

# Social Security (Amendment) (Scotland) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:  
Explanatory Notes (SP Bill 35-EN), a Financial Memorandum (SP Bill 35-FM), a Policy  
Memorandum (SP Bill 35-PM), a Delegated Powers Memorandum (SP Bill 35-DPM) and  
statements on legislative competence (SP Bill 35-LC).**

# Social Security (Amendment) (Scotland) Bill

## [AS INTRODUCED]

An Act of the Scottish Parliament to modify the Social Security (Scotland) Act 2018 to make further provision about social security; and for connected purposes.

### PART 1

#### TYPES OF SOCIAL SECURITY ASSISTANCE

5 **1 Childhood assistance**

- (1) The Social Security (Scotland) Act 2018 (the “2018 Act”) is modified as follows.
- (2) In section 32(1) (early years assistance), before “costs” insert “early”.
- (3) After section 32 insert—

**“32A Childhood assistance**

- 10
- (1) Childhood assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 24 to help towards meeting some of the costs associated with having a child in the family.
  - (2) The Scottish Ministers are to make regulations prescribing—
    - 15 (a) the eligibility rules that are to be applied to determine whether an individual is entitled to childhood assistance, and
    - (b) what childhood assistance an individual who is entitled to it is to be given.
  - (3) Schedule 6A makes provision about the exercise of the power conferred by subsection (2).”.
- 20 (4) After schedule 6 insert—

“SCHEDULE 6A  
*(introduced by section 32A)*

CHILDHOOD ASSISTANCE REGULATIONS

**PART 1**

ELIGIBILITY

**CHAPTER 1**

ELIGIBILITY IS TO DEPEND ON HAVING RESPONSIBILITY FOR A CHILD

- 1 (1) The regulations must be framed so that an individual’s eligibility depends on the individual satisfying the primary eligibility criterion.
- 10 (2) The primary eligibility criterion is that the individual is responsible for a child.
- (3) The regulations are to define what being responsible for a child means for the purpose of determining entitlement to childhood assistance.
- 15 (4) But the regulations may make provision about continuing to give childhood assistance for a specified period, and in specified circumstances, to an individual who is no longer responsible for a child.

**CHAPTER 2**

FURTHER CRITERIA

*Limit to number of people entitled*

- 20 2 The regulations may provide that an individual is not eligible, despite satisfying the primary eligibility criterion, on account of that criterion being satisfied in respect of the same child by someone else.

*Residence and presence*

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

*Financial circumstances*

- 25 4 The regulations may make an individual’s eligibility depend on the individual’s financial circumstances.

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

- 30 5 The regulations may make an individual’s eligibility depend on the individual—
- (a) being, or not being, in receipt of another type of assistance (whether under this Act or another enactment),
- (b) being, or not being, eligible or entitled to receive such assistance.

*Application within specified period*

6 The regulations may provide that an individual ceases to be eligible on account of satisfying the primary eligibility criterion unless, by a deadline specified in the regulations—

- 5 (a) the individual has applied for childhood assistance, or  
(b) the Scottish Ministers have become required to make a determination of the individual's entitlement to childhood assistance by regulations under section 52.

**PART 2**

10 ASSISTANCE TO BE GIVEN

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

7 (1) The regulations may allow childhood assistance to be given to an individual in a form other than money only if the individual (or a person acting on the individual's behalf) has agreed to the assistance being given in that form.

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

**PART 3**

20 FINAL PROVISIONS

*Generality of enabling power unaffected*

8 Nothing in this schedule, apart from the following provisions, is to be taken to limit what may be prescribed in the regulations—

- 25 (a) Chapter 1 of Part 1,  
(b) Part 2.

*Interpretation*

9 In this schedule—

“eligibility” means eligibility for childhood assistance and “eligible” means eligible for childhood assistance,

30 “the regulations” means regulations under section 32A(2),

“specified” means specified in the regulations.”.

**2 Care experience assistance**

- (1) The 2018 Act is modified as follows.  
(2) After section 93 insert—

**“PART 5A**

## CARE EXPERIENCE ASSISTANCE

**93A Scheme to provide care experience assistance**

- 5 (1) The Scottish Ministers may by regulations establish one or more schemes to give financial assistance to individuals who have had experience of being in the care system.
- (2) In this Act, assistance given by virtue of subsection (1) is known as “care experience assistance”.
- 10 (3) The power conferred by subsection (1) includes the power to make provision about—
- (a) who is to give the assistance,
  - (b) determining entitlement to the assistance (including specifying further eligibility rules that are to be used to determine whether an individual is entitled to the assistance),
  - 15 (c) the amount of assistance,
  - (d) applications for assistance,
  - (e) the making of payments to entitled individuals or their representatives,
  - (f) obtaining information,
  - (g) reviews and appeals,
  - 20 (h) the recovery of assistance given in error,
  - (i) offences,
  - (j) applying the provisions of this Act to schemes established by virtue of subsection (1) subject to such modifications as the Scottish Ministers consider appropriate.
- 25 (4) The maximum penalty that may be provided for in care experience assistance regulations 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
    - 30 (iii) both,
  - (b) on conviction on indictment—
    - (i) imprisonment for a term not exceeding 5 years,
    - (ii) a fine, or
    - 35 (iii) both.
- (5) Sections 71 to 73 (which establish offences) apply in connection with care experience assistance as they apply in connection with assistance given under section 24.
- (6) But subsection (5) is subject to any contrary provision in the care experience assistance regulations.

- (7) Where they apply by virtue of subsection (5), sections 71 to 73 apply subject to the following modifications—
- (a) a reference to assistance is to be read as a reference to care experience assistance,
  - (b) a reference to giving notice in accordance with section 56 is to be read as a reference to giving notice in accordance with the care experience assistance regulations,
  - (c) sections 72(3) and 73(3) do not apply unless, in accordance with the care experience 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.
- (8) 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 (5),
  - (b) an offence under the care experience assistance regulations.
- (9) The Scottish Ministers—
- (a) may give directions in relation to the giving of assistance under schemes established by virtue of subsection (1) to the persons responsible for giving it (which those persons must comply with), and
  - (b) must make publicly available any directions they give under paragraph (a).
- (10) Before laying a draft of a Scottish statutory instrument containing care experience assistance regulations before the Scottish Parliament for approval by resolution, the Scottish Ministers must consult—
- (a) such persons as they consider representative of individuals who have had experience of being in the care system, and
  - (b) such other persons as they consider appropriate.
- (11) For the purpose of subsection (10), it is immaterial that anything done by way of consultation was done before section 2(2) of the Social Security (Amendment) (Scotland) Act 2024 comes into force.
- (12) In this section, “care experience assistance regulations” means regulations under subsection (1).”.

## PART 2

### APPLICATIONS FOR ASSISTANCE

#### **3 Repeal of section 52B of the 2018 Act**

- (1) The 2018 Act is modified as follows.
- (2) Section 52B is repealed.

### PART 3

#### DETERMINATIONS AND RE-DETERMINATIONS OF ENTITLEMENT TO ASSISTANCE

##### *Re-determinations*

#### **4 Re-determination and appeal deadlines in exceptional circumstances**

- 5 (1) The 2018 Act is modified as follows.
- (2) In section 41 (right to request re-determination)—
- (a) in subsection (2)(b), the words “(read with section 52A)” are repealed,
- (b) in subsection (4)(b)—
- 10 (i) at the beginning of sub-paragraph (i), insert “if the request is made before the end of the day that falls one year after the day on which the individual is informed (in accordance with section 40) of the determination,”,
- (ii) for “and” following sub-paragraph (i) substitute “or”,
- (iii) for sub-paragraph (ii) substitute—
- 15 “(ii) if the request is made after the period mentioned in sub-paragraph (i) has ended, there are exceptional circumstances justifying why the request was not made sooner (see section 42).”.
- (3) In section 42 (late request for re-determination)—
- (a) in subsection (1), for “41(4)(b)” substitute “41(4)(b)(i)”,
- (b) after subsection (2) insert—
- 20 “(3) It is for—
- (a) the Scottish Ministers, or
- (b) on appeal under section 61, the First-tier Tribunal for Scotland,
- to decide whether, for the purpose of section 41(4)(b)(ii), there are exceptional circumstances justifying why a request for re-determination was not made sooner.
- 25 (4) Having made a decision under subsection (3), the Scottish Ministers must inform the individual concerned—
- (a) of the decision, and
- (b) if the decision is that there are no exceptional circumstances justifying why a request for re-determination was not made sooner, of—
- 30 (i) the reasons for the decision, and
- (ii) the individual’s right to appeal under section 61.”.
- (4) In section 48 (deadline for appealing)—
- (a) in subsection (1)(b)—
- 35 (i) after “permission” insert “(in accordance with subsection (3))”,
- (ii) after “(a)” insert “but still within the period of one year beginning with the day the relevant event occurred”,

(b) in subsection (1)(c)—

(i) for “may not be brought” substitute “may be brought only with the First-tier Tribunal's permission (in accordance with subsection (4))”,

(ii) the words “(but see section 52A)” are repealed,

(c) after subsection (3) insert—

“(4) The First-tier Tribunal may give permission under subsection (1)(c) for an appeal to be brought only if it is satisfied that there are exceptional circumstances justifying why the application was not made sooner.

(5) Any provision of Scottish Tribunal Rules that would (but for this subsection) have the effect of preventing an appeal being brought by virtue of subsection (1)(c) is to be disregarded to the extent that it would have that effect.”

(5) Section 52A and the italic heading immediately preceding it are repealed.

(6) In section 61 (appeal to First-tier Tribunal against process decisions)—

(a) in subsection (1), after paragraph (c) insert—

“(d) that there are no exceptional circumstances justifying why a request for a re-determination was not made sooner (see section 42).”

(b) in subsection (2)(b)—

(i) after “permission” insert “(in accordance with subsection (3))”,

(ii) after “(a)” insert “but still within the period of one year beginning with the day the individual was informed of the decision in accordance with this Act”,

(c) in subsection (2)(c), for “may not be brought” substitute “may be brought only with the First-tier Tribunal's permission (in accordance with subsection (3A))”,

(d) after subsection (3) insert—

“(3A) The First-tier Tribunal may give permission under subsection (2)(c) for an appeal to be brought only if it is satisfied that there are exceptional circumstances justifying why the appeal was not made sooner.

(3B) Any provision of Scottish Tribunal Rules that would (but for this subsection) have the effect of preventing an appeal being brought by virtue of subsection (2)(c) is to be disregarded to the extent that it would have that effect.”

(e) in subsection (4)(b), after “(2)(b)” insert “or (c)”.

(7) In section 85D (right to apply to First-tier Tribunal for review of certain decisions)—

(a) in subsection (3)(b)—

(i) after “permission” insert “(in accordance with subsection (4))”,

(ii) after “(a)” insert “but still within the period of one year beginning with the day on which the decision concerned was made”,

(b) in subsection (3)(c), for “may not be made” substitute “may be made only with the First-tier Tribunal's permission (in accordance with subsection (4A))”,

(c) after subsection (4) insert—

“(4A) The First-tier Tribunal may give permission under subsection (3)(c) for an application to be made only if it is satisfied that there are exceptional circumstances justifying why the application was not made sooner.

