

# Social Security (Amendment) (Scotland) Bill

## [As amended at Stage 2]

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## Supplementary Delegated Powers Memorandum

### Introduction

1. This supplementary Delegated Powers Memorandum has been prepared by the Scottish Government in accordance with Rule 9.7.9 of the Parliament's Standing Orders to assist the Delegated Powers and Law reform Committee in its consideration of the Social Security (Amendment) (Scotland) Bill ("the Bill"). This memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2. It should be read in conjunction with the Delegated Powers Memorandum published to accompany the Bill on introduction.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

### Provisions conferring power to make subordinate legislation introduced or amended at Stage 2

3. The amended or new delegated powers in the Bill are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary power has been considered appropriate.

### Delegated powers

#### Section 1(3): Childhood assistance

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or New power: Revised

## Provision

4. Section 1(3) of the Bill on introduction inserted a new section 32A into Chapter 2 of Part 2 of the Social Security (Scotland) Act 2018 (“the 2018 Act”). Section 32A(1) sets out that childhood assistance is assistance to help towards meeting the costs associated with having a child in the family. Section 32A(2) gives the Scottish Ministers power to make regulations to provide for childhood assistance. The Scottish Ministers are to make regulations under section 32A(2) setting out who is eligible for childhood assistance, and what assistance those who are entitled are to be given.

5. Along with section 32A, section 1 of the Bill inserts a new schedule 6A (childhood assistance regulations), which makes further provision about the regulation-making power conferred by section 32A(2). Schedule 6A, as amended at Stage 2, extends the list of eligibility criteria for childhood assistance that the Scottish Ministers must make provision for within regulations. This provision has been extended to include eligibility for an individual who is or has been pregnant and for persons who have a relationship of a specified kind to another individual who is, or has been, pregnant, as well as an individual or who is to, or has, become responsible for a child. It now also allows for Scottish Ministers to make provision in regulations that an individual may be given assistance if they previously satisfied one of the primary eligibility criteria but no longer does so, and to make provision that childhood assistance may be given to an individual who meets one of the primary eligibility criteria within a specified period of a specified event occurring in a child’s life.

6. The purpose of amending schedule 6A in this way is to allow for assistance which is currently given under the powers in section 32 and schedule 6 of the 2018 Act to be brought under the inserted section 32A and schedule 6A. Section 1(1A) of the Bill, as amended at Stage 2, repeals section 32 and schedule 6.

7. Further amendments to the inserted schedule 6A at Stage 2 allow for provisions on deductions from liability in respect of ongoing assistance. This amendment reflects the provision in schedules 2, 5, 6, 7 and 9 of the 2018 Act which allow Scottish Ministers to make provision in regulations that assistance may be given by way of deductions from liability which the individual has for overpayments of assistance given under Part 2 Chapter 2 of the 2018 Act, if the individual is liable for an overpayment under section 63 of the 2018 Act, or under provision corresponding to section 63 made in regulations under section 79 of the 2018 Act.

8. In addition, under the new paragraph 6A of schedule 6A, where the regulations on childhood assistance make provision for a deadline for applications for assistance, they may also make provision in which an application made after the deadline is treated in law as if it had been made by the deadline.

## Reason for taking power

9. The reason for taking the power has not changed and remains as set out in the Delegated Powers Memorandum published to accompany the Bill on introduction.

This document relates to the Social Security (Amendment) (Scotland) Bill (SP Bill 35A) as amended at Stage 2

### Choice of procedure

10. The choice of procedure has not changed and remains as set out in the Delegated Powers Memorandum published to accompany the Bill on introduction.

### Section 8A(2)(e): Liability for assistance given in error

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or New power: Revised

### Provision

11. Section 8A(2) of the Bill, inserted at Stage 2, amends section 63 of the 2018 Act. Section 8A(3) of the Bill, as inserted at Stage 2, inserts section 63A and 63B into the 2018 Act and section 8A(4) of the Bill repeals section 64 of the 2018 Act. Section 8A effectively replaces sections 9, 10 and 11 of the Bill as introduced.

12. Section 9(4)(d) of the Bill on introduction inserted subsection (6) into section 64 of the 2018 Act and provided that the Scottish Ministers may by regulations specify the persons, or categories of persons, who are included within the meaning of “the individual’s representative” for the purposes of sections 64, 64A and 64B. Section 8A of the Bill, as inserted at Stage 2, streamlines the provisions on assistance given in error, amending section 63 to encompass the provisions in section 64 of the 2018 Act. Therefore the regulation-making power inserted by section 9(4)(d) of the Bill at introduction, which was contained in section 64 of the 2018 Act, will now be set out in section 63(12) of the 2018 Act, as inserted by section 8A(2)(e) of the Bill.

13. The purpose and effect of the power delegated by provision made by this section has not changed and the amendment has been to streamline the provisions and make them less structurally complex. The wording of the power has not changed.

### Reason for taking power

14. The reasons for taking the power have not changed and remains as set out in paragraph 39 of the Delegated Powers Memorandum published to accompany the Bill on introduction.

### Choice of procedure

15. The choice of procedure has not changed and remains as set out in paragraph 40 of the Delegated Powers Memorandum published to accompany the Bill on introduction.

## Section 13A: Assistance given in error: deductions from other assistance

Powers conferred on: the Scottish Ministers

Powers exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or New power: New

### Provision

16. Section 13A of the Bill, inserted at Stage 2, amends schedules 2, 5, 7 and 9 of the 2018 Act. Schedules 2, 5, 6, 7 and 9 of the 2018 Act allow Scottish Ministers to make provisions in regulations that the assistance may be given by way of deductions from liability which the individual has for overpayments of assistance given under Chapter 2 of the 2018 Act if the individual is liable for an overpayment under section 63 of the 2018 Act. Section 13A of the Bill extends the provision to include liability for overpayment under provision corresponding to section 63 made in regulations under section 79 of the 2018 Act.

