

# Social Security (Scotland) Bill

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## 3rd 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.

### 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*

- 5
- (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.>

#### Mark Griffin

**22A** As an amendment to amendment 22, line 2, at end insert—

<( ) Subject to sub-paragraph (1), the regulations must provide for cold-spell heating assistance to be given in money.>

#### Mark Griffin

**22B** As an amendment to amendment 22, line 5, after <behalf> insert <—

- (a) has first been offered the assistance in money, and
- (b)>

#### Mark Griffin

**22C** As amendment to amendment 22, line 5, leave out <that> and insert <another>

**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

**Mark Griffin**

- 184 In schedule 3, page 28, line 15, at beginning insert <Subject to paragraph 4,>

**Mark Griffin**

- 185 In schedule 3, page 28, line 15, leave out <may> and insert <must not>

**Mark Griffin**

- 186 In schedule 3, page 29, line 8, at end insert—

*<Financial circumstances*

6ZA Subject to paragraph 6ZB, the regulations must not make the value of the winter heating assistance that is to be given to an individual depend on>

**Mark Griffin**

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

*<Receipt of, or eligibility for, other types of State assistance*

6ZB The regulations may make the value of assistance depend on either or both the individual and anyone who lives with the individual—

- (a) being, or not being, in receipt of another type of assistance (whether under this Act or another enactment),
- (b) being, or not being, eligible to receive such assistance.>

**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.

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- (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.>

**Mark Griffin**

- 24A** As an amendment to amendment 24, line 2, at end insert—  
<( ) Subject to sub-paragraph (1), the regulations must provide for winter heating assistance to be given in money.>

**Mark Griffin**

- 24B** As an amendment to amendment 24, line 5, after <behalf> insert <—  
(a) has first been offered the assistance in money, and  
(b)>

**Mark Griffin**

- 24C** As amendment to amendment 24, line 5, leave out <that> and insert <another>

**Jeane Freeman**

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

**Mark Griffin**

- 25A** As an amendment to amendment 25, leave out <paragraph> and insert <paragraphs 3, 6ZA and>

**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

**Mark Griffin**

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

**<CHAPTER**

**EQUAL CONSIDERATION TO BE GIVEN TO EFFECTS OF DIFFERENT IMPAIRMENTS**

- (1) The regulations must be framed so as to provide that eligibility depends solely on the effect that an individual's impairment has on—  
(a) the individual's ability to carry out normal day-to-day activities, or  
(b) whether the individual has a significant and not short-term need.

- (2) The regulations must not be framed in any way that differentiates (whether in terms of eligibility for assistance, value of assistance or any other matter) between individuals on the basis of whether their impairment is physical or mental.>

**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

**Mark Griffin**

188 In schedule 4, page 30, line 23, at end insert—

<*Financial circumstances*

- 5A Subject to paragraph 6, the regulations must not make an individual’s eligibility depend on the financial circumstances of either or both—
- (a) the individual, and
  - (b) anyone who lives with the individual.>

**Jeane Freeman**

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

<*Restriction on giving assistance in a form other than money*

- 5 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.
- 10 (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.>

**Mark Griffin**

- 26A As an amendment to amendment 26, line 2, at end insert—  
<( ) Subject to sub-paragraphs (1) and (3), the regulations must provide for disability assistance to be given in money.>

**Mark Griffin**

- 26B As an amendment to amendment 26, line 4, after <behalf> insert <—  
(a) has first been offered the assistance in money, and  
(b)>

**Mark Griffin**

- 26C As amendment to amendment 26, line 5, leave out <that> and insert <another>

**Mark Griffin**

- 189 In schedule 4, page 32, line 2, at end insert—  
<Payment where individual has a terminal illness  
The regulations may provide for the disability assistance that is to be given to an individual to be given by way of a particular payment arrangement where the individual's entitlement arises on account of the individual having a terminal illness.>

**Jeane Freeman**

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

**Mark Griffin**

- 27A As an amendment to amendment 27, after <paragraphs> insert <5A,>

**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*

- 5 (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.

- 10 (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.>

**Mark Griffin**

- 28A** As an amendment to amendment 28, line 4, at end insert—  
<( ) Subject to sub-paragraph (1), the regulations must provide for early years assistance to be given in money.>

**Mark Griffin**

- 28B** As an amendment to amendment 28, line 6, after <behalf> insert <—  
(a) has first been offered the assistance in money, and  
(b)>

**Mark Griffin**

- 28C** As amendment to amendment 28, line 7, leave out <that> and insert <another>

**Schedule 6**

**Jeremy Balfour**

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

**Mark Griffin**

- 190** In schedule 6, page 35, line 7, leave out paragraph 7 and insert—  
<7A Subject to paragraph 8, the regulations must not make an individual's eligibility depend on the financial circumstances of either or both—  
(a) the individual, and  
(b) anyone who lives with the individual.>

**Jeane Freeman**

- 29** In schedule 6, page 36, line 9, at end insert—  
<*Restriction on giving assistance in a form other than money*
- 5 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.

