be treated by the Scottish Ministers as an application for that other type of assistance as an alternative, or in addition (as the case may be), to the application received.>

Pauline McNeill

129 After section 34, insert—

<Entitlement to other assistance: duty to inform

Where it appears to the Scottish Ministers that an individual who has applied for a particular type of assistance may be entitled to another type of assistance described in Chapter 2, the Scottish Ministers must inform the individual—

- (a) that the individual may be entitled to another type of assistance,
- (b) of the other type of assistance to which the individual may be entitled, and
- (c) that a further application is required to be made in order that a determination may be made in respect of that other type of assistance.>

Section 36

Jeane Freeman

- 40 In section 36, page 13, line 12, leave out <as a result of a mistaken decision under section 33(1)> and insert <due to an error in the performance of a function conferred by virtue of this Part (but see section (*Exclusion from overpayment liability*))>

Jeane Freeman

- 41 In section 36, page 13, line 16, leave out from <decision> to end of line 17 and insert <error not been made.>

Jeane Freeman

- 42 In section 36, page 13, line 20, leave out subsection (4) and insert—
- <(4) In this section and section (*Exclusion from overpayment liability*)—
- (a) references to an error include a decision under section 33(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) references to giving assistance in error include giving assistance as a result of an error of the kind described in paragraph (a).>

After section 36

Jeane Freeman

- 43 After section 36, insert—
- <Exclusion from overpayment liability**
- (1) An individual has no liability under section 36(1) in respect of assistance given in 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 31, 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.>

After section 38

Jeane Freeman

44 After section 38, insert—

<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 36(4).>

Jeane Freeman

45 After section 38, insert—

<Funeral expense assistance

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).>

Section 39

Pauline McNeill

94 In section 39, page 14, line 6, after first <person> insert <knowingly>

Section 40

Pauline McNeill

95 In section 40, page 14, line 22, after <person> insert <knowingly>

Jeane Freeman

- 46 In section 40, page 14, line 23, after <occurs,> insert—
<() the person does not have a reasonable excuse for failing to do so,>

Pauline McNeill

- 96 In section 40, page 14, line 24, leave out <or ought to have known>

Pauline McNeill

- 97 In section 40, page 14, line 24, leave out <might> and insert <would>

Section 41

Pauline McNeill

- 98 In section 41, page 15, line 12, after first <person> insert <knowingly>

Pauline McNeill

- 99 In section 41, page 15, line 15, leave out <or ought to have known>

Pauline McNeill

- 100 In section 41, page 15, line 16, leave out <might> and insert <would>

Section 42

Pauline McNeill

- 101 In section 42, page 16, line 5, leave out <, or is attributable to the neglect of>

After section 44

Jeane Freeman

- 47 After section 44, insert—

<CHAPTER

UPRATING FOR INFLATION

Duty to consider effects of inflation

- (1) Before the end of each financial year, the Scottish Ministers must—
 - (a) calculate the inflation-adjusted level of each relevant figure,
 - (b) prepare a report that complies with subsection (2),
 - (c) lay a copy of the report before the Scottish Parliament, and
 - (d) make the report publicly available by such means as the Ministers consider appropriate.
- (2) A report prepared under subsection (1)(b) complies with this subsection if it—
 - (a) states what the Scottish Ministers have most recently calculated to be the inflation-adjusted level of each relevant figure,
 - (b) explains how the Ministers calculated the inflation-adjusted levels, and

- (c) states what (if anything) the Ministers have done, or intend to do, in light of their calculations and their reasons for that decision.
- (3) In this section, “relevant figure” means a figure prescribed in regulations under any section in Chapter 2 as the value, or part of the value, of the assistance that is to be given to an individual.
- (4) The inflation-adjusted level of a figure prescribed in regulations is to be calculated for the purposes of this Chapter as follows—

$$f \times \left(1 + \frac{i}{100}\right)$$

where—

f is the figure prescribed, and

i is the number of percentage points which the Scottish Ministers consider reflects the change in the general level of relevant prices since a copy of a report was last laid before the Scottish Parliament under subsection (1)(c).

