

EXPLANATORY NOTES

Social Security (Amendment) (Scotland) Act 2025 (asp 2)

£8.14

SOCIAL SECURITY (AMENDMENT) (SCOTLAND) ACT 2025

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Social Security (Amendment) (Scotland) Act 2025. They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or a part of a section does not seem to require any explanation or comment, none is given.

CROWN APPLICATION

3. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless a provision expressly exempts it. The freestanding provisions in this Act apply generally to emanations of the Crown in the same way as they apply to everyone else.

4. The Act also amends the 2018 Act, which applies to the Crown generally – and the Act makes no change to the application of the 2018 Act to the Crown.

OVERVIEW OF THE ACT

5. The aim of the Act is to improve the Scottish system of social security established under the 2018 Act. The Act includes a number of provisions intended to improve the experience of people using the services provided by Social Security Scotland (the agency which delivers social security assistance on behalf of the Scottish Ministers) and a number of provisions intended to make the system more efficient. The Act also seeks to implement the findings of an independent review into the remit and operation of the Scottish Commission on Social Security, and to revoke emergency provision inserted into the 2018 Act in 2020 at the height of the coronavirus pandemic. Some provisions of the Act amend or repeal sections of the 2018 Act, and others create new provisions in that Act.

6. The Act is drafted in ten Parts:

- Part 1 contains regulation-making powers for the Scottish Ministers to create two new forms of social security assistance: childhood assistance, for individuals with children; and care experience assistance, for individuals with experience of having been in the care system.

- Part 2 repeals section 52B of the 2018 Act, which contains emergency coronavirus provision introduced in 2020 during the pandemic; and provides a power to allow late applications for assistance for each form of assistance under the 2018 Act.
- Part 3 contains provisions which set out timescales for re-determination or appeal requests; provisions which introduce the right to withdraw a re-determination request; provisions which clarify the duties on Scottish Ministers where they have not completed a re-determination within the statutory deadline; provisions introducing a power for Scottish Ministers to make a new determination of entitlement during an appeal, with the effect of ending that appeal; provisions to set out the circumstances which may be taken into account by the First-tier Tribunal in making a determination on appeal; and provisions which set out the powers of the Tribunal in a "process appeal" under section 61 of the 2018 Act, along with the consequences of the Tribunal's decision.
- Part 4 contains provisions which modify the 2018 Act provisions on liability for assistance given in error and introduce a right to a review, followed by a right to appeal to the First-tier Tribunal for Scotland, against a finding of liability for assistance given in error. Provision is also made to allow assistance given in error under regulations made under section 79 to be recovered by way of deduction from other assistance given to that individual.
- Part 5 contains provisions which would allow Scottish Ministers to treat a person appointed by the UK Department for Work and Pensions for a limited time as though they are an appointee under the 2018 Act; provision is also made to make appointees liable to the person they act for where they act in breach of their duties.
- Part 6 extends the duty on the Scottish Ministers to take into account the effect of inflation and annually uprate social security assistance, so that it applies to all payments delivered under the 2018 Act.
- Part 7 confers powers on Scottish Ministers allowing them to audit the monetary value of error and fraud in the Scottish social security system.
- Part 8 contains the provisions and powers which will allow the Scottish Ministers to make recoveries of devolved social security assistance from awards of compensation, where they have both been awarded in relation to the same accident, injury or disease.
- Part 9 contains provisions amending the remit and operation of the Scottish Commission on Social Security.
- Part 10 contains the final and general provisions for the Act.

COMMENTARY ON PROVISIONS

PART 1 – TYPES OF SOCIAL SECURITY ASSISTANCE

Section 1: Childhood assistance

7. The Scottish Child Payment is currently delivered under section 79 of the 2018 Act as a 'top-up' where an individual is receiving a qualifying UK Government benefit. Section 1 of the Act provides a new enabling power for the Scottish Ministers to give childhood assistance under section 24 of the 2018 Act.

8. Chapter 2 of Part 2 of the 2018 Act sets out the nine existing types of assistance that are to be given by the Scottish Ministers under section 24. Each assistance type is described at a high level by a section of Chapter 2, setting out the characteristics of the assistance, for example an activity that qualifies for assistance (such as caring for a disabled person), a purpose of assistance (such as to help with heating costs) or an event that qualifies for assistance (such as an employment-related injury). Regulations then set out the eligibility rules that will determine entitlement to assistance and what assistance is to be provided. For all sections there is a link to a schedule which makes further provision about the content of regulations.

9. Section 1 of the Act follows this same approach in inserting a new section 32A and schedule 6A into the 2018 Act. These amendments together provide for childhood assistance, which is assistance to an individual to help towards meeting some of the costs associated with having a child in their family. This form of assistance will also effectively replace Early Years Assistance, with section 1 of the Act repealing section 32 and schedule 6 of the 2018 Act once the powers are commenced. The Act also makes transitional provision so that the regulations under the 2018 Act providing for Best Start Grants are to be treated as if they were made using the new power in section 32A(2).