- 10 (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.
- 15 (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.>

**Mark Griffin**

**29A** As an amendment to amendment 29, line 2, at end insert—

<( ) Subject to sub-paragraphs (1) and (3), the regulations must provide for employment-injury assistance to be given in money.>

**Mark Griffin**

**29B** As an amendment to amendment 29, line 5, after <behalf> insert <—

- (a) has first been offered the assistance in money, and
- (b)>

**Mark Griffin**

**29C** As an amendment to amendment 29, line 5, leave out <that> and insert <another>

**Jeane Freeman**

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

**Mark Griffin**

**30A** As an amendment to amendment 30, after <paragraphs> insert <7A,>

**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.

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- (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.>

**Mark Griffin**

- 31A** As an amendment to amendment 31, line 2, at end insert—  
<( ) Subject to sub-paragraph (1), the regulations must provide for funeral expense assistance to be given in money.>

**Mark Griffin**

- 31B** As an amendment to amendment 31, line 5, after <behalf> insert <—  
(a) has first been offered the assistance in money, and  
(b)>

**Mark Griffin**

- 31C** As amendment to amendment 31, line 5, leave out <that> and insert <another>

**Jeane Freeman**

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

**After section 17**

**Jeane Freeman**

- 152** After section 17, insert—  
<**Housing assistance**  
(1) Housing assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 8 to an individual to meet, or help towards meeting, housing costs.  
(2) The Scottish Ministers are to make regulations prescribing—  
(a) the eligibility rules that are to be applied to determine whether an individual is entitled to housing assistance, and  
(b) what housing assistance an individual who is entitled to it is to be given.  
(3) Schedule (*Housing assistance regulations*) makes provision about the exercise of the power conferred by subsection (2).>

**Jeane Freeman**

- 153\*** After schedule 7, insert—

<SCHEDULE

(*introduced by section (Housing assistance)*)

HOUSING ASSISTANCE REGULATIONS

**PART 1**

ELIGIBILITY

**CHAPTER 1**



ELIGIBILITY IS TO DEPEND ON BEING TREATED IN CERTAIN WAYS UNDER THE WELFARE REFORM ACT  
2012 OR OTHERWISE NEEDING ASSISTANCE WITH HOUSING COSTS

- 10 1 (1) The regulations must be framed so that (subject to any provision of the kind described in  
paragraph 2) an individual’s eligibility in respect of a given period depends on meeting  
the conditions described in either—
- (a) sub-paragraph (2), or
  - (b) sub-paragraph (3).
- 15 (2) The conditions referred to in sub-paragraph (1)(a) are—
- (a) the individual is entitled to an award of universal credit in respect of the period in  
question,
  - (b) an amount under section 11 of the Welfare Reform Act 2012 (housing costs) is to  
be included in the calculation of that award,
  - 20 (c) the amount relates to the individual’s liability to make payments in respect of  
accommodation in the social rented sector other than temporary accommodation,
  - (d) were it not for regulations made by the Scottish Ministers by virtue of section  
29(2) of the Scotland Act 2016, the amount would be lower on account of its  
being reduced due to the number of bedrooms in the property that the individual  
25 lives in,
  - (e) as a result of being entitled to more than would otherwise be the case because of  
the regulations referred to in paragraph (d), the value of the assistance to which  
the individual is entitled under an enactment is reduced in accordance with  
regulations under section 96 of the Welfare Reform Act 2012 (benefit cap).
- 30 (3) The conditions referred to in sub-paragraph (1)(b) are—
- (a) the individual is entitled to an award of universal credit in respect of the period in  
question,
  - (b) during that period, the individual is—
    - (i) 18 years of age or over, but
    - 35 (ii) not more than 21 years of age,
  - (c) no amount under section 11 of the Welfare Reform Act 2012 is to be included in  
the calculation of the award, and
  - (d) an amount under that section would fall to be included in the calculation if the  
individual were older.
- 40 (4) The regulations are to define “accommodation in the social rented sector” and  
“temporary accommodation” for the purpose of determining entitlement to housing  
assistance under provision made in accordance with paragraph 1(2).
- 2 (1) The regulations may be framed so that, despite the conditions described in paragraph 1  
not being met in relation to a given period, an individual may nevertheless be eligible in  
45 respect of that period.
- (2) Where the regulations allow an individual to be eligible in respect of a period in relation  
to which the conditions described in paragraph 1 are not met, they must be framed so  
that the individual’s eligibility depends on the individual needing assistance to meet  
housing costs in a connection with a property that is not owned (wholly or partly) by the  
50 individual.