- (5) It is for the Scottish Ministers to decide what prices are “relevant prices” in terms of subsection (4).
- (6) For the purposes of preparing the first report under subsection (1)(b), the reference in subsection (4) to the last time a copy of a report was laid before the Scottish Parliament is to be read as a reference to the date on which the figure in question was prescribed.>

Jeane Freeman

48 After section 44, insert—

<Duty to uprate disability and employment-injury assistance

- 5 (1) Before the end of each financial year, having calculated in accordance with section (*Duty to consider effects of inflation*) the inflation-adjusted level of each relevant figure prescribed in—
- (a) the disability assistance regulations, and
- (b) the employment-injury assistance regulations,
- 10 the Scottish Ministers must bring forward legislation to replace any relevant figure prescribed in those regulations which is, in their opinion, materially below its inflation-adjusted level with a figure of at least that level (subject to any rounding they think appropriate).
- (2) For the purpose of subsection (1), bringing forward legislation means laying before the Scottish Parliament for approval by resolution a draft Scottish statutory instrument containing disability assistance regulations and employment-injury assistance regulations.
- 15 (3) If the Scottish Parliament approves a draft instrument laid before it by the Scottish Ministers in fulfilment of their duty under subsection (1), the Ministers must make the regulations contained in the draft instrument.
- (4) In this section—
- 20 “disability assistance regulations” means regulations under section 14,
“employment-injury assistance regulations” means regulations under section 16,

“relevant figure” is to be construed in accordance with section (*Duty to consider effects of inflation*)(3).>

Mark Griffin

48A As an amendment to amendment 48, line 5, at end insert—

<() the carer’s assistance regulations,>

Mark Griffin

48B As an amendment to amendment 48, line 14, after <containing> insert <carer’s assistance regulations,>

Mark Griffin

48C As an amendment to amendment 48, line 19, at end insert—

<“carer’s assistance regulations” means regulations under section 11,>

After section 46

Mark Griffin

Supported by: Alison Johnstone, Elaine Smith

109 After section 46, insert—

<Child benefit supplement

- (1) Subject to the provisions of regulation 23 of the 1987 Regulations, the Scottish Ministers must make a payment (a “child benefit supplement”) of—
 - (a) £5 to a qualifying individual where the qualifying individual has elected to receive child benefit payment weekly in accordance with the provisions of Schedule 8 of the 1987 Regulations,
 - (b) £20 to a qualifying individual where the qualifying individual receives child benefit payment in the last week of each successive period of four weeks of the period of entitlement (as set out in regulation 23(1)(b) of the 1987 Regulations).
- (2) A payment under subsection (1) must be made to the qualifying individual when that individual receives child benefit.
- (3) A qualifying individual is an individual who, on the qualifying date, was—
 - (a) in receipt of child benefit under section 141 of the Social Security Contributions and Benefits Act 1992, and
 - (b) resident in Scotland.
- (4) The qualifying date is a date determined by the Scottish Ministers falling within the period to which the payment relates.
- (5) The Scottish Ministers may by regulations modify this section so as to modify—
 - (a) the amounts to be paid to qualifying individuals under subsections (1)(a) and (b),
 - (b) who is a qualifying individual for the purposes of this section.
- (6) For the purposes of this section, “the 1987 Regulations” means the Social Security (Claims and Payments) Regulations 1987.>

Section 48

Mark Griffin

- 110 In section 48, page 18, line 39, leave out <section> and insert <sections (*Child benefit supplement*) and>

Mark Griffin

- 111 In section 48, page 18, line 39, leave out <it> and insert <either section>

After section 48

Mark Griffin

- 133 After section 48, insert—

<PART

UPRATING OF ASSISTANCE

Uprating framework regulations

- (1) The Scottish Ministers must by regulations make provision about the procedure for ensuring that assistance given to an individual—
- (a) under Chapter 2 of Part 2,
 - (b) by virtue of regulations under Part 3,
- retains its value in relation to the general level of prices.
- (2) Regulations under subsection (1) must set out in particular—
- (a) the method by which the Scottish Ministers are to estimate the general level of prices,
 - (b) the method by which the Scottish Ministers are to assess whether each type of assistance has retained its value,
 - (c) the type of assistance which is to be assessed,
 - (d) the frequency with which each type of assistance is to be assessed,
 - (e) the process by which the Scottish Ministers are to report to the Scottish Parliament on the outcome of the assessment.>

Mark Griffin

- 134 After section 48, insert—

<Uprating framework regulations: procedure

- (1) The Scottish Ministers may not make regulations under section (*Uprating framework regulations*) unless—
- (a) they have consulted in accordance with section (*Uprating framework regulations: consultation*),
 - (b) following that consultation, they have laid before the Scottish Parliament—
 - (i) draft regulations, and
 - (ii) an explanatory document prepared in accordance with subsection (2), and

- (c) the draft regulations have been approved by resolution of the Parliament.
- (2) The explanatory document referred to in subsection (1)(b)(ii) must—
 - (a) introduce and give reasons for the regulations, and
 - (b) give details of—
 - (i) the consultation undertaken under section (*Uprating framework regulations: consultation*),
 - (ii) any representations received as a result of the consultation,
 - (iii) the changes (if any) made to the proposed draft regulations as a result of those representations.>

