

# Social Security (Scotland) Bill

[AS INTRODUCED]

---

---

## CONTENTS

Section

### **PART 1**

#### PRINCIPLES, CHARTER AND ACCOUNTABILITY

##### *Principles*

- 1 The Scottish social security principles

##### *Charter*

- 2 The Scottish social security charter  
3 Preparing the first charter  
4 Publication of the charter  
5 Reviewing the charter

##### *Accountability*

- 6 Annual report

##### *Interpretation*

- 7 Meaning of “Scottish social security system”

### **PART 2**

#### GIVING OF ASSISTANCE BY SCOTTISH MINISTERS

#### **CHAPTER 1**

##### ASSISTANCE TO BE GIVEN ACCORDING TO DETERMINATION OF ENTITLEMENT

- 8 Duty to give assistance  
9 Meaning of “determination of entitlement”  
10 Later determination supersedes earlier

#### **CHAPTER 2**

##### TYPES OF ASSISTANCE TO BE GIVEN

- 11 Carer’s assistance  
12 Cold-spell heating assistance  
13 Winter heating assistance  
14 Disability assistance  
15 Early years assistance  
16 Employment-injury assistance  
17 Funeral expense assistance

- 18 Short-term assistance

### CHAPTER 3

#### DETERMINING ENTITLEMENT

##### *Determination by the Scottish Ministers*

- 19 Duty to make determination  
20 Application for assistance  
21 Withdrawal of application  
22 Notice of determination

##### *Re-determination by the Scottish Ministers*

- 23 Right to request re-determination  
24 Duty to re-determine  
25 Notice of re-determination  
26 Notice where re-determination not made timeously

##### *Appeal against the Scottish Ministers' determination*

- 27 Right to appeal to First-tier Tribunal  
28 Time for appeal  
29 First-tier Tribunal's power to determine entitlement

##### *Obtaining information to make determination*

- 30 Obligation to provide information on request  
31 Duty to notify change of circumstances  
32 Lifting of duty to notify change of circumstances

##### *Further provision about determining entitlement*

- 33 Decisions comprising determination  
34 Determination on basis of ongoing entitlement  
35 Determination without application

### CHAPTER 4

#### RECOVERY OF ASSISTANCE GIVEN IN ERROR

- 36 Liability  
37 Consideration for debtor's circumstances  
38 Prescription of liability

### CHAPTER 5

#### OFFENCES AND INVESTIGATIONS

##### *Offences*

- 39 Offence of trying to obtain assistance by deceit  
40 Offence of failing to notify  
41 Offence of causing a failure to notify  
42 Individual culpability for offending by an organisation

##### *Investigations*

- 43 Power to make provision about investigations

- 44 Code of practice on investigations

**PART 3**

SUPPLEMENTING ASSISTANCE UNDER OTHER ENACTMENTS

*Top up of reserved benefits*

- 45 Power to provide for top up  
46 Restrictions on power

*Carer's allowance: temporary provision*

- 47 Carer's allowance supplement  
48 Power to repeal temporary provision

**PART 4**

DISCRETIONARY HOUSING PAYMENTS

- 49 Local authorities' power to make payments  
50 Restrictions on power to make payments  
51 Local authorities' duty to provide information about payments  
52 Guidance  
53 Power to modify section 49

**PART 5**

FINAL PROVISIONS

- 54 Ancillary provision  
55 Regulation-making powers  
56 Commencement  
57 Short title

- 
- Schedule 1—Carer's assistance regulations  
Schedule 2—Cold-spell heating assistance regulations  
Schedule 3—Winter heating assistance regulations  
Schedule 4—Disability assistance regulations  
Schedule 5—Early years assistance regulations  
Schedule 6—Employment-injury assistance regulations  
Schedule 7—Funeral expense assistance regulations



**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:  
Explanatory Notes (SP Bill 18-EN), a Financial Memorandum (SP Bill 18-FM), a Policy  
Memorandum (SP Bill 18-PM) and statements on legislative competence (SP Bill 18-LC).**

# Social Security (Scotland) Bill

## [AS INTRODUCED]

An Act of the Scottish Parliament making provision about social security.

### **PART 1**

#### PRINCIPLES, CHARTER AND ACCOUNTABILITY

##### *Principles*

5     **1     The Scottish social security principles**

The Scottish social security principles are—

- (a) social security is an investment in the people of Scotland,
- (b) social security is itself a human right and essential to the realisation of other human rights,
- 10     (c) respect for the dignity of individuals is to be at the heart of the Scottish social security system,
- (d) the Scottish Ministers have a role in ensuring that individuals are given what they are eligible to be given under the Scottish social security system,
- 15     (e) the Scottish social security system is to be designed with the people of Scotland on the basis of evidence,
- (f) opportunities are to be sought to continuously improve the Scottish social security system in ways which put the needs of those who require assistance first,
- (g) the Scottish social security system is to be efficient and deliver value for money.

##### *Charter*

20     **2     The Scottish social security charter**

- (1) A Scottish social security charter is to be prepared, published and from time to time reviewed in accordance with sections 3 to 5.
- (2) The charter is to set out what should be expected—
  - (a) from the Scottish Ministers when—
    - 25             (i) developing social security policy, and

- (ii) exercising their functions in the Scottish social security system, and
- (b) from the individuals who apply for, and receive, assistance through the Scottish social security system.
- (3) The charter is to reflect the Scottish social security principles.

### 5     **3     Preparing the first charter**

- (1) The Scottish Ministers are to prepare and publish the charter within 6 months of this section coming into force.
- (2) In preparing the charter, the Scottish Ministers must consult such persons as they consider appropriate.
- 10   (3) The persons consulted must include individuals who are in receipt of—
  - (a) disability living allowance as provided for by sections 71 to 76 of the Social Security Contributions and Benefits Act 1992,
  - (b) personal independence payment as provided for by Part 4 of the Welfare Reform Act 2012,
  - 15   (c) severe disablement allowance as provided for by sections 68 and 69 of the Social Security Contributions and Benefits Act 1992,
  - (d) attendance allowance as provided for by section 64 of that Act,
  - (e) industrial injuries benefits within the meaning of Part 5 of that Act,
  - (f) carer’s allowance as provided for by section 70 of that Act,
  - 20   (g) payments under section 138 of that Act in respect of—
    - (i) maternity expenses,
    - (ii) funeral expenses, and
    - (iii) heating expenses.

### 4     **4     Publication of the charter**

- 25   The Scottish Ministers are to make the charter publicly available by such means as they consider appropriate.

### 5     **5     Reviewing the charter**

- (1) The Scottish Ministers must review the charter—
  - (a) within 5 years of its being published in accordance with section 3(1), and
  - 30   (b) thereafter, within 5 years of the report of the last review being laid before the Parliament in accordance with subsection (4)(b).
- (2) In carrying out a review, the Scottish Ministers must consult such persons as they consider appropriate.
- 35   (3) The persons consulted must include individuals who have received assistance through the Scottish social security system.

- (4) Following a review, the Scottish Ministers must—
- (a) decide whether or not to make any changes to the charter, and
  - (b) lay before the Scottish Parliament a report setting out—
    - (i) the consultation undertaken in carrying out the review,
    - (ii) the reasons for their decision to make changes, or not make changes, to the charter, and
    - (iii) (where applicable) a summary of the changes made.

### *Accountability*

## **6 Annual report**

- (1) As soon as practicable after the end of each financial year, the Scottish Ministers are to—
- (a) lay before the Scottish Parliament, and
  - (b) make publicly available by such means as they consider appropriate, a report on the performance of the Scottish social security system in that year.
- (2) The report is to contain—
- (a) information about the performance of the Scottish social security system in that year, and
  - (b) a description of what the Scottish Ministers have done in that year to meet the expectations of them set out in the Scottish social security charter.

