



OFFICIAL REPORT
AITHISG OIFIGEIL

Social Security Committee

Thursday 1 March 2018

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Thursday 1 March 2018

CONTENTS

Col.

SOCIAL SECURITY (SCOTLAND) BILL: STAGE 2..... 1

SOCIAL SECURITY COMMITTEE

6th Meeting 2018, Session 5

CONVENER

*Clare Adamson (Motherwell and Wishaw) (SNP)

DEPUTY CONVENER

Pauline McNeill (Glasgow) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

*Jeremy Balfour (Lothian) (Con)

*Mark Griffin (Central Scotland) (Lab)

*Alison Johnstone (Lothian) (Green)

*Ben Macpherson (Edinburgh Northern and Leith) (SNP)

*Ruth Maguire (Cunninghame South) (SNP)

*Adam Tomkins (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jeane Freeman (Minister for Social Security)

CLERK TO THE COMMITTEE

Simon Watkins

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Social Security Committee

Thursday 1 March 2018

[The Convener opened the meeting at 09:31]

Social Security (Scotland) Bill: Stage 2

The Convener (Clare Adamson): Good morning and welcome to the sixth meeting in 2018 of the Social Security Committee. I welcome everyone, especially staff and members, who have made a Herculean effort to be here this morning—it is much appreciated. I remind everyone to turn mobile phones and other devices to silent. We have received apologies from Pauline McNeill and there will be no substitute for her this morning.

The only item on today's agenda is continued consideration of the Social Security (Scotland) Bill at stage 2. Members have the marshalled list and groupings covering all the remaining amendments, and we will continue where we left off last week. I remind everyone that we have to finish by 11:40 at the very latest.

I welcome the Minister for Social Security, and we will welcome her officials when they arrive. Before we start, I want to check my understanding that the amendments in the name of Pauline McNeill are to be moved by Mark Griffin. Can you confirm that you are content with that, Mark?

Mark Griffin (Central Scotland) (Lab): Yes, I am happy to do so.

Section 39—Offence of trying to obtain assistance by deceit

The Convener: The first group of amendments is on offences. Amendment 94, in the name of Pauline McNeill, is grouped with amendments 95, 46 and 96 to 101.

Mark Griffin: Amendment 94 and the other amendments in the group that are in Pauline McNeill's name are sponsored by, and lodged on the advice of, JUSTICE Scotland. They respond to concerns that were raised about proposed offences in the bill. As we discussed at stage 1, the offences as drafted are overbroad and imprecise, and they criminalise conduct that is careless or negligent rather than dishonest.

At stage 1 we heard that, although the policy memorandum makes it clear that the policy intention is not to criminalise genuine errors, the bill makes it an offence to fail to report a change of circumstances when a person knows or "ought to

have known" that it might affect entitlement. We feel that the bill sets a test that is too low. It does not test whether the person intended to commit an offence and someone could commit an offence unknowingly.

The committee recommended that the bill should be clarified to ensure that genuine errors or misunderstandings would not result in someone being criminalised. Having considered the amendments lodged by the Scottish Government, we are not fully content that that bar has been raised adequately. We should remind ourselves that, as presently drafted, the section would allow the conviction of an honest claimant who it was deemed should have known that a change of circumstances would have resulted in a change to their entitlement. It criminalises behaviour or conduct that is careless or negligent rather than intentionally dishonest. Additionally, there is no safeguard of a requirement for proof that benefits would have been affected.

We also have concerns about the language used by the Government in amendment 46, which says:

"the person does not have a reasonable excuse for failing to do so".

I ask the minister to elaborate on that line, on the existing use of that language in Scots law, and on the interpretation of "a reasonable excuse". Any support that we give to amendment 46 we would give reluctantly and only because the amendment improves the situation, although not as much as we would like it to be improved.

The focus of JUSTICE Scotland's advice has been a comparison with the United Kingdom offences framework. Although we would not and should not look to replicate the UK system, the tests in the bill are out of step with and more severe than those in use in the UK system.

I hope that we can come to an agreement, perhaps not at stage 2 but in advance of stage 3, on whether there is room for further improvement on this issue.

I move amendment 94.

The Minister for Social Security (Jeane Freeman): I thank the convener, members and staff for being here this morning and allowing the meeting to go ahead.

Our policy position is clear—we will treat people fairly and with dignity and respect, and we will pay the assistance that people are entitled to receive. However, we have to strike the right balance. We have a duty to ensure that public funds are protected and that there are consequences for those who choose to defraud the system.

Amendment 46 seeks to do that by introducing into section 40 the ability of a person to defend themselves from prosecution if they have a reasonable excuse for failing to notify a change of circumstances. I have listened to stakeholders' concerns and the committee's views about section 40 and have lodged amendment 46 to address them.

Section 40 says that an offence is committed if someone fails to notify a change of circumstances that, under section 31, they have a duty to notify, and the person knows or ought to know that the change in circumstances might reduce or stop their entitlement to assistance. A person might have a good excuse for not notifying a change in circumstances and the concern is that they should not be criminalised for an honest mistake. I share and understand that concern. That is why my amendment addresses the point. It is all that is needed to address stakeholders' concerns.

Ms McNeill's amendments to section 40 take a different approach, but tip the scales so far in the other direction that they would render the section ineffectual. Her amendments risk making offences so difficult to prosecute that nobody would take the risk of prosecution seriously.

The Scottish agency will be clear with people up front about why they have been awarded assistance, what types of information and changes of circumstances they should report and how they should report them. That differs from the approach taken under existing UK legislation, where the Department for Work and Pensions is under no obligation to provide that level of detail. I understand that in practice, in certain circumstances, the DWP provides detail, but the key point is that it is under no obligation to do so.

The use of "knowingly" in DWP legislation rightly places a high legal burden on prosecutors to prove a person's subjective knowledge in not notifying a change of circumstances, because people are not required to be told precisely what they have to notify. That makes it easy for a person to make a mistake.

The Scottish system will be fundamentally different. People will be clear about what changes must be notified, so that all that is required is to ensure that persons who have a reasonable excuse can give their explanation. If a person has a reasonable excuse, they will have the opportunity to explain the mitigating circumstances during an investigation by the agency. Those factors would be taken into account before officials of the agency concluded their investigation. If the error was genuine, prosecution would not take place, but if prosecution were to take place the excuse is the defence against conviction.

Amendment 94, in the name of Pauline McNeill, which is about what a person knew when providing false information, is unnecessary. Section 39 refers to an intention to cause assistance to be given incorrectly. To intend something, a person must know that what they do will cause it to happen. Section 41 has no need of the additional words proposed by her amendment, which would confuse references to what a person knew or ought to have known. As I have said, we will tell people the changes in circumstances that they need to notify, and it will be clear what they ought to know.

Section 42 allows senior figures in an organisation, such as a company or partnership, to be convicted of an offence if the organisation commits the offence because of the connivance, consent or neglect of the senior official. Amendment 101 would remove the "neglect" element of that.

Section 42 is worded in the usual way for a section of its kind. The same wording can be found in reference to air weapon offences in the Air Weapons and Licensing (Scotland) Act 2015, in legislation on environmental harm, in the Animal Health and Welfare (Scotland) Act 2006, and in the Criminal Justice and Licensing (Scotland) Act 2010. There are other examples, but I have to ask why senior officials of an organisation should not be held personally responsible if they neglect their duties, allowing their organisation to commit social security fraud. A company director who has been turning a blind eye to an organisation's involvement in fraud should have a case to answer. Therefore, I cannot support amendment 101. Nor, for the reasons that I have given, do I support the other amendments from Ms McNeill in this group, and I urge the committee to reject them.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Like the minister, I have concerns about the amendments with regard to the burden of proof, what prosecutors would be expected to prove and how that could be undertaken if they had to evidence the suggestion that false or misleading information had been provided "knowingly". Amendment 46, in the name of the minister, is sufficient to ensure that there is protection for those who are claiming and that they are not prosecuted unduly or unnecessarily. I therefore urge Mark Griffin not to press Pauline McNeill's amendments.