10. Under paragraph 1 of schedule 6A, the primary eligibility criteria for childhood assistance are that the individual is, or has been, pregnant; has a particular relationship to another individual who is, or has been, pregnant; is to, or has, become responsible for a child, or has a particular relationship to an individual who is to, or has, become responsible for a child. Regulations under section 32A must define what being responsible for a child is to mean (paragraph 1(3) of schedule 6A).

11. The regulations may also make provision about continuing to give childhood assistance for a specific period, and in specific circumstances, to an individual who previously satisfied one of the primary eligibility criteria but no longer does so (paragraph 1(2) of schedule 6A). It is envisaged that this power would be used, for example, to give childhood assistance to a recently bereaved parent.

Section 2: Care experience assistance

12. Section 2 of the Act inserts a new section 93A into the 2018 Act, giving a regulation-making power to the Scottish Ministers to create a scheme providing for a new kind of social security assistance for individuals with experience of being in the care system, known as "care experience assistance". This regulation-making power is subject to the affirmative procedure. The power allows flexibility as to who would deliver care experience assistance in practice.

13. An example of what having had experience of being in the care system could mean would be an individual who has been looked after by a local authority (within the meaning given by section 17(6) of the Children (Scotland) Act 1995) – or an individual who has been subject to a kinship care order (within the meaning given by section 72 of the Children and Young People (Scotland) Act 2014).

14. The detail of the scheme would be set out in the regulations. Subsection (3) of inserted section 93A sets out that provision can be made in the regulations for who is to administer the scheme; how entitlement is to be determined; the amount of assistance; the process by which assistance is sought and determined; what happens if assistance is given incorrectly; and creating offences. Subsections (4) to (7) make equivalent provision on the application of offences to these regulations as section 80A of the 2018 Act on "top-ups" of reserved benefits.

15. Subsection (9) of inserted section 93A provides that Ministers have the power to give directions to the person administering the scheme for care experience assistance in relation to the implementation of the scheme; that the administrators must comply with Ministerial directions; and that Ministers must publish any directions that they give.

PART 2 – APPLICATIONS FOR ASSISTANCE

Section 3: Repeal of section 52B of the 2018 Act

16. Section 52B of the 2018 Act was inserted by the Coronavirus (Scotland) Act 2020, passed on 1 April 2020 during the height of the coronavirus pandemic. Its effect is to allow the relaxation of the relevant deadline in an application for assistance under the 2018 Act where that deadline was missed for a reason related to coronavirus. Given the passage of time since the pandemic this provision is no longer necessary and so section 3 of the Act repeals section 52B.

Section 4: Power to make provision about late applications for assistance

17. Section 4 of the Act provides a power to allow late applications for assistance for each kind of assistance under the 2018 Act – inserting provision in each relevant schedule of the 2018 Act to the effect that if the regulations on assistance contain an application deadline, they may also make provision about the circumstances in which an application made after the deadline may be treated as if it had been made by that deadline. Section 1 of the Act contains equivalent provision for schedule 6A on childhood assistance.

PART 3 – DETERMINATIONS AND RE-DETERMINATIONS OF ENTITLEMENT TO ASSISTANCE

Re-determinations

Section 5: Re-determination and appeal deadlines in exceptional circumstances

18. As with section 52B, section 52A was amended into the 2018 Act by the Coronavirus (Scotland) Act 2020. Under section 52A, requests to the Scottish Ministers for re-determinations of entitlement to assistance must be considered valid beyond the maximum period of one year prescribed by the 2018 Act, where the reason for delay was related to coronavirus; appeals against determinations of entitlement may also be brought beyond the maximum prescribed period of one year, where the First-tier Tribunal is satisfied that the reason for the delay was related to coronavirus.

19. Section 5 of the Act repeals section 52A and instead, through a series of amendments to Chapter 3 of Part 2 of the 2018 Act, gives Ministers (acting through Social Security Scotland) discretion to accept late requests for re-determination beyond the one-year prescribed period on the basis of 'exceptional circumstances', rather than only for reasons relating to coronavirus. Similarly, appeals against determinations of entitlement will be able to be brought, with the permission of the First-tier Tribunal, beyond the one-year prescribed period on the basis of 'exceptional circumstances', rather than only for reasons relating to coronavirus. The intention is that examples of 'exceptional circumstances' will be provided in guidance: for instance, severe physical or mental illness, unstable housing, abuse or detainment.

Section 6: Withdrawal of request for re-determination

20. Under section 43 of the 2018 Act, if an individual requests a re-determination of their entitlement to assistance, the Scottish Ministers (acting through Social Security Scotland) are under a duty to make a new determination. But at present an individual cannot subsequently withdraw their request for re-determination, even if their circumstances have changed since making their request, or if they have otherwise changed their mind. Section 6 of the Act inserts a new section 42A into the 2018 Act, enabling an individual to ask Ministers to disregard a re-determination request.

21. In such a case, section 42A(2) provides that Ministers' duty under section 43 ceases to apply, and they are not to make a determination of the individual's entitlement to the particular type of assistance mentioned in the request for re-determination.

22. Section 42A(3) provides that a request to Ministers to disregard a re-determination must be made in such form as Ministers require; and the requisite form for this must be publicised by Ministers, as per section 42A(4).

