

# Social Security (Scotland) Bill

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## 1st Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

### Groupings of amendments

#### **Scottish social security principles**

77, 1, 102, 78, 5, 6, 113

#### **Take-up of assistance and income maximisation**

4, 7, 7A, 7B, 114, 115, 140, 14, 126, 128, 129, 51

#### **Effect of Scottish social security principles**

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#### **Advocacy and information provision**

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#### **Private sector involvement**

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#### **Right to social security**

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**Scottish Commission on Social Security**

15, 16, 16A, 16B, 118, 49, 53, 54

**Definition of “Scottish social security system”**

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**Scottish Social Security Agency**

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**Top-up child benefit**

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**Procedure for regulations for assistance**

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**THIS IS NOT THE MARSHALLED LIST**

**Amendments in debating order**

**Scottish social security principles**

**George Adam**

77 In section 1, page 1, line 9, at end insert—

<( ) the delivery of social security is a public service,>

**Alison Johnstone**

**Supported by: Mark Griffin**

1 In section 1, page 1, line 11, at end insert—

<( ) the Scottish social security system is to contribute to reducing poverty in Scotland,>

**Mark Griffin**

102 In section 1, page 1, line 13, at end insert—

<( ) equality of outcome for persons who have one or more protected characteristics (within the meaning of section 4 of the Equality Act 2010) is to be embedded in the Scottish social security system,>

**Mark Griffin**

78 In section 1, page 1, line 15, at end insert—

<( ) the Scottish social security system is to be designed with aims which include reducing the number of disabled people living in poverty,>

**Jeane Freeman**

5 In section 1, page 1, line 17, after <which> insert <—

( )>

**Jeane Freeman**

6 In section 1, page 1, line 17, after <first> insert <, and

( ) promote the goals of equality and non-discrimination>

**Pauline McNeill**

113 In section 1, page 1, line 18, at end insert—

<( ) the Scottish social security system has a role in promoting improved health and mental wellbeing for all individuals accessing the system.>

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**Take-up of assistance and income maximisation**

**Jeane Freeman**

- 4 In section 1, page 1, leave out lines 12 and 13

**Jeane Freeman**

- 7 After section 1, insert—

*<Scottish Ministers' duty to promote take-up*

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

The Scottish Ministers must—

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

**Mark Griffin**

- 7A As an amendment to amendment 7, line 4, leave out from <must> to <take> in line 4 and insert <have—

- (a) a duty>

**Mark Griffin**

- 7B As an amendment to amendment 7, leave out lines 8 and 9 and insert—

<(b) a role in encouraging individuals to apply for the other social security assistance that they are eligible to be given.

- (2) In this section, “other social security assistance” means social security schemes other than those listed in exceptions 1 to 10 in Section F1 of Part 2 of schedule 5 of the Scotland Act 1998.>

**Mark Griffin**

- 114 After section 1, insert—

**<Income maximisation strategy**

- (1) The Scottish Ministers must, within one year of this section coming into force, publish a strategy designed to encourage individuals to apply for the social security assistance that they are entitled to be given.
- (2) The strategy must set out—
  - (a) the types of assistance in relation to which the Scottish Ministers are to set a target for the uptake of the assistance,
  - (b) the target for the uptake of each type of assistance mentioned in paragraph (a),
  - (c) the target for the uptake in Scotland of all social security assistance.
- (3) In preparing the strategy, the Scottish Ministers must consult such persons as they consider appropriate.

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- (4) The persons consulted must include individuals who have received social security assistance.
- (5) As soon as practicable after the strategy has been published under subsection (1), the Scottish Ministers must lay a copy before the Scottish Parliament.
- (6) In this section, “social security assistance” means—
  - (i) assistance given through the Scottish social security system,
  - (ii) social security schemes other than those listed in exceptions 1 to 10 in Section F1 of Part 2 of schedule 5 of the Scotland Act 1998.>

### Mark Griffin

115 After section 1, insert—

#### <Review of strategy

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

### Alison Johnstone

140 After section 1, insert—

#### <Right to consideration of entitlement to other assistance

## THIS IS NOT THE MARSHALLED LIST

An individual who applies for any type of assistance under this Act has the right to be considered for all other assistance to which, in the opinion of the Scottish Ministers, the individual might be entitled to receive through the Scottish social security system.>