Alison Johnstone (Lothian) (Green): I would like to hear more from the minister about an issue on which some organisations have contacted me, pointing out that, under the current United Kingdom system, it is not an offence if a person does not know that a change in circumstances might affect their benefit, or that information that

they have provided is wrong. As it stands, the bill means that an individual in Scotland will, even with amendment 46, be at risk of prosecution.

I have been given a couple of scenarios that illustrate that point. For example, Iain lives in England and his sister Mary lives in Scotland. They go to visit their mum overseas. They both have caring responsibilities and they get carers allowance. Neither of them tells their respective carers allowance authority that they are going abroad, but when they come back they are both told that they have been overpaid carers allowance, and the decision makers in each case take the view that they should have asked whether the absence abroad would affect their entitlement. Iain lives in England so he has a £50 penalty imposed on him and has to repay the overpaid allowance, but he cannot be prosecuted because he did not know that going abroad would affect his benefit, even though he could have found out if he had tried. Mary also has to repay her carers allowance, but on top of that her case is passed to the procurator fiscal's office for consideration and she can be prosecuted for fraud, even though she has only made a mistake and has not acted dishonestly.

It is my view that Pauline McNeill has lodged these amendments to ensure that there are the same safeguards in Scotland as there are in UK law, and that a person would have to know that a change could affect their benefit and that the information that they had given was false.

09:45

Adam Tomkins (Glasgow) (Con): Will Alison Johnstone take an intervention on that?

Alison Johnstone: Certainly.

Adam Tomkins: If the offence is such that the individual cannot be prosecuted unless the prosecution can prove that he or she knowingly acted in the way that Alison Johnstone has described, is it not the case that such offences would, in practice, never be prosecuted because the prosecution would never be able to prove that?

Alison Johnstone: Organisations are raising areas of concern with us, which is why I am asking the minister for clarity. Obviously, we have different systems in Scotland than we do down south on a range of issues, but I am interested in why that should be the case in this particular instance.

The Convener: As no one else wishes to comment, would you like to respond, minister?

Jeane Freeman: Yes, I will do so happily. Mr Tomkins has helpfully got to the heart of the matter as regards what is required by the word "knowingly". As I have said, the burden of proof

that is on the prosecution makes it virtually impossible to prosecute. That takes me back to my point about the need to strike a balance between ensuring that we have a fair and reasonable system in which people receive what they are entitled to and being mindful of the duty to protect the public purse from fraudulent behaviour. We should be clear and sensible, and expect that, in a new system just as much as in any other public service system, there will be individuals who will seek—perhaps in a concerted manner—to test the system and its capacity to identify and prosecute fraudulent behaviour.

With regard to the specific question that Ms Johnstone asked me, without the benefit of anything more than just hearing about the two scenarios, I disagree with the interpretation of the case with regard to England. As I made clear, the individual could be prosecuted because, under UK legislation, there is no requirement on the DWP to identify, in detail, what an individual should report as a change in circumstance. Therefore I disagree that, in that instance, Iain would be beyond prosecution.

With regard to Iain's sister, Mary, my amendment prevents her from being prosecuted if she can provide a reasonable excuse. As Mr Griffin asked me about that, I shall take this opportunity to respond. As I understand it—I am sure that Mr Tomkins will correct me if I am wrong, as he understands these things better than I do—Scottish courts have a fairly standard test about a reasonable person and what might be considered a reasonable excuse. Of course, that standard test about reasonableness would be applied in Scottish courts in that instance. If the agency considered that an excuse was not reasonable and it wished to pass the matter on to the criminal justice system—which is what it would do because it would no longer be the agency's role—our procurator fiscal service would exercise its good, sound judgment in determining whether a case was viable for prosecution and likely to be prosecuted. I would imagine that, in the vast majority of cases, our prosecution service sets a high standard for what it believes should be prosecuted, and would not proceed. In that instance, Iain would not be in the fortunate position in which he is in the scenario, but Mary most certainly would be.

Mark Griffin: I fully support the minister's aim in protecting the public purse when someone is intentionally defrauding the system. However, I am still concerned that, when that happens unintentionally, people will be at risk of prosecution. I take on board what the minister and other members have said about the balance that needs to be struck.

If the balance in Ms McNeill's amendments would leave the situation that the minister outlined, with it being impossible to prosecute people and protect those public funds from being intentionally defrauded, I will seek to withdraw amendment 94. I will look to the Government to continue discussions with Pauline McNeill and organisations that have concerns about the balance ahead of stage 3.

The Convener: Thank you, Mr Griffin. The question is, that the committee agrees that amendment 94 be withdrawn. Are we agreed?

Adam Tomkins: I am not sure that we should agree to that, convener. I do not see that there is any need for the issue to be revisited at stage 3. I think that we should take a view on it now, at stage 2.

Ben Macpherson: I agree.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)
Johnstone, Alison (Lothian) (Green)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Balfour, Jeremy (Lothian) (Con)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 94 disagreed to.

Section 39 agreed to.

Section 40—Offence of failing to notify

Amendment 95 not moved.

Amendment 46 moved—[Jeane Freeman]—and agreed to.

Amendments 96 and 97 not moved.

Section 40, as amended, agreed to.

Section 41—Offence of causing a failure to notify

Amendments 98 to 100 not moved.

Section 41 agreed to.

Section 42—Individual culpability for offending by an organisation

Amendment 101 not moved.

Section 42 agreed to.

Sections 43 and 44 agreed to.

After section 44

The Convener: The next group is on uprating. Amendment 47, in the name of the minister, is grouped with amendments 48, 48A, 48B, 48C, 133 to 136, 2, 137 and 3.

Jeane Freeman: I have always been clear that we will maintain spending on disability and employment injury assistance through annual uprating, so that what people receive is not eroded by inflation. That is important to the people who rely on those benefits.

I am pleased to support an extension of that commitment through Mr Griffin's amendments to my amendment 48, so that the duty will also apply to carers assistance. The bill allows implementation of the policy through the rate-setting powers in the regulations for the individual types of assistance. I do not support Mark Griffin's other amendments, which would introduce unnecessary procedures, result in complexity and slow matters down.

I welcomed the committee's recommendation in its stage 1 report, which suggested the pragmatic approach of annually reviewing the rates of assistance, having regard to inflation. My amendments put the Government's policy commitment and the committee's recommendation on to a statutory footing. They would commit ministers to annually review the rates of devolved social security assistance, having regard to the impact of inflation, and to explain our decisions in a report to Parliament.

The amendments also place a duty on ministers to introduce legislation to uprate the value of disability and employment injury assistance annually by the rate of inflation. Mark Griffin's amendments 48A, 48B and 48C would include carers assistance in that group. That is in addition to the 13 per cent increase that we will deliver as our first benefit following the passage of the bill, which will bring carers allowance in line with jobseekers allowance.

My amendments set out very clearly what ministers are going to do on annual uprating. However, I have some concerns about the other amendments. They do not fully commit ministers to uprate; they simply require ministers to explain which assistance types will be uprated and to provide reasons for those that they have decided not to uprate.

That said, there are many similarities between my amendments and Alison Johnstone's amendments 2 and 3. In a broad sense, they look to do similar things. However, my amendments do not require a bespoke power to implement uprating decisions, which simplifies the process, and they also clearly commit ministers to uprate

disability and employment injury assistance as well as, with Mr Griffin's amendments, carers assistance. Amendment 2 would not require ministers to do that. I am also unconvinced that uprating any top-up benefits that might be provided through regulations under part 3 would be a good idea. The top-up amounts are likely to be relatively small compared with the underlying benefit and would result in extremely modest increases. I therefore invite Alison Johnstone not to move amendments 2 and 3 and to instead support my amendments.