Section 7: Re-determinations after the period allowed

23. Where a re-determination of entitlement is not completed by the Scottish Ministers (acting through Social Security Scotland) in the timescales set out in regulations under section 43(5) of the 2018 Act, a re-determination becomes out-of-time and the individual in question must be notified that they have a right to appeal to the First-tier Tribunal under section 46. The Scottish Ministers are, at that point, no longer under a duty to make the re-determination. However, in practice, they continue to consider the re-determination request.

24. Section 7 of the Act amends section 43 of the 2018 Act to clarify that Ministers remain under the duty to make the re-determination beyond the period allowed, unless an individual opts to exercise their right to appeal, in which case the duty on Ministers falls away. However if an appeal under section 46 is subsequently withdrawn, the duty on Ministers to make the determination applies again and continues unless the appeal is reinstated. Sections 44 to 46 are also amended in consequence of this change. The amendments to sections 44 and 45 provide that the individual will be provided with information as to how the process will work. The amendments to section 46 ensure that the right to appeal arises once the period allowed for re-determination has ended without a re-determination having been made, but without implying that the duty to make a re-determination has ended.

New determination of entitlement during appeal

Section 8: New determination of entitlement during appeal

25. Under the 2018 Act at present the Scottish Ministers (acting through Social Security Scotland) cannot make a new determination of entitlement after a valid appeal has been lodged with the First-tier Tribunal, even if an error has been identified, or new evidence received, which shows that an individual has been underpaid, or not received an award that they were entitled to. The appeal must continue unless it is withdrawn by the individual.

26. Section 8 of the Act inserts a new section 49A into the 2018 Act providing that in instances where the Scottish Ministers recognise after an appeal has been made that an individual should have received a higher award of assistance, or an otherwise more

advantageous determination of entitlement, Ministers will be required to make a new determination of entitlement, and the appeal will come to an end as a result. The new determination can only be made if the individual agrees to it, as per section 49A(1)(c).

27. Inserted section 49A(2) provides that a new determination of entitlement of this kind must result in the individual being given more assistance, or otherwise be a more advantageous determination of entitlement, than the original determination. A new determination may be advantageous to the individual in a way which does not amount to more assistance than the original determination: for example, it may amount to a decision that they should receive an ongoing award of assistance, where they previously did not.

28. Inserted section 49B then requires the Scottish Ministers to inform the individual concerned of their new determination of entitlement under section 49A; of the reasons for it; and of the individual's rights to request re-determination of the new determination, and to appeal it. As with other sections of the 2018 Act, the individual must also be given a proper record of the decision.

29. Inserted section 49C allows the Scottish Ministers, by regulations, to make provision in Scottish Tribunal Rules so that proceedings in the First-tier Tribunal in relation to an appeal will automatically come to an end by operation of law where Ministers make a determination of entitlement in relation to any type of assistance under section 49A, or any assistance provided under "top-up" regulations made under section 79 of the 2018 Act.

30. Consequential amendments are made to the 2018 Act to give individuals the right under section 41 to request re-determination of a new determination made under section 49A, and the right under section 46 to appeal a new determination to the First-tier Tribunal.

31. In addition, section 62 of the 2018 Act contains a legal presumption that when an individual is notified of something by Ministers, the individual is to be taken to have received the information 48 hours after it is sent, unless the contrary is shown: section 8(8) of the Act applies this to notifications under section 49B. Section 62A's rule against the disclosure of information about an individual's health is also applied to notifications under section 49B by section 8(10) of the Act.

32. Finally, sections 8(11) and (12) of the Act amend schedule 9 of the Tribunals (Scotland) Act 2014, to provide that Tribunal Rules may make provision for appeal proceedings to end in a case where Ministers have made a new determination of entitlement under section 49A of the 2018 Act.

Determinations as part of appeal

Section 9: Determinations as part of appeal

33. This section of the Act amends section 49 of the 2018 Act in order to clarify that when exercising its powers to either uphold a determination or make its own determination in an appeal, the First-tier Tribunal must not take into account circumstances which did not exist at the relevant time, although it may take into account circumstances which existed but which were not known.

34. Therefore, the Tribunal must not consider changes in the individual's circumstances that have occurred since the relevant time. The relevant time is the time at which entitlement fell to be determined by Scottish Ministers, under the applicable regulations for that assistance, when making the original determination under section 37 in relation to that entitlement. Depending on the regulations governing that form of assistance, this could be, for example, the date of application, the "treat as made" date for the application, or the qualifying period for assistance.

35. For example, the Tribunal could take into account medical results from a later date which demonstrate that the individual had a particular condition at the relevant time, or a backdated award of a qualifying benefit or assistance which confers eligibility for the form of assistance being determined. However it could not take into account, for example, evidence of a deterioration in the individual's medical condition which has occurred after the relevant time.

36. This ensures that individuals have re-determination and appeal rights in relation to any change in their circumstances for a later period, separate from the re-determination and appeal rights that flow from the determination for an earlier period.

37. If this were not the case, and the Tribunal were to consider a change of circumstances for a later period when making a determination at appeal, the individual would only have a right to ask the First-tier Tribunal to review its own decision or ask permission to appeal to the Upper Tribunal, on a point of law, against that decision.

