

Social Security (Scotland) Bill

Revised Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 57
Long Title

Schedules A1 to 9

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

Section 1

Jackie Baillie

- 17 In section 1, page 1, line 19, leave out <promote the goals of> and insert <advances>

Section 1A

Adam Tomkins

- 18 In section 1A, page 1, line 21, at end insert—

<() The Scottish social security principles are set out in section 1 so that—

- (a) they can be reflected in the Scottish social security charter as required by section 2(3), and
- (b) the Scottish Commission on Social Security can have regard to them as required by section 55A(4).>

Section 1B

Jeane Freeman

- 19 In section 1B, page 2, line 5, leave out <under> and insert <through>

After section 1C

Pauline McNeill

- 1 After section 1C, insert—

<Recognition of importance of available data

In fulfilling their duty under section 1B(a), the Scottish Ministers must have regard to the possibility that information obtained for the purpose of determining an individual's eligibility for one type of assistance might be used to identify the individual's eligibility for other types of assistance.>

Ruth Maguire
Supported by: Mark Griffin

20 After section 1C, insert—

<Recognition of importance of accessible information

- (1) In fulfilling their duty under section 1B(a), the Scottish Ministers must have regard to the importance of providing information in a way that is accessible for individuals who have a sensory, physical or mental disability.
- (2) The steps taken by the Scottish Ministers under section 1B(b) must include steps in relation to ensuring that—
 - (a) the information this Act requires the Scottish Ministers to give to an individual is given in a format that is accessible to the individual, and
 - (b) all information which this Act requires the Scottish Ministers to make publicly available is available in formats that are accessible to individuals who have a sensory, physical or mental disability.>

Section 1D

Ruth Maguire

21 Leave out section 1D

Section 1E

Jeremy Balfour

22 In section 1E, page 2, line 33, after <independent> insert <information and>

Jeane Freeman

23 In section 1E, page 2, line 35, leave out <under> and insert <through>

Jeremy Balfour

24 In section 1E, page 3, line 1, after <independent> insert <information and>

Jeremy Balfour

25 In section 1E, page 3, line 4, at end insert—

- <() The steps taken by the Scottish Ministers under section 1B(b) must include steps in relation to ensuring the availability of independent information and advice (that is accessible to, and proportionate to the needs of, the individuals to whom it is given) about the Scottish social security system, and the following matters in particular—
- (a) how to apply for assistance,
 - (b) the process by which entitlement to assistance is determined,
 - (c) the types of assistance available,
 - (d) income maximisation,
 - (e) the content of the Scottish social security charter.>

Jeremy Balfour

- 26 In section 1E, page 3, line 5, after <section,> insert <information,>

Jeane Freeman

- 27 Move section 1E to after section 1C

Section 1F

Jeremy Balfour

- 28 Leave out section 1F

Section 1G

Jeane Freeman

- 29 In section 1G, page 3, line 25, leave out <with a mental disorder> and insert <to whom subsection (2A) applies>

Jeane Freeman

- 30 In section 1G, page 3, line 27, leave out <under> and insert <through>

Jeane Freeman

- 31 In section 1G, page 3, line 30, at end insert—
<(2A) This subsection applies to an individual if, owing to a disability, the individual requires an advocate’s help to engage effectively with the process for determining entitlement to be given assistance through the Scottish social security system.>

Jeane Freeman

- 32 In section 1G, page 3, line 31, leave out <In> and insert <For the purposes of>

Jeane Freeman

- 33 In section 1G, page 3, line 35, leave out <under> and insert <through>

Jeane Freeman

- 34 In section 1G, page 3, line 37, leave out from beginning to <section,> in line 39 and insert—
<()>

After section 1G

Jeane Freeman

- 35 After section 1G, insert—
<**Advocacy service standards**
(1) It must be a term of any agreement that the Scottish Ministers enter into with a person for the provision of advocacy services in connection with their duty under section 1G(2), that the person undertakes to comply with the advocacy service standards.
(2) The advocacy service standards are to be set by the Scottish Ministers in regulations and may, in particular, include provision in relation to—

- (a) the training and experience individuals providing advocacy services must have,
 - (b) service quality,
 - (c) quality assurance processes,
 - (d) record keeping.
- (3) The advocacy service standards, or a part of them, may be set by reference to another document (whether or not prepared by the Scottish Ministers).>