(4B) Any provision of Scottish Tribunal Rules that would (but for this subsection) have the effect of preventing an application being made by virtue of subsection (3)(c) is to be disregarded to the extent that it would have that effect.”,

(d) in subsection (9)(b), after “(3)(b)” insert “or (c)”.

## 5 **Withdrawal of request for re-determination**

(1) The 2018 Act is modified as follows.

(2) After section 42 insert—

### **“42A Withdrawal of request for re-determination**

(1) An individual who has made a request for re-determination may request that the Scottish Ministers disregard it.

(2) If an individual requests that a request for re-determination be disregarded—

(a) the Scottish Ministers are not to make a determination of the individual’s entitlement to the particular type of assistance mentioned in the request for re-determination on the basis of the request for re-determination, and

(b) accordingly, their duty to do so under section 43 ceases to apply.

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

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

## 6 **Re-determinations after the period allowed**

(1) The 2018 Act is modified as follows.

(2) In section 43 (duty to re-determine)—

(a) subsection (3) is repealed,

(b) after subsection (4) insert—

“(4A) If the Scottish Ministers fail to make the determination within the period allowed for re-determination—

(a) section 45 applies, and

(b) their duty to make the determination continues unless the individual brings an appeal under section 46.

(4B) If an appeal under section 46 is subsequently withdrawn, the duty of the Scottish Ministers to make the determination applies again and continues unless the appeal is reinstated.”.

(3) In section 44 (notice of re-determination), in subsection (1)(a), after sub-paragraph (iii) insert—

“(iiia) in circumstances where the individual was previously issued with a notice under section 45, that the individual no longer has the

right to appeal to the First-tier Tribunal against the determination under section 37 which prompted the request for a re-determination.”

(4) In section 45 (notice where re-determination not made timeously), in subsection (1)(a)—

(a) the “and” following sub-paragraph (i) is repealed,

(b) the “and” following sub-paragraph (ii) is repealed,

(c) after sub-paragraph (ii) insert—

“(iii) that the Scottish Ministers will continue to consider the request for a re-determination unless the individual brings an appeal against the determination as mentioned in sub-paragraph (ii),

(iv) that if the individual brings an appeal against the determination but subsequently withdraws that appeal, the Scottish Ministers will again consider the request for a re-determination, and

(v) that if the re-determination is carried out and a notice issued under section 44, the individual’s right to appeal to the First-tier Tribunal mentioned in sub-paragraph (ii) will end, and”.

(5) In section 46 (right to appeal to First-tier Tribunal against determination), in subsection (2)—

(a) the “and” following paragraph (a) is repealed,

(b) after paragraph (a) insert—

“(aa) the period allowed for re-determination has ended, and”,

(c) in paragraph (b)—

(i) for “failed” substitute “yet”,

(ii) the words “within the period allowed for re-determination” are repealed.

### *New determination after error*

## **7 New determination of entitlement after error**

(1) The 2018 Act is modified in accordance with subsections (2) to (9).

(2) In section 25 (meaning of “determination of entitlement”), in subsection (1)(a)—

(a) the “or” following sub-paragraph (i) is repealed,

(b) after sub-paragraph (ii) insert “or

(iii) under section 49A,”.

(3) In section 41 (right to request re-determination)—

(a) in subsection (1), after “40” insert “or 49B”,

(b) in subsection (4)(b)(i) (as modified by section 4(2)(b)(i)), after “40” insert “or 49B”.

(4) In section 45 (notice where re-determination not made timeously), in subsection (1)(a)(ii), after “37” insert “or 49A”.

- (5) In section 46 (right to appeal to First-tier Tribunal against determination)—
- (a) in subsection (1)(b), after “37” insert “or 49A”,
  - (b) in subsection (2)(a), after “37” insert “or 49A”.
- (6) In section 48 (deadline for appealing), in subsection (2)(a)(ii), after “37” insert “or 49A”.
- 5 (7) After section 49 insert—

*“New determination after error in determining assistance*

**49A Duty to make new determination after error in determining assistance**

- (1) The Scottish Ministers are to make a new determination of an individual’s entitlement to a particular type of assistance where—

- 10 (a) an individual has made an appeal to the First-tier Tribunal under section 46 which has not yet been decided,
- (b) due to an error, the determination which is the subject of the appeal (“the original determination”)—
- 15 (i) resulted in the individual being entitled to less assistance than the individual would have been entitled to had the error not been made, or being entitled to no assistance, or
- (ii) was otherwise less advantageous to the individual than if the error had not been made, and

- 20 (c) the individual has agreed to a new determination being made by the Scottish Ministers.

- (2) A determination under subsection (1) must—

- (a) result in the individual receiving more assistance than the original determination, or
- 25 (b) otherwise be more advantageous to the individual than the original determination.

- (3) In subsection (1)(b), an “error” means the original determination having been made—

- (a) wrongly, or
- (b) correctly but on the basis of—
- 30 (i) information which subsequently proved to be incorrect, or
- (ii) an assumption which subsequently proved to be wrong.

- (4) A determination under subsection (1) has the effect of ending the individual’s appeal under section 46.

**49B Notice of new determination under section 49A**

- 35 (1) Having made a new determination of an individual’s entitlement to assistance under section 49A, the Scottish Ministers must inform the individual—

- (a) of the determination,
- (b) of the reasons for it,

- (c) of the individual's right under section 41 to request that the Scottish Ministers re-determine the individual's entitlement to the assistance,
- (d) that the individual will have the right under section 46 to appeal to the First-tier Tribunal against the determination should the Scottish Ministers fail to deal with a request for a re-determination within the period allowed for re-determination, and
- (e) if relevant, that the individual has the right to request a copy of an assessment report under section 60.

- (2) The Scottish Ministers must fulfil their duty under subsection (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.

#### **49C Tribunal rules to end appeal after new determination for error**

- (1) The Scottish Ministers may by regulations make rules providing for proceedings in the First-tier Tribunal in relation to an appeal to end, by operation of law, where the Scottish Ministers make a new determination of entitlement in relation to any type of assistance—

- (a) under section 49A, or
- (b) under regulations made under section 79.

- (2) Before making regulations under subsection (1), the Scottish Ministers must consult—

- (a) the President of the Scottish Tribunals, and
- (b) such other persons as they consider appropriate.

- (3) Once the Scottish Civil Justice Council and the Court of Session are involved in the making of Scottish Tribunal Rules by virtue of the coming into force of paragraph 13(2) to (5) of schedule 9 of the Tribunals (Scotland) Act 2014 (“the 2014 Act”)—

- (a) the power conferred by subsection (1) is no longer exercisable by the Scottish Ministers but by the Court of Session by act of sederunt,
- (b) all rules made by virtue of subsection (1) are to be regarded as if made as Scottish Tribunal Rules under Chapter 2 of Part 7 of the 2014 Act,
- (c) all such rules have effect accordingly (and may therefore be revoked, amended or remade by Scottish Tribunal Rules under Chapter 2 of Part 7 of the 2014 Act).

- (4) This section does not affect the power to make Scottish Tribunal Rules in section 71 of the 2014 Act.”.

- (8) In section 62 (presumption for purposes of sections 41, 48 and 61), in subsection (1), after “48” insert “, 49B”.
- (9) The section title of section 62 becomes “**Presumption for purposes of sections 41, 48, 49B and 61**”.
- (10) In section 62A (non-disclosure of information about individual's health), after “44(1)” insert “, 49B(1)”.
- (11) The Tribunals (Scotland) Act 2014 is modified in accordance with subsection (12).

(12) In schedule 9 (transitional and consequential), after paragraph 4(3) insert—

“(4) See section 49C of the Social Security (Scotland) Act 2018 (which makes provision for the making of Tribunal Rules in relation to ending appeals under that Act in certain circumstances).”.

5 *Appeal against Scottish Ministers’ process decisions*

**8 Appeal to First-tier Tribunal against process decisions**

(1) The 2018 Act is modified as follows.

(2) In the italic heading immediately preceding section 61, for “*Right to appeal*” substitute “*Appeal against*”.

10 (3) In section 61 (appeal to First-tier Tribunal against process decisions), after subsection (3B) (inserted by section 4(6)(d)) insert—

“(3C) In an appeal under this section, the First-tier Tribunal may—

(a) uphold the decision,

(b) set aside the decision and decide—

15 (i) in the case of an appeal against a decision mentioned in subsection (1)(a)—

(A) that the application for assistance was made in accordance with section 38(1), or

20 (B) that further information is required in order for the application for assistance to meet the requirements of section 38(1),

(ii) in the case of an appeal against a decision mentioned in subsection (1)(b)—

(A) that the request satisfied the condition in section 41(3), or

25 (B) that further information is required in order for the request to satisfy the condition in section 41(3),

(iii) in the case of an appeal against a decision mentioned in subsection (1)(c), that an individual has a good reason for not requesting a re-determination sooner,

30 (iv) in the case of an appeal against a decision mentioned in subsection (1)(d), that there are exceptional circumstances justifying why a request for a re-determination was not made sooner.”.

(4) After section 61 insert—

**“61A Action by Scottish Ministers following process appeal decision**

35 (1) Following a decision of the First-tier Tribunal under section 61(3C)(b)(i)(A) that an application for assistance was made in accordance with section 38(1), the Scottish Ministers must make a determination of entitlement under section 37.

- 5
- (2) Following a decision of the First-tier Tribunal under section 61(3C)(b)(i)(B) that further information is required for the application to meet the requirements of section 38(1), the Scottish Ministers—
- (a) must seek that further information, and
  - (b) if—
    - (i) that information is received, must make a determination of entitlement under section 37, or
    - (ii) that information cannot be obtained, may make a further decision of the type referred to in section 38(5).
- 10
- (3) Following a decision of the First-tier Tribunal under section 61(3C)(b)(ii)(A) that a request for a re-determination satisfied the condition in section 41(3), the Scottish Ministers must make a determination of entitlement under section 43.
- 15
- (4) Following a decision of the First-tier Tribunal under section 61(3C)(b)(ii)(B) that further information is required for the request to satisfy the condition in section 41(3), the Scottish Ministers—
- (a) must seek that further information, and
  - (b) if—
    - (i) that information is received, must make a determination of entitlement under section 43, or
    - (ii) that information cannot be obtained, may make a further decision of the type referred to in section 41(6).
- 20
- (5) Following a decision of the First-tier Tribunal under section 61(3C)(b)(iii) or (iv), the Scottish Ministers must make a determination of entitlement under section 43.”.
- 25

## **PART 4**

### ASSISTANCE GIVEN IN ERROR

#### **9 Liability of individual for assistance given in error**

- (1) The 2018 Act is modified as follows.
- 30
- (2) In section 63 (liability for assistance given in error)—
- (a) at the beginning of subsection (1) insert “The Scottish Ministers may decide that”,
  - (b) after subsection (4) insert—
    - “(5) Having made a decision that an individual is liable under subsection (1), the Scottish Ministers must inform the individual—
- 35
- (a) of the decision,
  - (b) of the reasons for it,
  - (c) of the individual’s right under section 69A to request that the Scottish Ministers review the decision,

(d) that the individual will have the right under section 69F(1)(b) to appeal to the First-tier Tribunal against the decision should the Scottish Ministers fail to deal with a request for a review within the period allowed for review.

5 (6) The Scottish Ministers must fulfil their duty under subsection (5) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.”.

