



# Social Security (Scotland) Act 2018

## 2018 asp 9

### PART 1

#### TENETS AND OVERSIGHT

##### *Principles*

#### **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,
- (c) the delivery of social security is a public service,
- (d) respect for the dignity of individuals is to be at the heart of the Scottish social security system,
- (e) the Scottish social security system is to contribute to reducing poverty in Scotland,
- (f) the Scottish social security system is to be designed with the people of Scotland on the basis of evidence,
- (g) opportunities are to be sought to continuously improve the Scottish social security system in ways which—
  - (i) put the needs of those who require assistance first, and
  - (ii) advance equality and non-discrimination,
- (h) the Scottish social security system is to be efficient and deliver value for money.

#### **2 Effect of the principles**

- (1) The Scottish social security principles are set out in section 1 so that—
  - (a) they can be reflected in the Scottish social security charter as required by section 15(3), and
  - (b) the Scottish Commission on Social Security can have regard to them as required by section 97(6).

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

#### *Promotion of take-up*

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

The Scottish Ministers must—

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

### **4 Recognition of importance of inclusive communication**

- (1) In fulfilling their duty under section 3(a), the Scottish Ministers must have regard to the importance of communicating in an inclusive way.
- (2) In subsection (1), “communicating in an inclusive way” means communicating in a way that ensures individuals who have difficulty communicating (in relation to speech, language or otherwise) can receive information and express themselves in ways that best meet each individual’s needs.

### **5 Recognition of importance of accessible information**

- (1) In fulfilling their duty under section 3(a), the Scottish Ministers must have regard to the importance of providing information in a way that is accessible for individuals who have a sensory, physical or mental disability.
- (2) The steps taken by the Scottish Ministers under section 3(b) must include steps in relation to ensuring that—
  - (a) the information this Act requires the Scottish Ministers to give to an individual is given in a format that is accessible to the individual, and
  - (b) all information which this Act requires the Scottish Ministers to make publicly available is available in formats that are accessible to individuals who have a sensory, physical or mental disability.

### **6 Recognition of importance of independent information, advice and advocacy**

- (1) In fulfilling their duty under section 3(a), the Scottish Ministers must have regard to the role that—
  - (a) independent information and advice, and
  - (b) independent advocacy,can play in ensuring that individuals are given what they are eligible to be given through the Scottish social security system.

- (2) The steps taken by the Scottish Ministers under section 3(b) must include steps in relation to providing, or ensuring the provision of, information about—
  - (a) independent information and advice, and
  - (b) independent advocacy,for individuals applying for, or receiving, assistance through the Scottish social security system.
- (3) The steps taken by the Scottish Ministers under section 3(b) must include steps in relation to ensuring the availability of independent information and advice (that is accessible to, and proportionate to the needs of, the individuals to whom it is given) about the Scottish social security system, and the following matters in particular—
  - (a) how to apply for assistance,
  - (b) the process by which entitlement to assistance is determined,
  - (c) the types of assistance available,
  - (d) income maximisation,
  - (e) the content of the Scottish social security charter.
- (4) For the purposes of this section, information, advice and advocacy are independent if they are provided by a person other than the Scottish Ministers.

## **7 Recognition of importance of available data**

In fulfilling their duty under section 3(a), the Scottish Ministers must have regard to the possibility that information obtained for the purpose of determining an individual's eligibility for one type of assistance might be used to identify the individual's eligibility for other types of assistance.

## **8 Strategy to promote take-up**

- (1) The Scottish Ministers are to prepare a strategy to promote take-up in accordance with this section and section 9.
- (2) A strategy to promote take-up is to set out—
  - (a) the Scottish Ministers' best estimate of the extent to which, at the time the strategy is prepared, all individuals who are eligible to be given assistance through the Scottish social security system are being given the assistance they are eligible to be given,
  - (b) the steps under section 3(b) that the Ministers intend to take during the strategy's lifetime.
- (3) Having prepared a strategy to promote take-up, the Scottish Ministers must—
  - (a) lay it before the Scottish Parliament, and
  - (b) make it publicly available by such means as they consider appropriate.

## **9 Further provision about preparing strategies to promote take-up**

- (1) The Scottish Ministers must prepare—
  - (a) the first strategy to promote take-up within 1 year of this section coming into force,
  - (b) the second strategy within 3 years of this section coming into force, and

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- (c) thereafter, a new strategy within 5 years of the last strategy being laid before the Parliament in accordance with section 8(3)(a).
- (2) In preparing a strategy to promote take-up, the Scottish Ministers must consult such persons as they consider appropriate.
- (3) The persons consulted must include—
  - (a) individuals who have received assistance through the Scottish social security system, and
  - (b) persons who work with or represent individuals living in households whose income is adversely affected, or whose expenditure is increased, because a member of the household has one or more protected characteristics within the meaning of section 4 of the Equality Act 2010.

### *Advocacy*

## **10 Right to advocacy**

- (1) Every individual to whom subsection (3) applies has a right of access to independent advocacy in connection with the determination of the individual's entitlement to be given assistance through the Scottish social security system.
- (2) It is the duty of the Scottish Ministers to ensure that independent advocacy services are available to the extent necessary for that right to be exercised by the individuals who have it.
- (3) 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 determining entitlement to be given assistance through the Scottish social security system.
- (4) For the purposes of this section—
  - (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 decisions that determine the individual's entitlement to be given assistance through the Scottish social security system as is, in the circumstances, appropriate,
  - (b) advocacy services are independent if they are provided by a person other than the Scottish Ministers.

## **11 Advocacy service standards**

- (1) It must be a term of any agreement that the Scottish Ministers enter into with a person for the provision of advocacy services in connection with their duty under section 10(2), that the person undertakes to comply with the advocacy service standards.
- (2) The advocacy service standards are to be set by the Scottish Ministers in regulations and may, in particular, include provision in relation to—
  - (a) the training and experience individuals providing advocacy services must have,
  - (b) service quality,
  - (c) quality assurance processes,

- (d) record keeping.
- (3) The advocacy service standards, or a part of them, may be set by reference to another document (whether or not prepared by the Scottish Ministers).