Section 1H

Jeane Freeman

36 Leave out section 1H and insert—

<Strategy to promote take-up

- (1) The Scottish Ministers are to prepare a strategy to promote take-up in accordance with this section and section (*Further provision about preparing strategies to promote take-up*).
- (2) A strategy to promote take-up is to set out—
 - (a) the Scottish Ministers’ best estimate of the extent to which, at the time the strategy is prepared, all individuals who are eligible to be given assistance through the Scottish social security system are being given the assistance they are eligible to be given,
 - (b) the steps under section 1B(b) that the Scottish Ministers intend to take during the strategy’s lifetime.
- (3) Having prepared a strategy to promote take-up, the Scottish Ministers must—
 - (a) lay it before the Scottish Parliament, and
 - (b) make it publicly available by such means as they consider appropriate.>

Jeane Freeman

37 Move section (*Strategy to promote take-up*) to after section 1F

Section 1I

Jeane Freeman

38 Leave out section 1I and insert—

<Further provision about preparing strategies to promote take-up

- (1) The Scottish Ministers must prepare—
 - (a) the first strategy to promote take-up within 1 year of this section coming into force,
 - (b) the second strategy within 3 years of this section coming into force, and
 - (c) thereafter, a new strategy within 5 years of the last strategy being laid before the Parliament in accordance with section (*Strategy to promote take-up*)(3)(a).
- (2) In preparing a strategy to promote take-up, the Scottish Ministers must consult such persons as they consider appropriate.
- (3) The persons consulted must include—

- (a) individuals who have received assistance through the Scottish social security system, and
- (b) persons who work with or represent individuals living in households whose income is adversely affected, or whose expenditure is increased, because a member of the household has one or more protected characteristics within the meaning of section 4 of the Equality Act 2010.>

Jeane Freeman

- 39 Move section (*Further provision about preparing strategies to promote take-up*) to after section 1F

Section 1J

Jeane Freeman

- 40 In section 1J, page 5, line 5, leave out <under> and insert <through>

Adam Tomkins

- 41 In section 1J, page 5, line 8, after <by> insert <, or under the direct authority of,>

Jeane Freeman

- 42 In section 1J, page 5, line 15, at end insert—

<() For the purposes of this section, an individual may be regarded as carrying out an assessment in the course of employment by a body if the individual carries out the assessment pursuant to an agreement between the body and the individual; it is immaterial that the individual would not be regarded as an employee of the body for the purposes of any other enactment.>

Jeane Freeman

- 43 In section 1J, page 5, line 17, leave out <under> and insert <through>

Jeane Freeman

- 44 In section 1J, page, 5, line 22, leave out <assistance under> and insert <the giving of assistance through>

Jeane Freeman

- 45 In section 1J, page 5, line 23, leave out <under> and insert <given through>

After section 1J

Mark Griffin

- 2 After section 1J, insert—

<Assessors to be suitably qualified

- (1) The Scottish Ministers must ensure that any assessment to which subsection (2) applies is carried out by a suitably qualified person.
- (2) This subsection applies to an assessment that—
 - (a) is arranged—

- (i) by the Scottish Ministers,
 - (ii) in connection with making a determination of what assistance an individual is eligible to be given through the Scottish social security system, and
- (b) is an assessment of physical condition or mental health.
- (3) The Scottish Ministers may by regulations specify who is to be regarded as a suitably qualified person within the meaning of subsection (1) by reference to a person's—
- (a) training,
 - (b) experience, or
 - (c) holding a particular position.
- (4) Regulations under subsection (3) must make different provision about who is suitably qualified to carry out an assessment depending on what the assessment is about.>

Alison Johnstone

46 After section 1J, insert—

<Assessments only to be required where necessary

It is implicit in the principle (expressed in section 1(c)) that respect for the dignity of individuals is to be at the heart of the Scottish social security system that—

- (a) an individual should not be required to undergo an assessment in order to be given assistance unless that is the only practicable way to obtain the information needed to determine what assistance the individual is eligible to be given, and
- (b) the Scottish Ministers should take into consideration any preferences an individual has expressed to them about where and how any assessment is carried out.>

Section 3

Pauline McNeill

3 In section 3, page 6, line 2, leave out <and publish>

Jeane Freeman

47 In section 3, page 6, line 8, leave out <paragraphs (a), (b) and (d) of subsection (3)> and insert <subsection (3)(a)(i), (ii) and (iv)>

Jeane Freeman

48 In section 3, page 6, line 21, leave out <under section 141 of the Social Security Contributions and Benefits Act 1992> and insert <as provided for by Part 9 of that Act>

Jeane Freeman

49 In section 3, page 6, line 28, leave out <and organisations>

Pauline McNeill

4 In section 3, page 6, line 34, at end insert—

- <() The Scottish Ministers may not make the charter unless a draft of it has been laid before, and approved by resolution of, the Scottish Parliament.>

Section 5

Pauline McNeill

- 5 In section 5, page 7, line 3, leave out <published in accordance with section 3(1)> and insert <made>