I urge the committee to reject amendments 133 to 137, which would result in an overly bureaucratic and process-heavy system for annual uprating. My amendments are clear about what ministers have to do with regard to uprating, whereas amendments 133 to 137 seem to be more about how uprating should be done through powers to make regulations about other regulations. It is difficult to see any advantage in that approach. I believe that the process of annual uprating should be a simple operation and must be responsive in order to ensure that individuals receive any increase in assistance as quickly as possible. It is in no way certain that that could happen with the requirements that are put in place by amendments 133 to 137. Before uprating regulations to increase rates could be laid, the regulations setting up an uprating framework would have to be agreed by the Parliament. That would require at least 60 session days. However, if Parliament said no to those regulations, a further lengthy process would be needed. That seems highly unresponsive, and I urge committee members to reject those amendments. I ask members to support the amendments in my name.

I move amendment 47.

Mark Griffin: We welcome the Government's substantial movement on the issue. Although we appreciate that it has always been the Government's policy intention to provide uprating to disability assistance, I think that the idea of including that in this legislation is a fairly recent change. We absolutely welcome and support that change.

Amendments 48A to 48C, in my name, seek to modify the bill to ensure that carers assistance is uprated and that that guarantee is secured in the bill, as is standard practice under the UK scheme for carers allowance.

We assume that the Scottish Government will soon take on the full delivery of carers assistance at a combined higher rate, at which point it would exercise powers under section 48 to repeal the temporary provision. Amendments 48A to 48C seek to ensure that a fully devolved carers assistance would track inflation.

Clearly, the flaw of the formula under section 47 forces the Scottish Government to pass on the UK Government benefit freeze, because of the link to JSA. We appreciate the Government's support for the amendments concerning carers allowance.

Amendments 133 to 137 seek to improve the Government's attempts to fulfil the recommendations that were made in the stage 1 report. Put simply, my amendments seek to provide a robust and transparent framework for uprating benefits. Specifically, they would require ministers to consult publicly on regulations that establish an uprating system; they would require those regulations to set out the mechanism, the frequency and the form of assistance that is to be uprated; and, crucially, they would require ministers to draft, consult on and agree a system in relation to those requirements before uprating starts to take place.

I ask members to support the amendments in my name.

The Convener: Thank you, Mr Griffin. I invite Ms Johnstone to speak to amendment 2 and the other amendments in the group.

10:00

Alison Johnstone: Amendment 2 provides for an uprating mechanism that would apply to all the forms of assistance that the bill outlines. The amendment is closely based on the provisions of the Social Security Administration Act 1992, which provides for uprating of many of the current reserved benefits. It asks ministers to ascertain whether the value of any form of assistance has changed relative to the general level of relevant prices and to uprate the benefits in question accordingly.

How the relevant prices, general living costs and the cost of energy bills and funerals are calculated is left to ministers—I am not trying to tie ministers down to a specific index of inflation, for example—but I believe that the principle is very important. When assistance is provided, it should be at a rate adequate for the purpose for which it is paid. If there is a change in the cost that the assistance covers, the rate of assistance should increase with it. Rightly, dignity and respect form the basis of the new system, and there is a link between dignity and respect and the adequacy of the assistance that is paid. A system that pays, relative to increasing prices, less and less every year is not a system that respects recipients and offers them dignity.

According to research that was commissioned by this committee, by 2020, £300 million will be cut from 700,000 Scots households because the UK Government has set aside the requirement on it to uprate benefits. That is £450 per year for each

household, on top of all the other cuts that are being made. For example, the sure start maternity grant has been uprated only once since it began, and so the value of those payments has dropped every year while other prices have increased, as Maternity Action argued in a submission to our predecessor committee, the Welfare Reform Committee. Although the minister has made a range of very welcome improvements in the new best start grant, I ask her to comment on whether she would consider uprating best start as prices change. That will be particularly crucial, given that we now have statutory child poverty targets.

I appreciate that the minister recognises the issue and has lodged her own amendments. They are a good start and an improvement on the original draft of the bill, but they do not create a requirement to uprate all assistance. The requirement relates to disability assistance; for other forms of assistance, the requirement is only to consider the issue, not to uprate. The bill sets up a system that could be radically different from the one that it replaces, and it could do that by ensuring a guaranteed, reliable, real-terms minimum payment each year. That is what amendment 2 seeks to achieve.

The Convener: As no other members wish to comment, I invite the minister to wind up.

Jeane Freeman: My amendments on uprating put our policy commitment to uprate disability and employment injury assistance on a statutory footing. As I said, I am happy to support Mr Griffin's amendments 48A, 48B and 48C to extend that commitment to carers assistance. My amendments also take into account the committee's recommendations. They provide the flexibility to take different decisions for different types of assistance in line with the wider budget-setting process of the Scottish Government.

With respect to Ms Johnstone's amendments, I believe that my amendments respond most directly to the committee's stage 1 recommendation. Mr Griffin's amendments 133 to 137 would result in a bureaucratic process that would take a significant amount of time when what is needed by those who rely on such financial support is a quick and clear process. Uprating should be a routine procedure that does not require massive machinery behind it. I urge the committee to reject those amendments and to support the amendments in my name.

Amendment 47 agreed to.

Amendment 48 moved—[Jeane Freeman].

Amendments 48A to 48C moved—[Mark Griffin]—and agreed to.

Amendment 48, as amended, agreed to.

Sections 45 and 46 agreed to.

After section 46

The Convener: The next group is on top-up child benefit. Amendment 202, in the name of Mark Griffin, is grouped with amendments 110 and 111.

Mark Griffin: The first test of the child benefit policy was before recess, when the initial amendment on the subject was accepted; I made the argument that there is a place for consulting parents who receive child benefit because of the power to top up.

Following on from that committee decision, we now move on to the substantive amendments that would put in place the mechanism to top up child benefit and give effect to the give me five campaign. We debated the amendment in question in the same week that the Poverty and Inequality Commission published its first report, ahead of the Scottish Government's delivery plan for meeting its child poverty targets. To put it as simply as possible, the overwhelming message of that report is that significant use of new social security powers is required if the Scottish Government is to meet its challenging targets to reduce child poverty.

When we passed the Child Poverty (Scotland) Act 2017, we basically said that we refused to turn a blind eye. The time for acting on those sentiments is now. By Easter, the Scottish Government's first delivery plan for the 2017 act will set out how we can set out on a different path, in the face of the transition to universal credit, the benefit freeze and more austerity.

Taken together with the provisions for early years assistance, my proposal supplements that policy direction. As families across Scotland face inflation of 3 per cent, which is weighing down on their weekly budgets, with child benefit losing its value for another year, the proposal would assist more than 500,000 families who are struggling with the impact of Brexit and Tory Government austerity. More importantly, 30,000 children would be lifted out of poverty immediately.

The Institute for Fiscal Studies predicts that, by the time of the next Holyrood elections, one in three children will be in poverty. With the passing of the rate resolution, we acknowledge that the SNP has failed to secure the budget to pass on a top-up in 2018-19, but legislating now could ensure that the provisions are commenced in future years or—if in-year provision could be found—this year.

I feel that failing to legislate at stage 2 would be short-sighted and to delay a decision would also mean that we are content to wait while children suffer poverty and misery, with all the associated impacts on health and wellbeing, educational

attainment, future earning potential and their ability to get themselves out of poverty.

