

# Social Security Administration and Tribunal Membership (Scotland) Bill

[AS PASSED]

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# Social Security Administration and Tribunal Membership (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to modify the Social Security (Scotland) Act 2018 in relation to the appointment of persons to act on behalf of applicants; the provision of information in connection with the determination of eligibility for assistance; the duty to inform about possible eligibility for assistance; the operation of top-up assistance; and the diagnosis of terminal illness for disability assistance purposes; the recovery of assistance given in error; and to modify the Tribunals (Scotland) Act 2014 in relation to the eligibility of judicial office-holders to sit in the First-tier Tribunal and the Upper Tribunal.

## PART 1

### SOCIAL SECURITY ADMINISTRATION

#### *Appointees*

#### **1A Appointment of person to act on behalf of child**

- (1) The Social Security (Scotland) Act 2018 is modified as follows.
- (2) After section 85 insert—

#### *“Appointees*

#### **85A Appointment of person to act on behalf of child**

- (1) The Scottish Ministers may appoint a person (an “appointee”) to act on behalf of a child in connection with the determination of the child’s entitlement to assistance under section 24 or regulations under section 79.
- (2) An appointment under subsection (1) may, if the Scottish Ministers consider it appropriate, include an appointment of the person to receive such assistance on the child’s behalf.
- (3) The Scottish Ministers may only appoint an appointee if it appears to them that there is no person who—
  - (a) has authority to act on behalf of the child,
  - (b) resides with, and has care of, the child, and
  - (c) is willing, and practicably able, to act on the child’s behalf in relation to the matter mentioned in subsection (1).

- (4) An individual who is under 16 years may not be appointed as an appointee.
- (5) Where an appointee is appointed under subsection (1) to act on behalf of a child—
- (a) the appointee can do anything that a person with authority (however arising) to act on behalf of the child in relation to the determination of the child’s entitlement to assistance could do in connection with the determination of the child’s entitlement to assistance (including making an application for assistance),
- (b) the Scottish Ministers may request that the appointee provide them with information that the Ministers may otherwise request under section 54 or, as the case may be, the regulations under section 79 (and in the case of section 54, subsections (2) and (3) of that section apply to that request as they apply to a request made to the child),
- (c) any information that would be given to the child under or by virtue of Part 2 or, as the case may be, the regulations, must be given to the appointee instead.
- (6) The Scottish Ministers may terminate an appointment under subsection (1) at any time.
- (7) In this section, “child” means an individual who is under 16 years.”.

**1B Appointment of person to act on behalf of individual**

- (1) The Social Security (Scotland) Act 2018 is modified as follows.
- (2) Section 58 is repealed.
- (3) In section 85A (as inserted by section 1A), after subsection (5) insert—
- “(5A) The Scottish Ministers must consider whether to make an appointment under subsection (1), or to terminate such an appointment, if requested to do so by—
- (a) the child, or
- (b) anyone else who appears to the Ministers to—
- (i) have authority to act on behalf of the child,
- (ii) reside with, and have care of, the child, or
- (iii) have an interest in the welfare or financial affairs of the child.
- (5B) Subsection (5C) applies where the Scottish Ministers are deciding whether to make or terminate an appointment under subsection (1).
- (5C) In making the decision the Scottish Ministers must, insofar as practicable, have regard to the views of—
- (a) the child,
- (b) anyone who is a relevant person in relation to the child within the meaning of section 200 of the Children’s Hearings (Scotland) Act 2011, and
- (c) anyone else who appears to the Ministers to have an interest in the welfare or financial affairs of the child.”.
- (4) After section 85A insert—

**“85B Appointment of person to act in other circumstances**

- (1) The Scottish Ministers may appoint a person (an “appointee”) to act on behalf of an individual in connection with the determination of the individual’s entitlement to assistance under section 24 or regulations under section 79.
- 5 (2) An appointment under subsection (1) may, if the Scottish Ministers consider it appropriate, include an appointment of the person to receive such assistance on the individual’s behalf.
- (3) The Scottish Ministers may only appoint an appointee if—
- 10 (a) the individual is 16 years or over and the conditions in subsection (4) are met, or
- (b) it appears to them that subsection (6) or (7) applies.
- (4) The conditions are—
- 15 (a) the individual indicates (in such form as the Scottish Ministers require) that the individual agrees to the appointment, and
- (b) an appropriate person certifies (in such form as the Scottish Ministers require) that in the person’s opinion—
- 20 (i) the individual is not incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000,
- (ii) the individual understands the effect of the appointment,
- (iii) the individual has not been subject to any undue influence in agreeing to the appointment, and
- (iv) the person proposed to be appointed is suitable to act as the individual’s appointee.
- 25 (5) The Scottish Ministers are to make regulations defining “appropriate person” for the purposes of subsection (4)(b).
- (6) This subsection applies if—
- (a) the individual is deceased, and
- (b) there is no executor appointed on the individual’s estate.
- 30 (7) This subsection applies if, in relation to the matter mentioned in subsection (1)—
- (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
- 35 (d) there is no other person who has authority to act on behalf of the individual and is willing to do so.
- (8) An individual who is under 16 years may not be appointed as an appointee.
- (9) Where an appointee is appointed under subsection (1) to act on behalf of an individual—