### *Interpretation*

## **7 Meaning of “Scottish social security system”**

In this Part, “Scottish social security system” means the system for giving individuals assistance—

- (a) under Part 2, and
- (b) by virtue of regulations made under Part 3.

## **PART 2**

### **GIVING OF ASSISTANCE BY SCOTTISH MINISTERS**

#### **CHAPTER 1**

##### **ASSISTANCE TO BE GIVEN ACCORDING TO DETERMINATION OF ENTITLEMENT**

## **8 Duty to give assistance**

The Scottish Ministers must give an individual whatever assistance of a type described in Chapter 2 the individual is entitled to be given under a determination of the individual’s entitlement to assistance.

## **9 Meaning of “determination of entitlement”**

- (1) References in this Part to a determination of an individual’s entitlement to assistance are to a determination made—
- (a) by the Scottish Ministers—
    - (i) under section 19, or
    - (ii) (following a request for a re-determination) under section 24,
  - (b) by the First-tier Tribunal for Scotland—
    - (i) under section 29 in an appeal against a determination made by the Scottish Ministers, or
    - (ii) (subsequent to such an appeal) under its Tribunals Act powers,
  - (c) by the Upper Tribunal for Scotland under its Tribunals Act powers (subsequent to an appeal against, or following a review of, a decision of the First-tier Tribunal), or
  - (d) by the Court of Session under its Tribunals Act powers (in an appeal against a decision of the Upper Tribunal).
- (2) In this section, “Tribunals Act powers” means powers under Part 6 (review or appeal of decisions) of the Tribunals (Scotland) Act 2014.

## **10 Later determination supersedes earlier**

- (1) The latest determination of an individual’s entitlement to a particular type of assistance in respect of a given period or event supersedes any earlier determination insofar as it deals with the individual’s entitlement to that type of assistance in respect of the same period or event.
- (2) Accordingly the individual is not entitled, and is not to become entitled, to be given any assistance in respect of that period or event by the earlier determination insofar as it has been superseded.

## **CHAPTER 2**

### TYPES OF ASSISTANCE TO BE GIVEN

## **11 Carer’s assistance**

- (1) Carer’s assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 8 to an individual who provides, or has provided, care to another individual who has a disability.
- (2) The Scottish Ministers are to make regulations prescribing—
- (a) the eligibility rules that are to be applied to determine whether an individual is entitled to carer’s assistance, and
  - (b) what carer’s assistance an individual who is entitled to it is to be given.
- (3) Schedule 1 makes provision about the exercise of the power conferred by subsection (2).



**12 Cold-spell heating assistance**

- (1) Cold-spell heating assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 8 to an individual to meet, or help towards meeting, the individual's heating costs during a period of cold weather.
- 5 (2) The Scottish Ministers are to make regulations prescribing—
- (a) the eligibility rules that are to be applied to determine whether an individual is entitled to cold-spell heating assistance, and
  - (b) what cold-spell heating assistance an individual who is entitled to it is to be given.
- (3) Schedule 2 makes provision about the exercise of the power conferred by subsection (2).

**13 Winter heating assistance**

- 10 (1) Winter heating assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 8 to an individual to meet, or help towards meeting, the individual's heating costs during the winter months.
- (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 winter heating assistance, and
- (b) what winter heating assistance an individual who is entitled to it is to be given.
- (3) Schedule 3 makes provision about the exercise of the power conferred by subsection (2).

**14 Disability assistance**

- 20 (1) Disability assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 8 to an individual on account of the individual having—
- (a) a disability arising from a physical or mental impairment, or
  - (b) a terminal illness.
- 25 (2) The Scottish Ministers are to make regulations prescribing—
- (a) the eligibility rules that are to be applied to determine whether an individual is entitled to disability assistance, and
  - (b) what disability assistance an individual who is entitled to it is to be given.
- (3) Schedule 4 makes provision about the exercise of the power conferred by subsection (2).

**15 Early years assistance**

- 30 (1) Early years assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 8 to help towards meeting some of the costs associated with having, or expecting to have, a child in the family.
- (2) The Scottish Ministers are to make regulations prescribing—
- 35 (a) the eligibility rules that are to be applied to determine whether an individual is entitled to early years assistance, and
- (b) what early years assistance an individual who is entitled to it is to be given.

- (3) Schedule 5 makes provision about the exercise of the power conferred by subsection (2).

## **16 Employment-injury assistance**

- (1) Employment-injury assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 8 to an individual on account of the individual, or another individual, having suffered an injury, or contracted a disease, in the course of employment.
- (2) The Scottish Ministers are to make regulations prescribing—
- (a) the eligibility rules that are to be applied to determine whether an individual is entitled to employment-injury assistance, and
  - (b) what employment-injury assistance an individual who is entitled to it is to be given.
- (3) Schedule 6 makes provision about the exercise of the power conferred by subsection (2).

## **17 Funeral expense assistance**

- (1) Funeral expense assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 8 to an individual to meet, or help towards meeting, funeral expenses.
- (2) The Scottish Ministers are to make regulations prescribing—
- (a) the eligibility rules that are to be applied to determine whether an individual is entitled to funeral expense assistance, and
  - (b) what funeral expense assistance an individual who is entitled to it is to be given.
- (3) Schedule 7 makes provision about the exercise of the power conferred by subsection (2).

## **18 Short-term assistance**

- (1) Short-term assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 8 to an individual on a short-term basis.
- (2) The Scottish Ministers are to make regulations prescribing—
- (a) the eligibility rules that are to be applied to determine whether an individual is entitled to short-term assistance, and
  - (b) what short-term assistance an individual who is entitled to it is to be given.
- (3) Regulations under subsection (2) must provide for an individual to be eligible for short-term assistance if—
- (a) the individual is, or was, entitled to a particular type of assistance (other than short-term assistance) under a determination made on the basis that the individual has ongoing entitlement,
  - (b) that determination has been superseded by a determination under section 19 with the result that the individual—
    - (i) is no longer entitled to the type of assistance in question, or
    - (ii) is entitled to less assistance of the type in question,

(c) the individual's entitlement to the type of assistance in question is under review, and

(d) any further eligibility rules prescribed by the Scottish Ministers in regulations under subsection (2) are satisfied in the individual's case.

5 (4) An individual's entitlement to a particular type of assistance is under review within the meaning of subsection (3)(c) if—

(a) the individual has, under section 23, requested a re-determination of the individual's entitlement to the type of assistance in question and—

10 (i) the Scottish Ministers have yet to make a determination of the individual's entitlement under section 24, and

(ii) the individual has not, since requesting the re-determination, made an appeal to the First-tier Tribunal against a determination of the individual's entitlement, or

15 (b) the individual has, under section 27, made an appeal to the First-tier Tribunal against a determination of the individual's entitlement to the type of assistance in question and the First-tier Tribunal has yet to make a decision under section 29.

(5) For the avoidance of doubt, subsection (3) is not exhaustive of the eligibility rules that may be prescribed under subsection (2)(a).

### CHAPTER 3

20 DETERMINING ENTITLEMENT

*Determination by the Scottish Ministers*

#### 19 Duty to make determination

The Scottish Ministers are to make a determination of an individual's entitlement to a type of assistance described in Chapter 2—

25 (a) on receiving an application for that type of assistance from the individual, or

(b) when required to do so by regulations under section 35.

#### 20 Application for assistance

(1) An application for assistance must be—

(a) made to the Scottish Ministers in such form, and

30 (b) accompanied by such evidence,

as the Scottish Ministers require.

(2) The Scottish Ministers must publicise any requirements for the time being set under subsection (1).

