

Social Security (Scotland) Bill

[AS AMENDED AT STAGE 2]

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Social Security (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament making provision about social security.

PART 1

TENETS AND OVERSIGHT

Principles

5 **1 The Scottish social security principles**

The Scottish social security principles are—

- (a) social security is an investment in the people of Scotland,
- (b) social security is itself a human right and essential to the realisation of other human rights,
- 10 (ba) the delivery of social security is a public service,
- (c) respect for the dignity of individuals is to be at the heart of the Scottish social security system,
- (ca) the Scottish social security system is to contribute to reducing poverty in Scotland,
- (e) the Scottish social security system is to be designed with the people of Scotland
15 on the basis of evidence,
- (f) opportunities are to be sought to continuously improve the Scottish social security system in ways which—
 - (i) put the needs of those who require assistance first, and
 - (ii) promote the goals of equality and non-discrimination,
- 20 (g) the Scottish social security system is to be efficient and deliver value for money.

1A Effect of the principles

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

*Scottish Ministers' duty to promote take-up***1B Scottish Ministers' duty to promote take-up**

The Scottish Ministers must—

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

1C Recognition of importance of inclusive communication

- 10 (1) In fulfilling their duty under section 1B(a), the Scottish Ministers must have regard to the importance of communicating in an inclusive way.
- (2) In subsection (1), “communicating in an inclusive way” means communicating in a way that ensures individuals who have difficulty communicating (in relation to speech, language or otherwise) can receive information and express themselves in ways that best meet each individual’s needs.
- 15

1D Accessibility of information

- (1) Every individual has a right to request and be given, where practicable, the information mentioned in subsection (2) in a form which is accessible to, and proportionate to the needs of, that individual.
- 20 (2) The information mentioned in subsection (1) is—
- (a) a copy of the charter,
- (b) a form to apply for assistance,
- (c) a notice of determination,
- (d) a form to request a re-determination,
- 25 (e) a notice of re-determination,
- (f) a form to bring an appeal against a determination,
- (g) any guidance issued under, or in connection with, this Act,
- (h) any other document which the Scottish Ministers are required to publish in accordance with this Act.

1E Recognition of importance of independent advice and advocacy

- 30 (1) In fulfilling their duty under section 1B(a), the Scottish Ministers must have regard to the role that—
- (a) independent advice, and
- (b) independent advocacy,
- 35 can play in ensuring that individuals are given what they are eligible to be given under the Scottish social security system.
- (2) The steps taken by the Scottish Ministers under section 1B(b) must include steps in relation to providing, or ensuring the provision of, information about—

(a) independent advice, and

(b) independent advocacy,

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

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

1F Information and advice

10 (1) An individual applying, or considering applying, for assistance through the Scottish social security system is entitled to independent information and advice about in particular—

(a) how to apply to the Scottish Ministers for assistance,

(b) the process for determining an individual's entitlement to assistance,

(c) the types of assistance to which the individual may be entitled,

(d) income maximisation,

15 (e) the content of the charter.

(2) The information and advice must be accessible to, and proportionate to the needs of, the individuals to whom it is provided.

(3) The Scottish Ministers must take steps to ensure the availability of information and advice to individuals applying, or considering applying, for assistance.

20 (4) The Scottish Ministers may delegate the functions set out in this section to another person.

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

1G Right to advocacy

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

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

(3) In this section—

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

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

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

1H Income maximisation strategy

- (1) The Scottish Ministers must, within one year of this section coming into force, publish a strategy designed to encourage individuals to apply for the social security assistance that they are entitled to be given.
- 5 (2) The strategy must set out—
- (a) the types of assistance in relation to which the Scottish Ministers are to set a target for the uptake of the assistance,
 - (b) the target for the uptake of each type of assistance mentioned in paragraph (a),
 - (c) the target for the uptake in Scotland of all social security assistance.
- 10 (3) In preparing the strategy, the Scottish Ministers must consult such persons as they consider appropriate.
- (4) The persons consulted must include individuals who have received social security assistance.
- 15 (5) As soon as practicable after the strategy has been published under subsection (1), the Scottish Ministers must lay a copy before the Scottish Parliament.
- (6) In this section, “social security assistance” means—
- (a) assistance given through the Scottish social security system,
 - (b) social security schemes other than those listed in exceptions 1 to 10 in Section F1 of Part 2 of schedule 5 of the Scotland Act 1998.

1I Review of strategy

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

- (b) in respect of a revised strategy, the period of 5 years beginning with the day on which the previous strategy was published.

Restriction of private-sector involvement

1J Restriction on private-sector involvement in assessments

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

Charter

2 The Scottish social security charter

- (1) A Scottish social security charter is to be prepared, published and from time to time reviewed in accordance with sections 3 to 5.
- (2) The charter is to set out what should be expected—
- (a) from the Scottish Ministers when—
 - (i) developing social security policy, and
 - (ii) exercising the functions conferred on them by this Part and Parts 2 and 3, and
 - (b) from the individuals who apply for, and receive, assistance through the Scottish social security system.
- (3) The charter is to reflect the Scottish social security principles.

3 Preparing the first charter

- (1) The Scottish Ministers are to prepare and publish the charter within 6 months of this section coming into force.
- (2) In preparing the charter, the Scottish Ministers must consult such persons as they consider appropriate.
- (2A) The Scottish Ministers must ensure, as far as is reasonably practicable, that the persons consulted include, in particular, a representative proportion of persons such as are mentioned in paragraphs (a), (b) and (d) of subsection (3) who have—
- (a) a physical impairment,
 - (b) a mental impairment.
- (3) The persons consulted must include—
- (a) individuals who are in receipt of—
 - (i) disability living allowance as provided for by sections 71 to 76 of the Social Security Contributions and Benefits Act 1992,
 - (ii) personal independence payment as provided for by Part 4 of the Welfare Reform Act 2012,
 - (iii) severe disablement allowance as provided for by sections 68 and 69 of the Social Security Contributions and Benefits Act 1992,
 - (iv) attendance allowance as provided for by section 64 of that Act,
 - (v) industrial injuries benefits within the meaning of Part 5 of that Act,
 - (va) child benefit under section 141 of the Social Security Contributions and Benefits Act 1992,
 - (vi) carer's allowance as provided for by section 70 of that Act,
 - (vii) payments under section 138 of that Act in respect of—
 - (A) maternity expenses,
 - (B) funeral expenses,
 - (C) heating expenses, and
 - (b) persons and organisations who work with or represent individuals living in households whose income is adversely affected, or whose expenditure is increased, because a member of the household has one or more protected characteristics (within the meaning of section 4 of the Equality Act 2010).
- (4) For the purpose of subsection (2), it is immaterial that anything done by way of consultation was done before the Bill for this Act was passed or after that but before this section comes into force.

4 Publication of the charter

The Scottish Ministers are to make the charter publicly available by such means as they consider appropriate.

5 Reviewing the charter

- (1) The Scottish Ministers must review the charter—
- (a) within 5 years of its being published in accordance with section 3(1), and
 - (b) thereafter, within 5 years of the report of the last review being laid before the Parliament in accordance with subsection (4)(b).
- (2) In carrying out a review, the Scottish Ministers must consult—
- (a) the Scottish Commission on Social Security, and
 - (b) any other persons they consider appropriate.
- (3) The persons consulted must include—
- (a) individuals who have received assistance through the Scottish social security system, and
 - (b) persons and organisations who work with or represent individuals living in households whose income is adversely affected, or whose expenditure is increased, because a member of the household has one or more protected characteristics (within the meaning of section 4 of the Equality Act 2010).
- (4) Following a review, the Scottish Ministers must—
- (a) decide whether or not to make any changes to the charter, and
 - (b) lay before the Scottish Parliament a report setting out—
 - (i) the consultation undertaken in carrying out the review,
 - (ii) the reasons for their decision to make changes, or not make changes, to the charter, and
 - (iii) (where applicable) a summary of the changes made.

5A Effect of the charter

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

Accountability

6 Annual report

- (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 performance of the Scottish social security system in that year.
- (2) The report is to contain—
- (a) information about the performance of the Scottish social security system in that year,

- (b) a description of what the Scottish Ministers have done in that year to meet the expectations of them set out in the Scottish social security charter,
- (c) an assessment of how the Scottish social security system has affected the circumstances of persons living in households whose income is adversely affected, or whose expenditure is increased, because a member of the household has one or more protected characteristics (within the meaning of section 4 of the Equality Act 2010), and
- (d) a description of the data for the purpose of monitoring equality of opportunity used in preparing the report.

- (3) The first report under this section is to include a plan setting out the Scottish Ministers' intentions to collect and publish data for the purpose of monitoring equality of opportunity where existing data sources are not sufficient for the preparation of the report.

6A Scottish Commission on Social Security

- (1) The Scottish Commission on Social Security is established.
- (2) The Commission is a body corporate.
- (3) Schedule A1 makes further provision about the Commission.