- (a) the appointee can do anything that a relevant individual could do in connection with the determination of the individual's entitlement to assistance (including making an application for assistance),
- 5 (b) the Scottish Ministers may request that the appointee provide them with information that the Ministers may otherwise request under section 54 or, as the case may be, the regulations under section 79 (and in the case of section 54, subsections (2) and (3) of that section apply to that request as they apply to a request made to the individual),
- 10 (c) any information that would be given to the individual under or by virtue of Part 2 or, as the case may be, the regulations, must be given to the appointee instead.
- (10) In subsection (9)(a), “relevant individual” means—
- (a) in the case of an appointment by virtue of subsection (3)(a), the individual in relation to whom the appointment is made,
- 15 (b) in the case of an appointment by virtue of subsection (6), an executor appointed on the individual's estate,
- (c) in the case of an appointment by virtue of subsection (7), a person with authority (however arising) to act on behalf of the individual in relation to the determination of the individual's entitlement to assistance.
- 20 (11) The Scottish Ministers may terminate an appointment under subsection (1) at any time.
- (12) The Scottish Ministers must—
- (a) terminate an appointment made by virtue of subsection (3)(a) if the individual withdraws agreement to it,
- 25 (b) consider whether to terminate an appointment made by virtue of subsection (3)(a) if requested to do so by anyone who appears to the Ministers to have an interest in the welfare or financial affairs of the individual.
- (13) The Scottish Ministers must consider whether to terminate an appointment made by virtue of subsection (6) if requested to do so by anyone who appears to the Ministers to have an interest in the financial affairs of the individual.
- 30 (14) The Scottish Ministers must consider whether to make an appointment by virtue of subsection (7), or to terminate such an appointment, if requested to do so by—
- 35 (a) the individual, or
- (b) anyone else who appears to the Ministers to—
- (i) have authority to act on behalf of the individual, or
- (ii) have an interest in the welfare or financial affairs of the individual.
- (15) Subsection (16) applies where the Scottish Ministers are deciding whether to make an appointment by virtue of subsection (7) or to terminate such an appointment.
- 40 (16) In making the decision, the Scottish Ministers must, insofar as practicable, have regard to—

- (a) the wishes and feelings of the individual, and
- (b) the views of anyone else who appears to the Ministers to have an interest in the welfare or financial affairs of the individual.”.

(5) After section 85B (as inserted by subsection (4)) insert—

**“85C Guidelines for decisions about appointees**

(1) The Scottish Ministers—

- (a) must prepare guidelines governing their decisions in connection with appointments under sections 85A and 85B,
- (b) may revise the guidelines,
- (c) must make the latest version of the guidelines publicly available by such means as they consider appropriate.

(2) The guidelines must, in particular, set out—

- (a) the steps that the Scottish Ministers will take to determine that a person is suitable for appointment,
- (b) how a request that an appointment be made or terminated may be made and how it will be handled,
- (c) the process by which persons with an interest in the making or termination of an appointment will be involved in those decisions,
- (d) the steps that the Scottish Ministers will take to review appointments periodically (being in any case no more than 5 years) and the process by which that will occur,
- (e) how concerns about the acts, or omissions, of an appointee may be raised and how any concerns raised will be handled.

(3) In preparing or revising the guidelines, the Scottish Ministers must have regard (among other things) to the following considerations—

- (a) that an appointment in the case of a living individual should be made only if it appears to secure a benefit in respect of the individual that cannot reasonably be achieved without the appointment,
- (b) that such an appointment should last for only so long as it continues to secure that benefit,
- (c) that, so far as reasonably practicable, before decisions are made—
  - (i) persons who may be affected are consulted, and
  - (ii) due account is taken of their views (or, if they are incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000, their wishes and feelings),
- (d) that decisions should be made on the basis of good information,
- (e) that decision-making processes should, so far as reasonably practicable, take account of the circumstances of individual cases,
- (f) that persons who may be affected by decisions are given adequate information and support in relation to their involvement in the decision-making process.

(4) In preparing or revising the guidelines, the Scottish Ministers must consult—

- (a) the Commissioner for Children and Young People in Scotland,
- (b) the Mental Welfare Commission for Scotland,
- (c) the Public Guardian (established by section 6 of the Adults with Incapacity (Scotland) Act 2000), and
- (d) local authorities.”.