### Alison Johnstone

14 Before section 6, insert—

#### <Assistance take-up targets

- (1) The Scottish Ministers must by regulations set targets for the take-up of each type of assistance described in Chapter 2 of Part 2.
- (2) The Scottish Ministers must ensure that the targets are met.
- (3) Regulations under subsection (1) may make provision about data collection.>

### Pauline McNeill

126 In section 19, page 7, line 25, at end insert—

<( ) where the circumstances in section (*Determination of other entitlement*) apply,  
or>

### Pauline McNeill

128 After section 34, insert—

#### <Determination of other entitlement

Where it appears to the Scottish Ministers that an individual who has applied for a particular type of assistance may be entitled to another type of assistance described in Chapter 2, the application may be treated by the Scottish Ministers as an application for that other type of assistance as an alternative, or in addition (as the case may be), to the application received.>

### Pauline McNeill

129 After section 34, insert—

#### <Entitlement to other assistance: duty to inform

Where it appears to the Scottish Ministers that an individual who has applied for a particular type of assistance may be entitled to another type of assistance described in Chapter 2, the Scottish Ministers must inform the individual—

- (a) that the individual may be entitled to another type of assistance,
- (b) of the other type of assistance to which the individual may be entitled, and
- (c) that a further application is required to be made in order that a determination may be made in respect of that other type of assistance.>

### Alison Johnstone

51 In section 55, page 21, line 25, after <procedure:> insert <section (*Assistance take-up targets*),>

## THIS IS NOT THE MARSHALLED LIST

### Effect of Scottish social security principles

**Adam Tomkins**

**57** After section 1, insert—

#### <Effect of the principles

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

**Mark Griffin**

**138** After section 1, insert—

#### <The Scottish social security principles: duty on the Scottish Ministers

The Scottish Ministers must, in exercising their functions under this Act, have regard to the Scottish social security principles.>

### Advocacy and information provision

**Jeane Freeman**

**8** After section 1, insert—

#### <Recognition of importance of independent advice and advocacy

- (1) In fulfilling their duty under section (*Scottish Ministers' duty to promote take-up*)(a), the Scottish Ministers must have regard to the role that—
  - (a) independent advice, and
  - (b) independent advocacy,can play in ensuring that individuals are given what they are eligible to be given under the Scottish social security system.
- (2) The steps taken by the Scottish Ministers under section (*Scottish Ministers' duty to promote take-up*)(b) must include steps in relation to providing, or ensuring the provision of, information about—
  - (a) independent advice, and
  - (b) independent advocacy,for individuals applying for, or receiving, assistance through the Scottish social security system.
- (3) For the purposes of this section, advice and advocacy are independent if they are provided by a person other than the Scottish Ministers.>

**Jeane Freeman**

**9** After section 1, insert—

#### <Right to advocacy



## THIS IS NOT THE MARSHALLED LIST

- (1) Every individual with a mental disorder has a right of access to independent advocacy in connection with the determination of the individual's entitlement to be given assistance under the Scottish social security system.
- (2) It is the duty of the Scottish Ministers to ensure that independent advocacy services are available to the extent necessary for that right to be exercised by the individuals who have it.
- (3) In this section—

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

“mental disorder” has the meaning given in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003.
- (4) For the purposes of this section, advocacy services are independent if they are provided by a person other than the Scottish Ministers.>

### Jeremy Balfour

58 After section 1, insert—

#### <Information and advice

- (1) An individual applying, or considering applying, for assistance through the Scottish social security system is entitled to independent information and advice about in particular—
  - (a) how to apply to the Scottish Ministers for assistance,
  - (b) the process for determining an individual's entitlement to assistance,
  - (c) the types of assistance to which the individual may be entitled,
  - (d) income maximisation,
  - (e) the content of the charter.
- (2) The information and advice must be accessible to, and proportionate to the needs of, the individuals to whom it is provided.
- (3) The Scottish Ministers must take steps to ensure the availability of information and advice to individuals applying, or considering applying, for assistance.
- (4) The Scottish Ministers may delegate the functions set out in this section to another person.
- (5) For the purposes of this section, information and advice are independent if they are provided by a person other than the Scottish Ministers.>

### Jeremy Balfour

59 After section 1, insert—

#### <Independent advocacy services

- (1) An individual who has applied for assistance through the Scottish social security system is entitled to independent advocacy services.