(3) The title of section 63 becomes “**Liability of individual for assistance given in error**”.

(4) In section 64 (exclusion from liability)—

10 (a) in subsection (2), after “individual” insert “or the individual’s representative”,

(b) in subsection (3)(b), after “individual” insert “or the individual’s representative”,

(c) in subsection (4)(b)—

(i) the words from the first “the” to the end become sub-paragraph (i),

15 (ii) in that sub-paragraph, after “individual”, insert “or the individual’s representative”,

(iii) after that sub-paragraph insert—

“(ii) the reference to information being given to the individual’s representative only applies where that person was the individual’s representative on the date the information was given.”,

20 (d) after subsection (4) insert—

“(5) An individual has no liability under section 63(1) in respect of assistance given due to an error caused or contributed to by the individual’s representative, to the extent that that assistance was used for a purpose which constitutes a breach of any duty or responsibility owed to the individual by the individual’s representative (acting as the individual’s representative).

25 (6) The Scottish Ministers may by regulations specify the persons, or categories of persons, who are included within the meaning of “the individual’s representative” for the purposes of this section and sections 64A and 64B.”.

(5) The title of section 64 becomes “**Exclusion from liability of individual**”.

## 30 **10 Liability of individual’s representative for assistance given in error**

(1) The 2018 Act is modified as follows.

(2) After section 64 insert—

### **“64A Liability of individual’s representative for assistance given in error**

35 (1) The Scottish Ministers may decide that an individual’s representative is liable to pay the Scottish Ministers the value of any assistance that was given to the individual due to an error, where that assistance was used for a purpose which constitutes a breach of any duty or responsibility owed to the individual by the individual’s representative acting as the individual’s representative (but see section 64B).

(2) For the avoidance of doubt, the representative's liability under subsection (1) is limited to the difference in value between—

- (a) the assistance that was given, and
- (b) the assistance (if any) that would have been given had the error not been made,

to the extent that the assistance was used for a purpose which constitutes a breach of any duty or responsibility owed to the individual by the individual's representative (acting as the individual's representative).

(3) If the assistance was given in a form other than money, its value for the purposes of this section is what giving it cost the Scottish Ministers (excluding any administration costs).

(4) In this section and section 64B, references to an error are to—

(a) an error in the performance of a function conferred by virtue of this Part, including a decision under section 50(1) being made—

- (i) wrongly, or
- (ii) correctly but on the basis of—
  - (A) incorrect information, or
  - (B) an assumption which proves to be wrong,

(b) a new decision under section 50(1) not being made after an assumption on the basis of which an earlier decision was made has proved to be wrong.

(5) Having made a decision that an individual's representative is liable under subsection (1), the Scottish Ministers must inform the representative—

- (a) of the decision,
- (b) of the reasons for it,
- (c) of the representative's right under section 69A to request that the Scottish Ministers review the decision,
- (d) that the representative will have the right under section 69F(1)(b) to appeal to the First-tier Tribunal against the decision should the Scottish Ministers fail to deal with a request for a review within the period allowed for review.

(6) The Scottish Ministers must fulfil their duty under subsection (5) in a way that leaves the individual's representative with a record of the information which the representative can show to, or otherwise share with, others.

#### **64B Exclusion from liability of individual's representative**

(1) An individual's representative has no liability under section 64A(1) in respect of assistance given due to an error if the error is neither—

- (a) the individual's nor the individual's representative's fault, nor
- (b) the kind of error that an individual could reasonably be expected to notice.

(2) For the purpose of this section, an error is an individual's fault if it is caused or contributed to by the individual or the individual's representative—

- (a) providing false or misleading information,
- (b) failing to notify the Scottish Ministers about a change in circumstances in breach of a duty to do so under section 56, or
- (c) causing another person to do either of those things.

(3) In considering whether an error is of a kind that an individual could reasonably be expected to notice, the following are amongst the matters to which regard is to be had—

- (a) the extent to which the value of the assistance given in error exceeds the value of the assistance that would have been given (if any) had the error not been made,
- (b) whether any information given to the individual or the individual's representative by the Scottish Ministers prior to, or immediately after, the assistance being given would have alerted a reasonable person to the fact that a decision had been, or was to be, made on the basis of incorrect information or a wrong assumption.

(4) In—

- (a) subsection (1)(a), the reference to providing information includes making a statement,
- (b) subsection (3)(b)—
  - (i) the reference to information given to the individual or the individual's representative by the Scottish Ministers does not include information explaining why the Ministers consider the assistance to have been given in error,
  - (ii) the reference to information being given to the individual's representative only applies where that person was the individual's representative on the date the information was given.”.

(3) In—

- (a) section 65 (consideration for debtor's circumstances)—
  - (i) in subsection (1)(a), after “63” insert “or (as the case may be) 64A”,
  - (ii) in subsection (2), for “individual” substitute “person”,
- (b) section 87A(1)(a) (power to transfer jurisdiction from sheriff to tribunal), after “63” insert “or 64A”,
- (c) schedule 2 (carer's assistance regulations)—
  - (i) in paragraph 10(b), after “63” insert “or 64A”,
  - (ii) in paragraph 11(3), after “63” insert “or 64A”,
- (d) schedule 5 (disability assistance regulations)—
  - (i) in paragraph 15(b), after “63” insert “or 64A”,
  - (ii) in paragraph 17(3), after “63” insert “or 64A”,

- (e) schedule 9 (housing assistance regulations)—
  - (i) in paragraph 11(b), after “63” insert “or 64A”,
  - (ii) in paragraph 12(3), after “63” insert “or 64A”.

## 11 Consequential modification of the Prescription and Limitation (Scotland) Act 1973

- (1) The Prescription and Limitation (Scotland) Act 1973 is modified as follows.
- (2) In schedule 1 (obligations affected by prescriptive period of five years), in paragraph 1(ba), after “63” insert “or 64A”.

## 12 Liability of individual’s estate

- (1) The 2018 Act is modified as follows.
- (2) In section 69(1) (liability where assistance given for period after death)—
  - (a) the words from the second “the” to the end become paragraph (a),
  - (b) in that paragraph, for “section 24” substitute “a determination of the individual’s entitlement to assistance”,
  - (c) after that paragraph insert—
    - “(b) where the Scottish Ministers make a decision under section 63(1) or 64A(1) after the death of the individual who would have been liable under section 63 or (as the case may be) 64A, the value of any assistance which that individual would have been liable to pay to the Scottish Ministers under section 63 or (as the case may be) 64A had the decision been made before that individual’s death.”.
- (3) The title of section 69 becomes “**Liability of individual’s estate**”.

## 13 Assistance given in error: reviews and appeals

- (1) The 2018 Act is modified as follows.
- (2) After section 69 insert—

*“Assistance given in error: reviews and appeals*

### 69A Right to request review

- (1) An individual may request that the Scottish Ministers review their decision after being informed (in accordance with section 63) of a decision by the Ministers of the individual’s liability.
- (2) An individual’s representative may request that the Scottish Ministers review their decision after being informed (in accordance with section 64A) of a decision by the Ministers of the representative’s liability.
- (3) A request for a review under subsection (1) or (2) is valid only if the conditions set out in the following subsections are satisfied—
  - (a) subsection (4), and
  - (b) subsection (5).

- (4) The condition referred to in subsection (3)(a) is satisfied if the request is made in such form as the Scottish Ministers require.
- (5) The condition referred to in subsection (3)(b) is satisfied if—
- (a) the request is made before the end of the period prescribed by the Scottish Ministers in regulations, or
- (b) in a case where the request is made after that period has ended—
- (i) if the request is made before the end of the day that falls one year after the day on which the individual or (as the case may be) the individual's representative is informed in accordance with section 63 or (as the case may be) 64A of the decision, that person has a good reason for not requesting a review sooner (see section 69B), or
- (ii) if the request is made after the period mentioned in sub-paragraph (i) has ended, there are exceptional circumstances justifying why the request was not made sooner (see section 69B).
- (6) The Scottish Ministers must publicise any requirements for the time being set under subsection (4).
- (7) If the Scottish Ministers decide that something purporting to be a request for a review does not satisfy the condition in subsection (4), they must inform the person who purported to make the request of—
- (a) the decision,
- (b) the reasons for it, and
- (c) the person's right to appeal under section 69J.

**69B Late request for review under section 69A**

- (1) It is for—
- (a) the Scottish Ministers, or
- (b) on appeal under section section 69J, the First-tier Tribunal for Scotland, to decide whether, for the purpose of section 69A(5)(b)(i), a person has a good reason for not requesting a review sooner.
- (2) Having made a decision under subsection (1), the Scottish Ministers must inform the person concerned—
- (a) of the decision, and
- (b) if the decision is that the person has no good reason for not requesting a review sooner, of—
- (i) the reasons for the decision, and
- (ii) the person's right to appeal under section 69J.
- (3) It is for—
- (a) the Scottish Ministers, or
- (b) on appeal under section section 69J, the First-tier Tribunal for Scotland,

to decide whether, for the purpose of section 69A(5)(b)(ii), there are exceptional circumstances justifying why a request for review was not made sooner.

- (4) Having made a decision under subsection (3), the Scottish Ministers must inform the person concerned—
- (a) of the decision, and
  - (b) if the decision is that there are no exceptional circumstances justifying why a request for review was not made sooner, of—
    - (i) the reasons for the decision, and
    - (ii) the person's right to appeal under section 69J.

### **69C Duty to complete review**

- (1) On being requested under section 69A to review a decision that a person is liable under section 63 or 64A, the Scottish Ministers are to review that decision.
- (2) The Scottish Ministers must aim to complete the review within the period allowed for review.
- (3) If the Scottish Ministers complete the review (whether or not within the period allowed for review), section 69D applies.
- (4) If the Scottish Ministers fail to complete the review within the period allowed for review—
- (a) section 69E applies, and
  - (b) their duty to complete the review continues unless the person brings an appeal under section 69F.
- (5) If an appeal under section 69F is subsequently withdrawn, the duty of the Scottish Ministers to complete the review applies again and continues unless the appeal is reinstated.
- (6) The period allowed for review is to be prescribed by the Scottish Ministers in regulations.
- (7) The reference in subsection (1) to a request under section 69A is to a request that is valid according to subsection (3) of that section.

### **69D Notice of outcome following review**

- (1) Having completed a review under section 69C, the Scottish Ministers must—
- (a) inform the person who requested the review—
    - (i) of the outcome of the review,
    - (ii) of the reasons for that outcome,
    - (iii) of the person's right to appeal to the First-tier Tribunal under section 69F against the outcome of the review,
    - (iv) in circumstances where the person was previously issued with a notice under section 69E, that the person no longer has the right to appeal to the First-tier Tribunal against the decision under section 63 or 64A which prompted the request for a review,

(b) provide the person with a form that the person can complete and submit to the Scottish Ministers in order to bring an appeal against the outcome of the review.

(2) The Scottish Ministers must fulfil their duty under subsection (1)(a) in a way that leaves the person with a record of the information which the person can show to, or otherwise share with, others.