(6) After section 85C (as inserted by subsection (5)) insert—

**“85D Right to apply to First-tier Tribunal for review of certain decisions**

- (1) A qualifying person may apply to the First-tier Tribunal for Scotland for a review of—
  - (a) a decision under section 85A made following a request under subsection (5A) of that section,
  - (b) a decision under section 85B made following a request under subsection (12)(b), (13) or (14) of that section.
- (2) For the purposes of subsection (1), the following are qualifying persons—
  - (a) the person who made the request, and
  - (b) any other person entitled to make the same request.
- (3) An application under subsection (1)—
  - (a) may be made without the First-tier Tribunal’s permission if the application is made within 31 days beginning with the day on which the decision concerned was made,
  - (b) may be made only with the First-tier Tribunal’s permission if the application is made after the period mentioned in paragraph (a),
  - (c) may not be made after the period of one year beginning with the day on which the decision concerned was made.
- (4) The First-tier Tribunal may give permission under subsection (3)(b) for an application to be made only if satisfied that there is a good reason for the application not having been made sooner.
- (5) On application under subsection (1), the First-tier Tribunal is to review the decision concerned and may in consequence—
  - (a) uphold the decision, or
  - (b) set the decision aside.
- (6) Where a decision is set aside by the First-tier Tribunal, it may (as it considers appropriate)—
  - (a) reach its own view on what the decision should be and order the Scottish Ministers to make the decision accordingly, or
  - (b) order the Scottish Ministers to make the decision afresh.
- (7) In reaching its own view on what a decision should be by virtue of subsection (6)(a), the First-tier Tribunal may reach such findings in fact as it considers appropriate.



(8) In ordering the Scottish Ministers to make a decision afresh by virtue of subsection (6)(b), the First-tier Tribunal may give the Ministers such directions as it considers appropriate.

(9) A decision by the First-tier Tribunal about—

(a) the outcome of an application under subsection (1), or

(b) whether to give permission under subsection (3)(b) for an application to be made,

is final.

(10) Accordingly (and without prejudice to the generality of subsection (9)), any such decision by the First-tier Tribunal may be neither—

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

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

(7) After section 85D (as inserted by subsection (6)) insert—

**“85E Guidance for appointees**

(1) A person appointed under section 85A or 85B must have regard to any guidance issued by the Scottish Ministers about the way in which the role of appointee should be carried out.

(2) The Scottish Ministers must make guidance issued for the purpose of subsection (1) publicly available.”.

(8) In section 96(3), for “and 43(5)” substitute “, 43(5) and 85B(5)”.

*Non-disclosure of health information*

**2 Determination of entitlement to assistance: non-disclosure of information**

(1) The Social Security (Scotland) Act 2018 is modified as follows.

(2) After section 62 insert—

*“Non-disclosure of health information*

**62A Non-disclosure of information about individual’s health**

(1) This section applies in relation to a duty of the Scottish Ministers arising from section 38(5), 40(1), 41(6), 42(2), 44(1) or 53(2) to inform a person (“the recipient”) of certain things in connection with the determination of an individual’s entitlement to assistance.

(2) Nothing in the duty is to be regarded as requiring the Scottish Ministers to disclose information if subsection (3) applies to it.

(3) This subsection applies to information if—

(i) it relates to the physical or mental health of the individual, and

(ii) a registered medical practitioner or a registered nurse has informed the Scottish Ministers that disclosure of the information would be likely to cause serious harm to the physical or mental health of the recipient.”.

*Top up of reserved benefits*

**3 Offences**

(1) The Social Security (Scotland) Act 2018 is modified as follows.

(2) In section 79(2), after paragraph (f) insert—

“(g) offences.”.

(3) In section 80, after subsection (3) insert—

“(4) The maximum penalty that may be provided for in regulations under section 79 in respect of an offence under those regulations is—

(a) on summary conviction—

(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—

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

(ii) a fine, or

(iii) both.”.

(4) After section 80 insert—

**“80A Default provision in respect of offences**

(1) Sections 71 to 73 (which establish offences) apply in connection with financial assistance given by virtue of top-up assistance regulations as they apply in connection with assistance given under section 24.

(2) But subsection (1) is subject to any contrary provision in top-up assistance regulations.

(3) Where they apply by virtue of subsection (1), sections 71 to 73 apply subject to the following modifications—

(a) a reference to assistance is to be read as a reference to financial assistance provided for by top-up assistance regulations,

(b) a reference to giving notice in accordance with section 56 is to be read as a reference to giving notice in accordance with top-up assistance regulations,

(c) sections 72(3) and 73(3) do not apply unless, in accordance with top-up assistance regulations, the Scottish Ministers have informed the person in question about the way in which notification of a change of circumstances is to be given.

(4) For the avoidance of doubt, the reference in section 74 to an offence under this Act or any regulations made under it includes—

(a) an offence under any of sections 71 to 73 as applied by virtue of subsection (1),

(b) an offence under top-up assistance regulations.