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- (2) On receiving an application for assistance from an individual, the Scottish Ministers are to—
  - (a) notify the individual of the individual’s entitlement to independent advocacy services,
  - (b) provide information about independent advocacy services available to the individual.
- (3) The Scottish Ministers may delegate a function set out in subsection (2) to another person.
- (4) The Scottish Ministers may by regulations make further provision about independent advocacy services, in particular—
  - (a) the type of organisation that may provide such services,
  - (b) the type of support that may be provided,
  - (c) the duration of that support.
- (5) The Scottish Ministers must ensure that independent advocacy services are adequately resourced and available to individuals applying for assistance.
- (6) In this section, “advocacy services” means services of support and representation that are made available for the purpose of enabling an individual to whom they are provided to have as much control of, or capacity to influence, the decisions that determine the individual’s entitlement to be given assistance under the Scottish social security system as is, in the circumstances, appropriate.
- (7) For the purposes of this section, advocacy services are independent if they are provided by a person other than the Scottish Ministers.>

### Ruth Maguire

112 After section 1, insert—

#### <Recognition of importance of inclusive communication

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

### Mark Griffin

139 After section 1, insert—

#### <Accessibility of information

- (1) Every individual has a right to request and be given, where practicable, the information mentioned in subsection (2) in a form which is accessible to, and proportionate to the needs of, that individual.
- (2) The information mentioned in subsection (1) is—
  - (a) a copy of the charter,
  - (b) a form to apply for assistance,

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- (c) a notice of determination,
- (d) a form to request a re-determination,
- (e) a notice of re-determination,
- (f) a form to bring an appeal against a determination,
- (g) any guidance issued under, or in connection with, this Act,
- (h) any other document which the Scottish Ministers are required to publish in accordance with this Act.>

### **Jeane Freeman**

**39** After section 32, insert—

*<Support during discussions and assessments*

#### **Right to support**

- (1) The Scottish Ministers must comply with an individual’s wish to have another person (“a supporter”) present during any discussion or assessment relating to the individual’s entitlement to a type of assistance described in Chapter 2, unless the wish is unreasonable.
- (2) The Scottish Ministers’ duty under subsection (1) includes ensuring that any person acting on their behalf complies with such a wish, unless the wish is unreasonable.
- (3) The role of a supporter is to support the individual in question during the discussion or (as the case may be) assessment, and includes making representations on the individual’s behalf.
- (4) Nothing in this section is to be read as requiring the Scottish Ministers to provide or pay for a supporter.>

### **Jeremy Balfour**

**75** In section 55, page 21, line 25, after <procedure:> insert <section (*Independent advocacy services*),>

## **Private sector involvement**

### **Jeane Freeman**

**10** After section 1, insert—

*<Restriction of private-sector involvement*

#### **Restriction on private-sector involvement in assessments**

- (1) An individual may not be required, in order to be given assistance under the Scottish social security system, to undergo an assessment of physical condition or mental health that is carried out by another individual who is not acting in the course of employment by a public body.
- (2) In subsection (1), “public body” means any of the following—
  - (a) a Minister of the Crown,
  - (b) a person established by an enactment,

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- (c) a body comprised solely of persons described by this subsection,
- (d) a body corporate that has no members other than (either or both)—
  - (i) persons described by this subsection,
  - (ii) persons acting on behalf of persons described by this subsection.
- (3) Subsection (1) does not preclude its being made a requirement for being given assistance under the Scottish social security system that an individual be—
  - (a) in receipt of, or
  - (b) eligible or entitled to receive,other assistance, despite entitlement to that other assistance depending on the fulfilment of a requirement that subsection (1) would preclude from being imposed in relation to assistance under the Scottish social security system.
- (4) In subsection (3), “other assistance” means assistance other than assistance under the Scottish social security system.>

### **Charter: approval by regulations**

#### **Pauline McNeill**

- 141** In section 2, page 1, line 21, at beginning insert <The Scottish Ministers are, by regulations, to set out and from time to time revise>