#### **69E Notice where review not completed timeously**

(1) Having failed to complete a review under section 69C within the period allowed for review, the Scottish Ministers must—

(a) inform the person—

(i) that the review has not been completed within the period allowed,

(ii) that the person therefore has the right to appeal to the First-tier Tribunal against the decision under section 63 or 64A which prompted the request for a review,

(iii) that the Scottish Ministers will continue to consider the request for a review unless the person brings an appeal as mentioned in sub-paragraph (ii),

(iv) that if the person brings an appeal as mentioned in sub-paragraph (ii) but subsequently withdraws that appeal, the Scottish Ministers will again consider the request for a review, and

(v) that if the review is completed and a notice issued under section 69D, the person's right to appeal to the First-tier Tribunal mentioned in sub-paragraph (ii) will end, and

(b) provide the person with a form that the person can complete and submit to the Scottish Ministers in order to bring an appeal against the decision under section 63 or 64A.

(2) The Scottish Ministers must fulfil their duty under subsection (1)(a) in a way that leaves the person with a record of the information which the person can show to, or otherwise share with, others.

#### **69F Right to appeal to First-tier Tribunal**

(1) A person may appeal to the First-tier Tribunal for Scotland—

(a) against the outcome of a review under section 69C, or

(b) in a case where subsection (2) applies, against the decision under section 63 or 64A referred to in that subsection.

(2) This subsection applies where—

(a) having been informed of a decision under section 63 or 64A of the person's liability, the person has made a request for a review under section 69A,

(b) the period allowed for review has ended, and

(c) the Scottish Ministers have yet to complete a review under section 69C in consequence of that request.

**69G Initiating an appeal**

(1) In order to bring an appeal under section 69F, a person must submit to the Scottish Ministers the form provided under section 69D or (as the case may be) 69E.

5 (2) On receiving a form that they provided under section 69D or 69E, the Scottish Ministers must send—

(a) the form, and

(b) the information held by them that they used to make the decision which is the subject of the appeal,

10 to the First-tier Tribunal.

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

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

15 (5) For the avoidance of doubt, the form that the Scottish Ministers provide under section 69D or 69E need not be a physical form.

(6) Scottish Tribunal Rules providing for the form and manner in which an appeal under section 69F is to be brought may not displace the effect of subsection (1), but this section is otherwise without prejudice to what may be provided under any power to make Scottish Tribunal Rules.

20 **69H Deadline for appealing**

(1) An appeal under section 69F—

(a) may be brought without the First-tier Tribunal's permission if an appeal application is made within the period of 31 days beginning with the day the relevant event occurred,

25 (b) may be brought only with the First-tier Tribunal's permission (in accordance with subsection (3)) if an appeal application is made after the period mentioned in paragraph (a) but still within the period of one year beginning with the day the relevant event occurred,

30 (c) may be brought only with the First-tier Tribunal's permission (in accordance with subsection (4)) if an appeal application has not been made within the period of one year beginning with the day the relevant event occurred.

(2) In subsection (1)—

(a) “the relevant event” means—

35 (i) in the case of an appeal against the outcome of a review under section 69C, the person who requested the review being informed of the outcome in accordance with section 69D,

40 (ii) in the case of an appeal against a decision under section 63 or 64A, the person to whom the decision relates being informed (in accordance with section 69E) that the person has the right to appeal against it,

(b) an appeal application is made when a form, that relates to the decision in question and has been completed to the extent that Scottish Tribunal Rules require, is received by the Scottish Ministers having been submitted in accordance with section 69G(1).

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

10 (4) The First-tier Tribunal may give permission under subsection (1)(c) for an appeal to be brought only if it is satisfied that there are exceptional circumstances justifying why the application was not made sooner.

(5) Any provision of Scottish Tribunal Rules that would (but for this subsection) have the effect of preventing an appeal being brought by virtue of subsection (1)(c) is to be disregarded to the extent that it would have that effect.

### **69I First-tier Tribunal’s power to determine liability**

15 In an appeal under section 69F, the First-tier Tribunal may—

(a) uphold the decision under section 63 or 64A or (as the case may be) the outcome of the review under section 69C, or

(b) make its own determination of the person’s liability under section 63 or 64A.

### **69J Right to appeal process decisions under sections 69A and 69B**

20 (1) A person may appeal to the First-tier Tribunal for Scotland against a decision by the Scottish Ministers—

(a) to reject something purporting to be a request for a review by that person (see section 69A(7)),

25 (b) that a person has no good reason for not requesting a review sooner (see section 69B(1)(a)),

(c) that there are no exceptional circumstances justifying why a request for review was not made sooner (see section 69B(3)(a)).

(2) An appeal under this section—

30 (a) may be brought without the First-tier Tribunal’s permission within the period of 31 days beginning with the day the person was informed of the decision in accordance with this Act,

35 (b) may be brought only with the First-tier Tribunal’s permission (in accordance with subsection (3)) after the period mentioned in paragraph (a) but still within the period of one year beginning with the day the person was informed of the decision in accordance with this Act,

(c) may be brought only with the First-tier Tribunal’s permission (in accordance with subsection (4)) after the end of the period of one year beginning with the day the person was informed of the decision in accordance with this Act.

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- (3) The First-tier Tribunal may give permission under subsection (2)(b) for an appeal to be made only if it is satisfied that there is a good reason for the appeal not having been made sooner.
- (4) The First-tier Tribunal may give permission under subsection (2)(c) for an appeal to be brought only if it is satisfied that there are exceptional circumstances justifying why a request for review was not made sooner.
- (5) Any provision of Scottish Tribunal Rules that would (but for this subsection) have the effect of preventing an appeal being brought by virtue of subsection (2)(c) is to be disregarded to the extent that it would have that effect.
- (6) In an appeal under this section, the First-tier Tribunal may—
- (a) uphold the decision, or
  - (b) set aside the decision and decide—
    - (i) in the case of an appeal against a decision mentioned in subsection (1)(a)—
      - (A) that the request satisfied the condition in section 69A(4), or
      - (B) that further information is required in order for the request to satisfy the condition in section 69A(4),
    - (ii) in the case of an appeal against a decision mentioned in subsection (1)(b), that a person has a good reason for not requesting a review sooner,
    - (iii) in the case of an appeal against a decision mentioned in subsection (1)(c), that there are exceptional circumstances justifying why a request for review was not made sooner.
- (7) A decision by the First-tier Tribunal about—
- (a) the outcome of an appeal under this section, or
  - (b) whether to give permission under subsection (2)(b) or (2)(c) for an appeal to be brought,
- is final.
- (8) Accordingly (and without prejudice to the generality of subsection (7)), 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.

**69K Action by Scottish Ministers following process appeal decision**

- (1) Following a decision of the First-tier Tribunal under section 69J(6)(b)(i)(A) that a request for review satisfied the condition in section 69A(4), the Scottish Ministers must complete a review under section 69C.
- (2) Following a decision of the First-tier Tribunal under section 69J(6)(b)(i)(B) that further information is required for the request to satisfy the condition in section 69A(4), the Scottish Ministers—
- (a) must seek that further information, and

(b) if—

- (i) that information is received, must complete a review under section 69C, or
- (ii) if that information cannot be obtained, may make a further decision of the type referred to in section 69A(7).

- (3) Following a decision of the First-tier Tribunal under paragraph (ii) or (iii) of section 69J(6)(b), the Scottish Ministers must complete a review under section 69C.

**69L Presumption for purposes of sections 69A, 69H and 69J**

- (1) Subsection (2) applies in relation to the references in sections 69A, 69H and 69J to someone being informed of something by the Scottish Ministers in accordance with a provision of this Act.

- (2) Where, in order to fulfil their duty to inform a person of something, the Scottish Ministers send information—

- (a) through the postal service to the last known address the Scottish Ministers have for the person, or
- (b) by email to the email address most recently provided to the Scottish Ministers by the person for the purposes of this Act,

the person is to be taken to have received the information 48 hours after it is sent by the Scottish Ministers unless the contrary is shown.”.

**PART 5**

APPOINTEES

**14 Power to make provision in relation to appointments made by a Minister of the Crown**

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

**“85F Power to make provision in relation to appointments made by a Minister of the Crown**

- (1) The Scottish Ministers may by regulations make provision for an appointed person to be treated as though appointed by the Scottish Ministers under section 85A or 85B to act on behalf of that individual.

- (2) In this section “appointed person” means a person appointed by a Minister of the Crown to act on behalf of an individual who is to receive assistance by virtue of this Act.

- (3) Regulations under subsection (1) are to—

(a) specify—

- (i) the category of individuals to whom the regulations apply,
- (ii) the appointed persons to whom the regulations apply, by reference to the provision under which they were appointed, and

(iii) the forms of assistance in relation to which paragraph (b) is to apply, and

(b) provide that where an individual to whom the regulations apply is to receive a specified form of assistance, the Scottish Ministers must, as soon as reasonably practicable—

(i) consider whether the conditions for making an appointment under section 85A or 85B are met in relation to the individual,

(ii) consider whether to terminate the appointment that is treated as having been made by virtue of the regulations, and terminate it if they consider appropriate,

(iii) if they have terminated an appointment under sub-paragraph (ii), appoint a person under section 85A or 85B to act on behalf of the individual if they consider it appropriate to do so.”.

## **15 Liability of appointees under sections 85A and 85B of the 2018 Act**

(1) The 2018 Act is modified as follows.

(2) After section 85F (inserted by section 14(2)) insert—

### **“85G Liability of appointees under sections 85A and 85B**

(1) Where a person appointed under section 85A or 85B (or treated as being so appointed as a result of regulations made under section 85F) uses any funds of the child or (as the case may be) other individual for whom they are acting—

(a) outwith their authority or power to act under that appointment,

(b) in breach of any duty or responsibility arising from that appointment,

(c) after their appointment is terminated,

that person is liable to repay those funds to the child or other individual.

(2) A person appointed under section 85A or 85B (or treated as being so appointed as a result of regulations made under section 85F) is not liable under subsection (1) where the person has—

(a) acted reasonably and in good faith, or

(b) failed to act and the failure was reasonable and in good faith.”.

## **PART 6**

### **INFORMATION FOR AUDIT**

## **16 Information for audit of social security system**

(1) The 2018 Act is modified as follows.

(2) After section 87A insert—

*“Information for audit of social security system***87B Obtaining information for audit**

- 5 (1) The Scottish Ministers may request an individual who is entitled to assistance by virtue of this Act to provide, within such period as Ministers specify in the request, information about—
- (a) the individual’s entitlement to assistance, and
  - (b) the payment of assistance to the individual.
- 10 (2) A request under subsection (1) may only be made for the purposes of—
- (a) auditing the monetary value of error and fraud in the Scottish social security system, and
  - (b) carrying out corrections of apparent errors and investigations into potential fraud (and other activities connected to auditing).
- 15 (3) Information received in response to a request under subsection (1) may only be used for the purposes mentioned in subsection (2).
- 20 (4) The Scottish Ministers may require the response to a request under subsection (1) to take the form of—
- (a) an interview in person,
  - (b) a telephone call or a video call,
  - (c) in circumstances prescribed by the Scottish Ministers in regulations, a written response, or
  - (d) such other form of response prescribed by the Scottish Ministers in regulations.
- 25 (5) The Scottish Ministers may by regulations prescribe categories of individuals who are not to be requested to provide information under subsection (1).
- 30 (6) If an individual fails to provide the requested information by the end of the period specified in the request under subsection (1), the Scottish Ministers may issue a decision to suspend the assistance to the individual in accordance with regulations under section 51(2)(aa).
- (7) Where the Scottish Ministers issue a decision to suspend the assistance to the individual under subsection (6) they must, at the same time, make a further request under subsection (1) that the individual provide them with the information within such further period as they specify.
- (8) Subsections (6) and (7) may apply more than once in respect of the same individual.

**87C Right to seek withdrawal of information request**

- 35 (1) An individual who has received a request for information under section 87B(1) may, before the end of the period prescribed by the Scottish Ministers in regulations, ask the Scottish Ministers to withdraw the request.
- 40 (2) The Scottish Ministers may only withdraw the request for information if the individual has a good reason for it to be withdrawn.

- (3) It is for the Scottish Ministers to decide whether, for the purpose of subsection (2), an individual has a good reason for the request to be withdrawn.
- (4) The Scottish Ministers must make a decision under subsection (3) before the end of the period prescribed by the Scottish Ministers in regulations.
- 5 (5) Regulations under subsection (4) may also make provision about cases where the Scottish Ministers fail to make a decision under subsection (3) within the period prescribed in the regulations.
- (6) The Scottish Ministers' decision under subsection (3) is final.
- 10 (7) Having made a decision under subsection (3), the Scottish Ministers must inform the individual concerned—
- (a) of the decision,
  - (b) of the reasons for it,
  - (c) that the decision is final, and
  - 15 (d) if the decision is that there is a good reason for withdrawal, that the request for information is withdrawn.
- (8) The Scottish Ministers must fulfil their duty under subsection (7) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.
- 20 (9) Where the Scottish Ministers decide under subsection (3) that an individual has a good reason for withdrawal, they must withdraw the request for information.

**87D Right to support for response to request**

- 25 (1) The Scottish Ministers must comply with an individual's wish to have another person ("a supporter") present during any interview, telephone call, video call, drafting of a written response or any other form of provision of a response relating to a request to provide information under section 87B(1), unless the wish is unreasonable.
- 30 (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 during the interview, telephone call, video call, drafting of a written response or (as the case may be) other form of provision of a response, and includes making representations on the individual's behalf.
- 35 (4) Nothing in this section is to be read as requiring the Scottish Ministers to provide or pay for a supporter.

**87E Right to advocacy**

- 40 (1) Every individual to whom subsection (3) applies has a right of access to independent advocacy in connection with the individual's engagement with the process for a request for information under section 87B(1).

- (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.
- 5 (3) This subsection applies to an individual if, owing to a disability, the individual requires an advocate’s help to engage effectively with the process for a request for information under section 87B(1).
- (4) For the purposes of this section—
- 10 (a) “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 individual’s engagement with the process of a request for information under section 87B(1) as is, in the circumstances, appropriate,
- (b) advocacy services are independent if they are provided by a person other than the Scottish Ministers.”.
- 15 (3) In schedule 11 (suspension of assistance), in paragraph 1(1)(a), after “54(1A)” insert “or 87B(6)”.

## PART 7

### RECOVERY FROM COMPENSATION PAYMENTS

#### 17 **Recovery of value of assistance from compensation payments**

- 20 (1) The 2018 Act is modified as follows.
- (2) After section 94 insert—

#### “PART 6A

### RECOVERY FROM COMPENSATION PAYMENTS

#### *Introductory*

#### 25 **94A Application of this Part**

- (1) This Part applies where—
- 30 (a) a person is to make a payment (whether on that person’s own behalf or not) to or in respect of an individual in consequence of any accident, injury or disease suffered by that individual,
- (b) relevant assistance has been, or is likely to be, received by or for that individual during the relevant period in respect of the accident, injury or disease, and
- 35 (c) the relevant period start date occurs on or after the day on which section 17(2) of the Social Security (Amendment) (Scotland) Act 2024 comes into force.
- (2) The reference in subsection (1)(a) to a payment to be made in consequence of any accident, injury or disease is to a payment to be made—
- (a) by or on behalf of a person who is, or is alleged to be, liable to any extent in respect of the accident, injury or disease,
- 40 (b) under a compensation scheme for motor accidents, or

(c) under the Diffuse Mesothelioma Payment Scheme (established under the Mesothelioma Act 2014),

but does not include a payment mentioned in Part 1 of schedule 12.

5 (3) The Scottish Ministers may by regulations modify Part 1 of schedule 12 so as to—

- (a) add a payment,
- (b) remove a payment,
- (c) vary the description of a payment.

10 (4) The reference in subsection (1)(a) to a payment to be made in consequence of any accident, injury or disease includes a payment to be made—

- (a) voluntarily, or under a court order or an agreement, or otherwise,
- (b) in Scotland or elsewhere.

15 (5) The Scottish Ministers may by regulations make provision about the recovery of the amounts of payments made under schemes providing for compensation in the form of a lump sum payment to or in respect of an individual in consequence of any accident, injury or disease suffered by that individual, where a compensation payment in respect of the same accident, injury or disease has been paid to or in respect of that individual.

20 (6) Regulations under subsection (5)—

- (a) must specify the lump sum payments to which they apply,
- (b) may in particular—
  - 25 (i) modify the heads of compensation set out in column 1 of the table in Part 2 of schedule 12 as they apply to the recovery of such payments,
  - (ii) make provision for the recovery of the amount of such a payment made to or in respect of another person as a result of their having a prescribed relationship with the injured person,
  - 30 (iii) make provision for the recovery of the amount of such a payment from a compensation payment (including for the recovery of an amount which reduces the compensation payment to nil),
  - (iv) make provision about certificates of recoverable assistance in relation to such payments,
  - (v) apply any provision of this Part to such payments, with or without modifications.

35 **94B Interpretation of this Part**

(1) In this Part—

“certificate of recoverable assistance” is to be interpreted in accordance with section 94D,

40 “compensation payment” means a payment mentioned in section 94A(1)(a),

“compensation scheme for motor accidents” means any scheme or arrangement under which funds are available for the payment of compensation in respect of motor accidents caused, or alleged to have been caused, by uninsured or unidentified persons,

5 “compensator” means the person making the compensation payment (and includes the scheme administrator of the Diffuse Mesothelioma Payment Scheme),

“injured person” means the individual who suffered the accident, injury or disease in respect of which the compensation payment is made,

10 “payment” means payment in money or money’s worth, and related expressions are to be construed accordingly,

“prescribed” means prescribed by regulations made by the Scottish Ministers,

15 “recoverable assistance” means relevant assistance which has been, or is likely to be, received as mentioned in section 94A(1)(b),

“relevant assistance” means—

(a) assistance of a type listed in column 2 of the table in Part 2 of schedule 12,

20 (b) any short-term assistance given as a result of a reduction or cessation of any such assistance,

“relevant period” means the period beginning on the relevant period start date and ending on the relevant period end date,

“relevant period start date” means—

25 (a) in the case of accident or injury, the day on which the accident or injury in question occurred,

(b) in the case of disease, the day on which the injured person first claimed relevant assistance in consequence of the disease,

“relevant period end date” means the earlier of—

30 (a) the day which is five years after the relevant period start date, and

(b) the day on which—

(i) a person makes a compensation payment in final discharge of any claim made by or in respect of the injured person and arising out of the accident, injury or disease, or

35 (ii) where an agreement is made under which an earlier compensation payment is treated as having been made in final discharge of any such claim, that earlier compensation payment was made,

40 “scheme administrator”, in relation to the Diffuse Mesothelioma Payment Scheme, has the meaning given by section 18 of the Mesothelioma Act 2014,

“short-term assistance” means assistance given under or by virtue of section 36.

- (2) The Scottish Ministers may by regulations modify—
  - (a) the definition of “relevant assistance”,
  - (b) the table in Part 2 of schedule 12.

*Certificate of recoverable assistance*

**94C Application for certificate of recoverable assistance**

- (1) Before making a compensation payment, a compensator must apply to the Scottish Ministers for a certificate of recoverable assistance.
- (2) An application under subsection (1) must—
  - (a) be in such form as the Scottish Ministers require,
  - (b) include such information about the injured person and the accident, injury or disease as the Scottish Ministers require,
  - (c) specify the name and address of the person to whom the certificate is to be issued.
- (3) The Scottish Ministers must publicise any requirements for the time being set under subsection (2).
- (4) Where a compensator makes an application for a certificate which complies with the requirements of subsection (2), the Scottish Ministers must—
  - (a) send the compensator an acknowledgement of receipt of the application,
  - (b) subject to subsection (8), issue the certificate to the person specified in the application before the end of the prescribed period (or, if no such period is prescribed, 4 weeks) beginning with the day after the day on which the application is received by the Scottish Ministers.
- (5) The certificate remains in force until the date specified in it as the date it ceases to be in force.
- (6) The compensator may apply for a further certificate from time to time.
- (7) Where a certificate ceases to be in force, the Scottish Ministers may issue a further certificate without an application for one being made.
- (8) Where the compensator applies for a further certificate while a certificate (“the existing certificate”) remains in force, the Scottish Ministers must issue the further certificate before the end of the prescribed period (or, if no such period is prescribed, 4 weeks) beginning with the day after the day on which the existing certificate ceases to be in force.
- (9) The Scottish Ministers may by regulations provide for the day on which an application for a certificate is to be treated as received.

**94D Information contained in certificates**

- (1) A certificate of recoverable assistance is a certificate which specifies, for each form of recoverable assistance, the amount of assistance which has been, or is likely to be, received during the relevant period.

- (2) If a certificate of recoverable assistance is issued after the relevant period end date, it must specify the amount of assistance which has been received during the relevant period.
- (3) If a certificate of recoverable assistance is issued before the relevant period end date, it must specify—
- (a) the amount of assistance which has been received from the relevant period start date until the day on which the application for the certificate was received by the Scottish Ministers,
  - (b) the rate and period for which, and the intervals at which, assistance is likely to be received from the day on which the application for the certificate was received by the Scottish Ministers until the relevant period end date.
- (4) If any of the actual amounts, rates or periods required to be specified in a certificate are not available, the certificate may specify reasonable estimates of those amounts, rates or periods.
- (5) Where the Scottish Ministers issue a certificate, they must provide the information contained in the certificate to—
- (a) the individual who appears to them to be the injured person,
  - (b) any person who they think will receive a compensation payment in respect of the injured person.
- (6) The Scottish Ministers must, on request from a person to whom a certificate is issued or to whom information is provided under subsection (5), provide the person with details of the manner in which any amount, rate or period specified in the certificate has been determined.
- (7) The Scottish Ministers must fulfil their duty under subsections (5) and (6) in a way that leaves the person with a record of the information which the person can show to, or otherwise share with, others.

*Liability of compensator*

**94E Liability to pay the Scottish Ministers amount equal to recoverable assistance**

- (1) A compensator is liable to pay the Scottish Ministers an amount equal to the amount of recoverable assistance.
- (2) The liability referred to in subsection (1) arises immediately before the compensation payment (or, if there is more than one, the first of them) is made.
- (3) The compensator must pay the amount referred to in subsection (1) before the end of the period of 14 days beginning with the later of—
- (a) the day on which the compensation payment (or, if there is more than one, the first of them) is made,
  - (b) the day on which the first certificate of recoverable assistance in respect of that recoverable assistance is issued under section 94C.