Jeane Freeman

- 50 In section 5, page 7, line 12, leave out <and organisations>

Pauline McNeill

- 6 In section 5, page 7, leave out line 22 and insert—
- <() if the Ministers have decided to make changes to the charter, a draft of the charter showing the changes they intend to make.
 - () The Scottish Ministers may not make changes to the charter unless a draft of the charter showing the changes they intend to make has been laid before, and approved by resolution of, the Scottish Parliament.>

Section 5A

Jeane Freeman

- 51 In section 5A, page 7, line 24, after <the> insert <Scottish social security>

Section 7

Adam Tomkins

- 52 In section 7, page 9, line 13, leave out from <giving> to end of line 16 and insert <the Scottish Ministers giving assistance to individuals in accordance with any of the following—
- (a) Part 2,
 - (b) regulations made under Part 3,
 - (c) a provision of any other Act of the Scottish Parliament if it is only by virtue of exception 10 of Section F1 of Part 2 of schedule 5 of the Scotland Act 1998 that the provision does not relate to reserved matters as defined in section 127 of that Act.>

After section 9

Mark Griffin

- 7 After section 9, insert—
- <Individual's right to end entitlement**
- (1) An individual may request that the Scottish Ministers cancel a determination of the individual's entitlement to assistance.
 - (2) On being requested to do so under subsection (1), the Scottish Ministers must cancel a determination—
 - (a) with immediate effect, or
 - (b) with effect from a later date specified in the request.

- (3) An individual is not entitled, and is not to become entitled, to be given assistance by a determination after it has been cancelled.
- (4) A request under subsection (1) must be made in such form as the Scottish Ministers require.
- (5) The Scottish Ministers must publicise any requirements for the time being set under subsection (4).>

Section 14

Jeane Freeman

- 53** In section 14, page 11, line 16, leave out subsection (1A)

Section 20

Jeane Freeman

- 54** In section 20, page 13, line 10, leave out from <made> to end of line 11 and insert—
- <() made to the Scottish Ministers in such form, and
 - () accompanied by such evidence,
- as the Scottish Ministers require.>

Jeane Freeman

- 55** In section 20, page 13, line 12, leave out <prescribed by regulations> and insert <set>

Jeane Freeman

- 56** In section 20, page 13, line 24, at end insert—
- <() If the Scottish Ministers reject something purporting to be an application for assistance, they must inform the individual concerned of—
 - (a) the decision to do that,
 - (b) the reasons for it, and
 - (c) the individual’s right to appeal under section (*Appeal to First-tier Tribunal against process decisions*).>

Section 22

Mark Griffin

- 57** In section 22, page 14, line 10, at end insert—
- <() if relevant, that the individual has the right to request a copy of an assessment report under section (*Right to reports used in determining entitlement*).>

Mark Griffin

- 8** In section 22, page 14, line 10, at end insert—
- <() The Scottish Ministers must fulfil their duty under subsection (1) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.>

Section 23

Jeane Freeman

58 In section 23, page 14, line 33, at end insert—

<() If the Scottish Ministers decide that something purporting to be a request for a re-determination does not satisfy the condition in subsection (2B), they must inform the individual concerned of—

(a) the decision,

(b) the reasons for it, and

(c) the individual's right to appeal under section (*Appeal to First-tier Tribunal against process decisions*).>

Section 23A

Jeane Freeman

59 In section 23A, page 14, line 37, leave out <subsection (3)> and insert <section (*Appeal to First-tier Tribunal against process decisions*)>

Jeane Freeman

60 In section 23A, page 15, line 9, leave out <subsection (3)> and insert <section (*Appeal to First-tier Tribunal against process decisions*)>

Jeane Freeman

61 In section 23A, page 15, line 10, leave out subsections (3) to (7)

Section 25

Jackie Baillie

124 In section 25, page 16, line 10, after <assistance,> insert <where that determination is not the same as the determination made under section 19,>

Mark Griffin

62 In section 25, page 16, line 15, at end insert—

<() if relevant, that the individual has the right to request a copy of an assessment report under section (*Right to reports used in determining entitlement*).>

Mark Griffin

9 In section 25, page 16, line 17, at end insert—

<() The Scottish Ministers must fulfil their duty under subsection (1)(a) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.>

Jackie Baillie

125 In section 25, page 16, line 17, at end insert—

<() Having made a determination under section 24 of an individual's entitlement to a particular type of assistance, where that determination is the same as the determination made under section 19, the Scottish Ministers must—

(a) inform the individual—

(i) of the determination,

(ii) of the reasons for it, and

(iii) that they will send to the First-tier Tribunal the information held by them that they used to make the determination,