6B Commission functions

- (1) The Scottish Commission on Social Security has the following functions—
 - (a) to scrutinise legislative proposals in accordance with section 55A,
 - (b) to prepare and submit to the Scottish Ministers a report on any matter, relevant to social security, that the Ministers request the Commission to report on,
 - (c) to prepare and submit to the Scottish Parliament a report on any matter, relevant to social security, that the Commission is requested to report on by the Parliament after the Parliament has resolved that the request should be made,
 - (d) to prepare and submit to the Ministers and the Parliament, from time to time, a report containing—
 - (i) an assessment of the extent to which any or all of the expectations set out in the Scottish social security charter are being fulfilled, and
 - (ii) recommendations for improvement where the assessment is that those expectations are not being fulfilled,
 - (e) any functions the Ministers confer on the Commission by regulations.
- (2) In performing any of the functions mentioned in subsection (1), the Commission may have regard to any relevant international human rights instruments (see also section 55A(4)).
- (3) The Commission must make publicly available by such means as it considers appropriate any report that it prepares in pursuance of a function mentioned in subsection (1).
- (4) The Commission must consider preparing a report under subsection (1)(d) if it receives evidence which suggests that expectations set out in the charter are frequently not being fulfilled.

- (5) In subsection (2), “international human rights instruments”—
- (a) means any international convention, treaty or other international instrument ratified by the United Kingdom, subject to—
- (i) any amendments in force in relation to the United Kingdom for the time being, and
- (ii) any reservations, objections or interpretative declarations by the United Kingdom for the time being in force, and
- (b) includes, in particular, the International Covenant on Economic, Social and Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

Interpretation

7 Meaning of “Scottish social security system”

In this Part, “Scottish social security system” means the system for giving individuals assistance—

- (a) under Part 2, and
- (b) by virtue of regulations made under Part 3.

PART 2

GIVING OF ASSISTANCE BY SCOTTISH MINISTERS

CHAPTER 1

ASSISTANCE TO BE GIVEN ACCORDING TO DETERMINATION OF ENTITLEMENT

8 Duty to give assistance

The Scottish Ministers must give an individual whatever assistance of a type described in Chapter 2 the individual is entitled to be given under a determination of the individual’s entitlement to assistance.

9 Meaning of “determination of entitlement”

- (1) References in this Part to a determination of an individual’s entitlement to assistance are to a determination made—
- (a) by the Scottish Ministers—
- (i) under section 19, or
- (ii) (following a request for a re-determination) under section 24,
- (b) by the First-tier Tribunal for Scotland—
- (i) under section 29 in an appeal against a determination made by the Scottish Ministers, or
- (ii) (subsequent to such an appeal) under its Tribunals Act powers,
- (c) by the Upper Tribunal for Scotland under its Tribunals Act powers (subsequent to an appeal against, or following a review of, a decision of the First-tier Tribunal),

(d) by the Court of Session under its Tribunals Act powers (in an appeal against a decision of the Upper Tribunal), or

(e) by the Supreme Court of the United Kingdom—

(i) in an appeal under section 40 of the Court of Session Act 1988 against a decision of the Court of Session, or

(ii) on a reference made by the Court of Session under schedule 6 of the Scotland Act 1998.

(2) In this section, “Tribunals Act powers” means powers under Part 6 (review or appeal of decisions) of the Tribunals (Scotland) Act 2014.

10 Later determination supersedes earlier

(1) The latest determination of an individual’s entitlement to a particular type of assistance in respect of a given period or event supersedes any earlier determination insofar as it deals with the individual’s entitlement to that type of assistance in respect of the same period or event.

(2) Accordingly the individual is not entitled, and is not to become entitled, to be given any assistance in respect of that period or event by the earlier determination insofar as it has been superseded.

CHAPTER 2

TYPES OF ASSISTANCE TO BE GIVEN

11 Carer’s assistance

(1) Carer’s assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 8 to an individual who provides, or has provided, care to another individual who has a disability.

(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 carer’s assistance, and

(b) what carer’s assistance an individual who is entitled to it is to be given.

(3) Schedule 1 makes provision about the exercise of the power conferred by subsection (2).

12 Cold-spell heating assistance

(1) Cold-spell heating 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, the individual’s heating costs during a period of cold weather.

(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 cold-spell heating assistance, and

(b) what cold-spell heating assistance an individual who is entitled to it is to be given.

(3) Schedule 2 makes provision about the exercise of the power conferred by subsection (2).

13 Winter heating assistance

- (1) Winter heating 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, the individual's heating costs during the winter months.
- 5 (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 winter heating assistance, and
 - (b) what winter heating assistance an individual who is entitled to it is to be given.
- (3) Schedule 3 makes provision about the exercise of the power conferred by subsection (2).

14 Disability assistance

- 10 (1) Disability assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 8 to an individual on account of the individual having—
- (a) a disability arising from a physical or mental impairment, or
 - 15 (b) a terminal illness.
- (1A) 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.
- (2) The Scottish Ministers are to make regulations prescribing—
- 20 (a) the eligibility rules that are to be applied to determine whether an individual is entitled to disability assistance, and
 - (b) what disability assistance an individual who is entitled to it is to be given.
- (3) Schedule 4 makes provision about the exercise of the power conferred by subsection (2).

15 Early years assistance

- 25 (1) Early years assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 8 to help towards meeting some of the costs associated with having, or expecting to have, a child in the family.
- (2) The Scottish Ministers are to make regulations prescribing—
- 30 (a) the eligibility rules that are to be applied to determine whether an individual is entitled to early years assistance, and
 - (b) what early years assistance an individual who is entitled to it is to be given.
- (3) Schedule 5 makes provision about the exercise of the power conferred by subsection (2).

16 Employment-injury assistance

- 35 (1) Employment-injury assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 8 to an individual on account of the individual, or another individual, having suffered an injury, or contracted a disease, in the course of employment.

- (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 employment-injury assistance, and
 - (b) what employment-injury assistance an individual who is entitled to it is to be given.
- (3) Schedule 6 makes provision about the exercise of the power conferred by subsection (2).

17 Funeral expense assistance

- (1) Funeral expense 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, funeral expenses.
- (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 funeral expense assistance, and
 - (b) what funeral expense assistance an individual who is entitled to it is to be given.
- (3) Schedule 7 makes provision about the exercise of the power conferred by subsection (2).

17A 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 8 makes provision about the exercise of the power conferred by subsection (2).

18 Short-term assistance

- (1) Short-term assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 8 to an individual on a short-term basis.
- (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 short-term assistance, and
 - (b) what short-term assistance an individual who is entitled to it is to be given.
- (3) Schedule 9 makes provision about the exercise of the power conferred by subsection (2).

CHAPTER 3

DETERMINING ENTITLEMENT

Determination by the Scottish Ministers

19 Duty to make determination

5 The Scottish Ministers are to make a determination of an individual's entitlement to a type of assistance described in Chapter 2—

- (a) on receiving an application for that type of assistance from the individual, or
- (b) when required to do so by regulations under section 35.

20 Application for assistance

10 (1) An application for assistance must be made to the Scottish Ministers in such form as may be prescribed in regulations.

(2) The Scottish Ministers must publicise any requirements for the time being prescribed by regulations under subsection (1).

(3) Once—

15 (a) an individual has applied for a particular type of assistance in respect of a period or (as the case may be) event, and

(b) the Scottish Ministers have made a determination of the individual's entitlement to that type of assistance in respect of the period or event,

20 the individual cannot make another application for that type of assistance in respect of the period or event.

(4) 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.

21 Withdrawal of application

25 (1) An individual who has made an application for assistance may request that the Scottish Ministers disregard it.

(2) If an individual requests that an application be disregarded—

30 (a) the Scottish Ministers are not to make a determination of the individual's entitlement to any type of assistance on the basis of the application, and

(b) accordingly, their duty to do so under section 19 ceases to apply.

(3) A request under subsection (1) must be made in such form as the Scottish Ministers require.

35 (4) The Scottish Ministers must publicise any requirements for the time being set under subsection (3).

22 Notice of determination

Having made a determination under section 19 of an individual's entitlement to assistance, the Scottish Ministers must inform the individual—

- (a) of the determination,
- (b) of the reasons for it,
- (c) of the individual's right under section 23 to request that the Scottish Ministers re-determine the individual's entitlement to the assistance, and
- (d) that the individual will have the right under section 27 to appeal to the First-tier Tribunal against the determination should the Scottish Ministers fail to deal with a request for a re-determination within the period allowed for re-determination.

Re-determination by the Scottish Ministers

23 Right to request re-determination

- (1) An individual may request that the Scottish Ministers re-determine the individual's entitlement to a particular type of assistance after being informed (in accordance with section 22) of a determination by the Ministers of the individual's entitlement to that type of assistance.
- (2A) A request for a re-determination is valid only if the conditions set out in the following subsections are satisfied—
 - (a) subsection (2B), and
 - (b) subsection (2C).
- (2B) The condition referred to in subsection (2A)(a) is satisfied if the request is made in such form as the Scottish Ministers require.
- (2C) The condition referred to in subsection (2A)(b) is satisfied if—
 - (a) the request is made before the end of the period prescribed by the Scottish Ministers in regulations, or
 - (b) in a case where the request is made after that period has ended—
 - (i) the individual has a good reason for not requesting a re-determination sooner (see section 23A), 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.
- (3) The Scottish Ministers must publicise any requirements for the time being set under subsection (2B).