17. This is consistent with the amendment to schedule 6A set out above at paragraph 7.

18. Schedule 6 of the 2018 Act is not amended in the same way because it is repealed by section 1(1A) of the Bill as amended.

### Reasons for taking powers

19. The change to this power is considered appropriate to allow for the same approach to be taken in respect of how individuals may repay an overpayment for which they are liable under regulations made under section 79 as for overpayments for assistance given under Part 2 Chapter 2 of the 2018 Act.

### Choice of procedure

20. Regulations made under Chapter 2 of the 2018 Act are subject to the affirmative procedure and the enhanced level of parliamentary scrutiny because regulations made under this power will be substantive in nature, impacting on when assistance can be given by way of deduction. The significance of these matters makes it appropriate that the Parliament should consider them in detail and that they should be subjected to the enhanced level of scrutiny the affirmative procedure offers.

## Section 16(2): Information for audit of the social security system

Powers conferred on: the Scottish Ministers

Powers exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or New power: Revised

### Provision

21. Section 16 of the Bill inserts a new section 87B into the 2018 Act, making provision for obtaining information for audit of the social security system. Section 87B(1) provides the Scottish Ministers with the power to require information from an individual who is entitled to assistance under the 2018 Act, about their entitlement to or payment of assistance. Section 87B(5) provides the Scottish Ministers with power to prescribe by categories of individuals who are not to be requested to provide information about their entitled to or payment of assistance under section 87B(1).

22. A further amendment to the inserted section 87B at Stage 2 provides that before making regulations under subsection (5), the Scottish Ministers must consult publicly on the categories of individuals who are not to be requested to provide information under subsection (1).

### Reasons for taking power

23. The reason for taking the power has not changed and remains as set out in the Delegated Powers Memorandum published to accompany the Bill on introduction.

### Choice of procedure

24. The newly inserted subsection (5A) requires Scottish Ministers to consult before making any Regulations under this provision. This has been added to provide Parliament with additional reassurance about the safeguards in place for making secondary legislation under this provision.

## Section 17(2): Recovery of value of assistance from compensation payments

Powers conferred on: the Scottish Ministers

Powers exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or New power: Revised (removed)

### Provision

25. Section 17 of the Bill inserts a new Part 6A after section 94 of the 2018 Act, as well as a new schedule 12. Within Part 6A, sections 94A to 94W are inserted into the

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2018 Act to make provision for recovery of specified forms of assistance (as set out in Part 2 of the new schedule 12) from compensation payments, where the compensation payment and the assistance are paid in relation to the same accident, injury or disease.

26. Section 94H provides that if liability for accident, injury or disease is covered by an insurance policy, the policy is also to be treated as covering liability under section 94E. At introduction, section 94H(4) allowed the Scottish Ministers to make provision about the liability imposed on the insurer. This has been amended at Stage 2 so that the power is to limit the liability imposed on the insurer.

27. Section 94N makes provision for the reconsideration by the Scottish Ministers of the certificate of recoverable assistance. Under section 94N(8)(b), specified persons will receive a notice of consideration. A person who has received a notice of reconsideration may then appeal to the First-tier Tribunal for Scotland against the reconsideration, as set out in section 94O. Section 94O(6), inserted by section 17 of the Bill on introduction, gave the Scottish Ministers the power to make provision in regulations about the manner in which and the period within which appeals may be brought and the circumstances and manner in which a purported appeal under this section may be treated instead as a request for a reconsideration under section 94N. Related to this process, the Scottish Ministers had the power under section 94O(11), inserted by section 17 of the Bill on introduction, to make provision in regulations about the non-disclosure of medical advice or medical evidence given or submitted in connection with an appeal. At Stage 2, section 17 of the Bill was amended to remove section 94O(6) and section 94O(11).

### Reason for revising and removing powers

28. The power at section 94H(4) on introduction was broader than required. The power will only be used in order to limit the liability of an insurer. The wording has therefore been narrowed to reflect that.

29. The powers at sections 94O(6) and 94O(11) are not required as the Tribunals (Scotland) Act 2014 expressly allows Scottish Tribunal Rules to make provision about the form and manner in which a case is to be brought and provision about the non-disclosure of medical advice or medical evidence given or submitted in connection with an appeal brought under this section. Therefore, there is no requirement for these provisions to be included in the Bill.

### Choice of procedure

30. The choice of procedure has not changed and remains as set out in the Delegated Powers Memorandum published to accompany the Bill on introduction.

## Section 25: Commencement

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid, no procedure

Revised or New power: Revised

### Provision

31. Section 25(2) of the Bill on introduction provides that the Scottish Ministers may, by regulations, appoint days on which the provisions in the Bill come into force. This is with the exception of sections 22, 23, 25 and 26, which come into force on the day after Royal Assent as per section 25(1) of the Bill on introduction. Regulations under section 25 may include transitional, transitory or saving provisions and may make different provision for different purposes. At Stage 2, section 25(1) was amended to include section 24 of the Bill as one of the exceptions and section 24 will now come into force on the day after Royal Assent and not by regulations.

32. Section 24 of the Bill amends the list of regulation powers in section 96 of the 2018 Act. It is considered that having to lay commencement regulations for section 24 would be disproportionate given that the provision relates solely to Parliamentary procedure.

### Reason for taking power

33. The reason for taking the power has not changed and remains as set out in the Delegated Powers Memorandum published to accompany the Bill on introduction.

### Choice of procedure

34. The choice of procedure has not changed and remains as set out in the Delegated Powers Memorandum published to accompany the Bill on introduction.

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