Appeal against Scottish Ministers' process decisions

Section 10: Appeal to First-tier Tribunal against process decisions

38. Under section 61 of the 2018 Act, an individual can appeal to the First-tier Tribunal against certain decisions made by the Scottish Ministers (acting through Social Security Scotland) on the process of applying for social security assistance and the process of challenging determinations of entitlement to assistance. Section 10 of the Act amends section 61 in order to clarify the powers of the Tribunal to uphold or set aside decisions in process appeals.

39. Section 10 of the Act also inserts a new section 61A into the 2018 Act, setting out the actions that Ministers have to take in consequence of the different kinds of Tribunal decisions, including the making of a new determination of entitlement in certain cases.

PART 4 – ASSISTANCE GIVEN IN ERROR

Section 11: Liability for assistance given in error

40. Under the 2018 Act, an individual has a statutory liability to repay any overpayment of assistance made in error, except where they did not cause or contribute to that error, or if it was the sort of error an individual could not reasonably be expected to have noticed.

41. Where Social Security Scotland determines that an overpayment has occurred, it makes a new determination on a client's entitlement to benefit. Although this new determination will bring re-determination and appeal rights if the client wants to challenge the decision, there is not currently any formal right to challenge the decision that an individual is liable to repay the overpayment.

42. There was also no provision in the 2018 Act for circumstances in which a representative is acting for an individual.

43. Section 11 therefore modifies section 63 of the 2018 Act in two ways: firstly, to provide for an individual's representative to be liable to repay assistance given in error in certain circumstances, and secondly, so that rather than arising automatically, liability flows from a decision by the Scottish Ministers that an individual or an individual's representative is liable to repay assistance given in error. In particular, section 63(1) refers to assistance given "to or for the benefit of the individual" to make clear that in the case of a representative, what is being referred to is assistance given to the representative for the benefit of the individual.

44. Section 11 inserts a new section 63(1A) into the 2018 Act setting out the test for Scottish Ministers to decide when a person is liable to repay an overpayment. Previously, section 64(1) set out the circumstances in which an individual would not be liable.

45. New section 63(1A)(a) reframes that test in positive terms, requiring the error to be the fault of the individual or representative, or the kind of error that an individual could reasonably be expected to notice.

46. Section 63(1A)(b) then sets out a further requirement that for an individual to be found liable, the individual must have benefitted from the overpaid assistance. For a representative to be found liable, the individual must not have benefitted from the assistance. Section 63(9) provides that it is assumed that the individual has benefitted from the assistance unless the Scottish Ministers are aware that that is not the case. Therefore, where it is unclear whether or not the individual has benefitted, the presumption will be that that is the case. This provides protection from liability for representatives.

47. New section 63(5) to (8) describes when an error is the fault of the individual or individual's representative, replicating what was previously set out in section 64(2) to (4) of the 2018 Act but adding reference to the representative.

48. The effect of section 63(1) to (9), as modified by the Act, is that where an individual or individual's representative has caused or contributed to an error which has led to an overpayment of assistance (for example, by providing false information or failing to notify a change of circumstances), or should have noticed the error (for example, because a system error has given them thousands of pounds more than the entitlement) then the Scottish Ministers may decide to recover that assistance. If the individual has benefitted from the assistance, then it is the individual who will be liable, even if the error is the fault of their representative. But if the individual has not benefitted from the assistance, for example, because the representative has misappropriated it, then it is the representative who will be liable.

49. Section 63(10) and (11) applies if a person has died since the overpayment was made. Section 63(10) allows the Scottish Ministers to make a liability decision if they would have been entitled to do so had the person not died. This is distinct from section 69 of the 2018 Act, which allows any assistance given in respect of a period after death to be recovered, whether or not there has been an error. Section 63(10) applies instead to overpayments made while the person was alive. It is required because liability now flows from a decision by the Scottish Ministers rather than arising automatically. Therefore, unless a decision has been made before death, there is no automatic liability which would transmit to the person's estate. Section 63(10) therefore preserves the ability for the Scottish Ministers to recover these overpayments.

50. Inserted section 63(12) allows the Scottish Ministers to make regulations specifying the persons or categories of persons who are included within the meaning of "individual's representative". For example, this might include legal representatives of children, people appointed under section 85A or 85B of the 2018 Act (which allow the Scottish Ministers to appoint people to act on behalf of children and other individuals in certain circumstances) and guardians under the Adults with Incapacity (Scotland) Act 2000, amongst others.

51. Section 11(3) inserts two new sections into the 2018 Act.

52. Inserted section 63A replicates what was section 63(2) and (3) of the 2018 Act.

53. Inserted section 63B provides that having made a decision that a person is liable under section 63, the Scottish Ministers must inform the person of the decision, the reasons for it, the right to request a review of the decision and the right to appeal to the First-tier Tribunal for Scotland (Social Security Chamber) if that review is not completed within the period allowed. The processes for reviews and appeals are set out in new sections 69A to 69L inserted by section 13. The further review and appeal provisions in part 6 of the Tribunals (Scotland) Act 2014 will also be available.

54. Section 11(4) repeals section 64 of the 2018 Act, because it is no longer required following the restructuring of the provisions in section 11(2) and (3).