23A 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—

5 (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).

10 (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)—

15 (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,

20 (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—

25 (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—

30 (a) reviewed under section 43 of the Tribunals (Scotland) Act 2014, nor

(b) appealed against under section 46 of that Act.

24 Duty to re-determine

35 (1) On being requested under section 23 to re-determine an individual's entitlement to a particular type of assistance, the Scottish Ministers are to make a determination of the individual's entitlement to that type of assistance.

(2) The Scottish Ministers must aim to make the determination within the period allowed for re-determination.

(3) If the Scottish Ministers fail to make the determination within the period allowed for re-determination—

40 (a) their duty to make the determination ends (but they may still make it), and

(b) section 26 applies.

- (4) If the Scottish Ministers make the determination (whether or not within the period allowed for re-determination), section 25 applies.
- (5) The period allowed for re-determination is to be prescribed by the Scottish Ministers in regulations.
- (6) 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.

25 Notice of re-determination

Having made a determination under section 24 of an individual's entitlement to a particular type of assistance, the Scottish Ministers must—

- (a) inform the individual of—
- (i) the determination,
 - (ii) the reasons for it, and
 - (iii) the individual's right to appeal to the First-tier Tribunal under section 27 against the determination,
- (b) 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.

26 Notice where re-determination not made timeously

Having failed to make a determination under section 24 of an individual's entitlement to a particular type of assistance within the period allowed for re-determination, the Scottish Ministers must—

- (a) inform the individual—
- (i) that the individual's request for a re-determination has not been dealt with within the period allowed, and
 - (ii) that the individual therefore has the right to appeal to the First-tier Tribunal against the determination under section 19 which prompted the request for a re-determination,
- (b) 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.

Appeal against the Scottish Ministers' determination

27 Right to appeal to First-tier Tribunal

- (1) An individual may appeal to the First-tier Tribunal for Scotland—
- (a) against a determination under section 24 of the individual's entitlement to assistance, or
 - (b) in a case where subsection (2) applies, against the determination under section 19 referred to in that subsection.

(2) This subsection applies where—

(a) having been informed of a determination under section 19 of the individual's entitlement to assistance, the individual has made a request for a re-determination under section 23, and

(b) the Scottish Ministers have failed to make a determination under section 24 in consequence of that request within the period allowed for re-determination.

27A Initiating an appeal

(1) In order to bring an appeal under section 27 against a determination, an individual must submit to the Scottish Ministers the form provided under section 25 or (as the case may be) 26 in relation to the determination.

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

(a) the form, and

(b) the information held by them that they used to make the determination in question,

to the First-tier Tribunal.

(3) Having complied with subsection (2), the Scottish Ministers must inform the individual to whom the determination in question relates that they have done so.

(4) In this section, references to a form include a copy of a form.

(5) For the avoidance of doubt, the form that the Scottish Ministers provide under section 25 or 26 need not be a physical form.

(6) Scottish Tribunal Rules providing for the form and manner in which an appeal under section 27 is to be brought may not displace the effect of subsection (1), but this section is otherwise without prejudice to what may be provided under any power to make Scottish Tribunal Rules.

28 Time for appeal

(1) An appeal under section 27—

(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.

(2) In subsection (1)—

(a) “the relevant event” means—

(i) in the case of an appeal against a determination under section 24, the individual to whom the determination relates being informed of it in accordance with section 25,

(ii) in the case of an appeal against a determination under section 19, the individual to whom the determination relates being informed (in accordance with section 26) that the individual has the right to appeal against it,

5 (b) 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 27A(1).

10 (3) The First-tier Tribunal may give permission under subsection (1)(b) for an appeal to be brought only if it is satisfied that there is a good reason for the application not having been made sooner.

29 First-tier Tribunal's power to determine entitlement

In an appeal under section 27 against a determination of an individual's entitlement to a particular type of assistance, the First-tier Tribunal may—

- 15 (a) uphold the determination, or
 (b) make its own determination of the individual's entitlement to the type of assistance in question.

Presumption about when information is received

29A Presumption for purposes of sections 23, 23A and 28

20 (1) Subsection (2) applies in relation to the references in sections 23, 23A 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—

- 25 (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,

30 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.

Obtaining information to make determination

30 Obligation to provide information on request

(1) When—

- 35 (a) the Scottish Ministers are determining an individual's entitlement to assistance (whether under section 19 or 24), and
 (b) they require further information in order to satisfy themselves about any matter material to the making of the determination,

they may request that the individual provide them with the information within such period as they specify.

(2) If the individual fails to provide the requested information by the end of the specified period the Scottish Ministers may, without further consideration, proceed to make the determination on the basis that the individual does not satisfy the eligibility rules prescribed in the applicable regulations (see section 33).

5 (3) For the avoidance of doubt, the information which the Scottish Ministers may request an individual to provide under subsection (1) includes the results of an assessment, including one which the individual has not undergone at the time the request is made.

31 Duty to notify change of circumstances

10 (1) The Scottish Ministers may place a duty to notify them about a change in circumstances on a person to whom subsection (3), (3A) or (4) applies.

(2) The Scottish Ministers place a duty under subsection (1) on a person by informing the person—

(a) of the changes in circumstances which the person has a duty to notify them about,

(b) of the way in which the person is to notify them, and

15 (c) that failing to notify them about a change in any of those circumstances in that way may be an offence under section 40.

(3) This subsection applies to an individual who is to be given assistance under section 8 under a determination made on the basis that the individual has ongoing entitlement to the type of assistance in question.

20 (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.

25 (4) This subsection applies to a person to whom payments are to be made under section 8 by way of assistance to another person under a determination made on the basis that that other person has ongoing entitlement to the type of assistance in question.

32 Lifting of duty to notify change of circumstances

(1) A duty to notify the Scottish Ministers about a change of circumstances placed on a person under section 31 ceases to apply when—

(a) it is lifted under subsection (2), or

30 (b) it stops being the case that a change in any of the circumstances to which the duty relates can affect someone's entitlement to be given assistance under section 8.

(2) The Scottish Ministers may lift a duty placed on a person under section 31 by informing the person that the duty is lifted.

35 (3) Under subsection (2), the Scottish Ministers may lift a duty as it relates to some or all of the changes in circumstances which the person has a duty to notify them about.

Appointees

32A Appointment of person to act on behalf of individual

- (1) The Scottish Ministers may appoint a person (an “appointee”)—
- 5 (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—
- 10 (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)—
- 15 (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.
- 20 (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),
- 25 (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.
- 30 (7) The Scottish Ministers may terminate an appointment under this section at any time.

Support during discussions and assessments

32B Right to support

- 35 (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.

Further provision about determining entitlement

33 Decisions comprising determination

- (1) A determination of an individual's entitlement to a particular type of assistance consists of—
- (a) a decision about whether or not the eligibility rules prescribed in the applicable regulations are satisfied in the individual's case,
- (b) if those rules are satisfied, a decision (taken in accordance with the applicable regulations) about what assistance of the type in question the individual is entitled to be given,
- (c) if the determination is to be made on the basis that the individual has ongoing entitlement to the type of assistance in question (see section 34), a decision about what assistance of the type in question the determination is to entitle the individual to be given in the future, 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.
- (1A) 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.
- (1B) 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.
- (2) In this section, "the applicable regulations" means the regulations made under the section in Chapter 2 that describes the type of assistance in question.

34 Determination on basis of ongoing entitlement

- (1) The Scottish Ministers may by regulations—
- (a) provide that a determination of an individual's entitlement to a specified type of assistance is to be made on the basis that the individual has ongoing entitlement to that type of assistance (either indefinitely or for a duration specified in the regulations), and
- (b) provide for exceptions to any provision made by virtue of paragraph (a).

- (2) Regulations making provision by virtue of subsection (1)(a) are also to—
- (a) prescribe the time, or times, at which an individual is to become entitled to be given assistance under a determination made on the basis that the individual has ongoing entitlement, and
 - (b) provide that a decision about what assistance the individual is to become entitled to be given under such a determination in respect of any future period is to be taken in accordance with the applicable regulations on the strength of such assumptions as are specified.
- (3) In this section—
- “the applicable regulations” means the regulations made under the section in Chapter 2 that describes the type of assistance in question,
- “specified” means specified by regulations under this section.

35 Determination without application

- (1) The Scottish Ministers may by regulations provide that, in such circumstances as the regulations specify, the Scottish Ministers are to make a determination of an individual’s entitlement to a particular type of assistance without receiving an application.
- (2) The Scottish Ministers may by regulations make provision about the information that is to be used, and the assumptions that are to be made, in making a determination when required to do so by regulations under subsection (1).

CHAPTER 4

RECOVERY OF ASSISTANCE GIVEN IN ERROR

36 Liability

- (1) An individual is liable to pay the Scottish Ministers the value of any assistance that was given to the individual due to an error in the performance of a function conferred by virtue of this Part (but see section 36A).
- (2) For the avoidance of doubt, the individual’s liability under subsection (1) is limited to the difference in value between—
 - (a) the assistance that was given, and
 - (b) the assistance (if any) that would have been given had the error not been made.
- (3) 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).
- (4) In this section and section 36A—
 - (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).