(b) provide the individual with information about how the individual can withdraw their appeal.>

Section 26

Jackie Baillie

126 In section 26, page 16, leave out lines 25 to 29 and insert—

<() that the Scottish Ministers will send the information held by them that they used to make the determination in question to the First-tier Tribunal,

() provide the individual with information about how the individual can withdraw their appeal.>

Mark Griffin

10 In section 26, page 16, line 29, at end insert—

<() The Scottish Ministers must fulfil their duty under subsection (1)(a) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.>

Section 27A

Jackie Baillie

127 In section 27A, page 17, line 8, after <determination,> insert <where that determination is not the same as the determination made under section 19,>

Jackie Baillie

128 In section 27A, page 17, line 9, leave out <or (as the case may be) 26>

Jackie Baillie

129 In section 27A, page 17, line 11, leave out <or 26>

Jackie Baillie

130 In section 27A, page 17, line 21, leave out <or 26>

After section 27A

Jackie Baillie

131 After section 27A, insert—

<Sending an appeal to the First-tier Tribunal

- (1) Having made a determination under section 24 of an individual's entitlement to a particular type of assistance, where—
 - (a) that determination is the same as the determination made under section 19, or
 - (b) that determination has not been made timeously,the Scottish Ministers must send—
 - (a) the individual's request for a re-determination under section 23, and
 - (b) the information held by them that they used to make the determination,to the First-tier Tribunal.
- (2) 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.>

After section 29

Pauline McNeill

132 After section 29, insert—

<Report to the Scottish Parliament on exercise of right to appeal

- (1) As soon as practicable after the end of each financial year, the Scottish Ministers are to—
 - (a) lay before the Scottish Parliament, and
 - (b) make publicly available by such means as they consider appropriate,a report on the number of individuals who obtained the right to appeal to the First-tier Tribunal under section 27 and the number of individuals who exercised that right.
- (2) The first report under this section must include a plan setting out how the Scottish Ministers intend to collect this data.
- (3) In reporting to the Scottish Parliament under subsection (1), the Scottish Ministers must indicate whether in the opinion of Ministers amendment of the process for determining entitlement under this Act is appropriate.>

Section 29A

Jeane Freeman

63 In section 29A, page 18, line 20, leave out <23A and 28> and insert <28 and (*Appeal to First-tier Tribunal against process decisions*)>

Jeane Freeman

64 Move section 29A to after section 32B

Section 30

Jeane Freeman

- 65 In section 30, page 19, line 3, leave out <individual does not satisfy the eligibility rules prescribed in the applicable regulations> and insert <eligibility rules prescribed in the applicable regulations are not satisfied in the individual’s case>

After section 30

Alison Johnstone

- 66 After section 30, insert—

<Requirement to justify assessment requests

- (1) This section applies to a request for information from an individual under section 30(1) if fulfilling the request would require the individual to undergo an assessment.
- (2) When making the request, the Scottish Ministers must inform the individual why they consider requiring the individual to undergo an assessment to be the only practicable way to obtain the information.
- (3) If the individual would have to undergo a face-to-face assessment in order to fulfil the request, when making the request the Scottish Ministers must also inform the individual what consideration they have given to—
 - (a) any preference the individual has expressed to them concerning where and how assessments are carried out,
 - (b) whether the assessment could be carried out another way,
 - (c) what distance (if any) they expect the individual will have to travel in order to attend the assessment,
 - (d) the extent to which travelling to attend the assessment may—
 - (i) cause the individual distress,
 - (ii) adversely affect the individual’s health.
- (4) In subsection (3), “face-to-face assessment” means an assessment involving—
 - (a) the individual, and
 - (b) the assessor,being physically in the same place at the same time.>

Section 31

Jeane Freeman

- 67 In section 31, page 19, line 21, after <relation> insert <to>

Section 32A

Jeane Freeman

- 68 In section 32A, page 20, line 26, leave out <sections 32(2) and (3)> and insert <subsections (2) and (3) of that section>

After section 32B

Jeane Freeman

69 After section 32B, insert—

<Right to appeal Scottish Ministers' process decisions

Appeal to First-tier Tribunal against process decisions

- (1) An individual may appeal to the First-tier Tribunal for Scotland against a decision by the Scottish Ministers—
 - (a) to reject something purporting to be an application for assistance (see section 20),
 - (b) that something purporting to be a request for a re-determination does not satisfy the condition in section 23(2B),
 - (c) that an individual has no good reason for not requesting a re-determination sooner (see section 23A).
- (2) An appeal under this section—
 - (a) may be brought without the First-tier Tribunal's permission within the period of 31 days beginning with the day the individual was informed of the decision in accordance with this Act,
 - (b) may be brought only with the First-tier Tribunal's permission after the period mentioned in paragraph (a),
 - (c) may not be brought after the end of the period of one year beginning with the day the individual was informed of the decision in accordance with this Act.
- (3) The First-tier Tribunal may give permission under subsection (2)(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.
- (4) A decision by the First-tier Tribunal about—
 - (a) the outcome of an appeal under this section, or
 - (b) whether to give permission under subsection (2)(b) for an appeal to be brought,is final.
- (5) Accordingly (and without prejudice to the generality of subsection (4)), 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.>