- (3) For the purpose of sub-paragraph (2), an individual is not an owner of property if, in relation to the property, the individual is party to a shared ownership agreement within the meaning of section 83(3) of the Housing (Scotland) Act 2001.
- 55 (4) If provision of the kind described in this paragraph is made, the regulations are to set out, for the purpose of determining entitlement to housing assistance—
- (a) a definition of “housing costs”,
  - (b) the circumstances in which an individual is to be regarded as needing assistance to meet housing costs.

## CHAPTER 2

### FURTHER CRITERIA

60

#### *Participation in education*

3 The regulations may make an individual’s eligibility depend on—

- (a) whether or not the individual, or anyone who lives with the individual, is in education, and
- 65 (b) the length of time the individual, or someone who lives with the individual, spends over a given period in education.

#### *Residence and presence*

4 The regulations may make an individual’s eligibility depend on the individual being resident and present in a particular place.

70 *Age*

5 The regulations may make an individual’s eligibility depend on the age of either or both—

- (a) the individual, and
- (b) anyone who lives with the individual.

75 *Financial circumstances*

6 The regulations may make an individual’s eligibility depend on the financial circumstances of either or both—

- (a) the individual, and
- (b) anyone who lives with the individual.

80 *Receipt of, or eligibility for, other types of State assistance*

7 The regulations may make an individual’s eligibility depend on either or both the individual and anyone who lives with the individual—

- (a) being, or not being, in receipt of another type of assistance (whether under this Act or another enactment),
- 85 (b) being, or not being, eligible or entitled to receive such assistance.

#### *Application within specified period*

8 The regulations may provide that an individual ceases to be eligible in respect of a given period unless, by a deadline specified in the regulations—

- (a) the individual has applied for housing assistance in respect of the period, or

- 90 (b) the Scottish Ministers have become required to make a determination of the individual's entitlement to housing assistance in respect of the period by regulations under section 35.

## PART 2

### ASSISTANCE TO BE GIVEN

95 **CHAPTER 1**

#### VALUE

*Cases where paragraph 1(2) conditions met*

- 9 (1) The regulations must provide for the value of housing assistance to be given in a case to which this paragraph applies to be the amount described in sub-paragraph (3).
- 100 (2) This paragraph applies to a case in which an individual is entitled to housing assistance in respect of a given period by virtue of meeting the conditions described in paragraph 1(2).
- (3) The amount referred to in sub-paragraph (1) is the lower of—
- (a) the difference between—
- 105 (i) the amount under section 11 of the Welfare Reform Act 2012 included in the calculation of the individual's universal credit award for the period in question, and
- (ii) the amount that would have been included under that section in the calculation were it not for the regulations referred to in paragraph 1(2)(d),
- 110 or
- (b) the amount by which the value of the assistance to which the individual is entitled from the Secretary of State in respect of the period in question is reduced in accordance with regulations under section 96 of the Welfare Reform Act 2012.

*Cases where paragraph 1(2) conditions not met*

- 115 10 In a case to which paragraph 9 does not apply, the regulations may make the value of housing assistance that is to be given to an individual depend on—
- (a) the age of either or both—
- (i) the individual, and
- (ii) anyone who lives with the individual,
- 120 (b) the financial circumstances of either or both—
- (i) the individual, and
- (ii) anyone who lives with the individual.

## CHAPTER 2

### FORM

125 *Meeting liabilities*

- 11 The regulations may provide for housing assistance that is to be given to an individual to be given (in whole or in part) by way of—

- (a) payment to another person in order to meet, or contribute towards meeting, any liability the individual has to that person,
- 130 (b) deduction from any liability the individual has to the Scottish Ministers under section 36.

*Restriction on giving assistance in a form other than money*

- 12 (1) The regulations may allow housing 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.
- 135 (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 housing assistance in a form other than money at any time.
- 140 (3) Despite sub-paragraph (1), the regulations may provide for housing 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.

145

**PART 3**

FINAL PROVISIONS

*Generality of enabling power unaffected*

- 13 Nothing in this schedule, apart from the following provisions, is to be taken to limit what may be prescribed in the regulations—
- 150 (a) Chapter 1 of Part 1,
- (b) in Part 2, paragraphs 9 and 12.