36A Exclusion from overpayment liability

- 5 (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.

- 10 (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.

- 15 (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.

- 20 (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.

37 Consideration for debtor's circumstances

- 30 (1) This section applies to decisions of the Scottish Ministers about—

- (a) whether to seek to recover money owed under section 36, and
- (b) the method by which money owed under that section is to be recovered.

- (2) In making a decision to which this section applies, the Scottish Ministers must have regard to the financial circumstances of the individual who owes the money (so far as those circumstances are known to the Ministers).

38 Prescription of liability

- 35 (1) Schedule 1 (obligations affected by prescriptive period of five years) of the Prescription and Limitation (Scotland) Act 1973 is amended as follows.

(2) After paragraph 1(b) insert—

“(ba) to any obligation to make payment to the Scottish Ministers arising from section 36 of the Social Security (Scotland) Act 2018.”.

38A 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).

Funeral expense assistance

38B 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).

CHAPTER 5

OFFENCES AND INVESTIGATIONS

Offences

39 Offence of trying to obtain assistance by deceit

(1) A person commits an offence if—

(a) the person provides, or causes another person to provide, information which is false or misleading, and

(b) the person does so with the intention of causing an individual to be given assistance under section 8 which would not otherwise be given.

(2) For the purpose of subsection (1), providing information includes making a statement.

(3) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to—

(i) imprisonment for a term not exceeding 12 months,

(ii) a fine not exceeding the statutory maximum, or

(iii) both,

(b) on conviction on indictment, to—

(i) imprisonment for a term not exceeding 5 years,

(ii) a fine, or

(iii) both.

40 Offence of failing to notify

(1) A person commits an offence if—

(a) the person fails to notify the Scottish Ministers about a change in circumstances to which subsection (2) applies as soon as reasonably practicable after it occurs,

(aa) the person does not have a reasonable excuse for failing to do so, and

(b) the person knew or ought to have known that the change might result in an individual ceasing to be entitled to assistance, or becoming entitled to less assistance.

(2) For the purpose of subsection (1)(a), a change in circumstances to which this subsection applies is a change—

(a) which the person has a duty under section 31 to notify the Scottish Ministers about, and

(b) which would, under a determination of an individual's entitlement, result in the individual ceasing to be entitled to assistance, or becoming entitled to less assistance.

(3) A person is not to be regarded as having notified a change in circumstances for the purpose of subsection (1)(a) unless the person notified the Scottish Ministers about it in the way the Ministers informed the person that such notification is to be given (see section 31(2)(b)).

(4) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to—

(i) imprisonment for a term not exceeding 12 months,

(ii) a fine not exceeding the statutory maximum, or

(iii) both,

(b) on conviction on indictment, to—

(i) imprisonment for a term not exceeding 5 years,

(ii) a fine, or

(iii) both.

41 Offence of causing a failure to notify

(1) A person commits an offence if—

(a) the person causes another person to fail to notify the Scottish Ministers about a change in circumstances to which subsection (2) applies as soon as reasonably practicable after it occurs, and

(b) the person knew or ought to have known that—

(i) the change might result in an individual ceasing to be entitled to assistance, or becoming entitled to less assistance, and

- (ii) the other person has a duty under section 31 to notify the Scottish Ministers about the change.
- (2) For the purpose of subsection (1)(a), a change in circumstances to which this subsection applies is a change which would, under a determination of an individual's entitlement, result in the individual ceasing to be entitled to assistance, or becoming entitled to less assistance.
- (3) A person is not to be regarded as having notified a change in circumstances for the purpose of subsection (1)(a) unless the person notified the Scottish Ministers about it in the way the Ministers informed the person that such notification is to be given (see section 31(2)(b)).
- (4) A person who commits an offence under subsection (1) is liable—
 - (a) on summary conviction, to—
 - (i) imprisonment for a term not exceeding 12 months,
 - (ii) a fine not exceeding the statutory maximum, or
 - (iii) both,
 - (b) on conviction on indictment, to—
 - (i) imprisonment for a term not exceeding 5 years,
 - (ii) a fine, or
 - (iii) both.

42 Individual culpability for offending by an organisation

- (1) Subsection (2) applies where—
 - (a) an offence under this Act or any regulations made under it is committed by a relevant organisation, and
 - (b) the commission of the offence involves the connivance or consent of, or is attributable to the neglect of—
 - (i) a responsible official of the organisation, or
 - (ii) an individual purporting to act in the capacity of a responsible official.
- (2) The responsible official (or, as the case may be, the individual purporting to act in that capacity), as well as the organisation, commits the offence.
- (3) “Relevant organisation” means—
 - (a) a company,
 - (b) a partnership (including a limited liability partnership),
 - (c) another body or association.
- (4) “Responsible official” means—
 - (a) in the case of a company—
 - (i) a director, secretary, manager or similar officer, or
 - (ii) where the affairs of the company are managed by its members, a member,
 - (b) in the case of a limited liability partnership, a member,

- (c) in the case of a partnership other than a limited liability partnership, a partner,
- (d) in the case of another body or association, a person who is concerned in the management or control of its affairs.

Investigations

5 **43 Power to make provision about investigations**

- (1) The Scottish Ministers may by regulations make provision about the investigation of offences under this Act.
- (2) Regulations under subsection (1) may, in particular—
 - (a) confer powers to—
 - 10 (i) enter and search premises (other than dwelling-houses), and
 - (ii) seize anything relevant to the investigation which is found on the premises,
 - (b) create offences relating to—
 - (i) a failure to provide information requested for the purposes of an investigation,
 - 15 (ii) obstruction of the conduct of an investigation,
 - (iii) any breach of the regulations,
 - (c) make provision about the time limit for bringing proceedings.
- (3) The maximum penalty that may be provided for in regulations under subsection (1) is, on summary conviction, a fine not exceeding level 3 on the standard scale.

20 **44 Code of practice on investigations**

- (1) The Scottish Ministers must publish a code of practice on investigations carried out by virtue of section 43.
- (2) The Scottish Ministers—
 - (a) must keep the code of practice under review,
 - 25 (b) may from time to time revise the code of practice.
- (3) Before publishing the code of practice, the Scottish Ministers must consult publicly on a draft of the code.
- (4) The Scottish Ministers must, as soon as practicable after publication, lay before the Scottish Parliament a copy of the code of practice.
- 30 (5) A court or tribunal in civil or criminal proceedings must take the code of practice into account when determining any question to which the code is relevant.
- (6) Breach of the code of practice does not of itself give rise to grounds for any legal claim whatsoever.
- 35 (7) Subsections (2) to (6) apply in relation to a revised code of practice as they apply in relation to the first published code of practice.

CHAPTER 6

UPRATING FOR INFLATION

44A Duty to consider effects of inflation

- (1) Before the end of each financial year, the Scottish Ministers must—
- 5 (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.
- 10 (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
- 15 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
- 20 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.

44B Duty to uprate carer’s, disability and employment-injury assistance

- (1) Before the end of each financial year, having calculated in accordance with section 43A the inflation-adjusted level of each relevant figure prescribed in—
- 35 (za) the carer’s assistance regulations,
 (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).

- 5 (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 carer’s assistance regulations, disability assistance regulations and employment-injury assistance regulations.
- 10 (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—
- “carer’s assistance regulations” means regulations under section 11,
- “disability assistance regulations” means regulations under section 14,
- 15 “employment-injury assistance regulations” means regulations under section 16,
- “relevant figure” is to be construed in accordance with section 43A(3).

PART 3

SUPPLEMENTING ASSISTANCE UNDER OTHER ENACTMENTS

Top up of reserved benefits

20 **45 Power to provide for top up**

- (1) The Scottish Ministers may by regulations provide for financial assistance to be given to an individual who—
- (a) is entitled to a reserved benefit, and
- 25 (b) appears to the Scottish Ministers to require financial assistance (in addition to any amount the individual receives by way of reserved benefit) for the purpose, or one of the purposes, for which the benefit is being provided.
- (2) The power conferred by subsection (1) includes the power to make provision about—
- (a) determining entitlement (including specifying further eligibility rules that are to be used to determine whether an individual is entitled to the assistance),
- 30 (b) the amount of assistance,
- (c) applications for assistance,
- (d) obtaining information,
- (e) appeals,
- (f) assistance given in error.
- 35 (3) In this section and section 46, “reserved benefit” means a benefit which is to any extent a reserved matter within the meaning of schedule 5 of the Scotland Act 1998.

46 Restrictions on power

- (1) Regulations under section 45 may not provide for financial assistance to be given to meet or help to meet housing costs.
- (2) Regulations under section 45 may not provide for financial assistance to be given where the need for the assistance 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.