Mark Griffin

70 After section 32B, insert—

<Right to reports used in determining entitlement

- (1) If an individual requests it, the Scottish Ministers must give the individual a copy of any assessment report held by the Ministers that they took into account in making a determination of the individual's entitlement to assistance.
- (2) Subsection (1) does not require the Scottish Ministers to provide an individual with information that they are exempt from the obligation to provide to the individual under Article 15 of the GDPR (whether by virtue of an enactment or otherwise).

- (3) In subsection (2), “the GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data on the free movement of such data.>

Section 33

Jeane Freeman

- 71 Move section 33 to after section 29

Section 34

Jeane Freeman

- 72 In section 34, page 21, line 37, leave out from <(either> to <regulations)> in line 38

Jeane Freeman

- 73 In section 34, page 22, line 8, at end insert—

<() Without prejudice to the generality of subsection (2)(b), the assumptions that may be specified include an assumption that eligibility rules prescribed in the applicable regulations will continue to be satisfied in an individual’s case for a specified duration or indefinitely.>

Jeane Freeman

- 74 Move section 34 to after section 29

Section 35

Jeane Freeman

- 75 Move section 35 to after section 29

After section 35

Pauline McNeill

- 11 After section 35, insert—

<Duty to inform about possible eligibility

- (1) Subsection (2) applies if, in the course of their making a determination of an individual’s entitlement to assistance, it appears to the Scottish Ministers that the individual may be eligible for other assistance.
- (2) The Scottish Ministers must—
 - (a) inform the individual that the individual may be eligible for the other assistance, and
 - (b) either—
 - (i) provide the individual with information about how to apply for it, or
 - (ii) if regulations under section 35 so allow, ask the individual whether they should proceed with making a determination of the individual’s entitlement to the other assistance without receiving an application.

- (3) Subsection (2)(b)(ii) does not preclude the Scottish Ministers from requesting further information under section 30(1) for the purpose of determining the individual's entitlement to the other assistance.
- (4) In this section, "other assistance" means—
 - (a) a different type of assistance described in Chapter 2 from the type of assistance that the determination mentioned in subsection (1) relates to, or
 - (b) the same type of assistance as that determination relates to, but in respect of a different period or (as the case may be) event.>

Section 36

Jeane Freeman

- 76** In section 36, page 22, line 24, leave out <in the performance of a function conferred by virtue of this Part>

Jeane Freeman

- 77** In section 36, page 22, line 32, leave out from <36A—> to <include> in line 33 and insert <36A, references to an error are to—
- (a) an error in the performance of a function conferred by virtue of this Part, including>

Jeane Freeman

- 78** In section 36, page 23, leave out lines 1 and 2 and insert—
- <() a new decision under section 33(1) not being made after an assumption on the basis of which an earlier decision was made has proved to be wrong.>

Section 36A

Jeane Freeman

- 79** In section 36A, page 23, line 4, leave out second <in> and insert <due to an>

Mark Griffin

- 133** In section 36A, page 23, line 7, leave out <reasonably>

Mark Griffin

- 134** In section 36A, page 23, line 13, at end insert—
- <() For the avoidance of doubt, an error is not of the kind that an individual could be expected to notice if it is an error in the determination of an individual's entitlement.>

Mark Griffin

- 135** In section 36A, page 23, line 14, leave out <an individual could reasonably> and insert <the individual could>

Mark Griffin

- 136** In section 36A, page 23, line 19, leave out <a reasonable person> and insert <the individual>

After section 37

Jeremy Balfour

137 After section 37, insert—

<Right of re-determination and appeal against decision on recovery of assistance

- (1) The provisions of sections 23 to 29 apply, with such modifications as the Scottish Ministers consider appropriate, to ensure that an individual has a right—
 - (a) to request a re-determination, and
 - (b) to appeal to the First-tier Tribunal for Scotland,in respect of a decision mentioned in subsection (2).
- (2) The decisions are—
 - (a) a decision under section 36 that an individual is liable to pay the Scottish Ministers the value of any assistance that was given to the individual,
 - (b) a decision by the Scottish Ministers to seek to recover money owed under section 36.>