(3) Once—

35 (a) an individual has applied for a particular type of assistance in respect of a period or (as the case may be) event, and

(b) the Scottish Ministers have made a determination of the individual's entitlement to that type of assistance in respect of the period or event,

the individual cannot make another application for that type of assistance in respect of the period or event.

## **21 Withdrawal of application**

- 5 (1) An individual who has made an application for assistance may request that the Scottish Ministers disregard it.
- (2) If an individual requests that an application be disregarded—
- (a) the Scottish Ministers are not to make a determination of the individual's entitlement to any type of assistance on the basis of the application, and
- (b) accordingly, their duty to do so under section 19 ceases to apply.
- 10 (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).

## **22 Notice of determination**

15 Having made a determination under section 19 of an individual's entitlement to assistance, the Scottish Ministers must inform the individual—

- (a) of the determination,
- (b) of the reasons for it,
- 20 (c) of the individual's right under section 23 to request that the Scottish Ministers re-determine the individual's entitlement to the assistance, and
- (d) that the individual will have the right under section 27 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.

### *Re-determination by the Scottish Ministers*

## **23 Right to request re-determination**

- 25 (1) An individual may request that the Scottish Ministers re-determine the individual's entitlement to a particular type of assistance after being informed (in accordance with section 22) of a determination by the Ministers of the individual's entitlement to that type of assistance.
- 30 (2) A request for a re-determination must be made—
- (a) in such form as the Scottish Ministers require,
- (b) before the end of the period prescribed by the Scottish Ministers in regulations.
- (3) The Scottish Ministers must publicise any requirements for the time being set under subsection (2)(a).

**24 Duty to re-determine**

- (1) On being requested under section 23 to re-determine an individual's entitlement to a particular type of assistance, the Scottish Ministers are to make a determination of the individual's entitlement to that type of assistance.
- 5 (2) The Scottish Ministers must aim to make the determination within the period allowed for re-determination.
- (3) If the Scottish Ministers fail to make the determination within the period allowed for re-determination—
- 10 (a) their duty to make the determination ends (but they may still make it), and
- (b) section 26 applies.
- (4) If the Scottish Ministers make the determination (whether or not within the period allowed for re-determination), section 25 applies.
- (5) The period allowed for re-determination is to be prescribed by the Scottish Ministers in regulations.

15 **25 Notice of re-determination**

Having made a determination under section 24 of an individual's entitlement to a particular type of assistance, the Scottish Ministers must inform the individual of—

- 20 (a) the determination,
- (b) the reasons for it, and
- (c) the individual's right to appeal to the First-tier Tribunal under section 27 against the determination.

**26 Notice where re-determination not made timeously**

25 Having failed to make a determination under section 24 of an individual's entitlement to a particular type of assistance within the period allowed for re-determination, the Scottish Ministers must inform the individual—

- 30 (a) that the individual's request for a re-determination has not been dealt with within the period allowed, and
- (b) that the individual therefore has the right to appeal to the First-tier Tribunal against the determination under section 19 which prompted the request for a re-determination.

*Appeal against the Scottish Ministers' determination*

**27 Right to appeal to First-tier Tribunal**

- 35 (1) An individual may appeal to the First-tier Tribunal for Scotland—
- (a) against a determination under section 24 of the individual's entitlement to assistance, or
- (b) in a case where subsection (2) applies, against the determination under section 19 referred to in that subsection.

(2) This subsection applies where—

- (a) having been informed of a determination under section 19 of the individual's entitlement to assistance, the individual has made a request for a re-determination under section 23, and
- (b) the Scottish Ministers have failed to make a determination under section 24 in consequence of that request within the period allowed for re-determination.

## **28 Time for appeal**

(1) An appeal under section 27—

- (a) may be made within 31 days of the relevant event without the First-tier Tribunal's permission,
- (b) may be made more than 31 days after the relevant event only with the First-tier Tribunal's permission,
- (c) may not be made more than one year after the relevant event.

(2) In subsection (1), “the relevant event” means—

- (a) in the case of an appeal against a determination under section 24, the individual to whom the determination relates being informed of it in accordance with section 25,
- (b) in the case of an appeal against a determination under section 19, the individual to whom the determination relates being informed (in accordance with section 26) that the individual has the right to appeal against it.

(3) The First-tier Tribunal may give permission under subsection (1)(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) Where, in fulfilment of their duty under section 25 or 26, the Scottish Ministers send an individual the information mentioned in the section—

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

the individual is to be taken to have received the information 48 hours after it is sent unless the contrary is shown.

## **29 First-tier Tribunal's power to determine entitlement**

In an appeal under section 27 against a determination of an individual's entitlement to a particular type of assistance, the First-tier Tribunal may—

- (a) uphold the determination, or
- (b) make its own determination of the individual's entitlement to the type of assistance in question.

*Obtaining information to make determination*

**30 Obligation to provide information on request**

(1) When—

(a) the Scottish Ministers are determining an individual's entitlement to assistance (whether under section 19 or 24), and

(b) they require further information in order to satisfy themselves about any matter material to the making of the determination,

they may request that the individual provide them with the information within such period as they specify.

(2) If the individual fails to provide the requested information by the end of the specified period the Scottish Ministers may, without further consideration, proceed to make the determination on the basis that the individual does not satisfy the eligibility rules prescribed in the applicable regulations (see section 33).

(3) For the avoidance of doubt, the information which the Scottish Ministers may request an individual to provide under subsection (1) includes the results of an assessment, including one which the individual has not undergone at the time the request is made.

**31 Duty to notify change of circumstances**

(1) The Scottish Ministers may place a duty to notify them about a change in circumstances on a person to whom subsection (3) or (4) applies.

(2) The Scottish Ministers place a duty under subsection (1) on a person by informing the person—

(a) of the changes in circumstances which the person has a duty to notify them about,

(b) of the way in which the person is to notify them, and

(c) that failing to notify them about a change in any of those circumstances in that way may be an offence under section 40.

(3) This subsection applies to an individual who is to be given assistance under section 8 under a determination made on the basis that the individual has ongoing entitlement to the type of assistance in question.

(4) This subsection applies to a person to whom payments are to be made under section 8 by way of assistance to another person under a determination made on the basis that that other person has ongoing entitlement to the type of assistance in question.

**32 Lifting of duty to notify change of circumstances**

(1) A duty to notify the Scottish Ministers about a change of circumstances placed on a person under section 31 ceases to apply when—

(a) it is lifted under subsection (2), or

(b) it stops being the case that a change in any of the circumstances to which the duty relates can affect someone's entitlement to be given assistance under section 8.

(2) The Scottish Ministers may lift a duty placed on a person under section 31 by informing the person that the duty is lifted.

- (3) Under subsection (2), the Scottish Ministers may lift a duty as it relates to some or all of the changes in circumstances which the person has a duty to notify them about.

*Further provision about determining entitlement*

**33 Decisions comprising determination**

- 5 (1) A determination of an individual’s entitlement to a particular type of assistance consists of—
- (a) a decision about whether or not the eligibility rules prescribed in the applicable regulations are satisfied in the individual’s case,
- 10 (b) if those rules are satisfied, a decision (taken in accordance with the applicable regulations) about what assistance of the type in question the individual is entitled to be given, and
- (c) if the determination is to be made on the basis that the individual has ongoing entitlement to the type of assistance in question (see section 34), a decision about what assistance of the type in question the determination is to entitle the individual to be given in the future.
- 15 (2) In this section, “the applicable regulations” means the regulations made under the section in Chapter 2 that describes the type of assistance in question.