#### **Pauline McNeill**

- 142** In section 2, page 2, line 21, leave out from <is> to end of line 22

#### **Pauline McNeill**

- 143** In section 3, page 2, line 6, leave out <publish the charter> and insert <lay before the Scottish Parliament draft regulations which set out the first charter>

#### **Pauline McNeill**

- 144** In section 3, page 2, line 8, leave out first <the> and insert <draft regulations setting out the first>

#### **Pauline McNeill**

- 146** In section 4, page 2, line 25, at beginning insert <Where the Scottish Parliament has approved draft regulations setting out the first charter or a revised charter,>

#### **Pauline McNeill**

- 147** In section 5, page 3, line 7, at end insert <and—  
<( ) where they have decided to make changes to the charter, lay before the Parliament draft regulations setting out a revised charter.>

#### **Pauline McNeill**

- 150** In section 55, page 21, line 25, after <procedure:> insert <section 2(1),>

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### Application of charter

#### **Jeane Freeman**

- 11 In section 2, page 2, line 1, leave out <their functions in the Scottish social security system> and insert <the functions conferred on them by this Part and Parts 2 and 3>

#### **Jeremy Balfour**

- 60 In section 2, page 2, line 1, at end insert—  
<( ) from any body established by the Scottish Ministers with the purpose of exercising functions in the Scottish social security system, and>

### Consultation on charter

#### **Jeremy Balfour**

- 145 In section 3, page 2, line 9, at end insert—  
<( ) The Scottish Ministers must ensure, as far as is reasonably practicable, that the persons consulted include, in particular, a representative proportion of persons such as are mentioned in paragraphs (a), (b) and (d) of subsection (3) who have—  
(a) a physical impairment,  
(b) a mental impairment.>

#### **Mark Griffin**

- 103 In section 3, page 2, line 10, after <include> insert <—  
(a)>

#### **Mark Griffin**

- 104 In section 3, page 2, line 18, at end insert—  
<( ) child benefit under section 141 of the Social Security Contributions and Benefits Act 1992,>

#### **Mark Griffin**

- 105 In section 3, page 2, line 23, at end insert <and  
(b) persons and organisations who work with or represent individuals living in households whose income is adversely affected, or whose expenditure is increased, because a member of the household has one or more protected characteristics (within the meaning of section 4 of the Equality Act 2010).>

#### **Jeane Freeman**

- 12 In section 3, page 2, line 23, at end insert—  
<( ) For the purpose of subsection (2), it is immaterial that anything done by way of consultation was done before the Bill for this Act was passed or after that but before this section comes into force.>

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### **Jeane Freeman**

- 13 In section 5, page 2, line 32, leave out from <such> to end of line 33 and insert—  
<( ) the Scottish Commission on Social Security, and  
( ) any other persons they consider appropriate.>

### **Mark Griffin**

- 106 In section 5, page 2, line 34, after <include> insert <—  
(a)>

### **Mark Griffin**

- 107 In section 5, page 2, line 35, at end insert <and  
(b) persons and organisations who work with or represent individuals living in households whose income is adversely affected, or whose expenditure is increased, because a member of the household has one or more protected characteristics (within the meaning of section 4 of the Equality Act 2010).>

## **Effect of charter**

### **Adam Tomkins**

- 61 After section 5, insert—  
<**Effect of the charter**  
(1) A court or tribunal in civil or criminal proceedings may take the charter into account when determining any question arising in the proceedings to which the charter is relevant.  
(2) Breach of the charter does not of itself give rise to grounds for any legal action.>

### **Jeane Freeman**

- 18 After section 6, insert—  
<**Charter-based complaints**  
(1) The Scottish Ministers are to make regulations conferring on a person the function described in subsection (2).  
(2) The function is investigating any complaint alleging a failure by the Scottish Ministers, in dealing with an individual's case, to meet the expectations of them set out in the Scottish social security charter.  
(3) Regulations under this section may modify any enactment (including this Act).>

### **Adam Tomkins**

- 18A As an amendment to amendment 18, line 3, leave out <a person> and insert <the Scottish Public Services Ombudsman>