- (5) In this section, “top-up assistance regulations” means regulations under section 79.”.

## **5 Investigations**

- (1) The Social Security (Scotland) Act 2018 is modified as follows.
- 5 (2) The title of Chapter 6 of Part 2 becomes “Offences”.
- (3) The italic heading immediately preceding section 71 is omitted.
- (4) Section 75 is—
- (a) moved to after section 84 (and the italic heading immediately preceding it moves with it), and
- 10 (b) re-numbered 84A.
- (5) Section 76 is—
- (a) moved to after section 84A, and
- (b) renumbered 84B.
- (6) In section 84A(1), after “Act” insert “or regulations under section 79”.
- 15 (7) In section 84B(1), for “75” substitute “84A”.
- (8) In section 96(2)—
- (a) the word “75,” is repealed,
- (b) after “82,” insert “84A,”.

## **6 Transitional provision in consequence of section 5**

- 20 (1) Anything done under section 75 or 76 of the Social Security (Scotland) Act 2018 (“the 2018 Act”) is to be treated as having been done under section 84A or 84B, respectively, of that Act.
- (2) And any reference to section 75 or 76 of the 2018 Act in any enactment or other document is to be read accordingly.
- 25 (3) The Scottish Ministers may publish a code of practice under section 84B of the 2018 Act without consulting in accordance with section 84B(3) of that Act, provided the only differences from the code last published under section 76 of that Act are to reflect the renumbering effected by section 5 of this Act.

## **6ZA Uprating for inflation**

- 30 (1) The Social Security (Scotland) Act 2018 is modified as follows.
- (2) The Chapter number and title immediately preceding section 77 are omitted.
- (3) Section 77 is—
- (a) moved to after section 86, and
- (b) renumbered 86A.
- 35 (4) Section 78 is—
- (a) moved to after section 86A, and

(b) renumbered 86B.

(5) Immediately before section 86A, insert the italic heading “Uprating for inflation”.

(6) In section 86A—

(a) in subsection (3), for paragraph (a) substitute—

“(a) a figure prescribed as the value, or part of the value, of the assistance that is to be given to an individual in regulations under—

(i) any section in Chapter 2 of Part 2, or

(ii) section 79, but”,

(b) subsection (6) is repealed.

(7) In section 86B—

(a) in subsection (1)—

(i) the word “and” immediately preceding paragraph (d) is repealed,

(ii) at the end of paragraph (d) insert “and

(e) the Scottish Child Payment Regulations 2020,”,

(b) for subsection (2) substitute—

“(2) The reference in subsection (1) to bringing forward legislation to replace a figure is a reference to laying before the Scottish Parliament for approval by resolution a draft Scottish statutory instrument containing regulations that would have the effect of replacing the figure.”,

(c) in subsection (4), in the definition of “relevant figure”, for “77(3)” substitute “86A(3)”.

(8) The title of section 86B becomes “Duty to uprate certain types of assistance”.

**6ZB Transitional provision in consequence of section 6ZA**

(1) Anything done under section 77 or 78 of the Social Security (Scotland) Act 2018 (“the 2018 Act”) is to be treated as having been done under section 86A or 86B, respectively, of that Act.

(2) And any reference to section 77 or 78 of the 2018 Act in any enactment or other document is to be read accordingly.

*Identifying possible eligibility*

**6A Duty to inform about possible eligibility**

(1) The Social Security (Scotland) Act 2018 is modified as follows.

(2) Section 53 is—

(a) moved to after section 84B (and the italic heading immediately preceding it moves with it), and

(b) re-numbered 84C.

(3) In section 84C—

(a) in subsection (1), after “assistance”, where it first appears, insert “under Part 2 or (as the case may be) regulations under section 79,”,

- (b) in subsection (2)(b)(ii), after “52” insert “, or (as the case may be) section 79”,
- (c) in subsection (3), after “54(1)” insert “, or (as the case may be) regulations under section 79”,
- (d) for paragraphs (a) and (b) of subsection (4) substitute—

- 5           “(a) where the determination mentioned in subsection (1) relates to an individual’s entitlement to assistance under Part 2—
- (i) a different type of assistance described in Chapter 2 of that Part from the type of assistance that the determination mentioned in subsection (1) relates to,
  - 10           (ii) the same type of assistance as that determination relates to, but in respect of a different period or (as the case may be) event, or
  - (iii) assistance under regulations under section 79,
- 15           (b) where the determination mentioned in subsection (1) relates to an individual’s entitlement to assistance under regulations under section 79—
- (i) a different type of assistance described in regulations under section 79 from the type of assistance that the determination mentioned in subsection (1) relates to,
  - 20           (ii) the same type of assistance as that determination relates to, but in respect of a different period or (as the case may be) event, or
  - (iii) a type of assistance described in Chapter 2 of Part 2.”.