The key to the give me five campaign's work is the recognition that the near universal uptake and eligibility criteria for child benefit make this the most appealing option for ensuring the most immediate impact. The Poverty and Inequality Commission notes in recommendation 23 of its report that the Government must consider

"the greatest financial impact alongside other relevant factors such as cost and complexity of delivery, take up rates, income security, and potential disincentives to move into work or increase earnings in order to identify the most effective option to impact on child poverty."

Although the committee has agreed to amendments to deliver a new strategy to boost uptake, the number of people who are eligible for and are claiming tax credits has fallen. Topping that up would support fewer and fewer families as Tory welfare reform accelerates.

Alongside that, the complexity of topping up the means-tested system, which is going through a period of transition, is huge. The alternative of topping up child tax credit would also require the Government to top up universal credit and income support for the medium term. To quote the commission again, doing so would be

"particularly challenging given the current problems with the way that Universal Credit is being delivered."

The commission notes that

"increasing the child element of Universal Credit appears to be the most cost-effective way of reducing child poverty",

assuming a 100 per cent uptake of universal credit, which is, of course, an impossibility in the short term. We will not have a clear idea of how and when the full transition to universal credit will take place until the end of this year.

I think that what I am proposing is the best and most cost-effective way of lifting as many children out of poverty as we can, and I hope that members will give serious consideration to the amendments in my name in this group.

I move amendment 202.

Alison Johnstone: I want to speak in whole-hearted support of Mark Griffin's amendment on topping up child benefit. I fully support the aims of the give me five campaign: we are all aware of its work and of the efforts that it has made to raise awareness of the issue. As Mark Griffin has pointed out, child benefit has decreased markedly in value since welfare reform was introduced, so the £5 top-up would probably go a little way towards addressing that. The measure would immediately lift 30,000 children out of poverty, which would in itself bring about cost savings in terms of their health and wellbeing. If we are a country that seriously wants to address the

attainment gap, then that is something that we cannot turn away from.

I am sure that we will hear arguments against universality, so I remind members of other parties that the Government is rightly, in my view, committed to that principle in relation to prescriptions and free access to higher education, and for the very reasons why we should support universality in this case. We know from the Child Poverty Action Group and others that child benefit is often the only income that families are dependent on, such is the complexity of our welfare system. That is well evidenced. What Mark Griffin proposes would send a strong message that Scotland is taking the issue seriously and really wants to strive to end child poverty.

It is a horrifying prospect that one child in three could be living in poverty by the time of the next election. I understand that there are costs attached to doing what is proposed, but there are also real costs attached to not doing it, so I stress again the importance of universality. There is nothing that we can do that is better than ensuring that our youngest people have the best possible start in life; child benefit is at the heart of that.

Ruth Maguire (Cunninghame South) (SNP):

My colleagues have made compelling, emotive and emotional arguments, and have quoted from the commission's report. However, the commission also says that it is not recommending that the Scottish Government top up a specific benefit, and it points to other options. The bottom line for me is that the framework bill is not the place for something that commits a substantial amount of money and rides roughshod over the budget, so I cannot support the amendments in the group.

Adam Tomkins: I am grateful to Mark Griffin for bringing this important matter to the attention of the committee—not least because, like him, I think that the Scottish Government's considerable power to top up reserved benefits is an important part of devolved social security, for which the bill is legislating.

Last year, Parliament unanimously and with all-party support passed what I think is a very important piece of legislation—the Child Poverty (Scotland) Act 2017. The Scottish Conservatives, as all the other parties did, supported the bill and tried to strengthen it as it went through Parliament. As Mark Griffin said, the first delivery plan under the Child Poverty (Scotland) Act 2017 will be published soon by the Scottish Government. It is important to note that that legislation takes a holistic approach to child poverty: the thinking is not that the only relevant measure of child poverty is income or that the only solution to child poverty is to increase the value of benefits. When we are thinking about child benefit, we need to think about

a huge variety of issues including education and the attainment gap, families in work, and health and mental health.

10:15

My friends and colleagues on the political left need to absorb, confront and reflect on the key finding of the Joseph Rowntree Foundation in 2016, which was that increasing the value of benefits without tackling the underlying drivers of poverty has failed to address poverty in the United Kingdom, including in Scotland. According to the Joseph Rowntree Foundation, the approach that is being advocated by Mark Griffin and Alison Johnstone has failed to address poverty. If we are serious about tackling child poverty—we all are—we need to get serious about addressing its underlying drivers, pathways and causes, and not merely to focus on the value of benefits, as amendments 202, 110 and 111 do.

Alison Johnstone: When we have discussed previous amendments, Adam Tomkins has suggested that drug addiction and other issues are causes of poverty, but does he accept that poverty is very often the cause of those issues? I understand that he is passionate, as we all are, about education, but it is very difficult for a person to reach their potential if they simply do not have enough food in the morning or if their family is really struggling. I see the two approaches as being entirely interlinked; we should be pushing for both, and not for one at the expense of the other.

Adam Tomkins: We do not disagree about that. I think that each can be a cause of the other. I do not think that poverty drives the education gap wider, any more than I think that the education gap drives poverty deeper. They are deeply interlinked and related to one another. They are causes of each other—they have a correlative relationship.

My point is that none of us will be successful—as a political party, an individual campaigner, a Government or an Opposition—in tackling child poverty if we think only about increasing the value of benefits, important though that is. I am not saying that doing so is unimportant, but in the Joseph Rowntree Foundation's view, it is a mistake to focus on that to the exclusion of other broader issues, including education, employment and health.

The top-up that is proposed by the give me five campaign would cost in excess of £0.25 billion a year—a not insignificant sum—to say nothing of its administration costs. The appropriate time and place for the Scottish Government to consider whether it wants to adopt that proposal as policy—which I hope it does—is not in a framework bill that is legislating for implementation of devolved social security, but in the annual budget process.

Amendments 202, 110 and 111 cut straight through the budget process. For that reason, they are inappropriate.

Jeane Freeman: As members have noted, on Monday the Poverty and Inequality Commission, which was set up by the SNP Government to provide independent expert advice, published its advice to guide us—as we asked it to—in the child poverty delivery plan that we will publish in the coming weeks. I am sure that members remember that that plan will set out the actions that we will take to meet the challenging statutory income targets that we have set to reduce and, ultimately, to eradicate child poverty.

The commission set out some general principles focused around five themes that should underpin the delivery plan. The most relevant for us this morning is “Linking actions to impact”, which means being clear what the impact of each action is expected to be and committing to monitoring and evaluating the impact. The commission's analysis takes as a starting point the removal of the benefit cap and the two-child limit, and then it models on top of that various benefit options. The package to top up child benefit by £5 would cost £340 million and would lift 20,000 children out of poverty, but a package to top up the child element of universal credit, at a cost of £360 million, would lift 45,000 children out of poverty. There can be little doubt that using resources in a way that delivers relatively small impacts on child poverty is not the most effective targeted action to take.

It is clear that although a universal £5 top-up to child benefit is not a bad idea, it is certainly not the best idea. Further analysis also demonstrates clearly that for every £10 that would be spent on that option, only £3 would effectively reach children who live in poverty. The analysis in the commission's report is clear in pointing to the most effective use of any additional resources that could be found and committed to such work. The commission does not recommend that we top up specific benefits, but helpfully points to the analysis as providing a direction of travel on options that are worth exploring further.

The commission also helpfully and pragmatically advises that consideration should be given to issues such as the not insubstantial cost and complexity of delivery, potential take-up rates, income security and potential disincentives to moving into work or to increasing earnings—all alongside consideration of the impact. The £340 million that the commission's analysis indicates is the cost of implementing the child benefit top-up package is roughly equivalent to the combined current spending in Scotland on winter fuel payments, industrial injury benefits, discretionary housing payments, severe disablement allowances and funeral expense assistance. That

points to the difficult decisions—for which we must all take responsibility—that are to be made in determining how a declining Scottish budget can be used most effectively and, as has been said, that are properly to be made through the Government and Parliament's budget process.