55. Section 11(5) modifies section 65 of the 2018 Act, which requires the Scottish Ministers to consider the financial circumstances of someone who is liable under section 63 when deciding whether and how to recover the overpayment, so that it applies to both an individual and an individual's representative.

56. Section 12: Liability of individual's estate

57. Section 12 modifies section 69 of the 2018 Act, which deals with the liability of an individual's estate for assistance which is paid after their death.

58. Subsection (2) changes the reference to assistance being given "under section 24" to assistance being given "in the performance of a function conferred by virtue of this Part". Section 24 requires the Scottish Ministers to give the assistance the individual is entitled to be given, so assistance which fell outwith that duty (because it was given in error) would not necessarily be caught by that reference. The replacement wording is consistent with other references in the 2018 Act.

Section 13: Assistance given in error: reviews and appeals

59. Section 13 inserts a run of sections after section 69 of the 2018 Act, to provide for reviews and appeals of decisions on liability made under section 63.

60. Inserted section 69A provides that a person has a right to request that the Scottish Ministers review a decision under section 63. The request must be in the required form: if the Scottish Ministers decide that it is not, they must inform the person who submitted it of that decision and that the person has a right to appeal that decision under section 69J.

61. The request for a review must be made within a period to be prescribed in regulations or, if it is made after that period, the person must have a good reason for not requesting it sooner and it must be made within a year of being informed of the decision (unless there are exceptional circumstances).

62. Under section 69B, it is for the Scottish Ministers (or the First-tier Tribunal on appeal) to decide whether a person has a good reason for not making an appeal within the period allowed or whether there are exceptional circumstances justifying why it was not made within a year. A decision of the Scottish Ministers under this section can be appealed under section 69J. The intention is that examples of 'exceptional circumstances' will be provided in guidance: for instance, severe physical or mental illness, unstable housing, abuse or detainment.

63. Section 69C requires the Scottish Ministers to complete a review within the period allowed for review, which will be prescribed in regulations.

64. If the Scottish Ministers complete a review, section 69D requires them to inform the person who requested the review of the outcome, the reasons for that outcome and the right to appeal to the First-tier Tribunal against the outcome. If the person has previously been given a notice under section 69E informing them of their right to appeal against the original decision because the review had not been completed within the period allowed, the Scottish Ministers must also inform them that they no longer have that right. The person must be given a form which they can submit to bring an appeal against the outcome of the review.

65. If the Scottish Ministers do not complete a review within the period allowed, section 69E provides that they must inform the person of that, that the person has the right to appeal against the original decision under section 63, and that if the person withdraws an appeal, the Scottish Ministers will again consider the request for a review. They must also explain the interaction with section 69D: that if the review is completed, the right to bring an appeal against the original decision will end (because there will then be a right to appeal against the review).

66. Section 69F sets out the right for a person to appeal to the First-tier Tribunal against the outcome of a review, or against the original decision under section 63 where a review has been requested, the period for review has ended, but the review has not yet been completed.

67. Section 69G provides that an appeal is brought by submitting the form provided to the Scottish Ministers, who must then send it to the First-tier Tribunal.

68. Section 69H sets out the deadlines for bringing an appeal. An appeal may be brought within 31 days of the person either being informed of the outcome of a review, or told that they have the right to appeal if the review was not completed within the period allowed. After that, the First-tier Tribunal's permission is required. If the appeal is brought after 31 days but within a year, the First-tier Tribunal must be satisfied that there is a good reason for the application not having been made sooner. If the appeal is brought after a year, the First-tier Tribunal must be satisfied that there are exceptional circumstances justifying this.

69. On appeal, section 69I allows the First-tier Tribunal to uphold the original decision or the outcome of the review, or make its own determination of liability under section 63.

70. Section 69J allows a person to appeal against process decisions of the Scottish Ministers: that is decisions to reject a request for a review, that a person has no good reason for not requesting a review sooner or that there are no exceptional circumstances justifying why a review request was not made sooner.

71. An appeal may be brought within 31 days of the person being informed of the decision. After that, the First-tier Tribunal's permission is required. If the appeal is brought after 31 days but within a year, the First-tier Tribunal must be satisfied that there is a good reason for the application not having been made sooner. If the appeal is brought after a year, the First-tier Tribunal must be satisfied that there are exceptional circumstances justifying this. If any provision of Scottish Tribunal Rules would prevent an appeal being brought after a year, that provision is to be disregarded with the effect that an appeal can still be made as provided for in this section.

72. The First-tier Tribunal may uphold the Scottish Ministers' decision or may set it aside and make its own decision. In the case of an appeal relating to the form of a request for review, the First-tier Tribunal may decide that further information is required. The decision of the First-tier Tribunal under section 69J is final.

73. Section 69K requires the Scottish Ministers to take appropriate action following a decision of the First-tier Tribunal. If the decision was that the request for a review should have been allowed, the Scottish Ministers must complete the review under section 69C. If the decision was that more information was required, the Scottish Ministers must seek that further information. If it is obtained, they must complete the review under section 69C, and if it is not then they may make a further decision that the request is not in the correct form. That decision could again be subject to appeal to the First-tier Tribunal.

74. Section 69L creates a presumption that information is received 48 hours after it is sent by the Scottish Ministers, for the purposes of sections 69A, 69H and 69J.