### *Assessments*

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

- (1) An individual may not be required, in order to be given assistance through the Scottish social security system, to undergo an assessment of physical condition or mental health that is carried out by another individual who is not acting in the course of employment by a public body.
- (2) In subsection (1), “public body” means any of the following—
  - (a) a Minister of the Crown,
  - (b) a person established by an enactment,
  - (c) a body comprised solely of persons described by this subsection,
  - (d) a body corporate that has no members other than (either or both)—
    - (i) persons described by this subsection,
    - (ii) persons acting on behalf of persons described by this subsection.
- (3) For the purposes of this section, an individual may be regarded as carrying out an assessment in the course of employment by a body if the individual carries out the assessment pursuant to an agreement between the body and the individual; it is immaterial that the individual would not be regarded as an employee of the body for the purposes of any other enactment.
- (4) Subsection (1) does not preclude its being made a requirement for being given assistance through the Scottish social security system that an individual be—
  - (a) in receipt of, or
  - (b) eligible or entitled to receive,other assistance, despite entitlement to that other assistance depending on the fulfilment of a requirement that subsection (1) would preclude from being imposed in relation to the giving of assistance through the Scottish social security system.
- (5) In subsection (4), “other assistance” means assistance other than assistance given through the Scottish social security system.

## **13 Assessors to be suitably qualified**

- (1) The Scottish Ministers must ensure that any assessment to which subsection (2) applies is carried out by a suitably qualified person.
- (2) This subsection applies to an assessment that—
  - (a) is arranged—
    - (i) by the Scottish Ministers,
    - (ii) in connection with making a determination of what assistance an individual is eligible to be given through the Scottish social security system, and
  - (b) is an assessment of physical condition or mental health.

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- (3) The Scottish Ministers may by regulations specify who is to be regarded as a suitably qualified person within the meaning of subsection (1) by reference to a person’s—
  - (a) training,
  - (b) experience, or
  - (c) holding a particular position.
- (4) Regulations under subsection (3) must make different provision about who is suitably qualified to carry out an assessment depending on what the assessment is about.

#### **14 Assessments only to be required where necessary**

It is implicit in the principle (expressed in section 1(d)) that respect for the dignity of individuals is to be at the heart of the Scottish social security system that—

- (a) an individual should not be required to undergo an assessment in order to be given assistance unless that is the only practicable way to obtain the information needed to determine what assistance the individual is eligible to be given, and
- (b) the Scottish Ministers should take into consideration any preferences an individual has expressed to them about where and how any assessment is carried out.

#### *Charter*

#### **15 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 16 to 18.
- (2) The charter is to set out what should be expected—
  - (a) from the Scottish Ministers when—
    - (i) developing social security policy, and
    - (ii) exercising the functions conferred on them by this Part and Parts 2 and 3, 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.

#### **16 Preparing the first charter**

- (1) The Scottish Ministers are to prepare 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.
- (3) The Scottish Ministers must ensure, as far as is reasonably practicable, that the persons consulted include, in particular, a representative proportion of persons such as are mentioned in subsection (4)(a)(i), (ii) and (iv) who have—
  - (a) a physical impairment,
  - (b) a mental impairment.

- (4) The persons consulted must include—
- (a) individuals who are in receipt of—
    - (i) disability living allowance as provided for by sections 71 to 76 of the Social Security Contributions and Benefits Act 1992,
    - (ii) personal independence payment as provided for by Part 4 of the Welfare Reform Act 2012,
    - (iii) severe disablement allowance as provided for by sections 68 and 69 of the Social Security Contributions and Benefits Act 1992,
    - (iv) attendance allowance as provided for by section 64 of that Act,
    - (v) industrial injuries benefits within the meaning of Part 5 of that Act,
    - (vi) child benefit as provided for by Part 9 of that Act,
    - (vii) carer’s allowance as provided for by section 70 of that Act,
    - (viii) payments under section 138 of that Act in respect of—
      - (A) maternity expenses,
      - (B) funeral expenses,
      - (C) heating expenses, and
  - (b) persons who work with or represent individuals living in households whose income is adversely affected, or whose expenditure is increased, because a member of the household has one or more protected characteristics within the meaning of section 4 of the Equality Act 2010.
- (5) For the purpose of subsection (2), it is immaterial that anything done by way of consultation was done before the Bill for this Act was passed or after that but before this section comes into force.
- (6) The Scottish Ministers may not make the charter unless a draft of it has been laid before, and approved by resolution of, the Scottish Parliament.

## **17 Publication of the charter**

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

## **18 Reviewing the charter**

- (1) The Scottish Ministers must review the charter—
- (a) within 5 years of its being made, and
  - (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—
- (a) the Scottish Commission on Social Security, and
  - (b) any other persons they consider appropriate.
- (3) The persons consulted must include—
- (a) individuals who have received assistance through the Scottish social security system, and
  - (b) persons who work with or represent individuals living in households whose income is adversely affected, or whose expenditure is increased, because a

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member of the household has one or more protected characteristics within the meaning of section 4 of the Equality Act 2010.

- (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) if the Ministers have decided to make changes to the charter, a draft of the charter showing the changes they intend to make.
- (5) The Scottish Ministers may not make changes to the charter unless a draft of the charter showing the changes they intend to make has been laid before, and approved by resolution of, the Scottish Parliament.

## **19 Effect of the charter**

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

### *Accountability*

## **20 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,
  - (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,
  - (c) an assessment of how the Scottish social security system has affected the circumstances of persons living in households whose income is adversely affected, or whose expenditure is increased, because a member of the household has one or more protected characteristics within the meaning of section 4 of the Equality Act 2010, and
  - (d) a description of the data for the purpose of monitoring equality of opportunity used in preparing the report.
- (3) The first report under this section is to include a plan setting out the Scottish Ministers' intentions to collect and publish data for the purpose of monitoring equality of opportunity where existing data sources are not sufficient for the preparation of the report.