## 6B Transitional provision in consequence of section 6A

- (1) Anything done under section 53 of the Social Security (Scotland) Act 2018 (“the 2018 Act”) is to be treated as having been done under section 84C of that Act.
- 25           (2) And any reference to section 53 of the 2018 Act in any enactment or other document is to be read accordingly.

### *Diagnosing terminal illness for disability assistance purposes*

## 7 Persons who can give diagnosis

- (1) The Social Security (Scotland) Act 2018 is modified as follows.
- 30           (2) In schedule 5—
  - (a) in paragraph 1—
    - (i) in sub-paragraph (2), for “a registered medical practitioner” substitute “an appropriate healthcare professional”,
    - (ii) after sub-paragraph (2) insert—
- 35           “(2ZA) The regulations may provide that, in the situation mentioned in sub-paragraph (2ZB), an individual who is not resident in the United Kingdom is to be regarded as having a terminal illness despite the clinical judgement described in sub-paragraph (2) not having been formed with regard to the guidance mentioned in sub-paragraph (3).

(2ZB) The situation referred to in sub-paragraph (2ZA) is that it would not be reasonable in the circumstances to insist on a clinical judgement being provided that has been formed with regard to the guidance.

(2A) The regulations are to define “appropriate healthcare professional” for the purpose of determining entitlement to disability assistance on the basis of an individual having a terminal illness.

(2B) In defining “appropriate healthcare professional” the regulations—

(a) must provide that being a registered medical practitioner or registered nurse is a requirement for being an appropriate healthcare professional,

(b) may provide that being a registered member of a healthcare profession otherwise than as mentioned in paragraph (a) is a requirement for being an appropriate healthcare professional,

(c) may include additional requirements that a person must satisfy in order to be an appropriate healthcare professional, including by reference to a person’s—

(i) skills, training, qualifications and experience,

(ii) professional relationship to the individual in question,

(iii) being authorised to act as an appropriate healthcare professional in relation to the individual in question by—

(A) a Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978,

(B) a Special Health Board constituted under section 2(1)(b) of that Act,

(C) the Scottish Ministers.

(d) may make different provision about the requirements for being an appropriate healthcare professional for the purposes of determining the entitlement to disability assistance of individuals who are resident in the United Kingdom and those who are not.”,

(iii) for sub-paragraph (3), substitute—

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

(a) to prepare and from time to time revise, and

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

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

(4) Before preparing or revising guidance under sub-paragraph (3), the Chief Medical Officer must consult appropriate healthcare professionals (as defined in sub-paragraph (2A)) who are registered in the United Kingdom as members of a healthcare profession.”,

(b) in paragraph 10 for “a registered medical practitioner” substitute “an appropriate healthcare professional (see paragraph 1(2A))”.

*Suspension of assistance*

**7A Power to suspend payment of assistance**

(1) The Social Security (Scotland) Act 2018 is modified as follows.

(2) In section 51—

(a) in subsection (2), the “and” at the end of paragraph (a) is repealed,

(b) after paragraph (a) insert—

“(aa) make provision, in accordance with schedule 11, about—

(i) the circumstances in which an individual who has an entitlement to assistance in respect of a period under such a determination is not to become entitled to be given some or all of that assistance at the time at which the individual otherwise would in accordance with provision under paragraph (a), and

(ii) in that event, how and when the individual is to become entitled to be given that assistance, and”,

(c) after subsection (3), insert—

“(3A) Schedule 11 makes provision about the exercise of the power conferred by subsection (2)(aa).”.

(3) In section 54—

(a) in subsection (1), for paragraphs (a) and (b) substitute—

“(a) the Scottish Ministers are either—

(i) determining an individual's entitlement to assistance (whether under section 37 or 43), or

(ii) considering whether regulations under section 52 require them to make a determination of an individual's entitlement to assistance without receiving an application, and

(b) they require further information in order to satisfy themselves about any matter material to the making of the determination of entitlement or (as the case may be) to their consideration of whether they are required to make a determination without receiving an application,”,

(b) after subsection (1) insert—

“(1A) If—

(a) the Scottish Ministers are either—

(i) determining the individual's entitlement to a type of assistance that the individual has ongoing entitlement to, or

(ii) considering whether regulations under section 52 require them to make a determination of the individual's entitlement to assistance without receiving an application,

(b) the individual fails to provide the requested information by the end of the period specified under subsection (1), and

(c) it is the first time that the individual has failed to provide the Scottish Ministers with the requested information within a specified period since they began making the determination or considering the matter mentioned in paragraph (a)(ii),

5 the Scottish Ministers may issue a decision to suspend the assistance to the individual in accordance with regulations under section 51(2)(aa).

(1B) Where the Scottish Ministers issue such a decision, they must, at the same time, request that the individual provide them with the information within such further period as they specify.”,

10 (c) in subsection (2), for “specified period” substitute “the period specified under subsection (1) or (1B)”,

(d) after subsection (3) insert—

15 “(4) The reference in subsection (1A)(a) to an individual having ongoing entitlement to a type of assistance is to an individual being entitled to be given the type of assistance in question under section 24 under a determination made on the basis that the individual has ongoing entitlement to that type of assistance.”.