Section 14: Assistance given in error: deductions from other assistance

75. For assistance which is paid on an ongoing basis rather than as a one-off payment, the relevant schedules to the 2018 Act (schedules 2, 5, 7 and 9) allow that assistance to be paid by way of deduction from any liability the individual has to the Scottish Ministers under section 63. Despite the general restriction on assistance being given in a form other than money without the individual's agreement, assistance can be paid by way of deduction at a reasonable level from section 63 liability if the individual has unreasonably refused to agree to that. Regard must be had to the individual's financial circumstances.

76. Because under the 2018 Act this was restricted to liability under section 63, it did not extend to liability for overpayments which arises as a result of regulations made under section 79, such as the Scottish Child Payment Regulations 2020. This means that overpayments of assistance paid under section 79 regulations could not be repaid by deduction from assistance given under Part 2 Chapter 2 of the 2018 Act.

77. Section 14 therefore modifies schedule 2 (carer's assistance regulations), schedule 5 (disability assistance regulations), schedule 7 (employment-injury assistance regulations) and schedule 9 (housing assistance regulations) to add reference to provision corresponding to section 63 made by regulations under section 79. That means that where regulations under section 79 provide for recovery of overpayments, recovery may be made by deduction from those forms of assistance, on the same basis as where the liability arises under section 63. Section 1 of the Act contains equivalent provision for schedule 6A on childhood assistance.

PART 5 – APPOINTEES

Section 15: Power to make provision in relation to appointments made by a Minister of the Crown

78. Section 85A of the 2018 Act allows the Scottish Ministers to appoint a person to act on behalf of a child in connection with the determination of their entitlement to assistance under section 24 or regulations made under section 79 of the 2018 Act, and where appropriate to receive that assistance on the child's behalf. Section 85B makes similar provision regarding appointments on behalf of adults regarded as incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000, on behalf of deceased individuals, and on behalf of adults in other circumstances set out in section 85B(4). UK Ministers have several similar powers of appointment in respect of benefits administered by the UK Department of Work and Pensions.

79. Section 15 of the Act inserts a new section 85F into the 2018 Act, giving a regulation-making power to the Scottish Ministers to provide that a person appointed by a UK Minister to act on behalf of an individual who is or may be eligible to receive assistance under the 2018 Act is to be treated as though appointed by the Scottish Ministers under section 85A or 85B to act on that individual's behalf. This regulation-making power is subject to the affirmative procedure.

80. Subsection (3) of inserted section 85F sets out that the regulations must provide that where an individual is or may be eligible to receive a specified form of assistance, the Scottish Ministers must, as soon as reasonably practicable, consider whether the conditions for making an appointment under section 85A or 85B are met; consider whether to terminate the UK appointment; and if they do so, make their own appointment of a representative under section 85A or 85B.

Section 16: Liability of appointees under sections 85A and 85B of the 2018 Act

81. This section of the Act inserts a new section 85G into the 2018 Act on the liability of persons appointed to act on behalf of an individual in receipt of social security assistance under sections 85A, 85B or 85F. Where an appointee uses any funds of the individual for whom the appointee is acting in breach of the appointee's common law fiduciary duty of good financial management, in breach of the appointee's common law duty of care towards the individual, or outwith the appointee's statutory authority under section 85A or 85B, the appointee is liable to repay those funds to the individual.

82. However as per subsection (2) of inserted section 85G the appointee is not liable under subsection (1) for any breach as described in subsection (1) where the appointee has acted reasonably and in good faith, or where the appointee has failed to act and that failure was reasonable and in good faith.

PART 6 – UPRATING ASSISTANCE FOR INFLATION

Section 17: Duty to uprate assistance for inflation

83. The Scottish Ministers are required under the 2018 Act to consider the effects of price inflation on all forms of assistance delivered under Part 2 Chapter 2 and section 79 of the 2018 Act; and to lay a report in the Scottish Parliament, before the end of each financial year, setting out what they have done or intend to do as a result of the changes to prices under section 86A of the 2018 Act. Furthermore, Ministers are required under section 86B to bring forward

subordinate legislation before the end of each financial year to uprate all forms of Carer's Assistance (including Young Carer Grant), Disability Assistance, Employment Injury Assistance, Funeral Support Payment and Scottish Child Payment.

84. Section 17 of the Act extends section 86A of the 2018 Act to include assistance created under the care experience assistance power in section 2 of the Act. It also extends section 86B to include all Scottish social security payments delivered under the 2018 Act. This means that Scottish Ministers are required by statute to uprate all Scottish social security payments annually to reflect the effects of inflation.

PART 7 – INFORMATION FOR AUDIT

Section 18: Information for audit of social security system

85. Currently the Scottish Ministers, through Social Security Scotland, can only request that individuals provide information to them for the specific purpose of determining entitlement to assistance. Section 18 of the Act amends the 2018 Act to give Ministers powers to require individuals to provide information in order to audit the social security system as a whole.

86. Where an individual is entitled to social security assistance under the 2018 Act, inserted section 87B gives power to the Scottish Ministers to request that the individual provides information in relation to their entitlement, by a set deadline. Such a request may only be made for the purpose of auditing the monetary value of error and fraud in the Scottish social security system, and for connected activities. The subsequent use of the information is limited to the same purposes.