After section 38

Jeane Freeman

80 After section 38A, insert—

<Liability where assistance given for period after death

- (1) An individual's estate is liable to pay the Scottish Ministers the value of any assistance that was given to the individual under section 8 in respect of a period after the individual's death.
- (2) For the avoidance of doubt, assistance may be regarded as having been given to an individual for the purposes of this section despite being given after the individual's death.>

Jeremy Balfour

Supported by: Jeane Freeman

146* After section 38A, insert—

<First-tier Tribunal's jurisdiction

The Scottish Ministers may by regulations transfer to the First-tier Tribunal for Scotland some or all of the competence and jurisdiction that a sheriff has in relation to the recovery of money owed under section 36.>

Section 39

Pauline McNeill

81 In section 39, page 24, line 24, after first <person> insert <knowingly>

Section 40

Pauline McNeill

- 82 In section 40, page 25, line 4, after <person> insert <knowingly>

Pauline McNeill

- 83 In section 40, page 25, line 7, leave out <or ought to have known>

Pauline McNeill

- 84 In section 40, page 25, line 7, leave out <might> and insert <would>

Section 41

Pauline McNeill

- 85 In section 41, page 25, line 32, after first <person> insert <knowingly>

Pauline McNeill

- 86 In section 41, page 25, line 35, leave out <or ought to have known>

Pauline McNeill

- 87 In section 41, page 25, line 36, leave out <might> and insert <would>

Section 42

Pauline McNeill

- 88 In section 42, page 26, line 24, leave out <, or is attributable to the neglect of>

Section 44

Jeane Freeman

- 89 In section 44, page 27, line 32, leave out <claim whatsoever> and insert <action>

Section 44A

Jeane Freeman

- 90 In section 44A, page 28, line 16, after <means> insert <—
()>

Jeane Freeman

- 91 In section 44A, page 28, line 18, after <individual> insert <, but
() not a figure which is so prescribed to apply only in respect of periods that have ended, or events that occurred, before a particular date>

Section 44B

Ben Macpherson

- 12 In section 44B, page 28, line 37, at end insert—
<() the funeral expense assistance regulations.>

Ben Macpherson

- 13 In section 44B, page 29, line 7, leave out from <containing> to end of line 8 and insert <(or instruments) containing regulations under each power mentioned in subsection (4).>

Ben Macpherson

- 14 In section 44B, page 29, line 15, at end insert—
<“funeral expense assistance regulations” means regulations under section 17,>

After section 46

Mark Griffin

Supported by: Elaine Smith, Alison Johnstone

- 138 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 47

Mark Griffin

- 139** In section 47, page 30, line 29, after <is> insert <whichever is the higher of—
(a)>

Mark Griffin

- 140** In section 47, page 30, line 31, at end insert—
<(b) that amount as it would have effect on the qualifying date if it were adjusted for inflation in accordance with subsection (4A), and>

Mark Griffin

- 141** In section 47, page 30, line 34, at end insert—
<(4A) The Scottish Ministers must, before the start of each new tax year, beginning with the first new tax year first beginning after this section comes into force—
(a) calculate what the weekly amount specified in regulation 79(1)(c) of the Jobseeker’s Allowance Regulations 1996 (S.I.1996/207) (“the JSA Regulations”) would be if it were adjusted for inflation,
(b) publish a statement explaining how they have calculated inflation for this purpose.
(4B) In calculating the amount for the purpose of subsection (4A)(a), the Scottish Ministers may take account of any change in the weekly amount specified in regulation 79(1)(c) of the JSA Regulations since this section comes into force.
(4C) For the purposes of subsection (4A), a tax year means a period beginning with 6 April in one year and ending with 5 April in the next.>

Section 48

Mark Griffin

Supported by: Elaine Smith

- 142** In section 48, page 31, line 3, leave out <section> and insert <sections (*Child benefit supplement*) and>

Mark Griffin

Supported by: Elaine Smith

- 143** In section 48, page 31, line 3, leave out <it> and insert <either section>

Section 48D

Jeane Freeman

- 92** In section 48D, page 32, line 26, after <to> insert <—
()>

Jeane Freeman

- 93 In section 48D, page 32, line 26, after <assistance> insert <, and
() short-term assistance that an individual is eligible to be given on account of the individual’s entitlement to housing assistance being under review within the meaning of paragraph 1(1)(c) of schedule 9>

After section 53

Mark Griffin

- 144 After section 53, insert—

<PART

UNIVERSAL CREDIT: PAYMENT TO JOINT CLAIMANTS

Universal credit: payment to joint claimants

- (1) 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) For the avoidance of doubt, the regulations under subsection (1), must give effect only to the proposal described in subsection (3).
- (5) The Scottish Ministers may by regulations repeal this section and revoke any regulations made under it.
- (6) 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