**34 Determination on basis of ongoing entitlement**

- (1) The Scottish Ministers may by regulations—
- 20 (a) provide that a determination of an individual’s entitlement to a specified type of assistance is to be made on the basis that the individual has ongoing entitlement to that type of assistance (either indefinitely or for a duration specified in the regulations), and
- (b) provide for exceptions to any provision made by virtue of paragraph (a).
- 25 (2) Regulations making provision by virtue of subsection (1)(a) are also to—
- (a) prescribe the time, or times, at which an individual is to become entitled to be given assistance under a determination made on the basis that the individual has ongoing entitlement, and
- 30 (b) provide that a decision about what assistance the individual is to become entitled to be given under such a determination in respect of any future period is to be taken in accordance with the applicable regulations on the strength of such assumptions as are specified.
- (3) In this section—
- “the applicable regulations” means the regulations made under the section in Chapter 2 that describes the type of assistance in question,
- 35 “specified” means specified by regulations under this section.



**35 Determination without application**

- (1) The Scottish Ministers may by regulations provide that, in such circumstances as the regulations specify, the Scottish Ministers are to make a determination of an individual's entitlement to a particular type of assistance without receiving an application.
- (2) The Scottish Ministers may by regulations make provision about the information that is to be used, and the assumptions that are to be made, in making a determination when required to do so by regulations under subsection (1).

**CHAPTER 4**

RECOVERY OF ASSISTANCE GIVEN IN ERROR

**36 Liability**

- (1) An individual is liable to pay the Scottish Ministers the value of any assistance that was given to the individual as a result of a mistaken decision under section 33(1).
- (2) For the avoidance of doubt, the individual'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 decision not been mistaken.
- (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) For the purpose of this section, a decision is mistaken if—
- (a) an error occurred in the making of it, or
- (b) while made correctly, it was made on the basis of—
- (i) incorrect information, or
- (ii) an assumption which proves to be wrong.

**37 Consideration for debtor's circumstances**

- (1) This section applies to decisions of the Scottish Ministers about—
- (a) whether to seek to recover money owed under section 36, and
- (b) the method by which money owed under that section is to be recovered.
- (2) In making a decision to which this section applies, the Scottish Ministers must have regard to the financial circumstances of the individual who owes the money (so far as those circumstances are known to the Ministers).

**38 Prescription of liability**

- (1) Schedule 1 (obligations affected by prescriptive period of five years) of the Prescription and Limitation (Scotland) Act 1973 is amended as follows.
- (2) After paragraph 1(b) insert—
- “(ba) to any obligation to make payment to the Scottish Ministers arising from section 36 of the Social Security (Scotland) Act 2018.”.

## CHAPTER 5

### OFFENCES AND INVESTIGATIONS

#### *Offences*

#### **39 Offence of trying to obtain assistance by deceit**

- 5 (1) A person commits an offence if—
- (a) the person provides, or causes another person to provide, information which is false or misleading, and
  - (b) the person does so with the intention of causing an individual to be given assistance under section 8 which would not otherwise be given.
- 10 (2) For the purpose of subsection (1), providing information includes making a statement.
- (3) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction, to—
    - (i) imprisonment for a term not exceeding 12 months,
    - (ii) a fine not exceeding the statutory maximum, or
    - 15 (iii) both,
  - (b) on conviction on indictment, to—
    - (i) imprisonment for a term not exceeding 5 years,
    - (ii) a fine, or
    - (iii) both.

#### **40 Offence of failing to notify**

- 20 (1) A person commits an offence if—
- (a) the person fails to notify the Scottish Ministers about a change in circumstances to which subsection (2) applies as soon as reasonably practicable after it occurs, and
  - 25 (b) the person knew or ought to have known that the change might result in an individual ceasing to be entitled to assistance, or becoming entitled to less assistance.
- (2) For the purpose of subsection (1)(a), a change in circumstances to which this subsection applies is a change—
- 30 (a) which the person has a duty under section 31 to notify the Scottish Ministers about, and
  - (b) which would, under a determination of an individual's entitlement, result in the individual ceasing to be entitled to assistance, or becoming entitled to less assistance.
- 35 (3) A person is not to be regarded as having notified a change in circumstances for the purpose of subsection (1)(a) unless the person notified the Scottish Ministers about it in the way the Ministers informed the person that such notification is to be given (see section 31(2)(b)).

(4) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to—

- (i) imprisonment for a term not exceeding 12 months,
- (ii) a fine not exceeding the statutory maximum, or
- (iii) both,

(b) on conviction on indictment, to—

- (i) imprisonment for a term not exceeding 5 years,
- (ii) a fine, or
- (iii) both.

**41 Offence of causing a failure to notify**

(1) A person commits an offence if—

(a) the person causes another person to fail to notify the Scottish Ministers about a change in circumstances to which subsection (2) applies as soon as reasonably practicable after it occurs, and

(b) the person knew or ought to have known that—

- (i) the change might result in an individual ceasing to be entitled to assistance, or becoming entitled to less assistance, and
- (ii) the other person has a duty under section 31 to notify the Scottish Ministers about the change.

(2) For the purpose of subsection (1)(a), a change in circumstances to which this subsection applies is a change which would, under a determination of an individual's entitlement, result in the individual ceasing to be entitled to assistance, or becoming entitled to less assistance.

(3) A person is not to be regarded as having notified a change in circumstances for the purpose of subsection (1)(a) unless the person notified the Scottish Ministers about it in the way the Ministers informed the person that such notification is to be given (see section 31(2)(b)).

(4) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to—

- (i) imprisonment for a term not exceeding 12 months,
- (ii) a fine not exceeding the statutory maximum, or
- (iii) both,

(b) on conviction on indictment, to—

- (i) imprisonment for a term not exceeding 5 years,
- (ii) a fine, or
- (iii) both.

## **42 Individual culpability for offending by an organisation**

- (1) Subsection (2) applies where—
- (a) an offence under this Act or any regulations made under it is committed by a relevant organisation, and
  - (b) the commission of the offence involves the connivance or consent of, or is attributable to the neglect of—
    - (i) a responsible official of the organisation, or
    - (ii) an individual purporting to act in the capacity of a responsible official.
- (2) The responsible official (or, as the case may be, the individual purporting to act in that capacity), as well as the organisation, commits the offence.
- (3) “Relevant organisation” means—
- (a) a company,
  - (b) a partnership (including a limited liability partnership),
  - (c) another body or association.
- (4) “Responsible official” means—
- (a) in the case of a company—
    - (i) a director, secretary, manager or similar officer, or
    - (ii) where the affairs of the company are managed by its members, a member,
  - (b) in the case of a limited liability partnership, a member,
  - (c) in the case of a partnership other than a limited liability partnership, a partner,
  - (d) in the case of another body or association, a person who is concerned in the management or control of its affairs.

### *Investigations*

## **43 Power to make provision about investigations**

- (1) The Scottish Ministers may by regulations make provision about the investigation of offences under this Act.
- (2) Regulations under subsection (1) may, in particular—
- (a) confer powers to—
    - (i) enter and search premises (other than dwelling-houses), and
    - (ii) seize anything relevant to the investigation which is found on the premises,
  - (b) create offences relating to—
    - (i) a failure to provide information requested for the purposes of an investigation,
    - (ii) obstruction of the conduct of an investigation,
    - (iii) any breach of the regulations,
  - (c) make provision about the time limit for bringing proceedings.

- (3) The maximum penalty that may be provided for in regulations under subsection (1) is, on summary conviction, a fine not exceeding level 3 on the standard scale.

**44 Code of practice on investigations**

- (1) The Scottish Ministers must publish a code of practice on investigations carried out by virtue of section 43.
- (2) The Scottish Ministers—
- (a) must keep the code of practice under review,
  - (b) may from time to time revise the code of practice.
- (3) Before publishing the code of practice, the Scottish Ministers must consult publicly on a draft of the code.
- (4) The Scottish Ministers must, as soon as practicable after publication, lay before the Scottish Parliament a copy of the code of practice.
- (5) A court or tribunal in civil or criminal proceedings must take the code of practice into account when determining any question to which the code is relevant.
- (6) Breach of the code of practice does not of itself give rise to grounds for any legal claim whatsoever.
- (7) Subsections (2) to (6) apply in relation to a revised code of practice as they apply in relation to the first published code of practice.