This is not a competition about who is most committed to ending child poverty. There can be absolutely no doubt of my colleagues' commitment in that regard, or of the Government's commitment and intention to take effective action—across Government and in addition to that to which we are already committed—to meet the challenging targets that we have set. The independent expert Poverty and Inequality Commission has provided all of us with clear and helpful advice. It sets out a direction of travel and points to the further thinking that needs to be done. We will progress that through our child poverty delivery plan: we will lay out both the extent to which we will use social security powers to reduce child poverty, and the options that are available to us. That is the right approach to take, and one that Parliament has agreed the Government should take.

I urge the committee to reject amendments 202, 110 and 111 in the group because they do not meet the key guiding principle that the commission has identified as being critical to underpinning our effective action.

Mark Griffin: I take on board all the points that members of the committee have made—first, in relation to whether the approach in amendment 202 is the right way of doing this or whether it cuts across the budget. I would happily ride roughshod over the Scottish Government's budget if doing so would lift 30,000 children out of poverty, and I would do so every single day of the week.

On Adam Tomkins's point about whether increasing benefits is the best lever to reduce poverty, that is an argument that we have regularly. However, the fact is that we are debating the Social Security (Scotland) Bill, so we are talking about the benefits system. I do not disagree with him that there are other ways to lift families out of poverty; there will be common ground on many such measures. However, we are talking about the social security system, so we are focused on how measures within it will help families and help to lift children out of poverty. A benefits freeze will certainly not lift a single family out of poverty. Amendments 202, 110 and 111 would contribute to addressing the benefits freeze that has been put in place by the UK Tory Government.

As the minister has said we should do, I am looking at linking action to impact. If amendments 202, 110 and 111 were to be agreed today, the action that would be taken would be to top up child

benefit, the impact of which would be that 30,000 children would be lifted out of poverty.

Again, I agree that this is not a competition. We are not competing with each other to see who most wants to reduce poverty; we all equally want to reduce child poverty. It is not a competition because we do not have competing proposals—there is one proposal on the table. If the Government had introduced proposals, detailed them and set them out in the budget, I would have welcomed that.

However, there is one proposal, which is that we increase child benefit by £5 a week to be paid in the simplest and easiest way. It would not be completely universal because people who earn more than the earnings limit do not qualify for child benefit, so there is still an element of targeting. I ask members to give serious consideration to supporting amendments 202, 110 and 111 in my name, and I press amendment 202.

The Convener: The question is, that amendment 202 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)

Johnstone, Alison (Lothian) (Green)

Against

Adam, George (Paisley) (SNP)

Adamson, Clare (Motherwell and Wishaw) (SNP)

Balfour, Jeremy (Lothian) (Con)

Macpherson, Ben (Edinburgh Northern and Leith) (SNP)

Maguire, Ruth (Cunninghame South) (SNP)

Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 202 disagreed to.

Section 47 agreed to.

Section 48—Power to repeal temporary provision

Amendment 110 moved—[Mark Griffin].

The Convener: The question is, that amendment 110 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)

Johnstone, Alison (Lothian) (Green)

Against

Adam, George (Paisley) (SNP)

Adamson, Clare (Motherwell and Wishaw) (SNP)

Balfour, Jeremy (Lothian) (Con)

Macpherson, Ben (Edinburgh Northern and Leith) (SNP)

Maguire, Ruth (Cunninghame South) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 110 disagreed to.

Amendment 111 moved—[Mark Griffin].

The Convener: The question is, that amendment 111 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)
Johnstone, Alison (Lothian) (Green)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Balfour, Jeremy (Lothian) (Con)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 111 disagreed to.

Section 48 agreed to.

After section 48

The Convener: The next group is on the inalienability of assistance. Amendment 198, in the name of the minister, is grouped with amendment 199.

Jeane Freeman: As the convener said, amendments 198 and 199 set out the general principle of inalienability of social security assistance. They are technical adjustments. The principle means, in effect, that a person's right to social security assistance will be protected and cannot be transferred to a third party for debt recovery.

Amendment 198 makes it clear that creditors cannot use legal mechanisms to assume the right to a person's benefit payments, which could be used to recover a debt. Amendment 199 sets out that if a person enters an insolvency process, there is a further safeguard to ensure that their assistance cannot be used to pay off creditors.

These are important amendments that will ensure that people get what they are entitled to and that the assistance provided meets the needs for which it was intended.

I move amendment 198.

Amendment 198 agreed to.

Amendment 199 moved—[Jeane Freeman]—and agreed to.

The Convener: The next group is on information sharing. Amendment 200, in the name of the minister, is grouped with amendment 201.

10:30

Jeane Freeman: Amendments 200 and 201 are technical adjustments to make provision in the bill for data sharing between ministers and Scottish public authorities.

The Scotland Act 2016 contains provision for data sharing between the Scottish ministers and the UK Government for social security functions. Additional gateways for data sharing need to be created so that ministers can share information with Scottish public authorities.

Amendment 200 lists the main public authorities that ministers may need information from to operate social security provision. There is a power to add further bodies by regulations.

I highlight that any requirement on the bodies to supply information will not override any prohibition in any other enactment or rule of law. That is to ensure that the gateway the bill will create is compatible with the wider requirements of data protection legislation.

The amendments also provide a gateway in the other direction, to allow ministers to supply social security information to Scottish public authorities, for example, to help with automation of benefits. To ensure transparency, regulations will have to set out which functions of the authority receiving the information are relevant. Again, that is subject to any other enactment or rule of law that would prohibit disclosure.

I move amendment 200.

Adam Tomkins: I understand that the amendments are technical and that they will be checked by Government lawyers for compatibility with UK and European Union data protection requirements. I hesitate to say this, but in light of the fact that within the past year or two there has been an adverse Supreme Court ruling against legislation passed by this Parliament on precisely the issue of information sharing, will the minister say anything about how the amendments are compatible with that interpretation of data protection and how they are different from the way in which the named persons legislation—which is obviously what I am referring to—constructed requirements to share information?

Jeane Freeman: I assure Mr Tomkins that the amendments have been drafted in order to take account of that court ruling. However, I am not in a position to draw to his attention the precise way in which they are different. I would be happy to do so outside the committee, but I am happy to say that

the amendments are compatible with the court ruling.

Alison Johnstone: Subsection (3) of the new section that will be inserted by amendment 200 states:

“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.”

What is meant by that? I am concerned about the extent to which information would be shared under amendment 200.

Jeane Freeman: It may well be that the manner in which the amendment is worded is standard for a section such as this. We have touched on the issue before when we have come up against what, with the greatest respect, I might describe as legal speak, which is not always as clear to us as our legal colleagues consider it is to them.

The amendment means that data that the agency holds can be used only for the purposes that we seek the approval of the individual whose data it is to hold, if you follow me. If the agency wanted to hold data about me, I would have to give it approval and it would have to be clear with me the purposes for which it wanted to hold that information. My consent would be an absolute requirement, which I hope provides Ms Johnstone with the assurance that she seeks.

The Convener: The question is, that amendment 200 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Balfour, Jeremy (Lothian) (Con)
Griffin, Mark (Central Scotland) (Lab)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Tomkins, Adam (Glasgow) (Con)

Abstentions

Johnstone, Alison (Lothian) (Green)

The Convener: The result of the division is: For 7, Against 0, Abstentions 1.

Amendment 200 agreed to.

Amendment 161 moved—[Jeane Freeman]—and agreed to.

Amendment 133 moved—[Mark Griffin].