*Interpretation*

- 14 In this schedule (unless stated otherwise)—
- 155 "eligibility" means eligibility for housing assistance and "eligible" means eligible for housing assistance,
- "the regulations" means regulations under section (*Housing assistance*)(2).>

**Jeremy Balfour**

**153A** As an amendment to amendment 153, line 68, leave out paragraph 4

**Section 18**

**Jeane Freeman**

- 154** In section 18, page 6, line 29, leave out subsections (3) to (5) and insert—
- <( ) Schedule (*Short-term assistance regulations*) makes provision about the exercise of the power conferred by subsection (2).>

**Jeane Freeman**

155 After schedule 7, insert—

<SCHEDULE

(introduced by section 18)

SHORT-TERM ASSISTANCE REGULATIONS

5

**PART 1**

ELIGIBILITY

*Entitlement to other assistance being reviewed*

1 (1) The regulations must be framed so that an individual is eligible for short-term assistance if—

10

(a) the individual is, or was, entitled to a particular type of assistance (other than short-term assistance) under a determination made on the basis that the individual has ongoing entitlement,

(b) that determination has been superseded by a determination under section 19 with the result that the individual—

15

(i) is no longer entitled to the type of assistance in question, or

(ii) is entitled to less assistance of the type in question,

(c) the individual's entitlement to the type of assistance in question is under review, and

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(d) any further eligibility rules prescribed in the regulations are satisfied in the individual's case.

(2) An individual's entitlement to a particular type of assistance is under review within the meaning of sub-paragraph (1)(c) if—

25

(a) the individual has, under section 23, requested a re-determination of the individual's entitlement to the type of assistance in question and—

(i) the Scottish Ministers have yet to make a determination of the individual's entitlement under section 24, and

(ii) the individual has not, since requesting the re-determination, made an appeal to the First-tier Tribunal against a determination of the individual's entitlement, or

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(b) the individual has, under section 27, appealed to the First-tier Tribunal against a determination of the individual's entitlement to the type of assistance in question and the First-tier Tribunal has yet to make a decision under section 29, or

35

(c) the First-tier Tribunal is considering, under section 28(1)(b), whether to give permission for the individual to bring an appeal against a determination of the individual's entitlement to the type of assistance in question.

**PART 2**

ASSISTANCE TO BE GIVEN

*Value and form of assistance where entitlement to other assistance under review*

- 40 2 (1) This paragraph applies to any case in which an individual is eligible for short-term assistance by virtue of provision made in accordance with paragraph 1(1).
- (2) In this paragraph, “the superseded determination” means the determination that has been superseded with one of the results mentioned in paragraph 1(1)(b), as a consequence of which the individual in question is eligible for short-term assistance.
- 45 (3) In relation to a case to which this paragraph applies, the regulations must provide for the value of the short-term assistance given to an individual in respect of any period to be equal to—
- $V1 - V2$
- where—
- 50  $V1$  is the value of the assistance that the individual would have been given in respect of the period under the superseded determination had it not been superseded, and
- $V2$  is the value of the assistance that the individual is to be given in respect of the period under what is, at the time the individual becomes eligible for short-term assistance in respect of the period, the most recent determination of the individual’s entitlement to the type of assistance to which the
- 55 superseded determination relates.
- (4) In relation to a case to which this paragraph applies, the regulations must provide for the rules regarding the form in which short-term assistance is given to an individual to be the same as the rules governing the form in which the type of assistance to which the
- 60 superseded determination relates may be given.

### PART 3

#### FINAL PROVISIONS

##### *Generality of enabling power unaffected*

- 65 3 Nothing in this schedule is to be taken to preclude the regulations from providing for an individual to be eligible for short-term assistance in circumstances other than those described in paragraph 1.

##### *Interpretation*

- 4 In this schedule, “the regulations” means regulations under section 18(2).>

##### **Jeremy Balfour**

**155A** As an amendment to amendment 155, line 35, at end insert—

##### *<Individual moving to other part of the United Kingdom*

- 1A(1) The regulations may be framed so that an individual is 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 sub-sub-paragraph (a) in the individual’s new place of residence.

- (2) 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 sub-paragraph (1),
  - (b) the maximum period for which short-term assistance under sub-paragraph (1) may be given in these circumstances, which may not be for a period exceeding 3 months.>

**Jeremy Balfour**

**155B** As an amendment to amendment 155, line 66, leave out <paragraph 1> and insert <paragraphs 1 and 1A>

**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 20

### Mark Griffin

- 204** In section 20, page 7, line 29, leave out from <, and> to end of line 31 and insert <as may be prescribed in regulations.>

### Mark Griffin

- 205** In section 20, page 7, line 32, leave out <set> and insert <prescribed by regulations>

### Jeane Freeman

- 156** In section 20, page 8, line 2, at end insert—  
 <( ) Despite subsection (3), an individual may make another application for a particular type of assistance in respect of an event if the latest determination of the individual’s entitlement to that type of assistance in respect of the event states that the individual may make another application.>