(4) After schedule 10, insert—

“SCHEDULE 11  
*(introduced by section 51)*

SUSPENSION OF ASSISTANCE

*Circumstances in which assistance may be suspended*

1 (1) The regulations may provide for an individual’s assistance to be suspended in the following circumstances only—

25 (a) under section 54(1A) the Scottish Ministers have issued a decision to suspend assistance to the individual due to a failure to provide information which the individual is yet to provide,

30 (b) where the Scottish Ministers have made arrangements (whether under section 85A, 85B or otherwise) for a person to receive the assistance on the individual’s behalf, and the Ministers consider that it is necessary to suspend the assistance—

(i) in order to protect the individual from the risk of financial abuse,  
(ii) because the person with whom the Ministers have made arrangements is unable to continue to receive the assistance, or

35 (iii) for any other reason specified in the regulations, or

(c) the individual has requested that the Scottish Ministers temporarily stop giving the assistance in question and is yet to request that they resume doing so.

(2) For the purpose of sub-sub-paragraph (1)(b), “financial abuse” includes—

40 (a) having money or other property stolen,

(b) being defrauded,

(c) being put under pressure in relation to money or other property,



- (d) having money or other property misused.

*Safeguards: requirement to consider financial circumstances before suspension*

- 2 The regulations must require the Scottish Ministers, before suspending the  
assistance given to an individual, to have regard to the financial circumstances  
of the individual.

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*Safeguards: right to review suspension*

- 3 The regulations must confer a right on an individual whose assistance has been  
suspended to require the Scottish Ministers to review their decision to suspend  
the individual's assistance.

*Safeguards: information to be given following suspension*

- 4 (1) The regulations must require the Scottish Ministers to inform an individual  
whose assistance they have suspended—
- (a) of their decision to suspend the individual's assistance,
  - (b) of the reasons for their decision,
  - (c) of any steps which might be taken by the individual in order for the  
Scottish Ministers to consider ending the suspension, and
  - (d) of the individual's right in accordance with the regulations to require the  
Scottish Ministers to review their decision to suspend the individual's  
assistance.
- (2) The regulations must provide that the Scottish Ministers are to fulfil the duty  
described by sub-paragraph (1) in a way that leaves the individual with a  
record of the information which the individual can show to, or otherwise share  
with, others.

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*Safeguards: effect of suspension ending*

- 5 The regulations must provide that when—
- (a) the suspension of an individual's assistance ends, and
  - (b) under the latest determination of the individual's entitlement to the type  
of assistance in question, the individual would have become entitled to  
be given assistance during the period of the suspension,
- the individual is immediately to be given under section 24 the assistance that  
the individual would have become entitled to be given under the determination  
during that period.

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*Generality of enabling power unaffected*

- 6 Nothing in this schedule is to be taken to limit the provision that may be  
included in the regulations except to the extent stated.

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*Interpretation*

- 7 In this schedule—

(a) references to an individual’s assistance being suspended are to an individual, by virtue of the regulations, not becoming entitled to be given some or all of the assistance in respect of a period that the individual otherwise would at the time, or times, prescribed by regulations under section 51(2)(a),

(b) “the regulations” means regulations under section 51(1).”.

*Power to set value of assistance as nil in certain circumstances*

**7B Power to set value of assistance as nil in certain circumstances**

(1) The Social Security (Scotland) Act 2018 is modified as follows.

(2) In schedule 2—

(a) after paragraph 11 insert—

*“Power to set value of assistance as nil*

11A(1) Provision may be made in the regulations for the value of the carer’s assistance that is to be given to an individual in respect of a period to be £0, but—

(a) such provision must be framed so as to apply by reference to at least one of the following matters—

(i) the individual being resident and present in a particular place during the period,

(ii) the individual being in receipt of another type of assistance (whether under this Act or another enactment) during the period, and

(b) the Scottish Ministers may only make such provision where they consider that it would be in the interests of the individuals to whom it applies to be entitled to carer’s assistance with a value of £0 in respect of a period rather than not being entitled to carer’s assistance at all.

(2) Nothing in sub-paragraph (1)(a) is to be taken to preclude provision being framed so as to apply by reference to further matters in addition to those mentioned there.”,

(b) in paragraph 12(b), for “paragraph 11” substitute “paragraphs 11 and 11A”.