Mark Griffin

- 15 In section 55, page 36, line 5, after first <section> insert <(Assessors to be suitably qualified),>

Jeane Freeman

94 In section 55, page 36, line 5, after first <section> insert <(Advocacy service standards),>

Jeane Freeman

95 In section 55, page 36, line 5, leave out <section (Charter-based complaints),>

Jeremy Balfour

Supported by: Jeane Freeman

147* In section 55, page 36, line 6, after <35,> insert <(First-tier Tribunal's jurisdiction),>

Jeane Freeman

96 In section 55, page 36, line 6, after <48,> insert <48C(2)(g) and (5),>

Jeane Freeman

97 In section 55, page 36, line 6, after <53> insert <and paragraph 4(2)(c) of schedule A1>

Jeane Freeman

98 In section 55, page 36, line 8, leave out <20(1),>

Jeane Freeman

99 In section 55, page 36, line 8, leave out <and 48C(2)(g) and (5)>

Jeane Freeman

100 In section 55, page 36, line 8, leave out <paragraphs 4(2)(c) and> and insert <paragraph>

Section 55A

Adam Tomkins

101 In section 55A, page 36, line 27, at end insert—

<() For the purposes of subsection (2), proposals must take the form of draft regulations.>

Adam Tomkins

102 In section 55A, page 36, line 30, at end insert—

<() The Scottish Ministers must ensure that the Commission has such time to prepare the report as the Commission deems appropriate.>

Pauline McNeill

16 In section 55A, page 37, leave out lines 20 to 23

After section 55B

Pauline McNeill

145* After section 55B, insert—

<Further procedure for other regulations

- (1) This section applies (subject to subsection (9)) in relation to regulations under any of the following provisions: sections 6B(1)(e), 20(1), 23(2C)(a), 24(5), 34, 35, 43, 47(5), 48, 48C(2)(g) and (5), 48D, 53 and paragraphs (4)(2)(c) and 13(2) of schedule A1.
- (2) Where the Scottish Ministers propose to make regulations to which this section applies, they must refer the proposals to the Commission.
- (3) The Commission must advise the Scottish Ministers whether the Commission intends to prepare a report 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 6B(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—
 - (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.
- (7) If the Commission has decided to prepare a report, when laying a Scottish statutory instrument containing regulations to which this section applies before the Scottish Parliament, 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
 - (b) a statement explaining why the Ministers consider it appropriate to lay the statutory 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,
 - (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).>

Section 56

Jeane Freeman

- 103** In section 56, page 37, line 39, after <55> insert <, 55A, 55B>

Schedule A1

Jeremy Balfour

- 104** In schedule A1, page 43, leave out lines 16 to 18 and insert—
- <() one of the members of the Scottish Tribunals, as defined in section 13(3) of the Tribunals (Scotland) Act 2014,
 - () a judge, or other member, of the Upper Tribunal or First-tier Tribunal.>

Schedule 1

Jeane Freeman

- 105** In schedule 1, page 47, leave out lines 11 to 13 and insert <this schedule, apart from the following provisions, is to be taken to limit what may be prescribed in the regulations—
- (a) Chapter 1 of Part 1,
 - (b) paragraph 10A in Part 2.>

Schedule 2

Jeane Freeman

- 106** In schedule 2, page 49, leave out lines 21 to 23 and insert <this schedule, apart from the following provisions, is to be taken to limit what may be prescribed in the regulations—
- (a) Chapter 1 of Part 1,
 - (b) paragraph 8A in Part 2.>

Schedule 3

Jeane Freeman

- 107** In schedule 3, page 50, line 15, leave out <must> and insert <may>

Jeane Freeman

- 108** In schedule 3, page 51, line 10, leave out <must> and insert <may>

Jeane Freeman

- 109** In schedule 3, page 51, line 32, leave out <paragraph 6A> and insert <the following provisions>

Jeane Freeman

- 110** In schedule 3, page 51, line 33, at end insert—

- <(a) paragraph 3 in Part 1,
- (b) paragraphs 6ZA and 6A in Part 2.>

Schedule 4

Jeane Freeman

111 In schedule 4, page 52, line 15, at end insert—

<() The regulations are to define “terminal illness” for the purpose of determining entitlement to disability assistance.