## Section 22

### Mark Griffin

- 167** In section 22, page 8, line 16, after <must> insert <—  
 (a)>



**Mark Griffin**

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

**Mark Griffin**

168 In section 22, page 8, line 18, at end insert <including—  
(A) details of the relevant eligibility rules that are not satisfied in the individual’s case,  
(B) any evidence relied on,>

**Mark Griffin**

169 In section 22, page 8, line 23, at end insert—  
<(b) provide the individual with a copy of any assessment report prepared by, or on behalf of, the Scottish Ministers relating to the determination of the individual’s entitlement to assistance.>

**Mark Griffin**

170 In section 22, page 8, line 23, at end insert—  
<( ) In this section, “relevant eligibility rules” means the eligibility rules prescribed in the regulations that are applied to determine whether an individual is entitled to the assistance for which the individual applied.>

**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—  
5 (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—  
10 (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—  
15 (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.>

**Pauline McNeill**

**33A** As an amendment to amendment 33, line 16, at end insert—

- <(2D) The form required by the Scottish Ministers must include an option for the individual to give an indication that the individual—
- (a) would wish to bring an appeal in the event that the re-determination is not more advantageous to the individual than the determination under section 19,
  - (b) would not wish to bring an appeal in the event that the re-determination is not more advantageous to the individual than the determination under section 19.
- (2E) In the event that the individual has given the indication described in (2D)(b) this does not preclude an individual from bringing an appeal after being given notice of that right under section 25 or 26.>

**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>

### Pauline McNeill

**193** In section 25, page 9, line 19, after <it,> insert—

- <(ba) in the event that the individual has, in requesting a re-determination under section 23, given the indication described in subsection (2D)(a) of that section and the re-determination under section 24 is not more advantageous to the individual than the determination under section 19, inform the individual that an appeal will be brought in accordance with section (*Initiating an appeal where indication given under section 23(2D)(a)*),>

### 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.>

**Pauline McNeill**

- 84A** As an amendment to amendment 84, line 2, at beginning insert <in the event that the individual has not given the indication described in section 23(2D)(a),>

**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>

**Pauline McNeill**

- 194** In section 26, page 9, line 27, after <allowed,> insert—  
<(aa) in the event that the individual has, in requesting a re-determination under section 23, given the indication described in subsection (2D)(a) of that section, inform the individual that an appeal will be brought in accordance with section (*Initiating an appeal where indication given under section 23(2D)(a)*), or>

**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.>

**Pauline McNeill**

- 87A** As an amendment to amendment 87, line 2, at beginning insert <in the event that the individual has not given the indication described in section 23(2D)(a),>

**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.  
5  
(2) On receiving a form that they provided under section 25 or 26, the Scottish Ministers must send—

- (a) the form, and  
10 (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.
- 15 (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  
20 Scottish Tribunal Rules.>

**Pauline McNeill**

- 88A** As an amendment to amendment 88, line 3, at beginning insert <Where section (*Initiating an appeal where indication given under section 23(2D)(a)*) does not apply,>

**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 28**

**Pauline McNeill**

- 195 After section 28, insert—

**<Initiating an appeal where indication given under section 23(2D)(a)>**

- (1) Where section 25(ba) or 26(aa) applies the Scottish Ministers must initiate an appeal by sending—
  - (a) the form provided by the individual under section 23, and
  - (b) the information held by them that they used to make the determination in question,  
to the First-tier Tribunal.
- (2) Having complied with subsection (1), the Scottish Ministers must inform the individual to whom the determination in question relates that they have done so.
- (3) In this section, references to a form include a copy of a form.
- (4) For the avoidance of doubt, the form that the Scottish Ministers provide under section 23 need not be a physical form.
- (5) 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 29**

**Pauline McNeill**

- 206 In section 29, page 10, line 37, at end insert—

<( ) In making its own determination under subsection (1)(b), the First-tier Tribunal need not consider any issue that is not raised by the appeal.>

**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.>

**Section 30**

**Mark Griffin**

**196** In section 30, page 11, line 10, leave out subsection (2)

**After section 30**

**Alison Johnstone**

**207** After section 30, insert—

**<Medical assessments**

- (1) Where the Scottish Ministers are determining an individual’s entitlement to assistance (whether under section 19 or 24), they may request that the individual undergo a medical assessment providing that the conditions set out in subsection (2) are met.
- (2) The conditions are that—