## **21 Scottish Commission on Social Security**

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

## **22 Commission functions**

- (1) The Scottish Commission on Social Security has the following functions—
  - (a) to scrutinise legislative proposals in accordance with section 97,
  - (b) to prepare and submit to the Scottish Ministers a report on any matter, relevant to social security, that the Ministers request the Commission to report on,
  - (c) to prepare and submit to the Scottish Parliament a report on any matter, relevant to social security, that the Commission is requested to report on by the Parliament after the Parliament has resolved that the request should be made,
  - (d) to prepare and submit to the Ministers and the Parliament, from time to time, a report containing—
    - (i) an assessment of the extent to which any or all of the expectations set out in the Scottish social security charter are being fulfilled, and
    - (ii) recommendations for improvement where the assessment is that those expectations are not being fulfilled,
  - (e) any functions the Ministers confer on the Commission by regulations.
- (2) In performing any of the functions mentioned in subsection (1), the Commission may have regard to any relevant international human rights instruments (see also section 97(6)).
- (3) The Commission must make publicly available by such means as it considers appropriate any report that it prepares in pursuance of a function mentioned in subsection (1).
- (4) The Commission must consider preparing a report under subsection (1)(d) if it receives evidence which suggests that expectations set out in the charter are frequently not being fulfilled.
- (5) In subsection (2), “international human rights instruments”—
  - (a) means any international convention, treaty or other international instrument ratified by the United Kingdom, subject to—
    - (i) any amendments in force in relation to the United Kingdom for the time being, and
    - (ii) any reservations, objections or interpretative declarations by the United Kingdom for the time being in force, and
  - (b) includes, in particular, the International Covenant on Economic, Social and Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

### *Interpretation*

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

In this Part, “Scottish social security system” means the system for the Scottish Ministers giving assistance to individuals in accordance with any of the following—

- (a) Part 2,
- (b) regulations made under Part 3,
- (c) a provision of any other Act of the Scottish Parliament if it is only by virtue of exception 10 of Section F1 of Part 2 of schedule 5 of the Scotland Act 1998 that the provision does not relate to reserved matters as defined in section 127 of that Act.

## **PART 2**

### GIVING OF ASSISTANCE BY SCOTTISH MINISTERS

#### **CHAPTER 1**

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

#### **24 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.

#### **25 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 37, or
    - (ii) (following a request for a re-determination) under section 43,
  - (b) by the First-tier Tribunal for Scotland—
    - (i) under section 49 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),
  - (d) by the Court of Session under its Tribunals Act powers (in an appeal against a decision of the Upper Tribunal), or
  - (e) by the Supreme Court of the United Kingdom—
    - (i) in an appeal under section 40 of the Court of Session Act 1988 against a decision of the Court of Session, or
    - (ii) on a reference made by the Court of Session under schedule 6 of the Scotland Act 1998.

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- (2) In this section, “Tribunals Act powers” means powers under Part 6 (review or appeal of decisions) of the Tribunals (Scotland) Act 2014.

## **26 Individual’s right to stop receiving assistance**

- (1) An individual may request that the Scottish Ministers cancel a determination of the individual’s entitlement to assistance.
- (2) On being requested to do so under subsection (1), the Scottish Ministers must cancel a determination—
- (a) with immediate effect, or
  - (b) with effect from a later date specified in the request.
- (3) An individual is not entitled, and is not to become entitled, to be given assistance by a determination after it has been cancelled.
- (4) A request under subsection (1) must be made in such form as the Scottish Ministers require.
- (5) The Scottish Ministers must publicise any requirements for the time being set under subsection (4).

## **27 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**

## **28 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 24 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 2 makes provision about the exercise of the power conferred by subsection (2).

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## **29 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 24 to an individual to meet, or help towards meeting, the individual's heating costs during a period of cold weather.
- (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 3 makes provision about the exercise of the power conferred by subsection (2).

## **30 Winter heating assistance**

- (1) Winter heating assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 24 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—
  - (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 4 makes provision about the exercise of the power conferred by subsection (2).

## **31 Disability assistance**

- (1) Disability assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 24 to an individual on account of the individual having—
  - (a) a disability arising from a physical or mental impairment, or
  - (b) a terminal illness.
- (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 5 makes provision about the exercise of the power conferred by subsection (2).

## **32 Early years assistance**

- (1) Early years 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, or expecting to have, a child in the family.
- (2) The Scottish Ministers are to make regulations prescribing—

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- (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 6 makes provision about the exercise of the power conferred by subsection (2).

### **33 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 24 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 7 makes provision about the exercise of the power conferred by subsection (2).

### **34 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 24 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 8 makes provision about the exercise of the power conferred by subsection (2).

### **35 Housing assistance**

- (1) Housing assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 24 to an individual to meet, or help towards meeting, housing costs.
- (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 housing assistance, and
  - (b) what housing assistance an individual who is entitled to it is to be given.
- (3) Schedule 9 makes provision about the exercise of the power conferred by subsection (2).

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### **36 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 24 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) Schedule 10 makes provision about the exercise of the power conferred by subsection (2).

## **CHAPTER 3**

### **DETERMINING ENTITLEMENT**

#### *Determination by the Scottish Ministers*

### **37 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—

- (a) on receiving an application for that type of assistance from the individual, or
- (b) when required to do so by regulations under section 52.

### **38 Application for assistance**

- (1) An application for assistance must be—
  - (a) made to the Scottish Ministers in such form, and
  - (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—
  - (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.
- (4) Despite subsection (3), an individual may make another application for a particular type of assistance in respect of an event if the latest determination of the individual's entitlement to that type of assistance in respect of the event states that the individual may make another application.
- (5) If the Scottish Ministers reject something purporting to be an application for assistance, they must inform the individual concerned of—

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- (a) the decision to do that,
- (b) the reasons for it, and
- (c) the individual's right to appeal under section 61.

### **39 Withdrawal of application**

- (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 37 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).

### **40 Notice of determination**

- (1) Having made a determination under section 37 of an individual's entitlement to assistance, 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.

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

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

- (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 40) of a determination by the Ministers of the individual's entitlement to that type of assistance.
- (2) A request for a re-determination is valid only if the conditions set out in the following subsections are satisfied—
  - (a) subsection (3), and

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- (b) subsection (4).
- (3) The condition referred to in subsection (2)(a) is satisfied if the request is made in such form as the Scottish Ministers require.
- (4) The condition referred to in subsection (2)(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) the individual has a good reason for not requesting a re-determination sooner (see section 42), and
    - (ii) 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.
- (5) The Scottish Ministers must publicise any requirements for the time being set under subsection (3).
- (6) If the Scottish Ministers decide that something purporting to be a request for a re-determination does not satisfy the condition in subsection (3), they must inform the individual concerned of—
  - (a) the decision,
  - (b) the reasons for it, and
  - (c) the individual's right to appeal under section 61.