*Carer's allowance: temporary provision***47 Carer's allowance supplement**

- (1) The Scottish Ministers must make a payment (a “carer's allowance supplement”) to qualifying individuals in respect of each of the following periods of each financial year—
- (a) 1 April to 30 September, and
- (b) 1 October to 31 March.
- (2) A qualifying individual is an individual who, on the qualifying date, was—
- (a) in receipt of a carer's allowance under section 70 of the Social Security Contributions and Benefits Act 1992, and
- (b) resident in Scotland.
- (3) The qualifying date is a date determined by the Scottish Ministers falling within the period to which the payment relates.
- (4) The amount of a carer's allowance supplement is to be calculated according to the following formula—
- $(JSA-CA) \times 26$
- where—
- JSA is the weekly amount specified in regulation 79(1)(c) of the Jobseeker's Allowance Regulations 1996 (S.I. 1996/207) as it has effect on the qualifying date, and
- CA is the weekly rate of carer's allowance specified in Part 3 of schedule 4 of the Social Security Contributions and Benefits Act 1992 as it has effect in Scotland on the qualifying date.
- (5) The Scottish Ministers may by regulations modify this section so as to modify who is a qualifying individual for the purposes of this section.

48 Power to repeal temporary provision

The Scottish Ministers may by regulations—

- (a) repeal section 47 and revoke any regulations made under it, and
- (b) repeal this section.

5

PART 3A

FURTHER PROVISION IN CONNECTION WITH PARTS 2 AND 3

Inalienability of assistance

48A No assignation or charge

10

- (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.

48B Retention of right to assistance on bankruptcy etc.

15

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.

20

Information-sharing

48C Information-sharing

25

- (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.

30

35

- (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.
- 5 (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.
- 10 (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.
- 15 (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.
- 20 (10) In this section, “social security function” means a function of the Scottish Ministers under or by virtue of this Act.

Agency arrangements

48D Agency arrangements for housing assistance

- 25 (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—
- 30 (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.
- 35 (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.

PART 4

DISCRETIONARY HOUSING PAYMENTS

49 Local authorities' power to make payments

- 5 (1) A local authority has power to give financial assistance to a qualifying individual to meet, or help towards meeting, the individual's housing costs.
- (2) In subsection (1), "qualifying individual" means an individual who—
- (a) is entitled to—
 - (i) housing benefit, or
 - (ii) an award of universal credit which includes an amount for rent, and
 - 10 (b) appears to the authority to need financial assistance under subsection (1) (in addition to any assistance of a kind mentioned in paragraph (a) which the individual receives) in order to meet housing costs.
- (3) For the purposes of subsection (2)(a)—
- 15 (a) "housing benefit" means housing benefit provided by virtue of a scheme under section 123 of the Social Security Contributions and Benefits Act 1992,
 - (b) an award of universal credit includes an amount for rent if—
 - (i) the calculation of the award includes an amount under section 11 of the Welfare Reform Act 2012, and
 - 20 (ii) that amount is included (wholly or partly) in respect of a liability to make payments within the meaning of paragraph 2 of schedule 1 of the Universal Credit Regulations 2013 (S.I. 2013/376).
- (4) Financial assistance under this section may be given to an individual by way of—
- (a) payment to the individual,
 - 25 (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.

50 Restrictions on power to make payments

- 30 (1) Financial assistance may not be given under section 49 by way of a loan.
- (2) Financial assistance may not be given under section 49 where the need for the assistance 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).
- 35 (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 subsection (2), “reserved benefit” means a benefit which is to any extent a reserved matter within the meaning of schedule 5 of the Scotland Act 1998.

51 Local authorities’ duty to provide information about payments

Each local authority must make available to the public resident in its area information about—

- (a) how to apply to the authority for financial assistance under section 49,
- (b) which housing costs the authority gives assistance in relation to,
- (c) the rules the authority applies in deciding—
 - (i) whether to give someone assistance,
 - (ii) the amount of assistance to give, and
 - (iii) what period to give assistance for,
- (d) how to apply for a review challenging a decision by the authority—
 - (i) to refuse to give assistance,
 - (ii) as to the amount of assistance it will give, or
 - (iii) as to the period for which it will give assistance.

52 Guidance

- (1) Local authorities must have regard to any guidance issued by the Scottish Ministers in connection with the exercise of the power conferred by section 49.
- (2) Guidance under subsection (1) may, in particular, deal with—
 - (a) the rules which authorities are to apply in deciding—
 - (i) whether to give someone financial assistance,
 - (ii) the amount of assistance to give, and
 - (iii) what period to give assistance for,
 - (b) the form of applications for—
 - (i) assistance, and
 - (ii) review of authorities’ decisions about the giving of assistance,
 - (c) the processes which authorities are to follow in—
 - (i) determining applications for assistance and review, and
 - (ii) deciding whether to stop giving someone assistance,
 - (d) the circumstances in which authorities should, and should not, seek to recover the value of assistance given in error or following a breach of any of the conditions under which it was given.
- (3) Guidance under subsection (1) may be addressed to—
 - (a) an authority, or more than one authority, identified in the guidance, or
 - (b) all authorities.

- (4) Before issuing guidance under subsection (1), the Scottish Ministers must consult such body representing authorities as the Ministers think fit.
- (5) As soon as reasonably practicable after issuing guidance under subsection (1), the Scottish Ministers must lay a copy of the guidance before the Scottish Parliament.
- 5 (6) The Scottish Ministers must make guidance issued under subsection (1) publicly available.
- (7) The power to issue guidance under subsection (1) includes the power to—
 - (a) issue guidance which varies guidance issued under that subsection, and
 - (b) revoke guidance issued under that subsection.

10 **52A 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.
- 15 (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.
- 20 (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.

53 Power to modify section 49

- (1) The Scottish Ministers may by regulations make whatever amendment to section 49 they think appropriate in consequence of—
 - 25 (a) an enactment mentioned in that section being amended, repealed or revoked, or
 - (b) the creation of a reserved benefit payable in respect of a liability to make rent payments.
- (2) Expressions used in subsection (1)(b) have the same meaning as they have for the purposes of exception 6 in Section F1 of Part 2 of schedule 5 of the Scotland Act 1998.

30 **PART 5**

FINAL PROVISIONS

54 Ancillary provision

35 The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, or in connection with, or for giving full effect to this Act or any provision made under it.

55 Regulation-making powers

- (1) A power to make regulations conferred by this Act includes the power to make different provision for different purposes and areas.
- (2) Regulations under any of the following provisions are subject to the affirmative procedure: section 6B(1)(e), section (*Charter-based complaints*), any section in Chapter 2 of Part 2 and sections 34, 35, 43, 45, 47(5), 48, 48D and 53.
- (3) Regulations under any of the following provisions are subject to the negative procedure: sections 20(1), 23(2C)(a) and 24(5) and 48C(2)(g) and (5) and paragraphs 4(2)(c) and 13(2) of schedule A1.
- (4) Regulations under section 54—
- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act), but
 - (b) otherwise are subject to the negative procedure.
- (5) Regulations under section 6B(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.

55A 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,
 - (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 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.

5 (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
- (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.

10

(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.

15

(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).

20

55B Temporary disapplication of section 55A

25 (1) Section 55A 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,

30

informing them of the date from which the Commission will be ready to perform its function of scrutinising legislative proposals in accordance with section 55A.

(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.

35

(4) At any time after the date specified by the Commission under subsection (1), the Scottish Ministers may by regulations repeal this section.

56 Commencement

(1) The following provisions come into force on the day after Royal Assent: this section and sections 54, 55 and 57.

- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) The power conferred by subsection (2) includes the power to make transitional, transitory or saving provision.

5 **57 Short title**
The short title of this Act is the Social Security (Scotland) Act 2018.

(c) any person, or person of such description, as is specified by the Scottish Ministers in regulations.

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

(a) the disclosure of any information, or

(b) the giving of any assistance or explanation.

CHAPTER 3

PROCEDURE

Committees

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

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

Regulation of procedure

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

Authority to perform functions

(1) The Commission may authorise—

(a) any of its members, or

(b) any of its committees or sub-committees,

to perform such of its functions (and to such extent) as it may determine.

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

(a) affect the Commission's responsibility for the performance of the function, or

(b) prevent the Commission from performing the function itself.

Validity of things done

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

(a) a vacancy in its membership,

(b) a defect in the appointment of a member,

(c) the disqualification of a person as a member after appointment.

CHAPTER 4

FINANCE

Remuneration and expenses of members

(1) The Commission's members are entitled to be paid by the Scottish Ministers such—

(a) remuneration, and

(b) sums in respect of expenses incurred in performing their functions as members of the Commission,
as the Ministers determine.

(2) In sub-paragraph (1)—

(a) the reference to the Commission's members includes a person who is not a member of the Commission but is a member of one of the Commission's committees or sub-committees, and

(b) the reference to performing functions as a member of the Commission, in the case of a person described in paragraph (a), is to be read as though it were a reference to performing the person's functions as a member of the committee or (as the case may be) sub-committee.

Expenses of non-members

(1) A person who attends a meeting of the Commission at its request is entitled to be paid by the Scottish Ministers such travelling and other allowances (including compensation for loss of time) as the Ministers determine.

(2) In sub-paragraph (1) the reference to the Commission includes any of its committees or sub-committees.