### **Jeane Freeman**

- 50 In section 55, page 21, line 25, after <procedure:> insert <section (*Charter-based complaints*).>

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**Right to social security**

**Mark Griffin**

**116** After section 5, insert—

*<Right to social security*

**Due regard to right to social security**

- (1) The persons mentioned in subsection (2) must have due regard to the right to social security when—
  - (a) exercising functions under this Act,
  - (b) exercising functions under any other enactment which contains provisions exercising the powers provided for in Part 3 of the Scotland Act 2016.
- (2) The persons are—
  - (a) the Scottish Ministers,
  - (b) any other Scottish public authority.
- (3) A court or tribunal must have due regard to the right to social security when—
  - (a) interpreting the provisions of this Act,
  - (b) interpreting the scope of any other enactment which contains provisions exercising the powers provided for in Part 3 of the Scotland Act 2016,
  - (c) called to determine any question relevant to the application of the duty in subsection (1).
- (4) In this section and section (*Interpreting the right to social security*), the right to social security is to be interpreted consistently with the right to social security protected by the Covenant on Economic, Social and Cultural Rights.
- (5) For the purposes of this section and section (*Interpreting the right to social security*), the Covenant on Economic, Social and Cultural Rights is the International Covenant on Economic, Social and Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.
- (6) The Scottish Ministers may by regulations modify subsection (5) to take account of any optional protocol to the Covenant on Economic, Social and Cultural Rights which the United Kingdom—
  - (a) has ratified, or
  - (b) has signed with a view to ratification.>

**Mark Griffin**

**117** After section 5, insert—

**<Interpreting the right to social security**

- (1) Where a person mentioned in section (*Due regard to right to social security*)(2) is exercising the duty under subsection (1) of that section, the person must take account of—

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- (a) the General Comments of the Committee on Economic, Social and Cultural Rights, including General Comment 19 (“The right to social security”), adopted on 23 November 2007, and
  - (b) any concluding observations of the Committee on Economic, Social and Cultural Rights in respect of the United Kingdom’s compliance with the Covenant on Economic, Social and Cultural Rights.
- (2) A court or tribunal determining a question which has arisen in connection with the duty under section (*Due regard to right to social security*)(1) must take into account—
- (a) the General Comments of the Committee on Economic, Social and Cultural Rights, including General Comment 19 (“The right to social security”), adopted on 23 November 2007, and
  - (b) any concluding observations of the Committee on Economic, Social and Cultural Rights in respect of the United Kingdom’s compliance with the Covenant on Economic, Social and Cultural Rights,
- so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.
- (3) In considering whether the duty in section (*Due regard to right to social security*)(1) has been discharged, a court or tribunal must have regard to—
- (a) the right to progressive realisation of the right to social security consistent with the maximum resources available to the Scottish Ministers,
  - (b) the core elements of the right to social security identified by General Comment 19 (“The right to social security”),
  - (c) that the right to social security should be enjoyed without discrimination.
- (4) In considering whether the duty in section (*Due regard to right to social security*)(1) has been discharged, any court or tribunal may have regard to—
- (a) any international obligation of the United Kingdom relevant to the right to social security,
  - (b) any comparative case law on the right to social security.>

### **Annual report and other accountability mechanisms**

#### **Jeremy Balfour**

**62** In section 6, page 3, line 19, at end insert—

- <( ) information about the performance of any body established by the Scottish Ministers for the purpose of exercising functions in the Scottish social security system, and
- ( ) a description of what any such body has done in that year to meet the expectations of that body set out in the Scottish social security charter.>

#### **Mark Griffin**

**79** In section 6, page 3, line 19, at end insert—

- <( ) information on how assistance provided under this Act has reduced the number of disabled people living in poverty, and



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- ( ) information on the extent to which assistance provided under this Act has reduced the number of disabled people living in poverty.
- ( ) For the purposes of this Act, a disabled person is considered to be living in poverty if the person's household's equivalised net income for the year is less than 60% of median equivalised net household income for the year.
- ( ) In this Act—
  - ( ) “equivalised”, in relation to household income, means adjusted to take account of variations in household size and composition,
  - ( ) “median equivalised net household income” means the median equivalised net household income for the United Kingdom.>

### Mark Griffin

108 In section 6, page 3, line 19, at end insert—

- <(c) an assessment of how the Scottish social security system has affected the circumstances of persons living in households whose income is adversely affected, or whose expenditure is increased, because a member of the household has one or more protected characteristics (within the meaning of section 4 of the Equality Act 2010), and
- (d) a description of the data for the purpose of monitoring equality of opportunity used in preparing the report.
- (3) The first report under this section is to include a plan setting out the Scottish Ministers' intentions to collect and publish data for the purpose of monitoring equality of opportunity where existing data sources are not sufficient for the preparation of the report.>

### Mark Griffin

148 After section 6, insert—

#### <Annual feedback survey

- (1) The Scottish Ministers must, as soon as practicable after the end of each financial year, carry out a survey of individuals who have applied for assistance through the Scottish social security system in that financial year.
- (2) The survey is to seek information about—
  - (a) the extent to which the determination of the individual's entitlement to assistance met the expectations set out in—
    - (i) the Scottish social security principles,
    - (ii) the Scottish social security charter,
  - (b) the individual's experience of the process of determining the individual's entitlement to assistance,
  - (c) the effectiveness and appropriateness of the assistance received (where relevant),
  - (d) the quality and effectiveness of the advice and information received in support—
    - (i) of the individual's application for assistance, and
    - (ii) at all stages of the determination of the individual's entitlement to assistance, and

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- (e) any other matters relevant to the individual's application for assistance.
- (3) The Scottish Ministers must, as soon as practicable after completing the carrying out of the survey under subsection (1)—
  - (a) lay the survey before the Scottish Parliament, and
  - (b) make the survey publicly available by such means as they consider appropriate.>

### Mark Griffin

80 After section 6, insert—

#### <Independent review of the Act

- (1) The Scottish Ministers must make provision for an independent review of this Act to be carried out—
  - (a) not later than 3 years after the day on which Part 1 of this Act comes into force, and
  - (b) thereafter, at least once in each subsequent period of 5 years.
- (2) Not later than 1 year after the day on which a review under subsection (1) has been completed, the person carrying out the review must lay a report on the conclusions of the review before the Scottish Parliament.
- (3) A report under subsection (2) must—
  - (a) include an assessment of the effectiveness of the provisions of this Act,
  - (b) recommend—
    - (i) whether the provisions of this Act should be retained or repealed,
    - (ii) what steps are to be taken by the Scottish Ministers as a result of the review.
- (4) Not later than 30 days after a report under subsection (2) has been laid before the Scottish Parliament, the Scottish Ministers must lay a response to that report before the Scottish Parliament.
- (5) In responding to a report under subsection (2), the Scottish Ministers must have regard to the provisions of subsection (3).>

### Scottish Commission on Social Security

#### Jeane Freeman

15 After section 6, insert—

#### <Scottish Commission on Social Security

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

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**Jeane Freeman**

16 Before schedule 1, insert—

<SCHEDULE

*(introduced by section (Scottish Commission on Social Security))*

SCOTTISH COMMISSION ON SOCIAL SECURITY

**PART 1**

OPERATION AND COMPOSITION OF THE COMMISSION

**CHAPTER 1**

STATUS

*Independence*

1 (1) In performing its functions, the Scottish Commission on Social Security is not subject to the direction or control of any member of the Scottish Government.

(2) This paragraph is subject to any contrary provision in this or any other enactment.

*Exclusion of Crown status*

2 The Commission—

(a) is not a servant or agent of the Crown, and

(b) does not enjoy any status, immunity or privilege of the Crown.

**CHAPTER 2**

POWERS

*General powers*

3 The Commission may do anything which appears to it—

(a) to be necessary or expedient for the purposes of, or in connection with, the performance of its functions, or

(b) to be otherwise conducive to the performance of its functions.

*Access to information*

4 (1) The Commission—

(a) has a right of access at reasonable times to any relevant information that it may reasonably require for the purpose of performing its functions, and

(b) may require any person who holds or is accountable for relevant information to provide at reasonable times any assistance or explanation that the Commission may reasonably require for the purpose of—

(i) performing its functions, or

(ii) exercising the right conferred by paragraph (a).