Mark Griffin

135 After section 48, insert—

<Uprating framework regulations: consultation

- (1) Where the Scottish Ministers propose to make regulations under section (*Uprating framework regulations*) they must consult such persons as they consider appropriate.
- (2) For the purposes of any consultation required by subsection (1), the Scottish Ministers must—
 - (a) lay before the Scottish Parliament—
 - (i) a copy of the proposed draft regulations, and
 - (ii) a copy of the proposed explanatory document referred to in section (*Uprating framework regulations: procedure*)(1)(b)(ii),
 - (b) make available a copy of the proposed draft regulations and proposed explanatory document to any person to be consulted under subsection (1), and
 - (c) have regard to any representations about the proposed draft regulations that are made to them within 60 days of the date on which the copy of the proposed draft regulations are laid before the Parliament under paragraph (a).
- (3) In calculating any period of 60 days for the purposes of subsection (2)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.
- (4) If, as a result of any consultation required by this section, it appears to the Scottish Ministers that it is appropriate to change the whole or any part of their proposals, they must undertake further consultation with respect to the changes as they consider appropriate.>

Mark Griffin

136 After section 48, insert—

<Uprating regulations

- (1) The Scottish Ministers may by regulations increase the amount payable of a type of assistance—
 - (a) under Part 2,
 - (b) by virtue of regulations under Part 3,

in order to retain the value of the assistance in relation to the general level of prices, providing that the conditions in subsection (2) are met.

- (2) The conditions are—
 - (a) that regulations under section (*Uprating framework regulations*) have been made,
 - (b) that the Scottish Ministers have complied, as appropriate, with the procedure set out in regulations under section (*Uprating framework regulations*).>

After section 53

Alison Johnstone

- 2** After section 53, insert—

<PART

ANNUAL UPDATING OF ASSISTANCE

Annual uprating of assistance

- (1) The Scottish Ministers are to review each tax year the amount given in respect of each type of assistance provided—
 - (a) under Part 2,
 - (b) by virtue of regulations made under Part 3,in order to determine whether the assistance has retained its value in relation to the general level of relevant prices.
- (2) Where it appears to the Scottish Ministers that the general level of relevant prices is greater at the end of the period under review than it was at the beginning of that period, the Scottish Ministers must by regulations make provision—
 - (a) which increases the amount payable of each type of assistance by a percentage not less than the percentage by which the general level of relevant prices is greater at the end of the period than it was at the beginning,
 - (b) which states the type of assistance in respect of which an increase has not been made.
- (3) Where subsection (2)(b) applies in relation to a type of assistance, the Scottish Ministers must provide a statement setting out the reason for this.
- (4) Where it appears to the Scottish Ministers that the general level of relevant prices is no greater at the end of the period under review than it was at the beginning of that period, the Scottish Ministers may, if they consider it appropriate having regard to the economic situation in Scotland and any other matters which they consider relevant, make regulations which increase by such a percentage or percentages as they think fit any type of assistance provided for under this Act.
- (5) The Scottish Ministers may, in providing for an increase in accordance with subsection (2) or (4), adjust the amount of the increase so as to round any amount up or down to such extent as they think fit.
- (6) For the purposes of any review under this section, the Scottish Ministers may estimate the general level of relevant prices in such a manner as they consider appropriate.
- (7) Regulations under this section must specify the date on which the increase is to take effect.

- (8) In this section—
- (a) the “period under review” means—
 - (i) in respect of the first review, the period of 12 months beginning with a day determined by the Scottish Ministers,
 - (ii) in respect of each subsequent review, the period of 12 months beginning with the day of the previous review,
 - (b) “relevant” in relation to the general level of prices means the general level of prices relevant to the particular type of assistance.>

Section 55

Jeremy Balfour

- 75 In section 55, page 21, line 25, after <procedure:> insert <section (*Independent advocacy services*),>

Pauline McNeill

- 150 In section 55, page 21, line 25, after <procedure:> insert <section 2(1),>

Alison Johnstone

- 51 In section 55, page 21, line 25, after <procedure:> insert <section (*Assistance take-up targets*),>

Jeane Freeman

- 49 In section 55, page 21, line 25, after <procedure:> insert <section (*Commission functions*)(1)(e),>

Jeane Freeman

- 50 In section 55, page 21, line 25, after <procedure:> insert <section (*Charter-based complaints*),>

Pauline McNeill

- 151 In section 55, page 21, line 25, after <procedure:> insert <section (*Scottish Social Security Agency*),>