87. Under section 87B(4), the response to a request under subsection (1) may be required to take the form of an interview with the individual in person; a telephone call or a video call; a written response (in circumstances prescribed by Ministers in regulations); or such other form of response as Ministers set out in regulations.

88. Section 87B(5) gives a further regulation-making power to Ministers to prescribe categories of individuals who cannot be requested to provide information under subsection (1), for example for reasons of inherent vulnerability. Section 87B(6) requires Ministers to consult publicly on these regulations before making them.

89. Section 87B(7) gives Ministers the power to suspend assistance to an individual who has failed to meet the deadline to provide information under this section. Suspension must be in accordance with the safeguards set out in schedule 11 of the 2018 Act: therefore Ministers must have regard to the financial circumstances of the individual first; Ministers must give due notice to the individual of the decision to suspend their assistance, of the reasons for it, and of any steps which the individual can take in order for Ministers to consider ending the suspension; and the individual will also have the right to require Ministers to review their decision.

90. Under section 87B(8), where Ministers suspend assistance to an individual, they must at the same time make a further request under subsection (1) that the individual provide them with the requested information, by a further deadline.

91. Section 87B(9) clarifies that subsections (7) and (8) may apply more than once in respect of the same individual: therefore multiple suspensions would be possible in theory. Ministers also have the power under the 2018 Act to terminate the assistance given to an individual by making a determination without application under section 52.

92. Inserted section 87C provides that an individual who has received a request for information under section 87B(1) may ask Ministers to withdraw the request (for instance due to bereavement, illness or another personal crisis that means they are unable to comply with the request). This must occur before a deadline to be set out in regulations. Ministers must then decide by a deadline also to be set out in regulations if there is a good reason for granting withdrawal, and their decision on the matter is final. An individual must be given notice of the decision and the reasons for it (and that it is final). As with other sections of the 2018 Act, the individual must also be given a proper record of the decision.

93. Where an individual is judged to have a good reason for requesting it, Ministers must withdraw the request for information that was made to the individual under section 87B(1).

94. Inserted section 87D allows an individual who has been given a request for information under section 87B to have a third-party supporter present during any interview, call or other form of provision of a response: Ministers must comply with an individual's wish to have a supporter unless their wish is unreasonable. Whether someone's wishes are unreasonable will depend on the facts and circumstances of the particular case, but it may, for example, be considered unreasonable to someone to continue to attend as a supporter if they are behaving aggressively. The role of a supporter is simply to support the individual during their response to the information request, and to make representations on their behalf.

95. Inserted section 87E gives disabled individuals a right of independent advocacy in connection with their engagement with the process for a request for information under section 87B (in the same way as section 10 of the 2018 Act gives such a right in connection with the determination of an individual's entitlement to assistance).

PART 8 – RECOVERY FROM COMPENSATION PAYMENTS

Section 19: Recovery of value of assistance from compensation payments

96. A person affected by accident, injury, or disease due to the fault of a third party may be entitled to compensation. Depending on the nature of their accident, injury, or disease they may also be entitled to social security assistance.

97. The provisions in the Act will allow the Scottish Government to recover relevant forms of Scottish assistance from awards of compensation, avoiding the risk of a person being 'doubly compensated' for the same incident. They largely mirror the provisions of the Social Security (Recovery of Benefits) Act 1997, with the intention that, in this area, devolved assistance will be treated in the same way as reserved benefits. Essentially, the provisions require that where a person is making a compensation payment to an individual who has received assistance, they must deduct the value of that assistance from the amount paid to the individual and pay it instead to the Scottish Ministers.

98. Section 19 inserts a new Part 6A into the 2018 Act. This consists of a series of sections making provision for recovery from compensation payments.

99. Inserted section 94A sets out that the Part applies where a person is to make a payment to an individual in consequence of accident, injury or disease, and relevant assistance has been received by that individual in respect of that accident, injury or disease. The provisions only apply where the accident or injury takes place, or the person claims assistance in relation to the disease, on or after the date on which this section comes into force.

100. This extends to payments by a person who is or may be liable, as well as payments under the compensation schemes mentioned in subsection (2). Liability for the accident, injury or disease is not affected by the provisions and so the test is simply whether a payment has been made. However, certain payments are excluded and they are listed in Part 1 of schedule 12 inserted into the 2018 Act. The Scottish Ministers have a power to vary this list by regulations which will be subject to affirmative procedure (as the new regulation making power will be added to the list in section 96(2) of the 2018 Act). Section 94A(5) allows the Scottish Ministers to make regulations about the recovery of payments made under schemes which make lump sum payments, where a compensation payment has also been made. Although the Scottish Ministers do not currently administer any such schemes, this will allow any provision to be made in relation to any future schemes. Regulations must specify the lump sum payments to which they apply. Subsection (6)(b) sets out the kind of detail which may be included in regulations. Regulations are subject to affirmative procedure (as the new regulation making power will be added to the list in section 96(2) of the 2018 Act).