The Convener: The question is, that amendment 133 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)
Johnstone, Alison (Lothian) (Green)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Balfour, Jeremy (Lothian) (Con)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 133 disagreed to.

Amendment 134 moved—[Mark Griffin].

The Convener: The question is, that amendment 134 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)
Johnstone, Alison (Lothian) (Green)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Balfour, Jeremy (Lothian) (Con)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 134 disagreed to.

Amendment 135 moved—[Mark Griffin].

The Convener: The question is, that amendment 135 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)
Johnstone, Alison (Lothian) (Green)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Balfour, Jeremy (Lothian) (Con)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 135 disagreed to.

Amendment 136 moved—[Mark Griffin].

The Convener: The question is, that amendment 136 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)
Johnstone, Alison (Lothian) (Green)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Balfour, Jeremy (Lothian) (Con)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 136 disagreed to.

The Convener: Before we move to the next group of amendments, we will have a five-minute comfort break. I request that members be back in their seats within those five minutes, if at all possible.

10:37

Meeting suspended.

10:43

On resuming—

Section 49—Local authorities' power to make payments

The Convener: The next group is on discretionary housing payments. Amendment 209, in the name of Pauline McNeill, is grouped with amendments 162 to 164.

Mark Griffin: Amendment 209 was drafted with the intention of ensuring that the existence of DHP schemes is mandatory. Citizens Advice Scotland raised the issue with the committee at stage 1. In no way would we seek to mandate the operation of the scheme or place duties to pay assistance, which would take discretion over operation out of the hands of local government. I accept that the duty to operate a scheme should perhaps have been the subject of a standalone amendment; perhaps Ms McNeill could discuss that with the minister ahead of stage 3. I will support the amendments in the group in the name of the minister.

I move amendment 209.

The Convener: I invite the minister to speak to amendment 162 and the other amendments in the group.

Jeane Freeman: Amendment 162 makes a technical adjustment to the bill to make clear that it is possible for discretionary housing payments to be paid either to an individual or to a person to

whom the individual has a liability. In practice, that is likely to be their landlord. The amendment also clarifies that, for a local authority landlord, the payment may be made by transfer between the authority's accounts, which will allow the current practice to continue.

In its stage 1 report, the committee invited the Government to reflect on the evidence that was received on DHPs. Amendments 163 and 164 respond to suggestions from local authorities and other stakeholders that local authorities should be under a duty to run DHP schemes where there is funding from the Scottish Government for them to do so.

In my view, Ms McNeill's amendment 209 is unworkable. The Government's amendments provide that a local authority must consider applications, but it will retain discretion as to who should receive an award. That is fundamental to the nature of the existing discretionary housing payment schemes. Ms McNeill's amendment would create an entitlement-based system such that all qualifying applicants must receive an award. That would go against the discretionary nature of the scheme. Although I am sure that that is not the intent, I therefore urge the committee not to support amendment 209.

The Government's amendments will ensure that DHP schemes continue to be run in all Scottish local authorities and therefore that essential support continues to be provided. I hope that members will support my amendments and reject the amendment lodged by Ms McNeill.

The Convener: I invite Mark Griffin to wind up and press or withdraw amendment 209.

Mark Griffin: As the minister suggested, that was certainly not the intention behind the amendment in the name of Pauline McNeill. On that basis, I seek the committee's permission to withdraw it.

Amendment 209, by agreement, withdrawn.

Amendment 162 moved—[Jeane Freeman]—and agreed to.

Section 49, as amended, agreed to.

Section 50 agreed to.

Section 51—Local authorities' duty to provide information about payments

Amendment 163 moved—[Jeane Freeman]—and agreed to.

Section 51, as amended, agreed to.

Section 52 agreed to.

After section 52

Amendment 164 moved—[Jeane Freeman]—and agreed to.

Section 53 agreed to.

After section 53

Amendment 2 moved—[Alison Johnstone].

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)
Johnstone, Alison (Lothian) (Green)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Balfour, Jeremy (Lothian) (Con)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 2 disagreed to.

The Convener: The next group is entitled “Universal credit: payment to joint claimants”. Amendment 203, in the name of Mark Griffin, is the only amendment in the group.

Mark Griffin: Amendment 203 seeks to place in law a requirement on ministers to bring forward regulations under section 30 of the Scotland Act 2016 to ensure that payments of universal credit are automatically split between the two members of a couple, allowing an opt-out if a couple wishes to retain a joint payment. The amendment transposes the restrictions in the 2016 act but, crucially, would ensure that the use of a regulation for the third universal credit flexibility was done in a way that has overwhelming support from individuals and organisations—and, indeed, the minister’s colleague Philippa Whitford.

In recent responses to questions, the minister has said—a year after the cabinet secretary first promised progress in the area—that officials are discussing with the DWP the feasibility and operational and cost implications of the different policy options. As much as I want it to, the amendment does not require ministers to rush to establish a split payment scheme within the next year. The regulations that the minister lays may, of course, have a later implementation date, and the amendment rightly requires that the minister continues the consultation with the DWP. That is a requirement of the power in the 2016 act. However, the 2016 act is very clear that, if Scottish

ministers make regulations and the Secretary of State for Scotland considers that it is not practicable to implement a change that is made by the regulations by the time it is due to start to have effect, the secretary of state may delay them to a more reasonable date.

The amendment would deliver the same intention as Philippa Whitford MP’s private member’s bill, which is due to have its second reading in mid-March. At the first reading of the Universal Credit (Application, Advice and Assistance) Bill, Ms Whitford said:

“The Bill calls on the Government to make separate payments the norm. It is often said that universal credit should be like a salary, but salaries are paid to individuals, and it is quite Victorian to go back to the idea of the breadwinner. I certainly would not be too chuffed if my salary was posted to my husband.”—[*Official Report, House of Commons, 27 November 2017; Vol 632, c 52.*]

I fully agree with that.

In the consultation on social security, there was overwhelming support for universal credit payments to be split between the members of a household from 99 per cent of organisations and 78 per cent of individuals; 74 per cent believe that payments should be split automatically. The key stakeholders advocate automatic use of this flexibility, including Engender, Scottish Women’s Aid, the Joseph Rowntree Foundation, Inclusion Scotland, the Scottish Council for Voluntary Organisations and the Scottish Federation of Housing Associations.

We have frequently rehearsed the argument that splitting payments automatically would aid gender equality in the Scottish social security system by promoting financial autonomy and helping to protect women and children from financial and domestic abuse. As it stands, nine out of 10 domestic abuse cases include a financial element. Women receive 20 per cent of their incomes from social security payments, and 86 per cent of UK Government cuts to social security will mean cuts to women’s incomes. Split payments can be requested under the current system, but they are massively underused and underpublicised. I ask members to support my amendment.

I move amendment 203.

Alison Johnstone: I support Mark Griffin’s important amendment. That flexibility is absolutely essential for the reasons that Mr Griffin outlined. There is support for it from a considerable number of groups, which have real concerns about the impact of payments to the so-called head of a household; the power that that can give one person in certain circumstances is something that we should seek to avoid. This is an important amendment and I am pleased to support it.

George Adam (Paisley) (SNP): I was not going to say anything on the amendment, but I feel that I must. From the practical point of view, it is the DWP that would have to do what is proposed. For the Scottish Government to do anything, it has to negotiate with the DWP. Also, do we know whether the DWP has the information technology systems in place to be able to do it properly and ensure that we can do it?

The problem that we have is that there are so many imponderables in relation to being able to do what is proposed that it makes it extremely difficult, in my opinion, for the Scottish Government to do it. It will be interesting to hear what the minister has to say.