**94F Recovery of payments due under section 94E**

- (1) This section applies where a compensator has made a compensation payment but—
- (a) has not applied for a certificate of recoverable assistance, or
  - (b) has not made any payment due to the Scottish Ministers under section 94E within the period mentioned in section 94E(3).
- (2) Where the Scottish Ministers are aware that this section applies, they must issue the compensator with—
- (a) either—
    - (i) a certificate of recoverable assistance, if none has been issued, or
    - (ii) a copy of the certificate of recoverable assistance or, if more than one has been issued, the most recent one, and
  - (b) a demand that payment of any amount due under section 94E be made immediately.
- (3) The Scottish Ministers may recover the amount for which a demand for payment is made under subsection (2)(b) from the compensator in accordance with subsection (4).
- (4) An amount recoverable under subsection (3) may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom in Scotland.
- (5) A document bearing a certificate which—
- (a) is signed by a person authorised to do so by the Scottish Ministers, and
  - (b) states that the document, apart from the certificate, is a record of the amount recoverable under subsection (3),
- is conclusive evidence that the amount stated is recoverable.
- (6) A certificate under subsection (5) purporting to be signed by a person authorised to do so by the Scottish Ministers is to be treated as so signed unless the contrary is proved.

**94G Amounts overpaid under section 94E**

- (1) This section applies where a compensator has paid a sum to the Scottish Ministers which purports to be in satisfaction of liability under section 94E but which the compensator was not liable to pay.
- (2) The Scottish Ministers are liable to pay the compensator the difference between the amount which has been paid and the amount which should have been paid.
- (3) The Scottish Ministers must—
- (a) send to the compensator and the person to whom the compensation payment was made a statement showing—
    - (i) the total amount which has been paid to the Scottish Ministers,
    - (ii) the amount which should have been paid,

(iii) the difference between these two amounts, which will be paid to the compensator by the Scottish Ministers, and

(b) issue a new certificate of recoverable assistance.

(4) Section 94D applies in relation to a new certificate issued under this section as it applies to the original certificate.

(5) Where the amount of the compensation payment made by the compensator was reduced under section 94J or 94K, the compensator must—

(a) recalculate the amount of the compensation payment under section 94J or (as the case may be) 94K to take account of the new certificate of recoverable assistance, and

(b) if that recalculation results in an increase to the compensation payment, pay the additional amount to the person to whom the compensation payment was made.

(6) The compensator is only liable to pay the amount referred to in subsection (5)(b) once the compensator has received payment from the Scottish Ministers.

(7) This section does not apply in a case where section 94P (payments following reconsideration or appeal) applies.

#### **94H Liability of insurers**

(1) If a compensation payment is made in a case where—

(a) a person is liable to any extent in respect of the accident, injury or disease, and

(b) the liability is covered to any extent by a policy of insurance,

the policy is also to be treated as covering any liability of that person under section 94E.

(2) Liability imposed on the insurer by subsection (1) cannot be excluded or restricted.

(3) For the purposes of subsection (2), excluding or restricting liability includes—

(a) making the liability or its enforcement subject to restrictive or onerous conditions,

(b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of that person pursuing any such right or remedy,

(c) excluding or restricting rules of evidence or procedure.

(4) The Scottish Ministers may by regulations make provision about the liability imposed on the insurer under subsection (1).

(5) The reference in subsection (1)(b) to a policy of insurance—

(a) includes a policy of insurance issued at any time,

(b) includes reference to a contract of insurance and its making.

**94I Failure to issue certificate of recoverable assistance**

- (1) A compensation payment is to be disregarded for the purposes of sections 94E, 94J and 94K if, when it is made—
- (a) the compensator has—
    - (i) made an application for a certificate of recoverable assistance which complies with the requirements of section 94C(2), and
    - (ii) received acknowledgement of the receipt of the application under section 94C(4)(a), and
  - (b) the Scottish Ministers have not issued the certificate of recoverable assistance as required by subsection (4)(b) or (8) of section 94C.
- (2) Where a compensation payment is to be disregarded under subsection (1) but the compensator nevertheless makes a payment to the Scottish Ministers for which the compensator would otherwise be liable under section 94E—
- (a) the disregard in subsection (1) ceases to apply to the compensation payment,
  - (b) the Scottish Ministers are not liable to repay the amount of the payment to the compensator under section 94G or otherwise.

*Reduction of compensation payment*

**94J Reduction of compensation payment**

- (1) This section applies in a case where, in relation to any head of compensation listed in column 1 of the table in Part 2 of schedule 12—
- (a) any of the compensation payment is attributable to that head, and
  - (b) any recoverable assistance is shown against that head in column 2 of the table in Part 2 of schedule 12.
- (2) The compensator must make the calculation mentioned in subsection (4).
- (3) Any claim of a person to receive the compensation payment is to be treated for all purposes as discharged if—
- (a) the person is paid the amount (if any) of the compensation payment calculated in accordance with this section, or
  - (b) in a case in which the amount of the compensation payment so calculated is nil, the person is given a statement saying so by the person who would (apart from this section) have paid the gross amount of the compensation payment.
- (4) For each head of compensation listed in column 1 of the table in Part 2 of schedule 12, so much of the gross amount of the compensation payment as is attributable to that head is to be reduced (to nil, if necessary) by deducting the amount of the recoverable assistance or (as the case may be) the aggregate amount of the recoverable assistance shown against it in column 2 of the table.
- (5) Subsection (4) is to have effect as if a requirement to reduce a payment by deducting an amount which exceeds that payment were a requirement to reduce that payment to nil.

(6) The amount of the compensation payment calculated in accordance with this section is the gross amount of the compensation payment less the sum of the reductions made under subsection (4) (and, accordingly, may be nil).

(7) For the purposes of this Part—

5 (a) the gross amount of the compensation payment is the amount of the compensation ignoring the application of this section or section 94K, and

(b) the amount of any recoverable assistance is the amount specified in the certificate of recoverable assistance.

10 **94K Reduction of compensation payment under Diffuse Mesothelioma Payment Scheme**

(1) This section applies instead of subsections (1) to (6) of section 94J where the compensation payment is a payment under the Diffuse Mesothelioma Payment Scheme.

15 (2) The scheme administrator of the Diffuse Mesothelioma Payment Scheme must make the calculation mentioned in subsection (3).

(3) The gross amount of the compensation payment—

(a) is to be reduced by the amount of the recoverable assistance, and

20 (b) accordingly, is to be reduced to nil in any case where the amount of the recoverable assistance is equal to or greater than the gross amount of the compensation payment.

(4) Any claim of a person to receive the compensation payment is to be treated for all purposes as discharged if—

25 (a) the person is paid the gross amount of the compensation payment less the amount of the recoverable assistance, or

(b) in a case in which the amount of the recoverable assistance is equal to or greater than the gross amount of the compensation payment, the person is given a statement by the scheme administrator stating that the compensation payment is reduced to nil.

30 **94L Reduction of compensation payment: further provision**

(1) A person who makes a compensation payment calculated in accordance with section 94J or 94K must give a statement to the person to whom the payment is made setting out—

(a) that the payment has been so calculated, and

35 (b) the date on which the payment is made.

(2) If the amount of a compensation payment calculated in accordance with section 94J or 94K is nil, a person giving a statement saying so is to be treated for the purposes of this Act as making a compensation payment on the day on which the person gives the statement.

- (3) Where a person—
- (a) makes a compensation payment calculated in accordance with section 94J or 94K, or
  - (b) if the amount of the compensation payment so calculated is nil, gives a statement saying so,
- the person is to be treated, for the purpose of determining any rights and liabilities in respect of contribution or indemnity, as having paid the gross amount of the compensation payment.
- (4) A person who makes a compensation payment must fulfil their duty under subsection (1) in a way that leaves the person to whom the payment is made with a record of the information which that person can show to, or otherwise share with, others.
- (5) The amount of any recoverable assistance is to be disregarded by—
- (a) a compensator in calculating the gross amount of the compensation payment, and
  - (b) a court in making any assessment of damages in respect of the accident, injury or disease giving rise to the compensation payment.

*Reviews, reconsiderations and appeals*

**94M Review of certificate of recoverable assistance**

- (1) A certificate of recoverable assistance must be reviewed by the Scottish Ministers at the request of a person mentioned in subsection (2) provided that—
- (a) the compensation payment has not been made,
  - (b) the compensator has not made a payment to the Scottish Ministers under section 94E, and
  - (c) the condition set out in subsection (6) is satisfied.
- (2) The persons referred to in subsection (1) are—
- (a) the compensator who applied for the certificate,
  - (b) where the compensation payment would be reduced under section 94J or 94K—
    - (i) the injured person,
    - (ii) another person who would receive the compensation payment in respect of the injured person.
- (3) But the scheme administrator of the Diffuse Mesothelioma Payment Scheme may not apply for a review under this section.
- (4) A certificate of recoverable assistance may be reviewed by the Scottish Ministers on their own initiative provided that—
- (a) the compensation payment has not been made,
  - (b) the compensator has not made a payment to the Scottish Ministers under section 94E, and

(c) the condition set out in subsection (6) is satisfied.

(5) The Scottish Ministers are to make regulations prescribing—

(a) the period within which a request for a review under this section may be made,

(b) the cases and circumstances in which such a request may be made,

(c) the cases and circumstances in which the Scottish Ministers may undertake a review on their own initiative.

(6) The condition referred to in subsection (1)(c) and subsection (4)(c) is satisfied if the requirements for the request for a review or, as the case may be, for a review on the Scottish Ministers' own initiative, prescribed in regulations made under subsection (5) are met.

(7) If the Scottish Ministers decide that something purporting to be a request for a review is not valid because the condition set out in subsection (6) is not satisfied, they must inform the person who purported to make the request for a review of—

(a) the decision,

(b) the reasons for it.

(8) Following a review under this section the Scottish Ministers must—

(a) either—

(i) confirm the certificate of recoverable assistance,

(ii) subject to subsection (9), issue a new certificate containing such variations as they consider appropriate, or

(iii) revoke the certificate, and

(b) give the persons mentioned in paragraphs (a) and (b) of subsection (2) notice of—

(i) the result of the review,

(ii) the reason for that result.

(9) The Scottish Ministers may not vary the certificate so as to increase the total amount of recoverable assistance unless it appears to them that the variation is required as a result of the person who applied for the certificate supplying them with incorrect or insufficient information.

(10) The Scottish Ministers must fulfil their duty to a person under subsection (8)(b) in a way that leaves the person with a record of the information which the person can show to, or otherwise share with, others.

(11) Section 94D applies in relation to a new certificate issued under this section as it applies to the original certificate.

#### **94N Reconsideration of certificate of recoverable assistance**

(1) A certificate of recoverable assistance—

(a) must be reconsidered by the Scottish Ministers at the request of a person mentioned in subsection (2) if the condition mentioned in subsection (4) is satisfied,

(b) may be reconsidered by the Scottish Ministers on their own initiative if the condition mentioned in subsection (4) is satisfied.

(2) The persons referred to in subsection (1) are—

(a) the compensator who either—

(i) applied for the certificate of recoverable assistance under section 94C(1), or

(ii) was issued with the certificate of recoverable assistance under section 94F(2),

(b) where the compensation payment has been reduced under section 94J or 94K—

(i) the injured person,

(ii) another person who has received the compensation payment in respect of the injured person (or whose claim to receive the compensation payment has been treated as discharged under section 94J or 94K).

