

Social Security (Scotland) Bill

4th 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 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—

- (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).

- (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.

- (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—

“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
 (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

- (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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