Jeane Freeman: There can be no doubt about this Government's view that the UK Government's policy of making a single payment of universal credit to a household can increase inequality in the welfare system and act as an enabler for domestic abuse or financial coercion by one partner towards the other. For the record, I restate the Scottish Government's clear commitment to introducing split payments of universal credit for people living in Scotland—a strong commitment that we are already progressing.

However, I cannot support Mr Griffin's amendment 203, first because there is not an overriding consensus among stakeholders on an automatic split of the universal credit award, as proposed in the amendment. There are different views on the issue, as well as on how the different elements of the universal credit award should be allocated. We are currently undertaking further work jointly with stakeholders and users of the universal credit system to examine what the impacts would be. However, perhaps most importantly, delivery is entirely dependent on the Department for Work and Pensions. Universal credit is reserved to the UK Government and, in line with the universal credit Scottish choices, the DWP would deliver any split payments that the Scottish Government requires.

I hear Mr Griffin's reference to Ms Whitford's bill at Westminster, but I do not believe that it can be prayed in aid of the amendment, as Ms Whitford rightly addresses her bill to the Government with responsibility for this reserved benefit. I hope that she succeeds in her endeavours, but I would respectfully suggest to Mr Griffin that, if he wishes this Government to act in that way, he supports our arguments for further powers in terms of the devolution of additional benefits.

The position that we are in means that it will not be solely for the Scottish Government to decide what can be achieved, and a set deadline is therefore unhelpful. We are completely reliant on what is technically feasible within the DWP's IT systems. Therefore, we need to agree with the

DWP a delivery date that it is confident it can meet and negotiate a cost that represents good value for money for the Scottish taxpayer, as it will come out of the fixed envelope towards the delivery of the devolved social security powers.

Discussions with the DWP are on-going, and the process is an iterative one. The amendment would write a blank cheque for the negotiations on costs. Although the Scottish Government is committed to the policy, I repeat that deliverability is completely in the hands of the DWP.

In summary, I reiterate that I share Mr Griffin's concerns about the DWP policy that his amendment touches on, but I hope he will agree that his proposition would pre-empt the outcome of our process, would hand the DWP a blank cheque and could not be delivered by this Government as it fails to recognise that the benefit is reserved. That is the case as a result of the agreement of the Smith commission, which his party was a party to. I hope that he will support the devolution of additional powers to this Government, but at present the deliverability rests with the holder of the reserved benefit, which is the UK Government, acting through the DWP.

I ask members to oppose amendment 203.

Mark Griffin: The amendment does not set a timescale for the Government to enact split payments. The only timescale that it sets is in relation to the requirement for the Scottish Government to bring forward a regulation within a year of royal assent. The regulation does not have to make automatic split payments a reality immediately; as I have worded the amendment, there is some flexibility.

I am committed to the policy of automatically splitting payments through universal credit and I think that the Government is committed to the policy of split payments, so I do not take the argument that the minister makes that the amendment gives the DWP a blank cheque. The fact that a majority of the parties in Parliament are committed to the policy effectively tells the DWP that we want this to happen and we expect it to deliver. In effect, we have already given it a blank cheque—

George Adam: We can demand anything that we like from the DWP, but it can decide that it does not want to listen to this place. We have to negotiate. The DWP has to listen to Westminster. I do not see the point in the member's argument.

Mark Griffin: The Scottish Government has the power to introduce flexibilities. That needs to be negotiated with the DWP. There is nothing in the amendment that stops the Government from entering into those negotiations. As I set out earlier, if there is anything that the DWP or the Government is unable to do within that timescale,

the secretary of state can introduce a new timetable.

I feel that, as it stands, the amendment would put into effect the policy that most of us round the table agree with, which is that there should be automatic split payments. Including that in the legislation would be a welcome step, so I press the amendment.

11:00

The Convener: The question is, that amendment 203 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)
Johnstone, Alison (Lothian) (Green)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Balfour, Jeremy (Lothian) (Con)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 203 disagreed to.

Section 54 agreed to.

Section 55—Regulation-making powers

Amendment 75 not moved.

Amendment 150 moved—[Mark Griffin].

The Convener: The question is, that amendment 150 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)
Johnstone, Alison (Lothian) (Green)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)

Abstentions

Balfour, Jeremy (Lothian) (Con)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 2, Against 4, Abstentions 2.

Amendment 150 disagreed to.

Amendment 51 not moved.

Amendments 49 and 50 moved—[Jeane Freeman]—and agreed to.

Amendment 151 moved—[Mark Griffin].

The Convener: The question is, that amendment 151 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)
Johnstone, Alison (Lothian) (Green)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)

Abstentions

Balfour, Jeremy (Lothian) (Con)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 2, Against 4, Abstentions 2.

Amendment 151 disagreed to.

Amendments 76, 130, 172 and 192 not moved.

Amendment 165 moved—[Jeane Freeman]—and agreed to.

Amendment 137 moved—[Mark Griffin].

The Convener: The question is, that amendment 137 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)
Johnstone, Alison (Lothian) (Green)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Balfour, Jeremy (Lothian) (Con)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 137 disagreed to.

Amendment 3 not moved.

Amendment 210 moved—[Mark Griffin]—and agreed to.

Amendments 52, 201, 53 and 54 moved—[Jeane Freeman]—and agreed to.

Section 55, as amended, agreed to.

After section 55

The Convener: The next group is on procedure for regulations for assistance. Amendment 131, in the name of the minister, is grouped with amendments 131B, 131A, 132 and 211. If amendment 131B is agreed to, amendment 131A is pre-empted.

Jeane Freeman: I am glad that the final debate of stage 2 is an important one. We all recognise the importance of getting the process right for scrutinising regulations, which is why, before the bill was even introduced, I met this committee and the Delegated Powers and Law Reform Committee to invite views on what extra scrutiny requirements would be appropriate and how they should fit with the Parliament's usual processes.

In its stage 1 report, the committee called for a super-affirmative procedure that would give an independent expert body an opportunity to feed its views into the scrutiny of regulations to help the Government and the Parliament ensure that our social security law is the best that it can be. Alongside the amendments setting up the new commission, amendment 131 gives full effect to the committee's recommendation. I thank Dr McCormick, Ms Paterson and the other members of the expert advisory group for their work in that regard.

Members will have received the Government's policy paper, which explains in detail the effect of the Government's amendments. To briefly summarise, amendment 131 would create a process for the scrutiny of regulations that deal with eligibility and entitlements under the assistance types in part 2 of the bill and any top-up assistance created under part 3.

The first step of the process is that the Scottish ministers must inform the commission of their proposals, notify the Parliament that they have done so and make the proposals publicly available. That will also allow for experience panels and other groups to be consulted, as this Government has done throughout the bill process—members will recall that it is one of the bill's principles that the system will be designed with the people of Scotland. It also provides an opportunity for the Parliament, if it so wishes, to engage with the proposals at the consultation stage.

The next stage of the process is that the independent commission must prepare a report on the draft regulations, setting out its observations and recommendations. In performing that work, the commission will be under a statutory duty to take into account the principles and any relevant international human rights instruments.

Once that independent report is published, ministers can lay their draft regulations before Parliament for approval. Alongside the draft regulations, they will also have to lay a report before Parliament explaining what they have and have not done in response to any recommendations that the commission has made. With the benefit of having seen the independent expert commission's report and the Government's response, it is then for the Parliament to decide whether to approve the Government's regulations and the steps that the Parliament might wish to take in reaching that decision.

There are two situations in which that procedure does not need to be followed. One is when the draft regulations are for the purpose of consolidating existing regulations, and the other is when the commission advises that its scrutiny is not required. I know that the Delegated Powers and Law Reform Committee has written to this committee to express concern about that last point. As the Government's position paper makes clear, if members would prefer the commission not to have that power, the Government will be happy to remove it at stage 3.