(3) In schedule 5—

(a) after paragraph 14 insert—

*“Power to set value of assistance as nil*

14A(1) Provision may be made in the regulations for the value of the disability assistance that is to be given to an individual in respect of a period to be £0, but—

(a) such provision must be framed so as to apply by reference to at least one of the following matters—

(i) the individual being resident and present in a particular place during the period,

(ii) the individual being in receipt of another type of assistance (whether under this Act or another enactment) during the period, and

(b) the Scottish Ministers may only make such provision where they consider that it would be in the interests of the individuals to whom it applies to be entitled to disability assistance with a value of £0 in respect of a period rather than not being entitled to disability assistance at all.

(2) Nothing in sub-paragraph (1)(a) is to be taken to preclude provision being framed so as to apply by reference to further matters in addition to those mentioned there.”,

(b) in paragraph 19, after paragraph (c) insert—

“(ca) paragraph 14A in Chapter 1 of Part 2,”.

(4) In schedule 7—

(a) after paragraph 11 insert—

*“Power to set value of assistance as nil*

11A(1) Provision may be made in the regulations for the value of the employment-injury assistance that is to be given to an individual in respect of a period to be £0, but—

(a) such provision must be framed so as to apply by reference to at least one of the following matters—

(i) the individual being resident and present in a particular place during the period,

(ii) the individual being in receipt of another type of assistance (whether under this Act or another enactment) during the period, and

(b) the Scottish Ministers may only make such provision where they consider that it would be in the interests of the individuals to whom it applies to be entitled to employment-injury assistance with a value of £0 in respect of a period rather than not being entitled to employment-injury assistance at all.

(2) Nothing in sub-paragraph (1)(a) is to be taken to preclude provision being framed so as to apply by reference to further matters in addition to those mentioned there.”,

(b) in paragraph 15, after paragraph (b) insert—

“(ba) paragraph 11A in Chapter 1 of Part 2,”.

(5) In schedule 9—

(a) after paragraph 10 insert—

*“Power to set value of assistance as nil*

10A(1) Provision may be made in the regulations for the value of the housing assistance that is to be given to an individual in respect of a period to be £0, but—

(a) such provision must be framed so as to apply by reference to at least one of the following matters—

(i) the individual being resident and present in a particular place during the period,

(ii) the individual being in receipt of another type of assistance (whether under this Act or another enactment) during the period, and

(b) the Scottish Ministers may only make such provision where they consider that it would be in the interests of the individuals to whom it applies to be entitled to housing assistance with a value of £0 in respect of a period rather than not being entitled to housing assistance at all.

(2) Nothing in sub-paragraph (1)(a) is to be taken to preclude provision being framed so as to apply by reference to further matters in addition to those mentioned there.”,

(b) in paragraph 13, after “9” insert “, 10A”.

*Assistance given in error*

**7C First-tier Tribunal’s jurisdiction**

- (1) The Social Security (Scotland) Act 2018 is modified as follows.
- (2) Section 68 is repealed.
- (3) After section 87 insert—

*“Assistance given in error: First-tier Tribunal’s jurisdiction*

**87A Power to transfer jurisdiction from sheriff to tribunal**

(1) The Scottish Ministers may by regulations transfer to the First-tier Tribunal for Scotland some or all of the competence and jurisdiction that a sheriff has in relation to the recovery of—

(a) money owed under section 63, or

(b) money owed under regulations under Part 3.

(2) Before laying a draft Scottish statutory instrument containing regulations under subsection (1) before the Scottish Parliament for approval by resolution, the Scottish Ministers must consult—

(a) the Lord President of the Court of Session,

(b) the President of the Scottish Tribunals,

(c) sheriffs principal.

(3) The Scottish Ministers must—

(a) exercise the power conferred by subsection (1) at least once,

(b) before 1 April 2021, consult the persons mentioned in subsection (2) about making regulations under subsection (1).”.

(4) In section 96(2)—

(a) the word “68,” is repealed,

(b) after “86” insert “, 87A”.

**PART 2**

TRIBUNAL MEMBERSHIP

**8 Authorisation of judiciary to sit in Scottish Tribunals**

(1) Section 18 of the Tribunals (Scotland) Act 2014 is modified as follows.

5 (2) For subsection (1), substitute—

“(1) If requested to do so by the President of Tribunals, the Scottish Ministers may issue a temporary authorisation—

(a) for a person falling within subsection (1A) to assist in the disposal of the business of the First-tier Tribunal,

10 (b) for a person falling within subsection (2) to assist in the disposal of the business of the Upper Tribunal.”.

(3) After subsection (1), insert—

“(1A) A person falls within this subsection if the person is—

(a) a judge of a relevant UK court or tribunal,

15 (b) a former judge of a relevant UK court or tribunal,

(c) a judge of an overseas court or tribunal, or

(d) a judge of an international court or tribunal.”.

(4) In subsection (2)—

(a) the “or” at the end of paragraph (a)(iii) is repealed,

20 (b) for paragraph (b), substitute—

“(b) a judge of a relevant UK court or tribunal,

(c) a former judge of a relevant UK court or tribunal,

(d) a judge of an overseas court or tribunal, or

(e) a judge of an international court or tribunal.”.