#### **42 Late request for re-determination**

- (1) 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), an individual has a good reason for not requesting a re-determination sooner.
- (2) Having made a decision under subsection (1), the Scottish Ministers must inform the individual concerned—
  - (a) of the decision, and
  - (b) if the decision is that the individual has no good reason for not requesting a re-determination sooner, of—
    - (i) the reasons for the decision, and
    - (ii) the individual's right to appeal under section 61.

#### **43 Duty to re-determine**

- (1) On being requested under section 41 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.
- (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—



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- (a) their duty to make the determination ends (but they may still make it), and
  - (b) section 45 applies.
- (4) If the Scottish Ministers make the determination (whether or not within the period allowed for re-determination), section 44 applies.
- (5) The period allowed for re-determination is to be prescribed by the Scottish Ministers in regulations.
- (6) The reference in subsection (1) to a request under section 41 is to a request that is valid according to subsection (2) of that section.

#### **44 Notice of re-determination**

- (1) Having made a determination under section 43 of an individual's entitlement to a particular type of assistance, the Scottish Ministers must—
- (a) inform the individual—
    - (i) of the determination,
    - (ii) of the reasons for it,
    - (iii) of the individual's right to appeal to the First-tier Tribunal under section 46 against the determination,
    - (iv) if relevant, that the individual has the right to request a copy of an assessment report under section 60, and
  - (b) provide the individual with a form that the individual can complete and submit to the Scottish Ministers in order to bring an appeal against the determination.
- (2) The Scottish Ministers must fulfil their duty under subsection (1)(a) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

#### **45 Notice where re-determination not made timeously**

- (1) Having failed to make a determination under section 43 of an individual's entitlement to a particular type of assistance within the period allowed for re-determination, the Scottish Ministers must—
- (a) inform the individual—
    - (i) that the individual's request for a re-determination has not been dealt with within the period allowed, and
    - (ii) that the individual therefore has the right to appeal to the First-tier Tribunal against the determination under section 37 which prompted the request for a re-determination, and
  - (b) provide the individual with a form that the individual can complete and submit to the Scottish Ministers in order to bring an appeal against the determination.
- (2) The Scottish Ministers must fulfil their duty under subsection (1)(a) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

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

#### **46 Right to appeal to First-tier Tribunal against determination**

- (1) An individual may appeal to the First-tier Tribunal for Scotland—
  - (a) against a determination under section 43 of the individual's entitlement to assistance, or
  - (b) in a case where subsection (2) applies, against the determination under section 37 referred to in that subsection.
- (2) This subsection applies where—
  - (a) having been informed of a determination under section 37 of the individual's entitlement to assistance, the individual has made a request for a re-determination under section 41, and
  - (b) the Scottish Ministers have failed to make a determination under section 43 in consequence of that request within the period allowed for re-determination.

#### **47 Initiating an appeal**

- (1) In order to bring an appeal under section 46 against a determination, an individual must submit to the Scottish Ministers the form provided under section 44 or (as the case may be) 45 in relation to the determination.
- (2) On receiving a form that they provided under section 44 or 45, the Scottish Ministers must send—
  - (a) the form, and
  - (b) the information held by them that they used to make the determination in question,to the First-tier Tribunal.
- (3) Having complied with subsection (2), the Scottish Ministers must inform the individual to whom the determination in question relates that they have done so.
- (4) In this section, references to a form include a copy of a form.
- (5) For the avoidance of doubt, the form that the Scottish Ministers provide under section 44 or 45 need not be a physical form.
- (6) Scottish Tribunal Rules providing for the form and manner in which an appeal under section 46 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.

#### **48 Deadline for appealing**

- (1) An appeal under section 46—
  - (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,
  - (b) may be brought only with the First-tier Tribunal's permission if an appeal application is made after the period mentioned in paragraph (a),
  - (c) may not be brought if an appeal application has not been made within the period of one year beginning with the day the relevant event occurred.

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- (2) In subsection (1)—
- (a) “the relevant event” means—
    - (i) in the case of an appeal against a determination under section 43, the individual to whom the determination relates being informed of it in accordance with section 44,
    - (ii) in the case of an appeal against a determination under section 37, the individual to whom the determination relates being informed (in accordance with section 45) that the individual has the right to appeal against it,
  - (b) an appeal application is made when a form, that relates to the determination 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 47(1).
- (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.

#### **49 First-tier Tribunal’s power to determine entitlement**

In an appeal under section 46 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.

#### *The determination of entitlement*

#### **50 Decisions comprising determination**

- (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,
  - (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,
  - (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 51), a decision about what assistance of the type in question the determination is to entitle the individual to be given in the future, and
  - (d) if the determination is of an individual’s entitlement to assistance in respect of an event, a decision about whether the individual’s application for assistance in respect of the event is possibly premature.
- (2) If it is decided under subsection (1)(d) that an individual’s application for assistance in respect of an event is possibly premature, the determination must include a statement that the individual may make another application for assistance in respect of the event.
- (3) An individual’s application for assistance in respect of an event is possibly premature for the purpose of subsection (1)(d) if—

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- (a) the decision under subsection (1)(a) is that the eligibility rules prescribed in the applicable regulations are not satisfied in the individual’s case, and
  - (b) it is possible that circumstances may change so that, in relation to the event in question, those rules will be satisfied in the individual’s case.
- (4) In this section, “the applicable regulations” means the regulations made under the section in Chapter 2 that describes the type of assistance in question.

## **51 Determination on basis of ongoing entitlement**

- (1) The Scottish Ministers may by regulations—
- (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, and
  - (b) provide for exceptions to any provision made by virtue of paragraph (a).
- (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
  - (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) Without prejudice to the generality of subsection (2)(b), the assumptions that may be specified include an assumption that the eligibility rules prescribed in the applicable regulations will continue to be satisfied in an individual’s case for a specified duration or indefinitely.
- (4) In this section—
- “the applicable regulations” means the regulations made under the section in Chapter 2 that describes the type of assistance in question,
  - “specified” means specified by regulations under this section.