Amendment 132, in my name, excepts draft funeral expense assistance regulations and early years assistance regulations from the process that I have just outlined, until such time as the commission advises that it is ready to begin carrying out its scrutiny role. That is to avoid delay in the implementation of those benefits by summer 2019. As the committee knows, the policy proposals for such assistance have been, and are being, consulted on extensively. We published illustrative regulations last year, and further public consultation on draft regulations will take place this year. Against that background, it seems unnecessary to hold up implementation until the commission is in operation. However, I reiterate that it will, of course, remain for this committee to determine the role that it wants to take in the scrutiny of those draft regulations when they are laid.

Amendment 131B, in the name of Ms McNeill, seeks to extend super-affirmative procedure to all regulations that will be made under the powers in both the bill and the Welfare Funds (Scotland) Act 2015. In my view, that is disproportionate and unnecessary; I also believe that the amendment is technically flawed. The scrutiny procedure that is attached to regulation-making powers has to be chosen with an eye to the importance of the regulations in question and the need to preserve and make effective use of parliamentary time. That is what the Delegated Powers and Law Reform Committee considers when it scrutinises bills. Unsurprisingly, it has not recommended that all regulations made under the powers in the bill and the 2015 act be subject to the affirmative

procedure, much less the super-affirmative procedure.

The effect of amendment 131B would be that even commencement regulations, which are normally subject to a laying requirement only, would be subject to the super-affirmative procedure. While I am sure that it would be a pleasure for me to appear before this committee on a weekly basis to go through every regulation, I am not sure that that would be the most effective use of members' time.

I cannot support amendment 211, in the name of Mr Griffin. It would let a judge strike down regulations that had been approved by a vote of the Parliament, on the basis that, in the judge's opinion, the policy behind the regulations is "retrogressive", without providing a definition of what that is or detailing any other circumstances surrounding such a decision. Whether a particular policy is or is not retrogressive is, in effect, a political judgment. It is precisely the sort of judgment that we have all been elected to this Parliament to make. I am sure that Mr Griffin does not want to abdicate to the courts his responsibility as a member of this Parliament. I do not think that that would be appropriate. Amendment 211 would diminish the role of Parliament. I therefore urge members to reject it and to support the amendments in my name.

I move amendment 131.

Mark Griffin: Amendment 211, in my name, is simply a probing amendment, which I will not press. Its purpose was to start a debate on the issue. In some respects, it returns the debate on the bill to where stage 1 deliberations began, with a focus on the ability of future Governments to erode the assistance that is made available to an individual and on how we can prevent that from happening.

Throughout the passage of the bill, the committee has heard and debated, again and again, that there is a balance to be struck between primary and secondary legislation. Although there have been substantial improvements by way of the use of the super-affirmative procedure and the establishment of the commission, which is bound to act in line with international treaties on the right to social security, the bill still allows future Governments to make fundamental changes to key social security benefits through secondary legislation. The commission will be able to warn of potential breaches of human rights in proposed legislation to aid parliamentary scrutiny, but the potential for fundamental changes to be made to social security by regulation alone remains.

The Child Poverty Action Group sponsored amendment 211 to ensure that fundamental change is introduced through primary, not

secondary, legislation, and that the bill makes the requisite distinction in that regard.

11:15

Amendment 211 seeks to draw the line at the point where Government proposals would reduce rights under international human rights provisions and would ensure that such retrogressive measures could not be introduced through regulations.

A Government that believes the measure to be—

Ruth Maguire: What do you consider to be the definition of "retrogressive"?

Mark Griffin: As I said, amendment 211 is simply a probing amendment. It is not an amendment that I intend to press; I simply want to have a debate on whether we have the right balance between primary and secondary legislation and whether, in advance of stage 3, we can agree that any effort to reduce the amount of benefit or entitlement to benefit would be seen to be retrogressive, because it would reduce someone's right to social security. Therefore, any negative change would have to be introduced through primary rather than secondary legislation. That is the purpose behind the amendment, and that is the debate that I want to have today.

Ruth Maguire: Lodging amendments that are sponsored elsewhere rather than lodging them as a committee member is a challenge, and I feel a bit uncomfortable with that approach. It is important to have definitions, so that we know exactly what we are talking about.

As you were communicating the purpose of the amendment, a question popped into my head. What would happen if we reduced something in one sense, but created a whole new other benefit for that same client group? The amendment is hugely problematic.

Mark Griffin: I accept everything that you are saying—amendment 211 is problematic, so I will not move it. This is about having a debate around the table about the issue that it raises.

I move amendment 131B.

George Adam: I am concerned about amendments 131B and 211. I am not convinced by Mr Griffin's argument for amendment 211.

On amendment 131B, as much as I dearly love the minister, coming here every single week for the slightest regulation would not be a good use of our time—

Mark Griffin: I accept everything that you say. As I have said, I will not be seeking to move amendment 211 or to press amendment 131B.

George Adam: I was about say that, because we have so much coming back at stage 3—we have so much work to do—I want to push amendments 131B and 211 to the vote, so that we can deal with the issues now. That would give us the opportunity to deal with all the other work that we will have to deal with at stage 3.

Adam Tomkins: I completely agree with Mr Adam's comments.

Jeremy Balfour (Lothian) (Con): As do I.

The Convener: I invite the minister to wind up, and to press or withdraw amendment 131.

Jeane Freeman: I do not need to say any more about my amendments, but I will take a moment to comment on amendment 211. The amendment fails to understand the difference in approach to secondary legislation between what happens in Westminster and what is being proposed here under the super-affirmative procedure—and we are clearly proposing the use of the super-affirmative procedure.

In the bill, we have, with the committee's agreement, agreed to establish an independent commission that would have a clear role in relation to compliance and checking whether anything that this or a future Government might introduce complies with human rights instruments.

Fundamentally, it seems to me that amendment 211 diminishes the role of the Parliament. That is quite wrong. Its main effect would be to leave ministers open to judicial review if it is considered that regulations contain "retrogressive provision" without specifying what the term means, which would be left to the courts to determine. That is a political judgment that should remain with the Parliament.

I urge members to vote against amendments 211 and 131B.

The Convener: I ask Mr Griffin to wind up on amendment 131B and to press or withdraw the amendment.

Mark Griffin: I appreciate that committee members might want to dispose of certain amendments to prevent them from coming back at stage 3, but that has no bearing on whether members might bring them back in an amended form at stage 3. That said, I seek to withdraw amendment 131B.

The Convener: Do members agree that amendment 131B be withdrawn?

Members: No.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)
Johnstone, Alison (Lothian) (Green)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Balfour, Jeremy (Lothian) (Con)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 131B disagreed to.

Amendment 131A not moved.

Amendment 131 agreed to.

Amendment 132 moved—[Jeane Freeman].

The Convener: The question is that amendment 132 be agreed to. Are we agreed?

Members: No

The Convener: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Balfour, Jeremy (Lothian) (Con)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Tomkins, Adam (Glasgow) (Con)

Abstentions

Johnstone, Alison (Lothian) (Green)

The Convener: The result of the division is: For 6, Against 0, Abstentions 1.

Amendment 132 agreed to.

Amendment 211 moved—[George Adam].

The Convener: The question is, that amendment 211 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Balfour, Jeremy (Lothian) (Con)
Griffin, Mark (Central Scotland) (Lab)
Johnstone, Alison (Lothian) (Green)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 0, Against 8, Abstentions 0.

Amendment 211 disagreed to.

Sections 56 and 57 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the minister, her officials and members for taking part, and parliamentary staff once again for their efforts to

make sure that today's meeting could go ahead.
We will not meet next week. We will be in touch
regarding future meeting dates.

Meeting closed at 11:23.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba