

Social Security Administration and Tribunal Membership (Scotland) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 68-EN), a Financial Memorandum (SP Bill 68-FM), a Policy
Memorandum (SP Bill 68-PM) and statements on legislative competence (SP Bill 68-LC).**

Social Security Administration and Tribunal Membership (Scotland) Bill

[AS INTRODUCED]

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 operation of top-up assistance; and the diagnosis of terminal illness for disability assistance purposes; 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

1 Appointment of person to act on behalf of individual

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

(2) In section 58—

(a) in subsection (2), for “it appears to them that either subsection (3) or (4) applies” substitute—

“(a) the individual is 16 years or over and agrees to the appointment, or

(b) it appears to them that subsection (3), (4) or (4A) applies.”,

(b) after subsection (4) insert—

“(4A) This subsection applies if—

(a) the individual is under 16 years, and

(b) there is no person who—

(i) has authority to act on behalf of the individual,

(ii) resides with, and has the care of, the individual, and

(iii) is willing, and practicably able, to act on the individual’s behalf for the purposes mentioned in subsection (1).”,

(c) subsection (7) is repealed.

(3) After section 58 insert—

“58A Termination and review of appointment

(1) The Scottish Ministers may terminate an appointment under section 58 at any time.

(2) Where an appointment has been made (by virtue of section 58(2)(a)) on the basis that an individual who is 16 years or over agreed to it, the Scottish Ministers must terminate the appointment if the individual withdraws agreement.

(3) Where an appointment has been made in respect of an individual by virtue of subsection (4) or (4A) of section 58, the Scottish Ministers must consider whether to terminate the appointment if requested to do so by a person who—

(a) has authority to act on behalf of the individual, or

(b) resides with, and has the care of, the individual.

58B Further provision about appointments for under 16s

(1) Subsection (2) applies where the Scottish Ministers are deciding whether to do either of the following things in respect of an individual who is under 16 years—

(a) make an appointment under section 58,

(b) terminate an appointment under section 58A.

(2) In making the decision the Scottish Ministers must, insofar as practicable, have regard to the views of—

(a) the individual, and

(b) anyone who is a relevant person in relation to the individual within the meaning of section 200 of the Children’s Hearings (Scotland) Act 2011.”.

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.”.

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

- (1) The Social Security (Scotland) Act 2018 is modified as follows.
- (2) In section 79(2)(f), after “error” insert “(including provision transferring 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 assistance given in error)”.

5 Investigations

- (1) The Social Security (Scotland) Act 2018 is modified as follows.
- (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
- (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”.
- (7) In section 84B(1), for “75” substitute “84A”.
- (8) In section 96(2)—
- (a) the word “75,” is repealed,
- (b) after “and (5),” insert “84A,”.

6 Transitional provision in consequence of section 5

- (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.
- (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.

Diagnosing terminal illness for disability assistance purposes

7 Persons who can give diagnosis

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

(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—

“(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.”,

(iii) in sub-paragraph (3), for “registered medical practitioners” substitute “appropriate healthcare professionals (as defined in accordance with sub-paragraph (2A))”,

(b) in paragraph 10 for “a registered medical practitioner” substitute “an appropriate healthcare professional (see paragraph 5(2A))”.

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.

(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,
- (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,
- (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,
- (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.”.

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

(6) For subsection (8), substitute—

“(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).”.

(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 3, 5, 6, 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 INTRODUCED]

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 operation of top-up assistance; and the diagnosis of terminal illness for disability assistance purposes; 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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