(2) In sub-paragraph (1), “relevant information” means information in the possession or under the control of—

(a) any member of the Scottish Government,

(b) a local authority,

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- (c) any person, or person of such description, as is specified by the Scottish Ministers in regulations.
- (3) Sub-paragraph (1) is subject to any enactment or rule of law that prohibits or restricts—
  - (a) the disclosure of any information, or
  - (b) the giving of any assistance or explanation.

### **CHAPTER 3**

#### PROCEDURE

##### *Committees*

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

##### *Regulation of procedure*

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

##### *Authority to perform functions*

- 7 (1) The Commission may authorise—
  - (a) any of its members, or
  - (b) any of its committees or sub-committees,to perform such of its functions (and to such extent) as it may determine.
- (2) The giving of authority under sub-paragraph (1) does not—
  - (a) affect the Commission's responsibility for the performance of the function, or
  - (b) prevent the Commission from performing the function itself.

##### *Validity of things done*

- 8 The validity of anything done by the Commission, its committees or sub-committees is not affected by—
  - (a) a vacancy in its membership,
  - (b) a defect in the appointment of a member,
  - (c) the disqualification of a person as a member after appointment.

### **CHAPTER 4**

#### FINANCE

##### *Remuneration and expenses of members*

- 9 (1) The Commission's members are entitled to be paid by the Scottish Ministers such—
  - (a) remuneration, and
  - (b) sums in respect of expenses incurred in performing their functions as members of the Commission,

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as the Ministers determine.

- (2) In sub-paragraph (1)—
  - (a) the reference to the Commission's members includes a person who is not a member of the Commission but is a member of one of the Commission's committees or sub-committees, and
  - (b) the reference to performing functions as a member of the Commission, in the case of a person described in paragraph (a), is to be read as though it were a reference to performing the person's functions as a member of the committee or (as the case may be) sub-committee.

### *Expenses of non-members*

- 10 (1) A person who attends a meeting of the Commission at its request is entitled to be paid by the Scottish Ministers such travelling and other allowances (including compensation for loss of time) as the Ministers determine.
- (2) In sub-paragraph (1) the reference to the Commission includes any of its committees or sub-committees.

### *Resources*

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

### *Accounts and audit*

- 12 (1) The Commission must—
  - (a) keep proper accounts and accounting records,
  - (b) prepare in respect of each financial year a statement of accounts, and
  - (c) send a copy of the statement to the Auditor General for Scotland for auditing.
- (2) The Commission must comply with any directions which the Scottish Ministers give it in relation to the matters mentioned in sub-paragraph (1)(a) and (b).

## **CHAPTER 5**

### **MEMBERSHIP OF THE COMMISSION**

#### *Number of members*

- 13 (1) The Commission is to consist of—
  - (a) a member to chair the Commission, and
  - (b) at least 2 but no more than 4 other members.
- (2) The Scottish Ministers may by regulations amend sub-paragraph (1)(b) by substituting a different number for any number for the time being specified there.

#### *Appointment of members*

- 14 (1) The Scottish Ministers are to appoint the Commission's members.
- (2) The Scottish Ministers may not appoint a person who is disqualified from being a member (see paragraph 17).
- (3) When appointing members the Scottish Ministers must have regard to the desirability of—

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- (a) securing that the Commission (taken as a whole) has experience in or knowledge of—
  - (i) the formulation, implementation and evaluation of social security policies in Scotland and elsewhere in the United Kingdom,
  - (ii) research in connection with social security, and
  - (iii) the effect of disability, arising from a physical or mental impairment, on daily life,
- (b) having a member with personal experience of having a disability arising from a physical or mental impairment, and
- (c) having as members people who have not previously been members.