**PART 3**

SUPPLEMENTING ASSISTANCE UNDER OTHER ENACTMENTS

*Top up of reserved benefits*

**45 Power to provide for top up**

- (1) The Scottish Ministers may by regulations provide for financial assistance to be given to an individual who—
- (a) is entitled to a reserved benefit, and
  - (b) appears to the Scottish Ministers to require financial assistance (in addition to any amount the individual receives by way of reserved benefit) for the purpose, or one of the purposes, for which the benefit is being provided.
- (2) The power conferred by subsection (1) includes the power to make provision about—
- (a) determining entitlement (including specifying further eligibility rules that are to be used to determine whether an individual is entitled to the assistance),
  - (b) the amount of assistance,
  - (c) applications for assistance,
  - (d) obtaining information,
  - (e) appeals,
  - (f) assistance given in error.
- (3) In this section and section 46, “reserved benefit” means a benefit which is to any extent a reserved matter within the meaning of schedule 5 of the Scotland Act 1998.

#### **46 Restrictions on power**

- (1) Regulations under section 45 may not provide for financial assistance to be given to meet or help to meet housing costs.
- (2) Regulations under section 45 may not provide for financial assistance to be given where the need for the assistance arises solely from reduction, non-payability or suspension of a reserved benefit as a result of an individual's conduct (for example, non-compliance with work-related requirements relating to the benefit).
- (3) But subsection (2) does not prevent assistance from being given where the need for the assistance in question—
- (a) also arises from some exceptional event or exceptional circumstances, and
- (b) is immediate.

*Carer's allowance: temporary provision*

#### **47 Carer's allowance supplement**

- (1) The Scottish Ministers must make a payment (a “carer's allowance supplement”) to qualifying individuals in respect of each of the following periods of each financial year—
- (a) 1 April to 30 September, and
- (b) 1 October to 31 March.
- (2) A qualifying individual is an individual who, on the qualifying date, was—
- (a) in receipt of a carer's allowance under section 70 of the Social Security Contributions and Benefits Act 1992, and
- (b) resident in Scotland.
- (3) The qualifying date is a date determined by the Scottish Ministers falling within the period to which the payment relates.
- (4) The amount of a carer's allowance supplement is to be calculated according to the following formula—
- $(JSA-CA) \times 26$
- where—
- JSA is the weekly amount specified in regulation 79(1)(c) of the Jobseeker's Allowance Regulations 1996 (S.I. 1996/207) as it has effect on the qualifying date, and
- CA is the weekly rate of carer's allowance specified in Part 3 of schedule 4 of the Social Security Contributions and Benefits Act 1992 as it has effect in Scotland on the qualifying date.
- (5) The Scottish Ministers may by regulations modify this section so as to modify who is a qualifying individual for the purposes of this section.

#### **48 Power to repeal temporary provision**

The Scottish Ministers may by regulations—

- (a) repeal section 47 and revoke any regulations made under it, and

- (b) repeal this section.

## **PART 4**

### DISCRETIONARY HOUSING PAYMENTS

#### **49 Local authorities' power to make payments**

- 5 (1) A local authority has power to give financial assistance to a qualifying individual to meet, or help towards meeting, the individual's housing costs.
- (2) In subsection (1), "qualifying individual" means an individual who—
- (a) is entitled to—
- 10 (i) housing benefit, or
- (ii) an award of universal credit which includes an amount for rent, and
- (b) appears to the authority to need financial assistance under subsection (1) (in addition to any assistance of a kind mentioned in paragraph (a) which the individual receives) in order to meet housing costs.
- (3) For the purposes of subsection (2)(a)—
- 15 (a) "housing benefit" means housing benefit provided by virtue of a scheme under section 123 of the Social Security Contributions and Benefits Act 1992,
- (b) an award of universal credit includes an amount for rent if—
- (i) the calculation of the award includes an amount under section 11 of the Welfare Reform Act 2012, and
- 20 (ii) that amount is included (wholly or partly) in respect of a liability to make payments within the meaning of paragraph 2 of schedule 1 of the Universal Credit Regulations 2013 (S.I. 2013/376).

#### **50 Restrictions on power to make payments**

- (1) Financial assistance may not be given under section 49 by way of a loan.
- 25 (2) Financial assistance may not be given under section 49 where the need for the assistance arises solely from reduction, non-payability or suspension of a reserved benefit as a result of an individual's conduct (for example, non-compliance with work-related requirements relating to the benefit).
- (3) But subsection (2) does not prevent assistance from being given where the need for the
- 30 assistance in question—
- (a) also arises from some exceptional event or exceptional circumstances, and
- (b) is immediate.
- (4) In subsection (2), "reserved benefit" means a benefit which is to any extent a reserved matter within the meaning of schedule 5 of the Scotland Act 1998.

#### **51 Local authorities' duty to provide information about payments**

- 35 (1) Each local authority must make available to the public resident in its area information about—

- (a) how to apply to the authority for financial assistance under section 49,
  - (b) which housing costs the authority gives assistance in relation to,
  - (c) the rules the authority applies in deciding—
    - (i) whether to give someone assistance,
    - 5 (ii) the amount of assistance to give, and
    - (iii) what period to give assistance for,
  - (d) how to apply for a review challenging a decision by the authority—
    - (i) to refuse to give assistance,
    - (ii) as to the amount of assistance it will give, or
    - 10 (iii) as to the period for which it will give assistance.
- (2) Subsection (1) does not apply to a local authority which chooses not to give financial assistance under section 49 in any circumstances.

## 52 Guidance

- 15 (1) Local authorities must have regard to any guidance issued by the Scottish Ministers in connection with the exercise of the power conferred by section 49.
- (2) Guidance under subsection (1) may, in particular, deal with—
  - (a) the rules which authorities are to apply in deciding—
    - (i) whether to give someone financial assistance,
    - (ii) the amount of assistance to give, and
    - 20 (iii) what period to give assistance for,
  - (b) the form of applications for—
    - (i) assistance, and
    - (ii) review of authorities' decisions about the giving of assistance,
  - (c) the processes which authorities are to follow in—
    - 25 (i) determining applications for assistance and review, and
    - (ii) deciding whether to stop giving someone assistance,
  - (d) the circumstances in which authorities should, and should not, seek to recover the value of assistance given in error or following a breach of any of the conditions under which it was given.
- 30 (3) Guidance under subsection (1) may be addressed to—
  - (a) an authority, or more than one authority, identified in the guidance, or
  - (b) all authorities.
- (4) Before issuing guidance under subsection (1), the Scottish Ministers must consult such body representing authorities as the Ministers think fit.
- 35 (5) As soon as reasonably practicable after issuing guidance under subsection (1), the Scottish Ministers must lay a copy of the guidance before the Scottish Parliament.



- (6) The Scottish Ministers must make guidance issued under subsection (1) publicly available.
- (7) The power to issue guidance under subsection (1) includes the power to—
- (a) issue guidance which varies guidance issued under that subsection, and
  - (b) revoke guidance issued under that subsection.

### **53 Power to modify section 49**

- (1) The Scottish Ministers may by regulations make whatever amendment to section 49 they think appropriate in consequence of—
- (a) an enactment mentioned in that section being amended, repealed or revoked, or
  - (b) the creation of a reserved benefit payable in respect of a liability to make rent payments.
- (2) Expressions used in subsection (1)(b) have the same meaning as they have for the purposes of exception 6 in Section F1 of Part 2 of schedule 5 of the Scotland Act 1998.