() The definition of “terminal illness” must be framed so that—

- 5 (a) any progressive disease that can reasonably be expected to cause the death of the individual in question within 6 months falls within it,
- (b) other conditions, identified and defined through consultation with registered medical practitioners, fall within it.>

Ben Macpherson

111A As an amendment to amendment 111, line 5, at beginning insert <there falls within it>

Ben Macpherson

111B As an amendment to amendment 111, line 6, leave out <6 months falls within it> and insert <—

() 6 months, or

() a period of any length if the individual in question is under 18 years of age when diagnosed>

Jeane Freeman

Supported by: Jeremy Balfour

148* In schedule 4, page 52, line 15, at end insert—

<(2) The regulations must provide that an individual is to be regarded as having a terminal illness for the purpose of determining entitlement to disability assistance if, having had regard to the guidance mentioned in sub-paragraph (3), it is the clinical judgement of a registered medical practitioner that the individual has a progressive disease that can reasonably be expected to cause the individual’s death.

(3) The Chief Medical Officer of the Scottish Administration is—

(a) following consultation with registered medical practitioners, to prepare and from time to time revise, and

(b) to make publicly available by such means as the Chief Medical Officer considers appropriate,

guidance that sets out when a progressive disease can reasonably be expected to cause an individual’s death for the purpose of determining entitlement to disability assistance.>

Jeane Freeman

112 In schedule 4, page 53, line 2, leave out <must> and insert <may>

Jeane Freeman

113 In schedule 4, page 53, line 17, at end insert—

<CHAPTER 3

SPECIAL RULES FOR TERMINAL ILLNESS CASES

No minimum period

The regulations may not make the eligibility of an individual who has a terminal illness depend on the individual having had the illness for any length of time.

No requirement for assessment

The regulations may not make the eligibility of an individual who has a terminal illness depend on the individual producing any evidence of that fact beyond a diagnosis by a registered medical practitioner.

Eligibility from date of application

The regulations must be framed so that an individual who applies for disability assistance on the basis of having a terminal illness, and does have a terminal illness, is eligible, at the latest, from the day the application is made.

Entitlement to maximum amount

The regulations must be framed so that an individual who is eligible by reason of having a terminal illness is entitled to the maximum amount of the assistance that the individual is eligible for.>

Jeane Freeman

114 In schedule 4, page 55, leave out lines 5 to 7 and insert <this schedule, apart from the following provisions, is to be taken to limit what may be prescribed in the regulations—

- (a) Chapter 1 of Part 1,
- (b) paragraph 5A in Chapter 2 of Part 1,
- (c) Chapter 3 of Part 1,
- (d) paragraphs 11A and 12 in Chapter 2 of Part 2.>

Schedule 5

Jeane Freeman

115 In schedule 5, page 57, line 4, leave out from <Chapter> to end of line 5 and insert <this schedule, apart from the following provisions, is to be taken to limit what may be prescribed in the regulations—

- (a) Chapter 1 of Part 1,
- (b) Part 1A.>

Schedule 6

Jeane Freeman

116 In schedule 6, page 58, line 19, leave out <must> and insert <may>

Jeane Freeman

- 117** In schedule 6, page 60, leave out lines 17 to 19 and insert <this schedule, apart from the following provisions, is to be taken to limit what may be prescribed in the regulations—
- (a) Chapter 1 of Part 1,
 - (b) paragraph 7A in Chapter 2 of Part 1,
 - (c) paragraphs 12A and 13 in Chapter 2 of Part 2.>

Schedule 7

Jeane Freeman

- 118** In schedule 7, page 63, leave out lines 5 to 7 and insert <this schedule, apart from the following provisions, is to be taken to limit what may be prescribed in the regulations—
- (a) Chapter 1 of Part 1,
 - (b) paragraph 12A in Part 2.>

Schedule 8

Jeane Freeman

- 119** In schedule 8, page 63, line 23, leave out from beginning to <2)> in line 24 and insert <Subject to sub-paragraph (1A) and paragraph 2, the regulations must be framed so that>

Jeane Freeman

- 120** In schedule 8, page 63, line 27, at end insert—
- <(1A) The regulations need not be framed so that eligibility depends on meeting the conditions described in sub-paragraph (2) or (3) if it is not (or is no longer) possible for circumstances to arise enabling the conditions described in the sub-paragraph to be met.>

Jeane Freeman

- 121** In schedule 8, page 64, line 17, after <calculation> insert <, in respect of accommodation in Scotland,>

Jeane Freeman

- 122** In schedule 8, page 66, line 21, at end insert—
- <() Sub-paragraph (1) does not apply if, by virtue of paragraph 1(1A), the regulations need not provide for eligibility to depend on the conditions described in paragraph 1(2) being met.>

Jeane Freeman

- 123** In schedule 8, page 67, line 22, leave out <in Part 2, paragraphs 9 and 12> and insert <paragraphs 9 and 12 of Part 2>

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