### *Tenure and other terms and conditions*

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

### *Early termination*

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

### *Disqualification grounds*

- 17 (1) A person is disqualified from being a member of the Commission if sub-paragraph (2) or (3) applies to the person.
- (2) This sub-paragraph applies to a person who is—
  - (a) a member of the—
    - (i) Scottish Parliament,
    - (ii) House of Commons,
    - (iii) National Assembly for Wales,

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- (iv) Northern Ireland Assembly, or
  - (v) European Parliament,
  - (b) a councillor of any local authority,
  - (c) a member of the Scottish Government,
  - (d) a Minister of the Crown,
  - (e) an office-holder of the Crown in right of Her Majesty's Government in the United Kingdom,
  - (f) an office-holder in the Scottish Administration,
  - (g) a civil servant.
- (3) This sub-paragraph applies to a person (subject to sub-paragraph (4)) who is or has been—
- (a) disqualified as a company director under the Company Directors Disqualification Act 1986,
  - (b) disqualified as a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005,
  - (c) the subject of a disqualification under a disqualification provision analogous to either of those mentioned in paragraph (a) or (b) anywhere in the world.
- (4) Sub-paragraph (3) does not apply to a person who is or has been disqualified as mentioned in that sub-paragraph only by—
- (a) section 11 of the Company Directors Disqualification Act 1986 (undischarged bankrupts),
  - (b) section 69(2)(b) of the Charities and Trustee Investment (Scotland) Act 2005 (which disqualifies undischarged bankrupts from being charity trustees), or
  - (c) a provision analogous to either of those mentioned in paragraph (a) or (b) anywhere in the world.

## PART 2

### APPLICATION OF LEGISLATION RELATING TO PUBLIC BODIES

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

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

“The Scottish Commission on Social Security”.

#### *Freedom of Information (Scotland) Act 2002*

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

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

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

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

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“Scottish Commission on Social Security”.

*Public Services Reform (Scotland) Act 2010*

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

“The Scottish Commission on Social Security”.>

### **Jeremy Balfour**

**16A** As an amendment to amendment 16, line 150, at end insert—

<( ) House of Lords,>

### **Jeremy Balfour**

**16B** As an amendment to amendment 16, line 160, at end insert—

<( ) a member of the—

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

### **Jeane Freeman**

**118** After section 6 insert—

#### **<Commission functions**

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



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- (4) The Commission must consider preparing a report under subsection (1)(d) if it receives evidence which suggests that expectations set out in the charter are frequently not being fulfilled.
- (5) In subsection (2), “international human rights instruments”—
- (a) means any international convention, treaty or other international instrument ratified by the United Kingdom, subject to—
    - (i) any amendments in force in relation to the United Kingdom for the time being, and
    - (ii) any reservations, objections or interpretative declarations by the United Kingdom for the time being in force, and
  - (b) includes, in particular, the International Covenant on Economic, Social and Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.>

### **Jeane Freeman**

- 49 In section 55, page 21, line 25, after <procedure:> insert <section (*Commission functions*)(1)(e),>

### **Jeane Freeman**

- 53 In section 55, page 21, line 28, after <24(5)> insert <and paragraphs 4(2)(c) and 13(2) of schedule (*Scottish Commission on Social Security*)>

### **Jeane Freeman**

- 54 In section 55, page 21, line 32, at end insert—
- <( ) Regulations under section (*Commission functions*)(1)(e), which modify the functions of the Scottish Commission on Social Security, may not be made after the Commission is established unless the Scottish Ministers have consulted the Commission about the modification.>

## **Definition of “Scottish social security system”**

### **Adam Tomkins**

- 119 In section 7, page 3, line 24, at end insert—
- <( ) by virtue of regulations made under section (*Power to create new benefits*), and>

### **Adam Tomkins**

- 63 In section 7, page 3, line 25, at end insert <and
- ( ) under any enactment which contains provision exercising the power provided for in section 28 of the Scotland Act 2016 to create new benefits.>

### **Mark Griffin**

- 120 In section 7, page 3, line 25, at end insert—
- <( ) under Part 4,
- ( ) by virtue of provision by the Scottish Ministers—

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- (i) under section 29 of the Scotland Act 2016,
- (ii) under section 30 of the Scotland Act 2016,
- ( ) under sections 53 and 54 of the Education (Scotland) Act 1980,
- ( ) by virtue of regulations made under section 73(f) of the Education (Scotland) Act 1980 to make provision for the payment of allowances or loans to or in respect of persons undertaking, or who have undertaken, courses of education,
- ( ) by virtue of regulations made under section 80 of the Local Government Finance Act 1992,
- ( ) under section 47 of the Children and Young People (Scotland) Act 2014, and
- ( ) under section 2 of the Welfare Funds (Scotland) Act 2015.>

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