## **PART 5**

### **FINAL PROVISIONS**

### **54 Ancillary provision**

The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, or in connection with, or for giving full effect to this Act or any provision made under it.

### **55 Regulation-making powers**

- (1) A power to make regulations conferred by this Act includes the power to make different provision for different purposes and areas.
- (2) Regulations under any of the following provisions are subject to the affirmative procedure: any section in Chapter 2 of Part 2 and sections 34, 35, 43, 45, 47(5), 48 and 53.
- (3) Regulations under any of the following provisions are subject to the negative procedure: sections 23(2)(b) and 24(5).
- (4) Regulations under section 54—
- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act), but
  - (b) otherwise are subject to the negative procedure.

### **56 Commencement**

- (1) The following provisions come into force on the day after Royal Assent: this section and sections 54, 55 and 57.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

- (3) The power conferred by subsection (2) includes the power to make transitional, transitory or saving provision.

**57 Short title**

The short title of this Act is the Social Security (Scotland) Act 2018.

**SCHEDULE 1**  
*(introduced by section 11)*

**CARER’S ASSISTANCE REGULATIONS**

**PART 1**

**ELIGIBILITY**

**CHAPTER 1**

**ELIGIBILITY IS TO DEPEND ON BEING OR HAVING BEEN A CARER**

- 1 (1) The regulations must be framed so that (subject to any provision of the kind described in paragraph 2) an individual’s eligibility in respect of a given period depends on the individual having provided regular and substantial care during that period to another individual to whom a disability benefit is normally payable.
- 10
- (2) The regulations—
- (a) are to set out the circumstances in which an individual is to be regarded as having provided regular and substantial care to another individual during a period, and
- 15 (b) may, in particular, do so by reference to whether or not the number of hours of care provided during the period exceeds (or is deemed to exceed) a threshold specified in the regulations.
- (3) In sub-paragraph (1), “disability benefit” has the meaning given in the interpretation provision in Section F1 of Part 2 of schedule 5 of the Scotland Act 1998.
- 20 2 (1) The regulations may be framed so that, despite the criterion described in paragraph 1(1) not being fulfilled in relation to a given period, an individual may nevertheless be eligible in respect of that period.
- (2) Where the regulations allow an individual to be eligible in respect of a period in relation to which the criterion described in paragraph 1(1) is not fulfilled, they must be framed so that the individual’s eligibility depends on the individual—
- 25 (a) having at some time provided care to another individual who has a disability, and
- (b) as a result of doing so, having received—
- (i) carer’s assistance,
- (ii) carer’s allowance, or
- 30 (iii) invalid care allowance.
- (3) In sub-paragraph (2)(b), “carer’s allowance” and “invalid care allowance” both mean an allowance payable under section 70 of the Social Security Contributions and Benefits Act 1992.

## CHAPTER 2

### FURTHER CRITERIA

#### *Carer’s other activities*

- 3        The regulations may make an individual’s eligibility depend on—
- 5            (a) whether or not the individual is in—
- (i) employment, or
- (ii) education,
- (b) the length of time the individual spends over a given period in—
- (i) employment, or
- 10            (ii) education.

#### *Multiple carers*

- 4        The regulations may make an individual’s eligibility depend on being the individual (or one of the individuals) selected through a process set out in the regulations in a case where more than one individual would otherwise be eligible as a result of providing care to the same cared-for person during a given period.
- 15

#### *Residence and presence*

- 5        The regulations may make an individual’s eligibility depend on either or both—
- (a) the individual, and
- (b) the cared-for person,
- 20        being resident and present in a particular place.

#### *Age*

- 6        The regulations may make an individual’s eligibility depend on the age of either or both—
- (a) the individual, and
- 25        (b) the cared-for person.

#### *Financial circumstances*

- 7        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        8        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*

9 The regulations may provide that an individual ceases to be eligible in respect of a given period unless, by a deadline specified in the regulations—

- 5 (a) the individual has applied for carer’s assistance in respect of the period, or  
(b) the Scottish Ministers have become required to make a determination of the individual’s entitlement to carer’s assistance in respect of the period by regulations under section 35.

**PART 2**

ASSISTANCE TO BE GIVEN

10 *Meeting liabilities*

10 The regulations may provide for the carer’s assistance that is to be given to an individual to be given (in whole or in part) by way of—

- 15 (a) payment to another person in order to meet, or contribute towards meeting, any liability the individual has to that person,  
(b) deduction from any liability the individual has to the Scottish Ministers under section 36.

**PART 3**

FINAL PROVISIONS

*Generality of enabling power unaffected*

20 11 Nothing in—

- (a) Chapter 2 of Part 1, or  
(b) Part 2,

is to be taken to limit what may be prescribed in the regulations.

*Interpretation*

25 12 In this schedule—

“cared-for person” means the individual by providing care to whom the individual whose eligibility is in question has fulfilled the criterion described in paragraph 1(1) or 2(2),

30 “eligibility” means eligibility for carer’s assistance and “eligible” means eligible for carer’s assistance,

“the regulations” means regulations under section 11(2).

**SCHEDULE 2**  
*(introduced by section 12)*

**COLD-SPELL HEATING ASSISTANCE REGULATIONS**

**PART 1**

**ELIGIBILITY**

**CHAPTER 1**

**ELIGIBILITY IS TO DEPEND ON LIVING IN AN AREA DURING A COLD SPELL**

1 The regulations must be framed so that (subject to any provision of the kind described in  
 10 paragraph 2) an individual’s eligibility in respect of a given period depends on the area  
 in which the individual’s home is situated experiencing a cold spell during that period.

2 (1) The regulations may be framed so that, despite the criterion described in paragraph 1 not  
 being fulfilled (or its being uncertain whether it will be fulfilled) in relation to a given  
 period, an individual may nevertheless be eligible in respect of that period.

15 (2) Where the regulations allow an individual to be eligible in respect of a period in relation  
 to which the criterion described in paragraph 1 is not fulfilled (or may not be fulfilled),  
 they must be framed so that the individual’s eligibility depends on the area in which the  
 individual’s home is situated being, or having been, forecast to experience a cold spell  
 during the period.

3 The regulations are to set out, for the purpose of determining entitlement to cold-spell  
 20 heating assistance—

(a) a definition of “home”,

(b) the circumstances in which an area is to be regarded as experiencing a cold spell,

25 (c) if provision of the kind described in paragraph 2 is made, the circumstances in  
 which an area is to be regarded as being, or having been, forecast to experience a  
 cold spell.

**CHAPTER 2**

**FURTHER CRITERIA**

*Age*

4 The regulations may make an individual’s eligibility depend on the age of either or  
 30 both—

(a) the individual, and

(b) anyone else who lives in the individual’s home.

*Financial circumstances*

5 The regulations may make an individual’s eligibility depend on the individual’s  
 35 financial circumstances.

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

6 The regulations may make an individual’s eligibility depend on either or both the individual and anyone else who lives in the individual’s home—

- 5 (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*

7 The regulations may provide that an individual ceases to be eligible in respect of a given period unless, by a deadline specified in the regulations—

- 10 (a) the individual has applied for cold-spell heating assistance in respect of the period, or
- (b) the Scottish Ministers have become required to make a determination of the individual’s entitlement to cold-spell heating assistance in respect of the period by regulations under section 35.

**PART 2**

ASSISTANCE TO BE GIVEN

8 The regulations may make the value of the cold-spell heating assistance that is to be given to an individual depend on—

- 20 (a) whether or not other people live in the individual’s home,
- (b) the age of either or both—
- (i) the individual, and
- (ii) anyone else who lives in the individual’s home.

**PART 3**

FINAL PROVISIONS

*Generality of enabling power unaffected*

9 Nothing in—

- (a) Chapter 2 of Part 1, or
- (b) Part 2,

is to be taken to limit what may be prescribed in the regulations.