25 (5) In subsection (4), for “the Upper Tribunal” substitute “the Tribunal concerned”.

(6) For subsection (8), substitute—

30 “(8) In the case of a person mentioned in subsection (1A)(a), (c) or (d) or (2)(b), (d) or (e), subsections (1) and (5) are subject to such further arrangements as the Scottish Ministers may make with a governmental or other body responsible for the administration of the court or tribunal concerned, or its judiciary, for the purposes of those subsections.

(8A) In the case of a person mentioned in subsection (1A) or (2)(b), (c), (d) or (e), if the person has not previously taken the required oaths, the person must take them in the presence of the President of Tribunals before acting as mentioned in subsection (4).”.

35 (7) For subsection (10), substitute—

“(10) In this section—

“an international court or tribunal” means a court or tribunal which exercises jurisdiction, or performs functions of a judicial nature, in pursuance of—

- (a) an agreement to which the United Kingdom or Her Majesty’s Government in the United Kingdom is a party, or
- (b) a resolution of the Security Council or General Assembly of the United Nations,

“an overseas court or tribunal” means a court or tribunal established under the law of a country or territory outwith the United Kingdom,

“a relevant UK court or tribunal” means a court or tribunal established under the law of one or more parts of the United Kingdom, excluding a court or tribunal established under the law of Scotland only,

“the required oaths” means the oaths of allegiance and the judicial oath as set out in the Promissory Oaths Act 1868.”.

## **9 Consequential modifications**

(1) The Tribunals (Scotland) Act 2014 is modified as follows.

(2) In section 14—

(a) in subsection (2)(b), for “the Upper Tribunal” substitute “the First-tier Tribunal or the Upper Tribunal (as the case may be)”,

(b) in subsection (3)(b), after second “of” insert “the First-tier Tribunal or”.

(3) In section 19—

(a) in subsection (3), after “member” insert “of the First-tier Tribunal or”,

(b) for subsection (4), substitute—

“(4) In this Act—

(a) a reference to an extra judge in relation to the First-tier Tribunal is to a person falling within section 18(1A) (as read with section 18(4)),

(b) a reference to an extra judge in relation to the Upper Tribunal is to a person falling within section 18(2) (as read with section 18(4)).”.

(4) In section 37(4), for the definition of “member” substitute—

“member”, in relation to a Tribunal chamber—

(a) means ordinary, legal or judicial member of the Tribunal who is assigned to the chamber,

(b) while assigned to the chamber, also includes an extra judge who is authorised to act as mentioned in section 18(4).”

(5) After section 38(4), insert—

“(4A) Regulations under subsection (1) may include provision about the involvement in decision-making of an extra judge who is authorised to act as mentioned in section 18(4).”.

(6) For section 41(2), substitute—

“(2) For the purposes of subsection (1), an extra judge in relation to the First-tier Tribunal or the Upper Tribunal is to be treated as if a member of the Tribunal concerned (with section 42(1) so applying accordingly).”.

(7) In paragraph 9 of schedule 4—

(a) after sub-paragraph (1), insert—

“(1A) An extra judge who is authorised to act as mentioned in section 18(4) is to be assigned to at least one of the chambers.”,

(b) in sub-paragraph (2), after “member” insert “or such an extra judge”,

(c) in sub-paragraph (3), for “such a member” substitute “a judicial member”.

(8) In schedule 10, after the entry for “judicial member (Upper)” insert—

“extra judge (First-tier) Section 19(4)”.

### **PART 3**

#### FINAL PROVISIONS

#### **10 Ancillary provision**

(1) 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.

(2) Regulations under this section may—

(a) make different provision for different purposes,

(b) modify any enactment (including this Act).

(3) Regulations under this section—

(a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act, but

(b) otherwise are subject to the negative procedure.

#### **11 Commencement**

(1) The following provisions come into force on the day after Royal Assent: this section and sections 1A, 3, 5, 6, 7C, 10 and 12.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

(3) Regulations under this section may make different provision for different purposes.

#### **12 Short title**

The short title of this Act is the Social Security Administration and Tribunal Membership (Scotland) Act 2020.

# **Social Security Administration and Tribunal Membership (Scotland) Bill**

[AS PASSED]

An Act of the Scottish Parliament to modify the Social Security (Scotland) Act 2018 in relation to the appointment of persons to act on behalf of applicants; the provision of information in connection with the determination of eligibility for assistance; the duty to inform about possible eligibility for assistance; the operation of top-up assistance; and the diagnosis of terminal illness for disability assistance purposes; the recovery of assistance given in error; and to modify the Tribunals (Scotland) Act 2014 in relation to the eligibility of judicial office-holders to sit in the First-tier Tribunal and the Upper Tribunal.

Introduced by: Shirley-Anne Somerville  
On: 27 April 2020  
Bill type: Government Bill

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