- (a) the information held by the Scottish Ministers does not provide them with the information that they require in order to determine the individual's entitlement to assistance,
  - (b) the Scottish Ministers are unable to obtain the information that they require lawfully from another person, and
  - (c) the Scottish Ministers are satisfied that a medical assessment of the individual is required in order to obtain the information that they require.
- (3) Where the conditions in subsection (2) are met, the Scottish Ministers must notify the individual in writing—
- (a) of the reasons why the information that they hold does not enable them to make a determination,
  - (b) of the reasons why they require the individual to undergo a medical assessment.>

**Alison Johnstone**

**208** After section 30, insert—

**<Medical assessments: further provision**

- (1) Where the Scottish Ministers determine that the conditions in section (*Medical assessments*)(2) are met in relation to an individual, they are to consider whether the assessment may be undertaken—
  - (a) by telephone,
  - (b) by electronic means,
  - (c) face-to-face, or
  - (d) by some other means.
- (2) In considering whether an assessment may be undertaken face-to-face, the Scottish Ministers must—
  - (a) take account of any preference expressed to them by the individual on this matter,
  - (b) have regard to—
    - (i) the expected location of the assessment and its relative distance from the individual's home,
    - (ii) whether and the extent to which travelling to the location may—
      - (A) cause unnecessary distress to the individual,
      - (B) exacerbate any physical or mental impairment of the individual, and
  - (c) consider whether the assessment may take place at the individual's home.
- (3) The Scottish Ministers must inform the individual—
  - (a) of their determination under subsection (1), and
  - (b) of the reasons for it.
- (4) In this section, references to the “individual's home” mean the place where the individual currently lives.>



## Section 31

### Jeane Freeman

157 In section 31, page 11, line 19, after <(3)> insert <, (3A)>

### Jeane Freeman

158 In section 31, page 11, line 28, at end insert—

<(3A) This subsection applies to a person acting on behalf of an individual to whom subsection (3) applies in relation any application for the assistance or the determination of the individual's entitlement.>

## After section 32

### Jeane Freeman

159 After section 32, insert—

#### *<Appointees*

#### **Appointment of person to act on behalf of individual**

- (1) The Scottish Ministers may appoint a person (an “appointee”)—
  - (a) to act on behalf of an individual in connection with the determination of the individual's entitlement to assistance under section 8, and
  - (b) to receive such assistance on the individual's behalf.
- (2) The Scottish Ministers may only appoint an appointee if it appears to them that either subsection (3) or (4) applies.
- (3) This subsection applies if—
  - (a) the individual is deceased, and
  - (b) there is no executor appointed on the individual's estate.
- (4) This subsection applies if, in relation to the matters mentioned in subsection (1)—
  - (a) the individual is incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000,
  - (b) there is no guardian acting or appointed under that Act,
  - (c) the individual's estate is not being administered by a judicial factor, and
  - (d) there is no other person who has authority to act on behalf of the individual and is willing to do so.
- (5) An individual who is under 16 years may not be appointed as an appointee.
- (6) Where an appointee is appointed in relation to an individual—
  - (a) the appointee can do anything that the individual could do in connection with the determination of the individual's entitlement to assistance (including making an application for assistance),

- (b) the Scottish Ministers may request that the appointee provide them with information that they may otherwise request the individual to provide under section 30 (and sections 32(2) and (3) apply to that request as they apply to a request made to the individual),
  - (c) any information that would be given to the individual under or by virtue of this Part must be given to the appointee instead.
- (7) The Scottish Ministers may terminate an appointment under this section at any time.>

**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.>

**Mark Griffin**

**171** After section 32, insert—

*<Mental health assessments*

**Mental health assessments: disability assistance**

- (1) Where an individual is required to undergo a face-to-face assessment to determine the individual’s entitlement to be given assistance under regulations made under section 14 which is, or includes, an assessment of the individual’s mental health, the assessment must be carried out by a person with professional experience of mental health.
- (2) The Scottish Ministers may by regulations prescribe the meaning of “professional experience of mental health” for the purposes of subsection (1).>

**Section 33**

**Jeane Freeman**

**160** In section 33, page 12, line 15, at end insert <and

- (d) if the determination is of an individual’s entitlement to assistance in respect of an event, a decision about whether the individual’s application for assistance in respect of the event is possibly premature.

- ( ) If it is decided under subsection (1)(d) that an individual’s application for assistance in respect of an event is possibly premature, the determination must include a statement that the individual may make another application for assistance in respect of the event.
- ( ) An individual’s application for assistance in respect of an event is possibly premature for the purpose of subsection (1)(d) if—
  - (a) the decision under subsection (1)(a) is that the eligibility rules prescribed in the applicable regulations are not satisfied in the individual’s case, and
  - (b) it is possible that circumstances may change so that, in relation to the event in question, those rules will be satisfied in the individual’s case.>

#### **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.>

#### **After section 35**

**Mark Griffin**

**191** After section 35, insert—

**<Determination: individuals having a terminal illness**

- (1) The Scottish Ministers must by regulations make provision about the determination of an application for assistance under section 8 where an individual has applied for—
  - (a) disability assistance on account of the individual having a terminal illness,
  - (b) carer’s assistance on account of the cared-for person applying for disability assistance on account of having a terminal illness.

- (2) Regulations may in particular make provision about—
  - (a) the form in which an application for assistance is to be made,
  - (b) the period within which—
    - (i) a determination,
    - (ii) a re-determination,
 of an individual’s entitlement to assistance is to be made,
  - (c) any assessment that the individual or the cared-for person (as the case may be) may be required to undergo.>

**Mark Griffin**

197 After section 35, insert—

**<CHAPTER**

ASSISTANCE NOT REQUIRED

**Assistance no longer required**

- (1) An individual who is being given assistance under section 8 may at any time inform the Scottish Ministers that the individual no longer wishes to receive that assistance.
- (2) Notification by an individual under subsection (1) must be made in such form as the Scottish Ministers require.
- (3) The Scottish Ministers must publicise any requirements for the time being set under subsection (2).>

**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**

- (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—  
5  
    (a) the disability assistance regulations, and  
    (b) the employment-injury assistance regulations,  
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).  
10
- (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**

**202** After section 46, insert—

**<Child benefit supplement**

- (1) Subject to the provisions of regulation 23 of the 1987 Regulations or, as the case may be, Part 3 of the 2003 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 or, as the case may be, regulations 19 and 20 of the 2003 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 and regulation 18(2)(b) of the 2003 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—
  - (a) “the 1987 Regulations” means the Social Security (Claims and Payments) Regulations 1987,
  - (b) “the 2003 Regulations” means the Child Benefit and Guardian’s Allowance (Administration) Regulations 2003.>

## 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

### Jeane Freeman

- 198 After section 48, insert—

#### <PART

#### FURTHER PROVISION IN CONNECTION WITH PARTS 2 AND 3

#### *Inalienability of assistance*

#### **No assignation or charge**

- (1) Any assignation of or charge on, or agreement to assign or charge, an individual's entitlement to assistance under or by virtue of this Act is void.
- (2) Nothing in subsection (1) prevents the Scottish Ministers from giving the assistance to which an individual is entitled to another person if the individual (or a person acting on the individual's behalf) has agreed to that>.

### Jeane Freeman

- 199 After section 48, insert—

#### **<Retention of right to assistance on bankruptcy etc.**

An individual's entitlement to assistance under or by virtue of this Act does not transfer to another person—

- (a) on the individual's sequestration, or
- (b) on the appointment of a judicial factor on the individual's estate under section 41 of the Solicitors (Scotland) Act 1980.>

### Jeane Freeman

- 200 After section 48, insert—

#### *<Information-sharing*

#### **Information-sharing**

- (1) The Scottish Ministers may require a person mentioned in subsection (2) to supply information held by the person to the Scottish Ministers for the purpose of a social security function.
- (2) The persons are—

- (a) a local authority,
  - (b) a Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978 or a Special Health Board constituted under section 2(1)(b) of that Act,
  - (c) an integration joint board established by order under section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014,
  - (d) the Registrar General for Scotland,
  - (e) the Keeper of the Records of Scotland,
  - (f) the Scottish Courts and Tribunals Service,
  - (g) a person specified in regulations made by the Scottish Ministers.
- (3) Where information is supplied to the Scottish Ministers under subsection (1) for use for any purpose, they may use it for any other purposes for which information held by them for that purpose may be used.
  - (4) In subsection (1), references to information held by a person include information held by another person providing services to the person.
  - (5) Information held by the Scottish Ministers for the purpose of a social security function may be supplied by the Scottish Ministers to a person mentioned in subsection (2) for use for the purposes of such function of the person as is specified in regulations made by the Scottish Ministers.
  - (6) Where information is supplied to a person under subsection (5) for use for any purpose, the person may use it for any other purposes for which information held by the person for that purpose may be used.
  - (7) In subsection (5), references to information held by the Scottish Ministers include information held by a person providing services to them.
  - (8) Information supplied under subsection (5) must not be supplied by the recipient of the information to any other person without the authority of the Scottish Ministers.
  - (9) This section does not permit or require the provision of information in breach of a prohibition or restriction on the disclosure of information arising by virtue of an enactment or rule of law.
  - (10) In this section, “social security function” means a function of the Scottish Ministers under or by virtue of this Act.>

**Jeane Freeman**

**161** After section 48, insert—

**<Agency arrangements for housing assistance**

- (1) The Scottish Ministers may by regulations provide for the functions conferred on them by virtue of Part 2 to be exercised on their behalf by local authorities, but only in relation to housing assistance.
- (2) Regulations under this section may in particular—
  - (a) specify the functions that local authorities are to exercise on the Scottish Ministers’ behalf,
  - (b) make provision identifying the persons in relation to whom a local authority is to exercise those functions, and

- (c) provide for any enactment (including this Act) to apply subject to such modifications as the Ministers consider appropriate in consequence of functions falling to be exercised by a local authority on the Ministers' behalf.
- (3) Regulations under this section do not affect the Scottish Ministers' responsibility for the exercise of their functions.
- (4) In subsection (1), "functions" does not include regulation-making functions.>

**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*).>

## **Section 49**

### **Pauline McNeill**

- 209** In section 49, page 19, line 5, leave out <power> and insert <a duty>

### **Jeane Freeman**

- 162** In section 49, page 19, line 22, at end insert—

- <( ) Financial assistance under this section may be given to an individual by way of—
- (a) payment to the individual,
  - (b) payment to another person to meet, or contribute towards meeting, any liability the individual has to that person,
  - (c) deduction from any liability the individual has to the authority giving the assistance which is connected to housing costs,
  - (d) any combination of the ways mentioned in the preceding paragraphs.>

## **Section 51**

### **Jeane Freeman**

- 163** In section 51, page 20, line 11, leave out subsection (2)

## **After section 52**

### **Jeane Freeman**

- 164** After section 52, insert—

#### **<Local authorities need not make payments if not funded**

- (1) The Scottish Ministers may make grants to local authorities to fund the giving of financial assistance under section 49.
- (2) Monies granted to an authority under subsection (1) may be spent only on giving financial assistance under section 49.
- (3) If an authority has spent all monies granted to it under subsection (1), the authority may refuse to consider any application for financial assistance under section 49.
- (4) If, by virtue of subsection (3), an authority is refusing to consider applications, it need not comply with section 51.
- (5) For the avoidance of doubt, subsection (3) does not prevent an authority from considering applications or giving financial assistance under section 49 should it choose to.>

## 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.>

**Mark Griffin**

**203** After section 53, insert—

**<PART**

**UNIVERSAL CREDIT: PAYMENT TO JOINT CLAIMANTS**

**Universal credit: payment to joint claimants**

- (1) Within one year of the day after Royal Assent, the Scottish Ministers must bring forward regulations under section 30 of the Scotland Act 2016 to give effect to the proposal described in subsection (3).
- (2) In subsection (1), “bring forward” means—
  - (a) consult the Secretary of State about the practicability of implementing the regulations in accordance with section 30(3) of the Scotland Act 2016, and
  - (b) lay regulations before the Scottish Parliament.
- (3) The regulations must give effect to the proposal that, despite regulation 47(4) to (6) of the 2013 Claims and Payments Regulations (payment of universal credit to joint claimants), universal credit payable in respect of Scottish joint claimants is to be split between the couple in such proportion as the Scottish Ministers consider appropriate unless the Scottish joint claimants elect to nominate a single bank or other account into which that benefit is to be paid.
- (4) In this section—
  - (a) “the 2013 Claims and Payments Regulations” means the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013,
  - (b) “couple” has the meaning given by section 39 of the Welfare Reform Act 2012,
  - (c) “Scottish joint claimants” means a couple living in Scotland who jointly make a claim for, or have been awarded, universal credit.>

**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**

172 In section 55, page 21, line 25, after <sections> insert <(Mental health assessments: disability assistance),>

**Mark Griffin**

192 In section 55, page 21, line 25, after <35,> insert <(Determination: individuals having a terminal illness),>

**Jeane Freeman**

165 In section 55, page 21, line 25, after <48> insert <, (*Agency arrangements for housing assistance*)>

**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*)>

**Mark Griffin**

210 In section 55, page 21, line 28, after <sections> insert <20(1),>

**Jeane Freeman**

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

**Jeane Freeman**

201 In section 55, page 21, line 28, after <24(5)> insert <and (*Information-sharing*)(2)(g) and (5)>

**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.

(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).>

**Pauline McNeill**

**131B** As an amendment to amendment 131, leave out lines 4 and 5 and insert—

- <( ) this Act, and
- ( ) the Welfare Funds (Scotland) Act 2015.>

**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.>

### **Mark Griffin**

**211** After section 55, insert—

#### **<Regulation-making powers: further provision**

- (1) Regulations under any provision listed in section 55(2) must not contain any retrogressive provision in relation to the right to social security protected by international human rights instruments.
- (2) In subsection (1), “international human rights instruments” has the same meaning as in section (*Commission functions*)(5).>

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