*Interpretation*

10 In this schedule—

“eligibility” means eligibility for cold-spell heating assistance and “eligible” means eligible for cold-spell heating assistance,

“the regulations” means regulations under section 12(2).

SCHEDULE 3  
*(introduced by section 13)*

WINTER HEATING ASSISTANCE REGULATIONS

**PART 1**

ELIGIBILITY

5

*Residence and presence*

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

*Age*

10

2       The regulations may make an individual's eligibility depend on the age of either or both—

- (a) the individual, and
- (b) anyone who lives with the individual.

*Financial circumstances*

15

3       The regulations may make an individual's eligibility depend on the financial circumstances of either or both—

- (a) the individual, and
- (b) anyone who lives with the individual.

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

20

4       The regulations may make an individual's eligibility depend on either or both the individual and anyone who lives with 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.

25

*Application within specified period*

5       The regulations may provide that an individual ceases to be eligible in respect of a given period unless, by a deadline specified in the regulations—

- (a) the individual has applied for winter heating assistance in respect of the period, or
- (b) the Scottish Ministers have become required to make a determination of the individual's entitlement to winter heating assistance in respect of the period by regulations under section 35.

30



**PART 2**

ASSISTANCE TO BE GIVEN

6 The regulations may make the value of the winter heating assistance that is to be given to an individual depend on—

5 (a) whether or not other people live with the individual,

(b) the age of either or both—

(i) the individual, and

(ii) anyone who lives with the individual,

(c) the financial circumstances of either or both—

10 (i) the individual, and

(ii) anyone who lives with the individual.

**PART 3**

FINAL PROVISIONS

*Generality of enabling power unaffected*

15 7 Nothing in this schedule is to be taken to limit what may be prescribed in the regulations.

*Interpretation*

8 In this schedule—

20 “eligibility” means eligibility for winter heating assistance and “eligible” means eligible for winter heating assistance,

“the regulations” means regulations under section 13(2).

SCHEDULE 4

*(introduced by section 14)*

DISABILITY ASSISTANCE REGULATIONS

**PART 1**

ELIGIBILITY

**CHAPTER 1**

ELIGIBILITY IS TO DEPEND ON HAVING, OR HAVING HAD, A DISABILITY

1 (1) The regulations must be framed so that (subject to any provision of the kind described in paragraph 2) an individual’s eligibility in respect of a given period depends on the individual having, during that period—

(a) a physical or mental impairment that—

(i) has a significant and not short-term adverse effect on the individual’s ability to carry out normal day-to-day activities, or

(ii) otherwise gives rise to a significant and not short-term need, or

(b) a terminal illness.

(2) The regulations are to define “terminal illness” for the purpose of determining entitlement to disability assistance.

5     2     (1) The regulations may be framed so that, despite the criterion described in paragraph 1(1) not being fulfilled in respect of a given period, an individual may nevertheless be eligible in respect of that period.

10     (2) Where the regulations allow an individual to be eligible in respect of a period in relation to which the criterion described in paragraph 1(1) is not fulfilled, they must be framed so that the individual’s eligibility depends on the individual having had, during some other period, a physical or mental impairment of the kind described in paragraph 1(1)(a).

## CHAPTER 2

### FURTHER CRITERIA

#### *Nature and extent of disability and needs*

15     3     The regulations may make an individual’s eligibility depend on the nature and extent of—

(a) the individual’s impairment,

(b) the needs of the individual in consequence of the impairment.

#### *Residence and presence*

20     4     The regulations may make an individual’s eligibility depend on the individual being resident and present in a particular place.

#### *Age*

5     The regulations may make an individual’s eligibility depend on the individual’s age.

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

25     6     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*

30     7     The regulations may provide that an individual ceases to be eligible in respect of a given period unless, by a deadline specified in the regulations—

(a) the individual has applied for disability assistance in respect of the period, or

(b) the Scottish Ministers have become required to make a determination of the individual’s entitlement to disability assistance in respect of the period by regulations under section 35.

**PART 2**

ASSISTANCE TO BE GIVEN

**CHAPTER 1**

VALUE

5 *Nature and extent of disability*

8 The regulations may make the value of the disability assistance that is to be given to an individual depend on the nature and extent of—

- (a) the individual's impairment,
- (b) the needs of the individual in consequence of the impairment.

10 *Age*

9 The regulations may make the value of the disability assistance that is to be given to an individual depend on the individual's age.

**CHAPTER 2**

FORM

15 *Meeting liabilities*

10 The regulations may provide for the disability assistance that is to be given to an individual to be given (in whole or in part) by way of—

- (a) payment to another person in order to meet, or contribute towards meeting, any liability the individual has to that person,
- (b) deduction from any liability the individual has to the Scottish Ministers under section 36.

*Payment to someone else*

11 The regulations may provide that if the Scottish Ministers consider it appropriate in the circumstances, the disability assistance that is to be given to an individual may be given (in whole or in part) by way of payment to another person who is to use the payment to benefit the individual entitled to the assistance.

*Restriction on lump sums*

12 The regulations may not provide for the disability assistance that is to be given to an individual to be given by way of a lump-sum payment where the individual's entitlement arises on account of the individual having, or having had—

- (a) pneumoconiosis,
- (b) byssinosis,
- (c) diffuse mesothelioma,
- (d) bilateral diffuse pleural thickening, or
- (e) primary carcinoma of the lung where there is accompanying evidence of—
  - (i) asbestosis,

*Chapter 1—Eligibility is to depend on having, or expecting to have, responsibility for a child*

---

- (ii) bilateral diffuse pleural thickening, or
- (iii) both.

**PART 3**

FINAL PROVISIONS

5 *Generality of enabling power unaffected*

13 Nothing in—

- (a) Chapter 2 of Part 1, or
- (b) Part 2 (apart from paragraph 12),

is to be taken to limit what may be prescribed in the regulations.

10 *Interpretation*

14 In this schedule—

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

“the regulations” means regulations under section 14(2).

15

SCHEDULE 5  
*(introduced by section 15)*

EARLY YEARS ASSISTANCE REGULATIONS

**PART 1**

ELIGIBILITY

20

**CHAPTER 1**

ELIGIBILITY IS TO DEPEND ON HAVING, OR EXPECTING TO HAVE, RESPONSIBILITY FOR A CHILD

1 (1) The regulations must be framed so that an individual’s eligibility depends on the individual satisfying one of the primary eligibility criteria.

(2) The primary eligibility criteria are that the individual—

25 (a) is, or has been, more than a specified number of weeks pregnant,

(b) has a relationship of a specified kind to another individual who is, or has been, more than a specified number of weeks pregnant,

(c) is to, or has, become responsible for a child within a specified period of the child’s birth,

30 (d) is responsible for a child when a specified event in the child’s life occurs or has become responsible for the child within a specified period of the event.

(3) The regulations are to define what being responsible for a child means for the purpose of determining entitlement to early years assistance.

## CHAPTER 2

### FURTHER CRITERIA

#### *Limit to number of people entitled*

- 2           The regulations may provide that an individual is not eligible, despite satisfying one of  
5           the primary eligibility criteria, on account of one of those criteria 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.

#### 10 *Financial circumstances*

- 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*

- 5           The regulations may make an individual's eligibility depend on the individual—  
15           (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  
20           satisfying a primary eligibility criteria unless, by a deadline specified in the  
              regulations—  
              (a) the individual has applied for early years assistance, or  
              (b) the Scottish Ministers have become required to make a determination of the  
              individual's entitlement to early years assistance by regulations under section 35.

## 25 **PART 2**

### FINAL PROVISIONS

#### *Generality of enabling power unaffected*

- 7           Nothing in Chapter 2 of Part 1 is to be taken to limit what may be prescribed in the  
              regulations.