Resources

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

Accounts and audit

(1) The Commission must—

(a) keep proper accounts and accounting records,

(b) prepare in respect of each financial year a statement of accounts, and

(c) send a copy of the statement to the Auditor General for Scotland for auditing.

(2) The Commission must comply with any directions which the Scottish Ministers give it in relation to the matters mentioned in sub-paragraph (1)(a) and (b).

CHAPTER 5

MEMBERSHIP OF THE COMMISSION

Number of members

(1) The Commission is to consist of—

(a) a member to chair the Commission, and

(b) at least 2 but no more than 4 other members.

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

Appointment of members

(1) The Scottish Ministers are to appoint the Commission's members.

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

15 *Tenure and other terms and conditions*

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

Early termination

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

Disqualification grounds

- 17 (1) A person is disqualified from being a member of the Commission if sub-paragraph (2) or (3) applies to the person.

(2) This sub-paragraph applies to a person who is—

(a) a member of the—

- (i) Scottish Parliament,
- (ii) House of Commons,
- 5 (iii) House of Lords,
- (iii) National Assembly for Wales,
- (iv) Northern Ireland Assembly, or
- (v) European Parliament,

(b) a councillor of any local authority,

10 (c) a member of the Scottish Government,

(d) a Minister of the Crown,

(e) an office-holder of the Crown in right of Her Majesty's Government in the United Kingdom,

(f) an office-holder in the Scottish Administration,

15 (g) a civil servant,

(h) a member of the—

- (i) First-tier Tribunal,
- (ii) Upper Tribunal.

20 (3) This sub-paragraph applies to a person (subject to sub-paragraph (4)) who is or has been—

(a) disqualified as a company director under the Company Directors Disqualification Act 1986,

(b) disqualified as a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005,

25 (c) the subject of a disqualification under a disqualification provision analogous to either of those mentioned in paragraph (a) or (b) anywhere in the world.

(4) Sub-paragraph (3) does not apply to a person who is or has been disqualified as mentioned in that sub-paragraph only by—

30 (a) section 11 of the Company Directors Disqualification Act 1986 (undischarged bankrupts),

(b) section 69(2)(b) of the Charities and Trustee Investment (Scotland) Act 2005 (which disqualifies undischarged bankrupts from being charity trustees), or

(c) a provision analogous to either of those mentioned in paragraph (a) or (b) anywhere in the world.

PART 2

APPLICATION OF LEGISLATION RELATING TO PUBLIC BODIES

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

18 In schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, after the
 5 entry relating to the Scottish Children’s Reporter Administration insert—

“The Scottish Commission on Social Security”.

Freedom of Information (Scotland) Act 2002

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

10 “80C The Scottish Commission on Social Security.”.

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

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

15 “Scottish Commission on Social Security”.

Public Services Reform (Scotland) Act 2010

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

“The Scottish Commission on Social Security”.

20 **SCHEDULE 1**

(introduced by section 11)

CARER’S ASSISTANCE REGULATIONS

PART 1

ELIGIBILITY

25 **CHAPTER 1**

ELIGIBILITY IS TO DEPEND ON BEING OR HAVING BEEN A CARER

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 the
 30 individual having provided regular and substantial care during that period to another
 individual to whom a disability benefit is normally payable.

(2) The regulations—

(a) are to set out the circumstances in which an individual is to be regarded as having
 provided regular and substantial care to another individual during a period, and

35 (b) may, in particular, do so by reference to whether or not the number of hours of
 care provided during the period exceeds (or is deemed to exceed) a threshold
 specified in the regulations.

- (3) In sub-paragraph (1), “disability benefit” has the meaning given in the interpretation provision in Section F1 of Part 2 of schedule 5 of the Scotland Act 1998.
- 2 (1) The regulations may be framed so that, despite the criterion described in paragraph 1(1) not being fulfilled in relation to a given period, an individual may nevertheless be eligible in respect of that period.
- 5 (2) Where the regulations allow an individual to be eligible in respect of a period in relation to which the criterion described in paragraph 1(1) is not fulfilled, they must be framed so that the individual’s eligibility depends on the individual—
- (a) having at some time provided care to another individual who has a disability, and
- 10 (b) as a result of doing so, having received—
- (i) carer’s assistance,
- (ii) carer’s allowance, or
- (iii) invalid care allowance.
- 15 (3) In sub-paragraph (2)(b), “carer’s allowance” and “invalid care allowance” both mean an allowance payable under section 70 of the Social Security Contributions and Benefits Act 1992.

CHAPTER 2

FURTHER CRITERIA

Carer’s other activities

- 20 3 The regulations may make an individual’s eligibility depend on—
- (a) whether or not the individual is in—
- (i) employment, or
- (ii) education,
- (b) the length of time the individual spends over a given period in—
- 25 (i) employment, or
- (ii) education.

Multiple carers

- 4 The regulations may make an individual’s eligibility depend on being the individual (or one of the individuals) selected through a process set out in the regulations in a case where more than one individual would otherwise be eligible as a result of providing care to the same cared-for person during a given period.
- 30

Residence and presence

- 5 The regulations may make an individual’s eligibility depend on either or both—
- (a) the individual, and
- 35 (b) the cared-for person,
- being resident and present in a particular place.

Age

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

- (a) the individual, and
- 5 (b) the cared-for person.

Financial circumstances

7 The regulations may make an individual’s eligibility depend on the individual’s financial circumstances.

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

- 10 8 The regulations may make an individual’s eligibility depend on 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 or entitled to receive such assistance.

Application within specified period

- 15 9 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 carer’s assistance in respect of the period, or
 - (b) the Scottish Ministers have become required to make a determination of the individual’s entitlement to carer’s assistance in respect of the period by
- 20 regulations under section 35.

PART 2**ASSISTANCE TO BE GIVEN***Meeting liabilities*

- 10 The regulations may provide for the carer’s assistance that is to be given to an individual
- 25 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,
 - (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

- 30 10A(1) The regulations may allow carer’s assistance to be given to an individual in a form other than money only if the individual (or a person acting on the individual’s behalf) has agreed to the assistance being given in that form.
- 35 (2) If the regulations include provision of the kind mentioned in sub-paragraph (1), they must allow an individual (or a person acting on the individual’s behalf) to withdraw agreement to being given carer’s assistance in a form other than money at any time.

Part 1—Eligibility

Chapter 1—Eligibility is to depend on living in an area during a cold spell

- (3) Despite sub-paragraph (1), the regulations may provide for carer’s assistance to be given (in whole or in part) by way of deduction, at a reasonable level, from any liability the individual has to the Scottish Ministers under section 36 if the individual has unreasonably refused to agree to the assistance being given in that form.
- 5 (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.

PART 3

FINAL PROVISIONS

Generality of enabling power unaffected

- 10 11 Nothing in—
- (a) Chapter 2 of Part 1, or
 - (b) paragraph 10 in Part 2,
- is to be taken to limit what may be prescribed in the regulations.

Interpretation

- 15 12 In this schedule—
- “cared-for person” means the individual by providing care to whom the individual whose eligibility is in question has fulfilled the criterion described in paragraph 1(1) or 2(2),
 - “eligibility” means eligibility for carer’s assistance and “eligible” means eligible for carer’s assistance,
 - “the regulations” means regulations under section 11(2).
- 20

SCHEDULE 2

(introduced by section 12)

COLD-SPELL HEATING ASSISTANCE REGULATIONS

25 **PART 1**

ELIGIBILITY

CHAPTER 1

ELIGIBILITY IS TO DEPEND ON LIVING IN AN AREA DURING A COLD SPELL

- 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 the area in which the individual’s home is situated experiencing a cold spell during that period.
- 30
- 2 (1) The regulations may be framed so that, despite the criterion described in paragraph 1 not being fulfilled (or its being uncertain whether it will be fulfilled) in relation to a given period, an individual may nevertheless be eligible in respect of that period.

- (2) Where the regulations allow an individual to be eligible in respect of a period in relation to which the criterion described in paragraph 1 is not fulfilled (or may not be fulfilled), they must be framed so that the individual's eligibility depends on the area in which the individual's home is situated being, or having been, forecast to experience a cold spell during the period.
- 3 The regulations are to set out, for the purpose of determining entitlement to cold-spell heating assistance—
- (a) a definition of “home”,
- (b) the circumstances in which an area is to be regarded as experiencing a cold spell,
- (c) if provision of the kind described in paragraph 2 is made, the circumstances in which an area is to be regarded as being, or having been, forecast to experience a cold spell.

CHAPTER 2

FURTHER CRITERIA

15 *Age*

- 4 The regulations may make an individual's eligibility depend on the age of either or both—
- (a) the individual, and
- (b) anyone else who lives in the individual's home.

20 *Financial circumstances*

- 5 The regulations may make an individual's eligibility depend on the individual's financial circumstances.

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

- 6 The regulations may make an individual's eligibility depend on either or both the individual and anyone else who lives in the individual's home—
- (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 or entitled to receive such assistance.

Application within specified period

- 7 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 cold-spell heating assistance in respect of the period, or
- (b) the Scottish Ministers have become required to make a determination of the individual's entitlement to cold-spell heating assistance in respect of the period by regulations under section 35.