(3) But the scheme administrator of the Diffuse Mesothelioma Payment Scheme may not apply for a reconsideration under this section.

(4) The condition referred to in paragraphs (a) and (b) of subsection (1) is satisfied if—

(a) in a case in which there is a claim giving rise to the compensation payment, that claim has been finally disposed of, and

(b) any liability to the Scottish Ministers under section 94E(1) has been discharged.

(5) For the purposes of subsection (4)(a), the circumstances in which a claim is to be treated as finally disposed of include the circumstances where an award of damages has been made under or by virtue of—

(a) section 32A(2)(a) of the Senior Courts Act 1981,

(b) section 12(2)(a) of the Administration of Justice Act 1982,

(c) section 51(2)(a) of the County Courts Act 1984.

(6) A certificate of recoverable assistance may only be reconsidered on the grounds that—

(a) any amount, rate or period specified in the certificate is incorrect,

(b) the certificate specifies relevant assistance which is not recoverable assistance,

(c) the payment in relation to which the certificate was issued is not a compensation payment because it was not made in consequence of any accident, injury or disease suffered by the injured person.

(7) The Scottish Ministers may by regulations make provision about the manner in which and the period within which a request for a reconsideration may be made.

- (8) Following a reconsideration under this section the Scottish Ministers must—
- (a) either—
    - (i) confirm the certificate of recoverable assistance,
    - (ii) subject to subsection (9), issue a new certificate containing such variations as they consider appropriate, or
    - (iii) revoke the certificate, and
  - (b) give the persons mentioned in paragraphs (a) and (b) of subsection (2) notice of—
    - (i) the result of the reconsideration,
    - (ii) the reasons for that result,
    - (iii) the right to appeal against the reconsideration to the First-tier Tribunal under section 94O (except where the person is the scheme administrator of the Diffuse Mesothelioma Payment Scheme).
- (9) The Scottish Ministers may not vary the certificate so as to increase the total amount of recoverable assistance unless it appears to them that the variation is required as a result of the person who applied for the certificate supplying them with incorrect or insufficient information.
- (10) The Scottish Ministers must fulfil their duty to a person under subsection (8)(b) in a way that leaves the person with a record of the information which the person can show to, or otherwise share with, others.
- (11) Section 94D applies in relation to a new certificate issued under this section as it applies to the original certificate.

**94O Appeal to First-tier Tribunal against reconsideration**

- (1) A person who has received a notice of reconsideration under section 94N(8)(b) may appeal to the First-tier Tribunal for Scotland against the reconsideration.
- (2) But the scheme administrator of the Diffuse Mesothelioma Payment Scheme may not appeal to the First-tier Tribunal under this section.
- (3) An appeal must be—
- (a) brought in such form, and
  - (b) accompanied by such evidence,
- as the Scottish Ministers require.
- (4) The Scottish Ministers must publicise any requirements for the time being set under subsection (3).
- (5) An appeal may only be brought—
- (a) where, following a reconsideration, either—
    - (i) a certificate of recoverable assistance has been confirmed under section 94N(8)(a)(i), or
    - (ii) a new certificate has been issued under section 94N(8)(a)(ii), and

(b) on the grounds that—

- (i) any amount, rate or period specified in the certificate is incorrect,
- (ii) the certificate specifies relevant assistance which is not recoverable assistance, or

5 (iii) the payment in relation to which the certificate was issued is not a compensation payment because it was not made in consequence of any accident, injury or disease suffered by the injured person.

(6) The Scottish Ministers may by regulations make provision about—

10 (a) the manner in which and the period within which an appeal under this section may be brought,

(b) the circumstances and manner in which a purported appeal under this section may be treated instead as a request for a reconsideration under section 94N.

15 (7) In determining any appeal under this section, the First-tier Tribunal must take into account any decision of a court relating to the same or any similar issue arising in connection with the accident, injury or disease in question.

(8) On an appeal under this section, the First-tier Tribunal may—

(a) confirm the amount, rates or periods specified in the certificate of recoverable assistance,

20 (b) specify any variations that are to be made to the certificate, or

(c) order the Scottish Ministers to revoke the certificate.

(9) On receiving the decision of the First-tier Tribunal under subsection (8), the Scottish Ministers must, in accordance with that decision—

(a) confirm the certificate,

25 (b) issue a new certificate containing such variations as the First-tier Tribunal has specified, or

(c) revoke the certificate.

(10) Section 94D applies in relation to a new certificate issued under this section as it applies to the original certificate.

30 (11) The Scottish Ministers may by regulations make provision about the non-disclosure of medical advice or medical evidence given or submitted in connection with an appeal brought under this section.

#### **94P Payments following reconsideration or appeal**

35 (1) This section applies in cases where a new certificate of recoverable assistance is issued as a result of a reconsideration under section 94N or an appeal under section 94O.

40 (2) Where the amount which has been paid to the Scottish Ministers under section 94E is greater than the amount which should have been payable on the basis of the new certificate, the Scottish Ministers are liable to pay the compensator the difference between the two amounts.

- (3) Where the amount which has been paid to the Scottish Ministers under section 94E is less than the amount which should have been payable on the basis of the new certificate, the compensator is liable to pay the Scottish Ministers the difference between the two amounts.
- 5 (4) Where liability arises under subsection (2) or subsection (3), the Scottish Ministers must send to the compensator and the person to whom the compensation payment was made a statement showing—
- 10 (a) the total amount which has been paid to the Scottish Ministers,
  - (b) the amount which should have been paid,
  - (c) the difference between these two amounts, and
  - (d) whether a payment equal to that difference is due by the Scottish Ministers to the compensator or by the compensator to the Scottish Ministers.
- 15 (5) Where the amount of the compensation payment made by the compensator was reduced under section 94J or 94K, the compensator must—
- 20 (a) recalculate the amount of the compensation payment under section 94J or 94K to take account of the new certificate of recoverable assistance, and
  - (b) if that recalculation results in an increase to the compensation payment, pay the additional amount to the person to whom the compensation payment was made.
- (6) The compensator is only liable to pay the amount referred to in subsection (5)(b) once the compensator has received payment from the Scottish Ministers.
- (7) Where subsection (8) applies, the compensator may—
- 25 (a) recalculate the compensation payment under section 94J or 94K to take account of the new certificate of recoverable assistance, and
  - (b) require the repayment to the compensator by the person to whom the compensator made the compensation payment of the difference (if any) between the payment made and the payment as so recalculated.
- 30 (8) This subsection applies where—
- 35 (a) the amount of the compensation payment made by the compensator was calculated under section 94J or 94K,
  - (b) the compensator is liable to make a payment under subsection (3), and
  - (c) the new certificate of recoverable assistance issued after the reconsideration or appeal was required as a result of—
- 40 (i) the injured person or other person to whom the compensation payment was made supplying information to the compensator knowing it to be incorrect or insufficient with the intent of increasing the compensation payment calculated under section 94J or 94K, and
  - (ii) the compensator supplying that information to the Scottish Ministers without knowing it to be incorrect or insufficient.

- (9) The Scottish Ministers may by regulations make provision about the timescales for payment of any amount due under this section.

*Reduction of compensation: complex cases*

**94Q Multiple compensation payments**

- 5 (1) This section applies where—
- (a) a compensation payment in the form of a lump sum payment (an “earlier payment”) is made to or in respect of the injured person, and
  - (b) subsequently another such payment (a “later payment”) is made to or in respect of the same injured person in consequence of the same accident, injury or disease.
- 10 (2) The liability arising under section 94E in relation to the making of the later payment is to be reduced by any amount paid in satisfaction of that liability as it arose in relation to the earlier payment.
- (3) Where—
- 15 (a) the certificate of recoverable assistance in force at the time of a later payment does not reflect that a payment has been made in satisfaction of the liability arising under section 94E in relation to an earlier payment, and
  - 20 (b) as a result, the aggregate of the payments made in satisfaction of the liability arising under section 94E is greater than the amount which would have been payable had that payment been so reflected,
- the Scottish Ministers are liable to pay the compensator who made the later payment the difference between the two amounts.
- (4) Where the Scottish Ministers are liable under subsection (3) , they must send to the compensator who made the later payment and the person to whom the compensation payment was made a statement showing—
- 25 (a) the total amount which has already been paid to the Scottish Ministers,
  - (b) the amount which should have been paid, and
  - 30 (c) the difference between these two amounts, which will be paid to the compensator by the Scottish Ministers.
- (5) Where subsection (3) applies the compensator must—
- (a) recalculate the amount of the compensation payment under section 94J, and
  - 35 (b) if that recalculation results in an increase to the compensation payment, pay that increase to the person to whom the compensation payment was made.
- (6) Where both the earlier payment and the later payment are made by the same compensator, the compensator may—
- (a) calculate the aggregate of the earlier payment and the later payment,

(b) calculate what would have been the reduction made under section 94J(4) if that aggregate amount had been paid at the date of the later payment, on the basis that—

(i) the aggregate amount will be taken to be the gross amount of the compensation payment,

(ii) the part of the aggregate amount that is attributable to a head of compensation listed in column 1 of the table in Part 2 of schedule 12 will be taken to be the part of the gross amount of the compensation payment attributable to that head, and

(iii) the amount of any recoverable assistance shown in column 2 of that table will be taken to be the amount determined in accordance with the most recent certificate of recoverable assistance,

(c) deduct from the reduction calculated under paragraph (b) the amount of the reduction under section 94J(4) from any earlier payment, and

(d) deduct from the later payment the net reduction calculated under paragraph (c) (and accordingly, the later payment may be nil).

(7) Where the compensation payment is recalculated under subsection (5) or (6), the compensator must inform the person to whom the payment has been made of that recalculation.

(8) The compensator is only liable to pay the amount referred to in subsection (5)(b) once the compensator has received payment from the Scottish Ministers.

(9) The Scottish Ministers may by regulations—

(a) make provision about the timescales for payment of any amount due under this section,

(b) make further provision for any case in which two or more compensation payments in the form of lump sum payments are made by two or more compensators to or in respect of an injured person in consequence of the same accident, injury or disease.

#### **94R Periodical payments**

(1) This section applies where—

(a) in final settlement of an injured person's claim, an agreement is entered into for the making of—

(i) periodical payments (whether of an income or capital nature), or

(ii) such periodical payments and lump sum payments, and

(b) apart from the provisions of this section, those payments would be treated as compensation payments under this Part.

(2) Where this section applies, this Part is modified so that—

(a) the compensator is treated as making a single compensation payment on the day of settlement equal to the total amount of all payments to be made under the agreement referred to in subsection (1)(a),

(b) if it has not already ended, the relevant period for that compensation payment is treated as ending on the day of settlement,

(c) payments under the agreement referred to in subsection (1)(a) will not be treated as being compensation payments when they are paid,

(d) subsections (5) and (7) of section 94P do not apply.

5 (3) Where any payment is due to or in respect of the injured person otherwise than under the agreement referred to in subsection (1)(a), this Part applies to that payment and the modification mentioned in subsection (2)(b) is therefore to be disregarded in determining the end of the relevant period in relation to that payment.

10 (4) Where a person making periodical payments is doing so as a result of an arrangement with another person who would otherwise have been liable to make the payments under the agreement referred to in subsection (1)(a), that other person is to be treated as the compensator for the purposes of this Part instead of the person making the payments.