#### 30 *Interpretation*

- 8           In this schedule—  
              “eligibility” means eligibility for early years assistance and “eligible” means  
              eligible for early years assistance,  
              “the regulations” means regulations under section 15(2),  
35           “specified” means specified in the regulations.

**SCHEDULE 6**  
*(introduced by section 16)*

EMPLOYMENT-INJURY ASSISTANCE REGULATIONS

**PART 1**

ELIGIBILITY

**CHAPTER 1**

ELIGIBILITY IS TO DEPEND ON BEING INJURED OR CONTRACTING A DISEASE AT WORK

1 The regulations must be framed so that (subject to any provision of the kind described in paragraph 2) an individual's eligibility depends on the individual—

- 10 (a) having suffered a relevant personal injury caused by an accident arising out of and in the course of the individual's employment, or
- (b) developing a relevant disease, or suffering a relevant personal injury, due to the nature of the individual's employment.

2 (1) The regulations may be framed so that, despite the criterion described in paragraph 1 not being fulfilled, an individual may nevertheless be eligible.

15 (2) Where the regulations allow an individual to be eligible despite the criterion described in paragraph 1 not being fulfilled, they must be framed so that the individual's eligibility depends on the individual having, or having had, a relationship of a kind specified in the regulations to an individual who suffered a personal injury, or developed a disease, in the circumstances mentioned in paragraph 1.

3 (1) The regulations are to define the following terms for the purpose of determining entitlement to employment-injury assistance—

- 25 (a) employment,  
 (b) relevant personal injury,  
 (c) relevant disease.

(2) The regulations may not define "employment" so as to include employment, or training for employment, that is not "relevant employment" as defined in the interpretation provision of Section F1 of Part 2 of schedule 5 of the Scotland Act 1998.

30 (3) The regulations may define "relevant personal injury" and "relevant disease" by reference to the circumstances in which an injury is suffered or a disease is developed as well as by reference to its kind and severity.

**CHAPTER 2**

FURTHER CRITERIA

*Place where injury suffered or disease contracted*

4 The regulations may make an individual's eligibility depend on where, geographically, the injury was suffered or the disease developed (or is deemed to have been suffered or developed).

*Residence and presence*

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

*Age*

5           6           The regulations may make an individual’s eligibility depend on the individual’s age.

*Financial circumstances*

7           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*

10          8           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*

15          9           The regulations may provide that an individual ceases to be eligible on account of an injury being suffered or a disease developed unless, by a deadline specified in the regulations—  
                  (a) the individual has applied for employment-injury assistance, or  
20               (b) the Scottish Ministers have become required to make a determination of the individual’s entitlement to employment-injury assistance by regulations under section 35.

**PART 2**

ASSISTANCE TO BE GIVEN

**CHAPTER 1**

VALUE

25

*Nature of injury or disease*

10          The regulations may make the value of the employment-injury assistance that is to be given to an individual depend on the—  
                  (a) kind, and  
30               (b) severity,  
                  of the injury or disease in respect of which the assistance is to be given.

*Age*

11          The regulations may make the value of the employment-injury assistance that is to be given to an individual depend on the individual’s age.

## CHAPTER 2

### FORM

#### *Meeting liabilities*

- 5 12 The regulations may provide for the employment-injury assistance that is to be given to an individual to be given (in whole or in part) by way of—
- (a) payment to another person in order to meet, or contribute towards meeting, any liability the individual has to that person,
  - (b) deduction from any liability the individual has to the Scottish Ministers under section 36.

#### 10 *Restriction on lump sums*

- 13 The regulations may not provide for the employment-injury assistance that is to be given to an individual to be given by way of a lump-sum payment where the individual's entitlement arises on account of someone having, or having had—
- (a) pneumoconiosis,
  - 15 (b) byssinosis,
  - (c) diffuse mesothelioma,
  - (d) bilateral diffuse pleural thickening, or
  - (e) primary carcinoma of the lung where there is accompanying evidence of—
    - (i) asbestosis,
    - 20 (ii) bilateral diffuse pleural thickening, or
    - (iii) both.

## PART 3

### FINAL PROVISIONS

#### *Generality of enabling power unaffected*

- 25 14 Nothing in—
- (a) Chapter 2 of Part 1, or
  - (b) Part 2 (other than paragraph 13),
- is to be taken to limit what may be prescribed in the regulations.

#### *Interpretation*

- 30 15 In this schedule—
- “eligibility” means eligibility for employment-injury assistance, and “eligible” means eligible for employment-injury assistance,
  - “the regulations” means regulations under section 16(2).



**SCHEDULE 7**  
*(introduced by section 17)*

**FUNERAL EXPENSE ASSISTANCE REGULATIONS**

**PART 1**

**ELIGIBILITY**

**CHAPTER 1**

**ELIGIBILITY IS TO DEPEND ON BEING RESPONSIBLE FOR FUNERAL EXPENSES**

- 5
- 1 (1) The regulations must be framed so that an individual’s eligibility for funeral expense  
10 assistance depends on the individual having met, or being responsible for meeting, the  
expenses of a funeral.
- (2) The regulations are to define “funeral” for the purpose of determining entitlement to  
funeral expense assistance.

**CHAPTER 2**

**FURTHER CRITERIA**

15 *Location of the funeral*

- 2 The regulations may make an individual’s eligibility depend on where the funeral takes  
place.

*Relationship with the deceased*

- 3 The regulations may make an individual’s eligibility depend on the individual—  
20 (a) being related to the deceased person, or  
(b) having a relationship of a kind described in the regulations with the deceased  
person immediately before the death.

*Value of deceased’s estate*

- 4 The regulations may make an individual’s eligibility depend on the value of the  
25 deceased person’s estate being below a level specified in the regulations.

*Residence and presence*

- 5 The regulations may make an individual’s eligibility depend on either or both—  
(a) the individual being resident and present in a particular place,  
(b) the deceased person having been resident and present in a particular place at the  
30 date of death.

*Financial circumstances*

- 6 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*

7 The regulations may make an individual’s eligibility depend on either or both the individual and, immediately before dying, the deceased person—

- 5 (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*

8 The regulations may provide that an individual ceases to be eligible in respect of a funeral unless, by a deadline specified in the regulations—

- 10 (a) the individual has applied for funeral expense assistance in respect of the funeral, or
- (b) the Scottish Ministers have become required to make a determination of the individual’s entitlement to funeral expense assistance in respect of the funeral by regulations under section 35.

**PART 2**

ASSISTANCE TO BE GIVEN

9 The regulations may specify items of expense in relation to which funeral expense assistance will, or will not, be given.

10 The regulations may set a limit on the value of the funeral expense assistance that will be given in relation to items of expense.

11 The regulations may set a limit on the total value of the funeral expense assistance that will be given.

12 The regulations may provide for the amount of funeral expense assistance that will be given to be reduced to reflect the availability of other funds that may be used to meet, or help to meet, any of the expenses.

**PART 3**

FINAL PROVISIONS

*Generality of enabling power unaffected*

13 Nothing in—

- 30 (a) Chapter 2 of Part 1, or
- (b) Part 2,

is to be taken to limit what may be prescribed in the regulations.

*Interpretation*

14 In this schedule—

35 “deceased person” means the person in respect of whose funeral assistance is sought,

“eligibility” means eligibility for funeral expense assistance and “eligible” means eligible for funeral expense assistance,

“the regulations” means regulations under section 17(2).

# **Social Security (Scotland) Bill**

[AS INTRODUCED]

An Act of the Scottish Parliament making provision about social security.

Introduced by: Angela Constance  
On: 20 June 2017  
Bill type: Government Bill

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website -  
[www.parliament.scot](http://www.parliament.scot)

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:  
[www.parliament.scot/documents](http://www.parliament.scot/documents)