PART 2

ASSISTANCE TO BE GIVEN

8 The regulations may make the value of the cold-spell heating assistance that is to be given to an individual depend on—

- 5 (a) whether or not other people live in the individual’s home,
(b) the age of either or both—
(i) the individual, and
(ii) anyone else who lives in the individual’s home.

Restriction on giving assistance in a form other than money

10 8A(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.

15 (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.

PART 3

FINAL PROVISIONS

Generality of enabling power unaffected

20 9 Nothing in—
(a) Chapter 2 of Part 1, or
(b) paragraph 8 in Part 2,
is to be taken to limit what may be prescribed in the regulations.

Interpretation

25 10 In this schedule—
“eligibility” means eligibility for cold-spell heating assistance and “eligible” means eligible for cold-spell heating assistance,
“the regulations” means regulations under section 12(2).

SCHEDULE 3
(introduced by section 13)

WINTER HEATING ASSISTANCE REGULATIONS

PART 1

5 ELIGIBILITY

Residence and presence

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

Age

10 2 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.

Financial circumstances

15 3 Subject to paragraph 4, 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.

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

20 4 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),
 (b) being, or not being, eligible or entitled to receive such assistance.

25 *Application within specified period*

 5 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 winter heating assistance in respect of the period, or
30 (b) the Scottish Ministers have become required to make a determination of the
 individual's entitlement to winter heating assistance in respect of the period by
 regulations under section 35.

PART 2

ASSISTANCE TO BE GIVEN

6 The regulations may make the value of the winter heating assistance that is to be given to an individual depend on—

- 5 (a) whether or not other people live with the individual,
(b) the age of either or both—
(i) the individual, and
(ii) anyone who lives with the individual.

Financial circumstances

10 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 the financial circumstances of either or both—

- (c) the individual, and
(d) anyone who lives with the individual.

15 *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),
20 (b) being, or not being, eligible to receive such assistance.

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.

- 25 (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.

PART 3

FINAL PROVISIONS

30

Generality of enabling power unaffected

7 Nothing in this schedule, apart from paragraph 6A, is to be taken to limit what may be prescribed in the regulations.

Interpretation

35 8 In this schedule—

“eligibility” means eligibility for winter heating assistance and “eligible” means eligible for winter heating assistance,

“the regulations” means regulations under section 13(2).

SCHEDULE 4

(introduced by section 14)

DISABILITY ASSISTANCE REGULATIONS

PART 1

ELIGIBILITY

CHAPTER 1

ELIGIBILITY IS TO DEPEND ON HAVING, OR HAVING HAD, A DISABILITY

1 The regulations must be framed so that (subject to any provision of the kind described in
 10 paragraph 2 an individual's eligibility in respect of a given period depends on the
 individual having, during that period—

(a) a physical or mental impairment that—

(i) has a significant and not short-term adverse effect on the individual's ability
 to carry out normal day-to-day activities, or

(ii) otherwise gives rise to a significant and not short-term need, or

(b) a terminal illness.

2 (1) The regulations may be framed so that, despite the criterion described in paragraph 1(1)
 not being fulfilled in respect of a given period, an individual may nevertheless be
 eligible in respect of that period.

(2) Where the regulations allow an individual to be eligible in respect of a period in relation
 20 to which the criterion described in paragraph 1(1) is not fulfilled, they must be framed
 so that the individual's eligibility depends on the individual having had, during some
 other period, a physical or mental impairment of the kind described in paragraph 1(1)(a).

CHAPTER 2

FURTHER CRITERIA

25 *Nature and extent of disability and needs*

3 The regulations may make an individual's eligibility depend on the nature and extent
 of—

(a) the individual's impairment,

(b) the needs of the individual in consequence of the impairment.

30 *Residence and presence*

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

Age

5 The regulations may make an individual's eligibility depend on the individual's age.

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
- 5 (b) anyone who lives with the individual.

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

6 The regulations may make an individual's eligibility depend on the individual—

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

Application within specified period

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

PART 2

ASSISTANCE TO BE GIVEN

20 **CHAPTER 1**

VALUE

Nature and extent of disability

8 The regulations may make the value of the disability assistance that is to be given to an individual depend on the nature and extent of—

- 25 (a) the individual's impairment,
- (b) the needs of the individual in consequence of the impairment.

Age

9 The regulations may make the value of the disability assistance that is to be given to an individual depend on the individual's age.

CHAPTER 2

FORM

Meeting liabilities

- 10 The regulations may provide for the disability assistance that is to be given to an
 5 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,
 - (b) deduction from any liability the individual has to the Scottish Ministers under section 36.

10 *Payment to someone else*

- 11 The regulations may provide that if the Scottish Ministers consider it appropriate in the circumstances, the disability assistance that is to be given to an individual may be given (in whole or in part) by way of payment to another person who is to use the payment to benefit the individual entitled to the assistance.

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

- 11A(1) The regulations may allow disability assistance to be given to an individual in a form other than money only if the individual (or a person acting on the individual's behalf) has agreed to the assistance being given in that form.
- (2) If the regulations include provision of the kind mentioned in sub-paragraph (1), they must allow an individual (or a person acting on the individual's behalf) to withdraw agreement to being given disability assistance in a form other than money at any time.
 - (3) Despite sub-paragraph (1), the regulations may provide for disability assistance to be given (in whole or in part) by way of deduction, at a reasonable level, from any liability the individual has to the Scottish Ministers under section 36 if the individual has unreasonably refused to agree to the assistance being given in that form.
 - (4) For the purpose of sub-paragraph (3), “reasonable level” means a level that is reasonable having regard to the financial circumstances of the individual.

Restriction on lump sums

- 12 The regulations may not provide for the disability assistance that is to be given to an
 30 individual to be given by way of a lump-sum payment where the individual's entitlement arises on account of the individual having, or having had—
- (a) pneumoconiosis,
 - (b) byssinosis,
 - (c) diffuse mesothelioma,
 - 35 (d) bilateral diffuse pleural thickening, or
 - (e) primary carcinoma of the lung where there is accompanying evidence of—
 - (i) asbestosis,
 - (ii) bilateral diffuse pleural thickening, or
 - (iii) both.

PART 3

FINAL PROVISIONS

Generality of enabling power unaffected

13 Nothing in—

- 5 (a) Chapter 2 of Part 1, or
(b) Part 2 (apart from paragraphs 5A, 11A and 12),
is to be taken to limit what may be prescribed in the regulations.

Interpretation

14 In this schedule—

- 10 “eligibility” means eligibility for disability assistance and “eligible” means eligible for disability assistance,
“the regulations” means regulations under section 14(2).

SCHEDULE 5

(introduced by section 15)

15 **EARLY YEARS ASSISTANCE REGULATIONS**

PART 1

ELIGIBILITY

CHAPTER 1

ELIGIBILITY IS TO DEPEND ON HAVING, OR EXPECTING TO HAVE, RESPONSIBILITY FOR A CHILD

- 20 1 (1) The regulations must be framed so that an individual’s eligibility depends on the individual satisfying one of the primary eligibility criteria.
(2) The primary eligibility criteria are that the individual—
25 (a) is, or has been, more than a specified number of weeks pregnant,
(b) has a relationship of a specified kind to another individual who is, or has been, more than a specified number of weeks pregnant,
(c) is to, or has, become responsible for a child within a specified period of the child’s birth,
(d) is responsible for a child when a specified event in the child’s life occurs or has become responsible for the child within a specified period of the event.
30 (3) The regulations are to define what being responsible for a child means for the purpose of determining entitlement to early years assistance.

CHAPTER 2

FURTHER CRITERIA

Limit to number of people entitled

- 2 The regulations may provide that an individual is not eligible, despite satisfying one of
 5 the primary eligibility criteria, on account of one of those criteria being satisfied in
 respect of the same child by someone else.

Residence and presence

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

10 *Financial circumstances*

- 4 The regulations may make an individual's eligibility depend on the individual's
 financial circumstances.

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

- 5 The regulations may make an individual's eligibility depend on the individual—
 15 (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 or entitled to receive such assistance.

Application within specified period

- 6 The regulations may provide that an individual ceases to be eligible on account of
 20 satisfying a primary eligibility criteria unless, by a deadline specified in the
 regulations—
 (a) the individual has applied for early years assistance, or
 (b) the Scottish Ministers have become required to make a determination of the
 individual's entitlement to early years assistance by regulations under section 35.

25 **PART 1A**

ASSISTANCE TO BE GIVEN

Restriction on giving assistance in a form other than money

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

PART 2

FINAL PROVISIONS

Generality of enabling power unaffected

7 Nothing in Chapter 2 of Part 1 is to be taken to limit what may be prescribed in the
5 regulations.

Interpretation

8 In this schedule—
 “eligibility” means eligibility for early years assistance and “eligible” means
 eligible for early years assistance,
10 “the regulations” means regulations under section 15(2),
 “specified” means specified in the regulations.