(5) In this section, “day of settlement” means—

15 (a) if the agreement referred to in subsection (1)(a) is approved by a court, the day on which that approval is given, and

(b) otherwise, the day on which the agreement is entered into.

#### *Cases involving courts*

#### **94S Court orders**

20 (1) Subsection (2) applies where a court makes an order for a compensation payment to be made in any case, unless the order is made with the consent of the injured person and the person by whom the compensation payment is to be made.

25 (2) The court must, in the case of each head of compensation listed in column 1 of the table in Part 2 of schedule 12 to which any of the compensation payment is attributable, specify in the order the amount of the compensation payment which is attributable to that head.

#### *Information and investigation*

#### **94T Provision of information**

30 (1) The Scottish Ministers may by regulations make provision about the information to be provided to the Scottish Ministers where compensation is sought in respect of any accident, injury or disease suffered by any person.

(2) Regulations under subsection (1) are to—

35 (a) require prescribed information about the injured person to be provided by—

(i) anyone who is, or is alleged to be, liable in respect of the accident, injury or disease,

(ii) anyone acting on behalf of such a person,

(iii) the scheme administrator of the Diffuse Mesothelioma Payment Scheme,

40 (iv) any person providing services to that scheme administrator,

- (b) require prescribed information about the accident, injury or disease to be provided by—
- (i) a person who receives or claims recoverable assistance, or
  - (ii) where that person has died, that person's personal representative as specified in the regulations,
- (c) require information about the amount and composition of the payment to be provided to the Scottish Ministers by any person who makes a payment (whether or not on that person's own behalf) in consequence of or which is referable to any expenses incurred by reason of any accident, injury or disease,
- (d) require that information is to be given in the manner, at the place and within the period prescribed.

#### **94U Power to make provision for investigation**

- (1) The Scottish Ministers may by regulations make provision about the investigation of any matter relating to the application of this Part to a payment to or in respect of any individual in consequence of any accident, injury or disease suffered by that individual.
- (2) Regulations under subsection (1) may in particular include provision—
- (a) about persons who are to be authorised to carry out such investigations on behalf of the Scottish Ministers,
  - (b) about the terms on which that authorisation may be given,
  - (c) about the powers which may be exercised by an authorised person in relation to—
    - (i) obtaining prescribed information from prescribed persons,
    - (ii) accessing prescribed electronic information held by prescribed persons,
    - (iii) entering prescribed premises,
  - (d) creating offences relating to—
    - (i) intentionally delaying or obstructing an authorised person in the exercise of any functions conferred by the regulations,
    - (ii) refusing or neglecting to comply with any requirement relating to the provision of information or access to electronic information.
- (3) The maximum penalty that may be provided for in regulations under subsection (1) creating an offence is, on summary conviction, a fine not exceeding level 3 on the standard scale.

#### *Interaction with provision for other parts of the United Kingdom*

#### **94V Relationship between this Part and UK provisions**

- (1) The Scottish Ministers may by regulations modify this Part to make provision about the relationship between this Part and the relevant UK provisions in circumstances where both this Part and the relevant UK provisions apply to a

payment to or in respect of any individual in consequence of any accident, injury or disease suffered by that individual.

(2) In this section—

“injured person’s address” means the address first notified in writing to the compensator by or on behalf of the injured person as that person’s residence or, if the injured person has died, by or on behalf of the person entitled to receive the compensation payment as the injured person’s last residence,

“relevant UK provisions” means—

- (a) where the injured person’s address is in Northern Ireland, any enactment making provision corresponding to this Part (or about the application of this Part) and having effect in Northern Ireland,
- (b) where the injured person’s address is in England or Wales, any enactment making provision corresponding to this Part (or about the application of this Part) and having effect there.

(3) Any reference in this section in relation to the relevant UK provisions to—

- (a) the compensator means a compensator within the meaning of those provisions,
- (b) the injured person means an injured person within the meaning of those provisions,
- (c) the compensation payment means a compensation payment within the meaning of those provisions.

#### **94W Recovery of payments due from compensator**

(1) The Scottish Ministers may by regulations modify this Part to make provision about the recovery of payments due from a compensator in circumstances where—

- (a) the relevant UK provisions apply to a payment to or in respect of any individual in consequence of any accident, injury or disease suffered by that individual, and
- (b) immediately before making a compensation payment the compensator—
  - (i) is not resident and does not have a place of business in a part of the United Kingdom other than Scotland, but
  - (ii) is resident or has a place of business in Scotland.

(2) In this section—

- (a) “relevant UK provisions” has the same meaning as in section 94V,
- (b) any reference in this section in relation to the relevant UK provisions to—
  - (i) the compensator means a compensator within the meaning of those provisions,
  - (ii) the compensation payment means a compensation payment within the meaning of those provisions.”.

(3) After schedule 11 insert—

“SCHEDULE 12  
*(introduced by section 94A(2))*

COMPENSATION PAYMENTS

**PART 1**

EXEMPTED PAYMENTS

- 1 Any payment made to or for the injured person under—
- (a) section 249 of the Criminal Procedure (Scotland) Act 1995,
  - (b) section 130 of the Powers of Criminal Courts (Sentencing) Act 2000,
  - 10 (c) section 175 of the Armed Forces Act 2006,
  - (d) section 8 of the Modern Slavery Act 2015,
  - (e) Chapter 2 of Part 7 of the Sentencing Act 2020,
- 2 Any payment made in the exercise of a discretion out of property held subject to a trust in a case where no more than 50% by value of the capital contributed to the trust was directly or indirectly provided by persons who are, or are
- 15 alleged to be, liable in respect of—
- (a) the accident, injury or disease suffered by the injured person, or
  - (b) the same or any connected accident, injury or disease suffered by another person.
- 20 3 Any payment made out of property held for the purposes of any prescribed trust (whether the payment also falls within paragraph 2 or not).
- 4 (1) Any payment made to the injured person by an insurer under the terms of any contract of insurance entered into between the injured person and the insurer before—
- 25 (a) the day on which the injured person first claims assistance in consequence of the disease in question, or
- (b) the occurrence of the accident or injury in question.
- (2) In this paragraph, “insurer” means a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to effect or carry out
- 30 contracts of insurance.
- (3) Sub-paragraph (2) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000,
  - (b) any relevant order under that section,
  - (c) schedule 2 of that Act.
- 35 5 Any redundancy payment falling to be taken into account in the assessment of damages in respect of an accident, injury or disease.
- 6 So much of any payment as is referable to expenses.

**PART 2**

CALCULATION OF COMPENSATION PAYMENT

	Column 1: head of compensation	Column 2: assistance
5	1. Compensation for earnings lost during the relevant period	Scottish Child Payment
	2. Compensation for cost of care incurred during relevant period	Daily living component of Adult Disability Payment Care component of Child Disability Payment
10	3. Compensation for loss of mobility during relevant period	Mobility component of Adult Disability Payment Mobility component of Child Disability Payment”.

**PART 8**

15

SCOTTISH COMMISSION ON SOCIAL SECURITY

**18 Scrutiny of regulations by the Commission**

- (1) The 2018 Act is modified as follows.
- (2) In section 97 (further procedure for regulations about assistance)—
  - (a) in subsection (1), for paragraphs (a) and (b) substitute—

20

- “(a) section 11(2),
- (b) section 13(3),
- (c) any section in Chapter 2 of Part 2,
- (d) section 41(4)(a),
- (e) section 43(5),
- 25 (f) section 51(1),
- (g) section 52,
- (h) section 69A(5)(a),
- (i) section 69C(6),
- (j) section 79(1),
- 30 (k) section 81(8),
- (l) section 82,
- (m) section 84A(1), and

(n) section 95, where the power to make regulations conferred by that section is exercised together with any of the powers to make regulations listed in paragraphs (a) to (m).”,

(b) after subsection (1) insert—

“(1A) This section applies (subject to subsection (11)) in relation to regulations made under section 13(1) of the Social Security Act 1988 and section 175(4) of the Social Security Contributions and Benefits Act 1992, where the powers to make regulations conferred by those sections are exercised together.”,

(c) after subsection (11) insert—

“(12) The Scottish Ministers may by regulations modify subsections (1) and (1A) so as to add, remove or vary the description of a power to make regulations conferred by this Act or by any other enactment.”.

(3) The title of section 97 becomes “**Further procedure for regulations**”.

## 19 Removal of Commission’s status as body corporate

(1) The 2018 Act is modified as follows.

(2) Section 21(2) is repealed.

## 20 Removal of Commission’s accounting and auditing duties

(1) The 2018 Act is modified as follows.

(2) In schedule 1 (Scottish Commission on Social Security), paragraph 12 and the italic heading immediately preceding it are repealed.

## 21 Duty on Commission to publish annual report

(1) The 2018 Act is modified as follows.

(2) In section 22 (Commission functions), after subsection (4) insert—

“(4A) As soon as practicable after the end of each financial year, the Commission must—

(a) prepare and publish a report containing—

(i) information on the carrying out of its functions during that year, and

(ii) a statement of accounts in respect of that year, and

(b) send a copy of the report to the Scottish Ministers.

(4B) The Scottish Ministers must lay before the Scottish Parliament a copy of each report sent to them by the Commission under subsection (4A)(b).”.

## PART 9

### FINAL PROVISIONS

## 22 Meaning of “2018 Act”

In this Act, the “2018 Act” means the Social Security (Scotland) Act 2018.

**23 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, in connection with or for giving full effect to this Act.
- 5 (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—
- 10 (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.

**24 Regulation-making powers**

- (1) The 2018 Act is modified as follows.
- (2) In section 96 (regulation-making powers)—
- 15 (a) in subsection (2), for the words from “11” to the end substitute “11(2), 13(3), 22(1)(e), any section in Chapter 2 of Part 2, sections 51(1), 52(1), 52(2), 64(6), 79(1), 81(8), 82, 84A(1), 85(2)(g), 85(5), 85F(1), 86(1), 87A(1), 87B(5), 93(1), 93A(1), 94A(3), 94A(5), 94B(2), 94H(4), 94M(5), 94O(6), 94O(11), 94Q(9), 94T(1), 94U(1), 94V(1), 94W(1), 97(12), paragraph 4(2)(c) of schedule 1 and
- 20 paragraph 3 of schedule 12.”,
- (b) in subsection (3), for “and 43(5)” substitute “, 43(5), 49C(1), 69A(5)(a), 69C(6), 87B(4)(c), 87B(4)(d), 87C(1), 87C(4), 94C(4), 94C(8), 94C(9), 94N(7) and 94P(9)”.

**25 Commencement**

- (1) This section and sections 22, 23 and 26 come into force on the day after Royal Assent.
- 25 (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—
- (a) include transitional, transitory or saving provision,
  - (b) make different provision for different purposes.

**26 Short title**

30 The short title of this Act is the Social Security (Amendment) (Scotland) Act 2024.

# **Social Security (Amendment) (Scotland) Bill**

[AS INTRODUCED]

An Act of the Scottish Parliament to modify the Social Security (Scotland) Act 2018 to make further provision about social security; and for connected purposes.

Introduced by: Shirley-Anne Somerville  
On: 31 October 2023  
Bill type: Government Bill

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