Jeremy Balfour

- 76 In section 55, page 21, line 25, after <procedure:> insert <section (*Residence conditions*),>

Adam Tomkins

- 130 In section 55, page 21, line 25, after <sections> insert <(Power to create new benefits),>

Mark Griffin

- 137 In section 55, page 21, line 25, after <48> insert <, (*Uprating regulations*)>

Alison Johnstone

- 3 In section 55, page 21, line 25, leave out <and 53> and insert <, 53 and (*Annual uprating of assistance*)>

Jeane Freeman

- 52 In section 55, page 21, line 28, leave out <23(2)(b)> and insert <23(2C)(a)>

Jeane Freeman

- 53 In section 55, page 21, line 28, after <24(5)> insert <and paragraphs 4(2)(c) and 13(2) of schedule (*Scottish Commission on Social Security*)>

Jeane Freeman

- 54 In section 55, page 21, line 32, at end insert—

<() Regulations under section (*Commission functions*)(1)(e), which modify the functions of the Scottish Commission on Social Security, may not be made after the Commission is established unless the Scottish Ministers have consulted the Commission about the modification.>

After section 55

Jeane Freeman

- 131 After section, 55, insert—

<Further procedure for regulations about assistance

- (1) This section applies (subject to subsection (9)) in relation to regulations under—
- (a) any section in Chapter 2 of Part 2, and
 - 5 (b) section 45.
- (2) Where the Scottish Ministers propose to make regulations to which this section applies, they must (before laying a draft Scottish statutory instrument containing such regulations before the Scottish Parliament for approval by resolution)—
- (a) inform the Scottish Commission on Social Security of their proposals,
 - 10 (b) notify the Scottish Parliament that they have done so, and
 - (c) make their proposals publicly available by such means as the Ministers consider appropriate.
- (3) Having been informed of the Scottish Ministers' proposals, the Commission must prepare a report setting out its observations and recommendations in relation to the proposals.
- 15 (4) In preparing its report, the Commission—
- (a) must have regard to—
- (i) the Scottish social security principles, and
 - (ii) any relevant international human rights instruments (as defined in section
 - 20 (*Commission functions*)(5)), and
- (b) may consult any persons it considers appropriate.
- (5) If the Commission's members are unable to agree the terms of its report unanimously, the report must set out the matters over which members differ.
- (6) Having prepared its report, the Commission must—
- 25 (a) submit a copy of the report to—
- (i) the Scottish Ministers, and
 - (ii) the Scottish Parliament, and

- (b) make the report publicly available by such means as the Commission considers appropriate.
- 30 (7) When laying a draft Scottish statutory instrument containing regulations to which this section applies before the Scottish Parliament for approval by resolution, the Scottish Ministers must also lay before the Parliament either—
- (a) a response to the Commission’s report on the proposals for the regulations, or
 - 35 (b) a statement explaining why the Ministers consider it appropriate to lay the draft instrument before the Parliament before the Commission has submitted its report on the proposals for the regulations.
- (8) The response mentioned in subsection (7)(a) must, in particular, give details of—
- (a) how (if at all) the regulations differ from the proposals,
 - 40 (b) how the Scottish Ministers have sought to address the observations and recommendations contained in the Commission’s report, and
 - (c) any observations or recommendations contained in the report that the Ministers disagree with and have not sought to address.
- (9) This section does not apply in relation to regulations—
- (a) made only for the purpose of the consolidation of earlier regulations, or
 - 45 (b) that give effect to proposals that fall within a description that the Commission has, by written notice to the Scottish Ministers and the Scottish Parliament, stated that the Commission does not consider it necessary to be informed about under subsection (2).>

Adam Tomkins

131A As an amendment to amendment 131, line 4, at end insert—
<() section (*Power to create new benefits*), and>

Jeane Freeman

132 After section 55, insert—

<Temporary disapplication of section (*Further procedure for regulations about assistance*)

- (1) Section (*Further procedure for regulations about assistance*) does not apply in relation to regulations under section 15 or 17 that are brought forward before the date specified by the Scottish Commission on Social Security.
- (2) The Commission specifies a date under subsection (1) by giving written notice to—
 - (a) the Scottish Ministers, and
 - (b) the Scottish Parliament,
 informing them of the date from which the Commission will be ready to perform its function of scrutinising legislative proposals in accordance with section (*Further procedure for regulations about assistance*).
- (3) In subsection (1), “brought forward” means contained in a draft Scottish statutory instrument that is laid before the Scottish Parliament for approval by resolution.
- (4) At any time after the date specified by the Commission under subsection (1), the Scottish Ministers may by regulations repeal this section.>

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