SCHEDULE 6

(introduced by section 16)

EMPLOYMENT-INJURY ASSISTANCE REGULATIONS

15

PART 1

ELIGIBILITY

CHAPTER 1

ELIGIBILITY IS TO DEPEND ON BEING INJURED OR CONTRACTING A DISEASE AT WORK

1 The regulations must be framed so that (subject to any provision of the kind described in
20 paragraph 2) an individual’s eligibility depends on the individual—

- (a) having suffered a relevant personal injury caused by an accident arising out of and in the course of the individual’s employment, or
- (b) developing a relevant disease, or suffering a relevant personal injury, due to the nature of the individual’s employment.

25 2 (1) The regulations may be framed so that, despite the criterion described in paragraph 1 not being fulfilled, an individual may nevertheless be eligible.

(2) Where the regulations allow an individual to be eligible despite the criterion described in paragraph 1 not being fulfilled, they must be framed so that the individual’s eligibility depends on the individual having, or having had, a relationship of a kind specified in the regulations to an individual who suffered a personal injury, or developed a disease, in the circumstances mentioned in paragraph 1.
30

3 (1) The regulations are to define the following terms for the purpose of determining entitlement to employment-injury assistance—

- (a) employment,
- 35 (b) relevant personal injury,
- (c) relevant disease.

- (2) The regulations may not define “employment” so as to include employment, or training for employment, that is not “relevant employment” as defined in the interpretation provision of Section F1 of Part 2 of schedule 5 of the Scotland Act 1998.
- (3) The regulations may define “relevant personal injury” and “relevant disease” by reference to the circumstances in which an injury is suffered or a disease is developed as well as by reference to its kind and severity.

CHAPTER 2

FURTHER CRITERIA

Place where injury suffered or disease contracted

- 4 The regulations may make an individual’s eligibility depend on where, geographically, the injury was suffered or the disease developed (or is deemed to have been suffered or developed).

Residence and presence

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

Age

- 6 The regulations may make an individual’s eligibility depend on the individual’s age.

Financial circumstances

- 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.

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

- 8 The regulations may make an individual’s eligibility depend on 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 or entitled to receive such assistance.

Application within specified period

- 9 The regulations may provide that an individual ceases to be eligible on account of an injury being suffered or a disease developed unless, by a deadline specified in the regulations—
- (a) the individual has applied for employment-injury assistance, or
 - (b) the Scottish Ministers have become required to make a determination of the individual’s entitlement to employment-injury assistance by regulations under section 35.

PART 2

ASSISTANCE TO BE GIVEN

CHAPTER 1

VALUE

5 *Nature of injury or disease*

10 The regulations may make the value of the employment-injury assistance that is to be given to an individual depend on the—

- (a) kind, and
- (b) severity,

10 of the injury or disease in respect of which the assistance is to be given.

Age

11 The regulations may make the value of the employment-injury assistance that is to be given to an individual depend on the individual's age.

CHAPTER 2

15 FORM

Meeting liabilities

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

- 20 (a) payment to another person in order to meet, or contribute towards meeting, any liability the individual has to that person,
- (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

25 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.

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

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

35 (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.

Restriction on lump sums

13 The regulations may not provide for the employment-injury assistance that is to be given to an individual to be given by way of a lump-sum payment where the individual's entitlement arises on account of someone having, or having had—

- 5 (a) pneumoconiosis,
 (b) byssinosis,
 (c) diffuse mesothelioma,
 (d) bilateral diffuse pleural thickening, or
 (e) primary carcinoma of the lung where there is accompanying evidence of—
- 10 (i) asbestosis,
 (ii) bilateral diffuse pleural thickening, or
 (iii) both.

PART 3

FINAL PROVISIONS

15 *Generality of enabling power unaffected*

14 Nothing in—
 (a) Chapter 2 of Part 1, or
 (b) Part 2 (other than paragraphs 7A, 12A and 13),
 is to be taken to limit what may be prescribed in the regulations.

20 *Interpretation*

15 In this schedule—
 “eligibility” means eligibility for employment-injury assistance, and “eligible” means eligible for employment-injury assistance,
 “the regulations” means regulations under section 16(2).

SCHEDULE 7
(introduced by section 17)

FUNERAL EXPENSE ASSISTANCE REGULATIONS

PART 1

ELIGIBILITY

CHAPTER 1

ELIGIBILITY IS TO DEPEND ON BEING RESPONSIBLE FOR FUNERAL EXPENSES

- 1 (1) The regulations must be framed so that an individual's eligibility for funeral expense
assistance depends on the individual having met, or being responsible for meeting, the
expenses of a funeral.
- 10 (2) The regulations are to define "funeral" for the purpose of determining entitlement to
funeral expense assistance.

CHAPTER 2

FURTHER CRITERIA

15 *Location of the funeral*

- 2 The regulations may make an individual's eligibility depend on where the funeral takes
place.

Relationship with the deceased

- 3 The regulations may make an individual's eligibility depend on the individual—
- 20 (a) being related to the deceased person, or
(b) having a relationship of a kind described in the regulations with the deceased
person immediately before the death.

Value of deceased's estate

- 4 The regulations may make an individual's eligibility depend on the value of the
deceased person's estate being below a level specified in the regulations.
- 25

Residence and presence

- 5 The regulations may make an individual's eligibility depend on either or both—
- (a) the individual being resident and present in a particular place,
(b) the deceased person having been resident and present in a particular place at the
date of death.
- 30

Financial circumstances

- 6 The regulations may make an individual's eligibility depend on the individual's
financial circumstances.

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, immediately before dying, the deceased person—

- 5 (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 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 funeral unless, by a deadline specified in the regulations—

- 10 (a) the individual has applied for funeral expense assistance in respect of the funeral, or
- (b) the Scottish Ministers have become required to make a determination of the individual's entitlement to funeral expense assistance in respect of the funeral by regulations under section 35.

15

PART 2

ASSISTANCE TO BE GIVEN

9 The regulations may specify items of expense in relation to which funeral expense assistance will, or will not, be given.

10 The regulations may set a limit on the value of the funeral expense assistance that will be given in relation to items of expense.

20

11 The regulations may set a limit on the total value of the funeral expense assistance that will be given.

12 The regulations may provide for the amount of funeral expense assistance that will be given to be reduced to reflect the availability of other funds that may be used to meet, or help to meet, any of the expenses.

25

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.

30 (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.

PART 3

FINAL PROVISIONS

Generality of enabling power unaffected

13 Nothing in—

- 5 (a) Chapter 2 of Part 1, or
(b) Part 2 (apart from paragraph 12A),

is to be taken to limit what may be prescribed in the regulations.

Interpretation

14 In this schedule—

10 “deceased person” means the person in respect of whose funeral assistance is sought,

“eligibility” means eligibility for funeral expense assistance and “eligible” means eligible for funeral expense assistance,

“the regulations” means regulations under section 17(2).

15

SCHEDULE 8

(introduced by section 17A)

HOUSING ASSISTANCE REGULATIONS

PART 1

ELIGIBILITY

20

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

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—

25

(a) sub-paragraph (2), or

(b) sub-paragraph (3).

(2) The conditions referred to in sub-paragraph (1)(a) are—

30

(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,

(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,

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

- (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 lives in,
- 5 (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).
- (3) The conditions referred to in sub-paragraph (1)(b) are—
- 10 (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
- (ii) not more than 21 years of age,
- 15 (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.
- (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).
- 20 (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 respect of that period.
- 25 (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 individual.
- 30 (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.
- (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—
- 35 (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

Participation in education

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

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

Residence and presence

10 4 The regulations may make an individual's eligibility depend on the individual being resident and present in a particular place.

Age

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

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

Financial circumstances

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

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

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—

- 25 (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 or entitled to receive such assistance.

Application within specified period

30 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
- (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

CHAPTER 1

VALUE

5 *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).

10 (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—

15 (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), or

20 (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

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—

25 (a) the age of either or both—

(i) the individual, and

(ii) anyone who lives with the individual,

(b) the financial circumstances of either or both—

(i) the individual, and

30 (ii) anyone who lives with the individual.

CHAPTER 2

FORM

Meeting liabilities

11 35 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,

- (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

5 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.

(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.

10 (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.

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.

PART 3

FINAL PROVISIONS

Generality of enabling power unaffected

20 13 Nothing in 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) in Part 2, paragraphs 9 and 12.

Interpretation

25 14 In this schedule (unless stated otherwise)—

"eligibility" means eligibility for housing assistance and "eligible" means eligible for housing assistance,

"the regulations" means regulations under section 17A(2).

SCHEDULE 9

(introduced by section 18)

30 SHORT-TERM ASSISTANCE REGULATIONS

PART 1

ELIGIBILITY

Entitlement to other assistance being reviewed

35 1 (1) The regulations must be framed so that an individual is eligible for short-term assistance if—

- (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—

(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

(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—

(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

(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

(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

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.

(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—

$V1$ 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 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 superseded determination relates may be given.

PART 3

FINAL PROVISIONS

Generality of enabling power unaffected

- 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

- In this schedule, "the regulations" means regulations under section 18(2).

Social Security (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament making provision about social security.

Introduced by: Angela Constance
On: 20 June 2017
Bill type: Government Bill

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