## **52 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

### FURTHER PROVISION ABOUT DETERMINING ENTITLEMENT

#### *Identifying possible eligibility*

#### **53 Duty to inform about possible eligibility**

- (1) Subsection (2) applies if, in the course of their making a determination of an individual's entitlement to assistance, it appears to the Scottish Ministers that the individual may be eligible for other assistance.
- (2) The Scottish Ministers must—
  - (a) inform the individual that the individual may be eligible for the other assistance, and
  - (b) either—
    - (i) provide the individual with information about how to apply for it, or
    - (ii) if regulations under section 52 so allow, ask the individual whether they should proceed with making a determination of the individual's entitlement to the other assistance without receiving an application.
- (3) Subsection (2)(b)(ii) does not preclude the Scottish Ministers from requesting further information under section 54(1) for the purpose of determining the individual's entitlement to the other assistance.
- (4) In this section, “other assistance” means—
  - (a) a different type of assistance described in Chapter 2 from the type of assistance that the determination mentioned in subsection (1) relates to, or
  - (b) the same type of assistance as that determination relates to, but in respect of a different period or (as the case may be) event.

#### *Obtaining information to make determination*

#### **54 Obligation to provide information on request**

- (1) When—
  - (a) the Scottish Ministers are determining an individual's entitlement to assistance (whether under section 37 or 43), 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 eligibility rules prescribed in the applicable regulations are not satisfied in the individual's case (see section 50).
- (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.

## **55 Requirement to justify assessment requests**

- (1) This section applies to a request for information from an individual under section 54(1) if fulfilling the request would require the individual to undergo an assessment.
- (2) When making the request, the Scottish Ministers must inform the individual why they consider requiring the individual to undergo an assessment to be the only practicable way to obtain the information.
- (3) If the individual would have to undergo a face-to-face assessment in order to fulfil the request, when making the request the Scottish Ministers must also inform the individual what consideration they have given to—
  - (a) any preference the individual has expressed to them concerning where and how assessments are carried out,
  - (b) whether the assessment could be carried out another way,
  - (c) what distance (if any) they expect the individual will have to travel in order to attend the assessment,
  - (d) the extent to which travelling to attend the assessment may—
    - (i) cause the individual distress, or
    - (ii) adversely affect the individual’s health.
- (4) In subsection (3), “face-to-face assessment” means an assessment involving—
  - (a) the individual, and
  - (b) the assessor,being physically in the same place at the same time.

## **56 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), (4) or (5) 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 72.
- (3) This subsection applies to an individual who is to be given assistance under section 24 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 acting on behalf of an individual to whom subsection (3) applies in relation to any application for the assistance or the determination of the individual’s entitlement.
- (5) This subsection applies to a person to whom payments are to be made under section 24 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.

**57 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 56 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 24.
- (2) The Scottish Ministers may lift a duty placed on a person under section 56 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.

*Appointees***58 Appointment of person to act on behalf of individual**

- (1) The Scottish Ministers may appoint a person (an “appointee”)—
  - (a) to act on behalf of an individual in connection with the determination of the individual’s entitlement to assistance under section 24, and
  - (b) to receive such assistance on the individual’s behalf.
- (2) The Scottish Ministers may only appoint an appointee if it appears to them that either subsection (3) or (4) applies.
- (3) This subsection applies if—
  - (a) the individual is deceased, and
  - (b) there is no executor appointed on the individual’s estate.
- (4) This subsection applies if, in relation to the matters mentioned in subsection (1)—
  - (a) the individual is incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000,
  - (b) there is no guardian acting or appointed under that Act,
  - (c) the individual’s estate is not being administered by a judicial factor, and
  - (d) there is no other person who has authority to act on behalf of the individual and is willing to do so.
- (5) An individual who is under 16 years may not be appointed as an appointee.
- (6) Where an appointee is appointed in relation to an individual—
  - (a) the appointee can do anything that the individual could do in connection with the determination of the individual’s entitlement to assistance (including making an application for assistance),
  - (b) the Scottish Ministers may request that the appointee provide them with information that they may otherwise request the individual to provide under section 54 (and subsections (2) and (3) of that section apply to that request as they apply to a request made to the individual),
  - (c) any information that would be given to the individual under or by virtue of this Part must be given to the appointee instead.
- (7) The Scottish Ministers may terminate an appointment under this section at any time.

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*Support during discussions and assessments*

**59 Right to support**

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

*Access to reports*

**60 Right to reports used in determining entitlement**

- (1) If an individual requests it, the Scottish Ministers must give the individual a copy of any assessment report held by the Ministers that they took into account in making a determination of the individual’s entitlement to assistance.
- (2) Subsection (1) does not require the Scottish Ministers to provide an individual with information that they are exempt from the obligation to provide to the individual under Article 15 of the GDPR (whether by virtue of an enactment or otherwise).
- (3) In subsection (2), “the GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

*Right to appeal Scottish Ministers’ process decisions*

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

- (1) An individual may appeal to the First-tier Tribunal for Scotland against a decision by the Scottish Ministers—
  - (a) to reject something purporting to be an application for assistance (see section 38),
  - (b) that something purporting to be a request for a re-determination does not satisfy the condition in section 41(3),
  - (c) that an individual has no good reason for not requesting a re-determination sooner (see section 42).
- (2) An appeal under this section—
  - (a) may be brought without the First-tier Tribunal’s permission within the period of 31 days beginning with the day the individual was informed of the decision in accordance with this Act,



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- (b) may be brought only with the First-tier Tribunal’s permission after the period mentioned in paragraph (a),
  - (c) may not be brought after the end of the period of one year beginning with the day the individual was informed of the decision in accordance with this Act.
- (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) 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) for an appeal to be brought,
- is final.
- (5) Accordingly (and without prejudice to the generality of subsection (4)), 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.

*Presumption about when information is received*

**62 Presumption for purposes of sections 41, 48 and 61**

- (1) Subsection (2) applies in relation to the references in sections 41, 48 and 61 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 an individual of something, the Scottish Ministers send information—
- (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 by the Scottish Ministers unless the contrary is shown.

**CHAPTER 5**

**RECOVERY OF VALUE OF ASSISTANCE**

*Assistance given in error*

**63 Liability for assistance given in error**

- (1) An individual is liable to pay the Scottish Ministers the value of any assistance that was given to the individual due to an error (but see section 64).
- (2) For the avoidance of doubt, the individual’s liability under subsection (1) is limited to the difference in value between—

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- (a) the assistance that was given, and
  - (b) the assistance (if any) that would have been given had the error not been made.
- (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 64, 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.

#### **64 Exclusion from liability**

- (1) An individual has no liability under section 63(1) in respect of assistance given due to an error if the error is neither—
- (a) the individual'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—
- (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 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 (2)(a), the reference to providing information includes making a statement,
  - (b) subsection (3)(b), the reference to information given to the individual by the Scottish Ministers does not include information explaining why the Ministers consider the assistance to have been given in error.

## **65 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 63, 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).

## **66 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 63 of the Social Security (Scotland) Act 2018.”.

## **67 Exclusion of other rights of recovery**

- (1) An individual given assistance in error has no non-statutory obligation based on redress of unjustified enrichment to pay the value of that assistance to the Scottish Ministers.
- (2) In subsection (1)—
  - (a) “non-statutory obligation” means an obligation that arises from a rule of law rather than an enactment,
  - (b) the reference to assistance being given in error is to be construed in accordance with section 63(4).

## **68 First-tier Tribunal’s jurisdiction**

The Scottish Ministers may by regulations transfer to the First-tier Tribunal for Scotland some or all of the competence and jurisdiction that a sheriff has in relation to the recovery of money owed under section 63.

## **69 Liability where assistance given for period after death**

- (1) An individual’s estate is liable to pay the Scottish Ministers the value of any assistance that was given to the individual under section 24 in respect of a period after the individual’s death.
- (2) For the avoidance of doubt, assistance may be regarded as having been given to an individual for the purposes of this section despite being given after the individual’s death.

*Funeral expense assistance*

**70 Liability of deceased's estate**

- (1) The value of funeral expense assistance given in connection with an individual's funeral is to be treated as a funeral expense that the individual's estate is liable to pay the Scottish Ministers.
- (2) 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).

**CHAPTER 6**

**OFFENCES AND INVESTIGATIONS**

*Offences*

**71 Offence of trying to obtain assistance by deceit**

- (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 24 which would not otherwise be given.
- (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
    - (iii) both,
  - (b) on conviction on indictment, to—
    - (i) imprisonment for a term not exceeding 5 years,
    - (ii) a fine, or
    - (iii) both.

**72 Offence of failing to notify**

- (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,
  - (b) the person does not have a reasonable excuse for failing to do so, and
  - (c) 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.

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- (2) For the purpose of subsection (1)(a), a change in circumstances to which this subsection applies is a change—
- (a) which the person has a duty under section 56 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.
- (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 56(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.

### **73 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 56 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 56(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,

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- (b) on conviction on indictment, to—
  - (i) imprisonment for a term not exceeding 5 years,
  - (ii) a fine, or
  - (iii) both.

#### **74 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*

#### **75 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,

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- (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.

## **76 Code of practice on investigations**

- (1) The Scottish Ministers must publish a code of practice on investigations carried out by virtue of section 75.
- (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 action.
- (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.

## **CHAPTER 7**

### **UPGRATING FOR INFLATION**

## **77 Duty to consider effects of inflation**

- (1) Before the end of each financial year, the Scottish Ministers must—
  - (a) calculate the inflation-adjusted level of each relevant figure,
  - (b) prepare a report that complies with subsection (2),
  - (c) lay a copy of the report before the Scottish Parliament, and
  - (d) make the report publicly available by such means as the Ministers consider appropriate.
- (2) A report prepared under subsection (1)(b) complies with this subsection if it—
  - (a) states what the Scottish Ministers have most recently calculated to be the inflation-adjusted level of each relevant figure,
  - (b) explains how the Ministers calculated the inflation-adjusted levels, and
  - (c) states what (if anything) the Ministers have done, or intend to do, in light of their calculations and their reasons for that decision.
- (3) In this section, “relevant figure” means—

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- (a) a figure prescribed in regulations under any section in Chapter 2 as the value, or part of the value, of the assistance that is to be given to an individual, but
  - (b) not a figure which is so prescribed to apply only in respect of periods that have ended, or events that occurred, before a particular date.
- (4) The inflation-adjusted level of a figure prescribed in regulations is to be calculated for the purposes of this Chapter as follows—

$$f \times \left(1 + \frac{i}{100}\right)$$

where—

f is the figure prescribed, and

i is the number of percentage points which the Scottish Ministers consider reflects the change in the general level of relevant prices since a copy of a report was last laid before the Scottish Parliament under subsection (1)(c).

- (5) It is for the Scottish Ministers to decide what prices are “relevant prices” in terms of subsection (4).
- (6) For the purposes of preparing the first report under subsection (1)(b), the reference in subsection (4) to the last time a copy of a report was laid before the Scottish Parliament is to be read as a reference to the date on which the figure in question was prescribed.

## 78 **Duty to uprate carer’s, disability, employment-injury and funeral expense assistance**

- (1) Before the end of each financial year, having calculated in accordance with section 77 the inflation-adjusted level of each relevant figure prescribed in—
- (a) the carer’s assistance regulations,
  - (b) the disability assistance regulations,
  - (c) the employment-injury assistance regulations, and
  - (d) the funeral expense assistance regulations,
- the Scottish Ministers must bring forward legislation to replace any relevant figure prescribed in those regulations which is, in their opinion, materially below its inflation-adjusted level with a figure of at least that level (subject to any rounding they think appropriate).
- (2) For the purpose of subsection (1), bringing forward legislation means laying before the Scottish Parliament for approval by resolution a draft Scottish statutory instrument (or instruments) containing regulations under each power mentioned in subsection (4).
- (3) If the Scottish Parliament approves a draft instrument laid before it by the Scottish Ministers in fulfilment of their duty under subsection (1), the Ministers must make the regulations contained in the draft instrument.
- (4) In this section—
- “carer’s assistance regulations” means regulations under section 28,
  - “disability assistance regulations” means regulations under section 31,
  - “employment-injury assistance regulations” means regulations under section 33,
  - “funeral expense assistance regulations” means regulations under section 34,
  - “relevant figure” is to be construed in accordance with section 77(3).



## PART 3

### SUPPLEMENTING ASSISTANCE UNDER OTHER ENACTMENTS

#### *Top up of reserved benefits*

#### **79 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 80, “reserved benefit” means a benefit which is to any extent a reserved matter within the meaning of schedule 5 of the Scotland Act 1998.

#### **80 Restrictions on power**

- (1) Regulations under section 79 may not provide for financial assistance to be given to meet or help to meet housing costs.
- (2) Regulations under section 79 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*

#### **81 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.

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- (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 whichever is the higher of—
- (a) 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
  - (b) that amount as it would have effect on the qualifying date if it were adjusted for inflation in accordance with subsection (5), 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 must, before the start of each new tax year, beginning with the first new tax year beginning after this section comes into force—
- (a) calculate what the weekly amount specified in regulation 79(1)(c) of the Jobseeker’s Allowance Regulations 1996 (“the JSA Regulations”) would be if it were adjusted for inflation,
  - (b) publish a statement explaining how they have calculated inflation for this purpose.
- (6) In calculating the amount for the purpose of subsection (5)(a), the Scottish Ministers may take account of any change in the weekly amount specified in regulation 79(1)(c) of the JSA Regulations since this section came into force.
- (7) For the purposes of subsection (5), a tax year means a period beginning with 6 April in one year and ending with 5 April in the next.
- (8) The Scottish Ministers may by regulations modify this section so as to modify who is a qualifying individual for the purposes of this section.

## 82 Power to repeal temporary provision

The Scottish Ministers may by regulations—

- (a) repeal section 81 and revoke any regulations made under it, and
- (b) repeal this section.

## PART 4

### FURTHER PROVISION IN CONNECTION WITH PARTS 2 AND 3

#### *Inalienability of assistance*

#### **83 No assignation or charge**

- (1) Any assignation of or charge on, or agreement to assign or charge, an individual's entitlement to assistance under or by virtue of this Act is void.
- (2) Nothing in subsection (1) prevents the Scottish Ministers from giving the assistance to which an individual is entitled to another person if the individual (or a person acting on the individual's behalf) has agreed to that.

#### **84 Retention of right to assistance on bankruptcy etc.**

An individual's entitlement to assistance under or by virtue of this Act does not transfer to another person—

- (a) on the individual's sequestration, or
- (b) on the appointment of a judicial factor on the individual's estate under section 41 of the Solicitors (Scotland) Act 1980.

#### *Information-sharing*

#### **85 Information-sharing**

- (1) The Scottish Ministers may require a person mentioned in subsection (2) to supply information held by the person to the Ministers for the purpose of a social security function.
- (2) The persons are—
  - (a) a local authority,
  - (b) a Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978 or a Special Health Board constituted under section 2(1)(b) of that Act,
  - (c) an integration joint board established by order under section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014,
  - (d) the Registrar General for Scotland,
  - (e) the Keeper of the Records of Scotland,
  - (f) the Scottish Courts and Tribunals Service,
  - (g) a person specified in regulations made by the Scottish Ministers.
- (3) Where information is supplied to the Scottish Ministers under subsection (1) for use for any purpose, they may use it for any other purposes for which information held by them for that purpose may be used.
- (4) In subsection (1), references to information held by a person include information held by another person providing services to the person.

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- (5) Information held by the Scottish Ministers for the purpose of a social security function may be supplied by the Ministers to a person mentioned in subsection (2) for use for the purposes of such function of the person as is specified in regulations made by the Ministers.
- (6) Where information is supplied to a person under subsection (5) for use for any purpose, the person may use it for any other purposes for which information held by the person for that purpose may be used.
- (7) In subsection (5), references to information held by the Scottish Ministers include information held by a person providing services to them.
- (8) Information supplied under subsection (5) must not be supplied by the recipient of the information to any other person without the authority of the Scottish Ministers.
- (9) This section does not permit or require the provision of information in breach of a prohibition or restriction on the disclosure of information arising by virtue of an enactment or rule of law.
- (10) In this section, “social security function” means a function of the Scottish Ministers under or by virtue of this Act.

#### *Agency arrangements*

### **86 Agency arrangements for housing assistance**

- (1) The Scottish Ministers may by regulations provide for the functions conferred on them by virtue of Part 2 to be exercised on their behalf by local authorities, but only in relation to—
  - (a) housing assistance, and
  - (b) short-term assistance that an individual is eligible to be given on account of the individual’s entitlement to housing assistance being under review within the meaning of paragraph 1(1)(c) of schedule 10.
- (2) Regulations under this section may in particular—
  - (a) specify the functions that local authorities are to exercise on the Scottish Ministers’ behalf,
  - (b) make provision identifying the persons in relation to whom a local authority is to exercise those functions, and
  - (c) provide for any enactment (including this Act) to apply subject to such modifications as the Ministers consider appropriate in consequence of functions falling to be exercised by a local authority on the Ministers’ behalf.
- (3) Regulations under this section do not affect the Scottish Ministers’ responsibility for the exercise of their functions.
- (4) In subsection (1), “functions” does not include regulation-making functions.

### *Monitoring of appeal process*

#### **87 Report to the Scottish Parliament on exercise of right to appeal**

- (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 number of individuals who obtained the right to appeal to the First-tier Tribunal under section 46 and the number of individuals who exercised that right.
- (2) The first report under this section must include a plan setting out how the Scottish Ministers intend to collect this data.
- (3) In reporting to the Scottish Parliament under subsection (1), the Scottish Ministers must indicate whether, in the opinion of the Ministers, amendment of the process for determining entitlement under this Act is appropriate.

## **PART 5**

### **DISCRETIONARY HOUSING PAYMENTS**

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

- (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—
    - (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)—
  - (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
    - (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 \(S.I. 2013/376\)](#).
- (4) Financial assistance under this section may be given to an individual by way of—
  - (a) payment to the individual,
  - (b) payment to another person to meet, or contribute towards meeting, any liability the individual has to that person,
  - (c) deduction from any liability the individual has to the authority giving the assistance which is connected to housing costs,

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- (d) any combination of the ways mentioned in the preceding paragraphs.

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

- (1) Financial assistance may not be given under section 88 by way of a loan.
- (2) Financial assistance may not be given under section 88 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.
- (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.

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

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 88,
- (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,
  - (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
  - (iii) as to the period for which it will give assistance.

## **91 Guidance**

- (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 88.
- (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
    - (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—
    - (i) determining applications for assistance and review, and
    - (ii) deciding whether to stop giving someone assistance,

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- (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.
- (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.
- (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.

## **92 Local authorities need not make payments if not funded**

- (1) The Scottish Ministers may make grants to local authorities to fund the giving of financial assistance under section 88.
- (2) Monies granted to an authority under subsection (1) may be spent only on giving financial assistance under section 88.
- (3) If an authority has spent all monies granted to it under subsection (1), the authority may refuse to consider any application for financial assistance under section 88.
- (4) If, by virtue of subsection (3), an authority is refusing to consider applications, it need not comply with section 90.
- (5) For the avoidance of doubt, subsection (3) does not prevent an authority from considering applications or giving financial assistance under section 88 should it choose to.

## **93 Power to modify section 88**

- (1) The Scottish Ministers may by regulations make whatever amendment to section 88 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.

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## PART 6

### UNIVERSAL CREDIT: PAYMENT TO JOINT CLAIMANTS

#### 94      **Universal credit: payment to joint claimants**

- (1) The Scottish Ministers must bring forward regulations under section 30 of the Scotland Act 2016 to give effect to the proposal described in subsection (3).
- (2) In subsection (1), “bring forward” means—
  - (a) consult the Secretary of State about the practicability of implementing the regulations in accordance with section 30(3) of the Scotland Act 2016, and
  - (b) lay regulations before the Scottish Parliament.
- (3) The regulations must give effect to the proposal that, despite regulation 47(4) to (6) of the 2013 Claims and Payments Regulations (payment of universal credit to joint claimants), universal credit payable in respect of Scottish joint claimants is to be split between the couple in such proportion as the Scottish Ministers consider appropriate unless the Scottish joint claimants elect to nominate a single bank or other account into which that benefit is to be paid.
- (4) For the avoidance of doubt, the regulations under subsection (1) must give effect only to the proposal described in subsection (3).
- (5) The Scottish Ministers may by regulations repeal this section and revoke any regulations made under it.
- (6) In this section—
 

“the 2013 Claims and Payments Regulations” means the [Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance \(Claims and Payments\) Regulations 2013 \(S.I. 2013/380\)](#),

“couple” has the meaning given by section 39 of the Welfare Reform Act 2012,

“Scottish joint claimants” means a couple living in Scotland who jointly make a claim for, or have been awarded, universal credit.

## PART 7

### FINAL PROVISIONS

#### 95      **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.

#### 96      **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.



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- (2) Regulations under any of the following provisions are subject to the affirmative procedure: sections 11, 13, 22(1)(e), any section in Chapter 2 of Part 2 and sections 51, 52, 68, 75, 79, 81(8), 82, 85(2)(g) and (5), 86 and 93 and paragraph 4(2)(c) of schedule 1.
- (3) Regulations under any of the following provisions are subject to the negative procedure: sections 41(4)(a) and 43(5) and paragraph 13(2) of schedule 1.
- (4) Regulations under section 95—
  - (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.
- (5) Regulations under section 22(1)(e), which modify the functions of the Scottish Commission on Social Security, may not be made after the Commission is established unless the Scottish Ministers have consulted the Commission about the modification.

## **97 Further procedure for regulations about assistance**

- (1) This section applies (subject to subsection (11)) in relation to regulations under—
  - (a) any section in Chapter 2 of Part 2, and
  - (b) section 79.
- (2) Where the Scottish Ministers propose to make regulations to which this section applies, they must (before laying a draft Scottish statutory instrument containing such regulations before the Scottish Parliament for approval by resolution)—
  - (a) inform the Scottish Commission on Social Security of their proposals,
  - (b) notify the Scottish Parliament that they have done so, and
  - (c) make their proposals publicly available by such means as the Ministers consider appropriate.
- (3) For the purposes of subsection (2), proposals must take the form of draft regulations.
- (4) Having been informed of the Scottish Ministers' proposals, the Commission must prepare a report setting out its observations and recommendations in relation to the proposals.
- (5) The Scottish Ministers must ensure that the Commission has such time to prepare the report as the Commission deems appropriate.
- (6) In preparing its report, the Commission—
  - (a) must have regard to—
    - (i) the Scottish social security principles, and
    - (ii) any relevant international human rights instruments (as defined in section 22(5)), and
  - (b) may consult any persons it considers appropriate.
- (7) If the Commission's members are unable to agree the terms of its report unanimously, the report must set out the matters over which members differ.
- (8) Having prepared its report, the Commission must—
  - (a) submit a copy of the report to—
    - (i) the Scottish Ministers, and

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- (ii) the Scottish Parliament, and
  - (b) make the report publicly available by such means as the Commission considers appropriate.
- (9) When laying a draft Scottish statutory instrument containing regulations to which this section applies before the Scottish Parliament for approval by resolution, the Scottish Ministers must also lay before the Parliament either—
- (a) a response to the Commission’s report on the proposals for the regulations, or
  - (b) a statement explaining why the Ministers consider it appropriate to lay the draft instrument before the Parliament before the Commission has submitted its report on the proposals for the regulations.
- (10) The response mentioned in subsection (9)(a) must, in particular, give details of—
- (a) how (if at all) the regulations differ from the proposals,
  - (b) how the Scottish Ministers have sought to address the observations and recommendations contained in the Commission’s report, and
  - (c) any observations or recommendations contained in the report that the Ministers disagree with and have not sought to address.
- (11) This section does not apply in relation to regulations made only for the purpose of the consolidation of earlier regulations.

## **98 Temporary disapplication of section 97**

- (1) Section 97 does not apply in relation to regulations under section 32 or 34 that are brought forward before the date specified by the Scottish Commission on Social Security.
- (2) The Commission specifies a date under subsection (1) by giving written notice to—
  - (a) the Scottish Ministers, and
  - (b) the Scottish Parliament,
 informing them of the date from which the Commission will be ready to perform its function of scrutinising legislative proposals in accordance with section 97.
- (3) In subsection (1), “brought forward” means contained in a draft Scottish statutory instrument that is laid before the Scottish Parliament for approval by resolution.
- (4) At any time after the date specified by the Commission under subsection (1), the Scottish Ministers may by regulations repeal this section.

## **99 Commencement**

- (1) The following provisions come into force on the day after Royal Assent: this section and sections 95, 96, 97, 98 and 100.
- (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.

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**100      Short title**

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