101. Section 94B(1) sets out the definitions used in this Part. In particular, it defines "relevant assistance" as being assistance listed in column 2 of the table in Part 2 of schedule 12 inserted into the 2018 Act, as well as short-term assistance (defined in section 36 of the 2018 Act) given as a result of its reduction or cessation. Subsection (2) allows the Scottish Ministers to modify the definition of relevant assistance, or the table in Part 2 of schedule 12 (which would have the effect of modifying what was included in the definition).

102. The definitions of "relevant period", "relevant period start date" and "relevant period end date" have the effect that assistance will be recovered in respect of a period of five years from the date of the accident or injury occurring (or the individual claiming assistance for the disease, since a disease will not have an easily identifiable start date). Once a compensation payment is made, the five year period stops running and the amount of assistance is calculated up to the date the compensation payment is made.

103. Section 94C requires a compensator, as defined in section 94B, to apply for a certificate of recoverable assistance before making a compensation payment and sets out the process related to that application. The Scottish Ministers may by regulations prescribe periods within which certificates must be issued: if they do not do so, certificates must be issued within 4 weeks of receipt by the Scottish Ministers. Regulations will be subject to negative procedure (as the new regulation making power will be added to the list in section 96(3) of the 2018 Act).

104. Section 94D details the information to be contained in certificates of recoverable assistance. This is the amount of assistance which has been (or is likely to be) received during the relevant period (as defined in section 94B). If the certificate is issued before the relevant period ends (for example, before the compensation payment is actually made) then it must include details of assistance which is likely to be received. Amounts, rates or periods may be based on reasonable estimates if the actual figures are not available.

105. The Scottish Ministers must send the information contained in the certificate to the recipient of the compensation payment. If that person or the compensator requests it, they must also provide details of the way in which any amount, rate or period specified in the certificate has been determined, in a way in which the person can share with others (mirroring other provisions of the 2018 Act where information is provided by the Scottish Ministers).

106. Section 94E provides that the compensator is to pay to the Scottish Ministers an amount equal to the amount of the recoverable assistance within 14 days of the compensation payment being made (or, if later, within 14 days of the certificate of recoverable assistance being issued).

107. Section 94F allows the Scottish Ministers to issue a demand for payment if the amount due under section 94E is not paid on time. If no certificate of recoverable assistance has been issued, the Scottish Ministers must issue one with the demand for payment. The amount shown in the demand for payment is recoverable as if a sheriff had issued a decree with a warrant for execution, which allows the Scottish Ministers to take immediate action for debt recovery.

108. If the compensator pays the Scottish Ministers an amount for which they were not liable, section 94G requires the Scottish Ministers to pay the compensator the difference between the amount they paid and the amount they should have paid. The Scottish Ministers must provide details of the calculation to the compensator and the person who received the compensation payment, and issue a new certificate of recoverable assistance. Where the compensator deducted recoverable assistance from the compensation payment it made, the compensator must recalculate the amount and pay any increase in the compensation payment to the person who received the original compensation payment (but only when the money is received from the Scottish Ministers).

109. For example, if the compensator paid the Scottish Ministers £2,000 when there was only £1,500 of recoverable assistance, the compensator would have to pay the difference of £500 to the person who received the compensation payment.

110. Section 94G does not apply where section 94P applies, because that section sets out a different procedure for recalculation following a reconsideration or appeal.

111. Section 94H ensures that the provisions of this Part will apply where it is an insurer rather than the compensator themselves who is ultimately funding the compensation payment. The Scottish Ministers may by regulations limit the liability of insurers.

112. Section 94I has the effect that if the Scottish Ministers fail to issue a certificate of recoverable assistance, the compensator need not deduct the amount of recoverable assistance from the compensation payment nor pay it to the Scottish Ministers. However, if a compensator does in fact make a payment despite this section, it is treated in the same way as any other payment and the Scottish Ministers do not have to repay it.

113. Section 94J requires the compensator to make a calculation deducting any recoverable assistance from each relevant head of compensation as set out in the table in Part 2 of schedule 12. That may have the effect of reducing the compensation payment to nil (but not beyond that: an injured person cannot be required to make a payment to the compensator or the Scottish Ministers). A payment calculated in this way satisfies the compensator's liability to make the compensation payment. If the payment is reduced to nil, the compensator must provide a statement setting that out.

114. Section 94K applies instead of section 94J where the payment is made under the Diffuse Mesothelioma Payment Scheme. It simply requires the compensation payment under that scheme to be reduced by the amount of recoverable assistance (which may reduce the compensation payment to nil). As in section 94J a payment calculated in this way satisfies the scheme administrator's liability to make the compensation payment. If the payment is reduced to nil, the scheme administrator must provide a statement setting that out.

115. Section 94L requires that the person receiving a compensation payment be provided with details of how the payment has been calculated and the date on which payment is made, in such a way that they have a record they can share with others. Subsection (5) prevents the recoverable assistance from being deducted twice, by providing that the calculation of the gross compensation payment (or an award of damages made by a court) must not take into account the recoverable assistance.

116. Section 94M provides for a certificate of recoverable assistance to be reviewed by the Scottish Ministers. An application for review can be made by a compensator (but not the scheme administrator of the Diffuse Mesothelioma Payment Scheme) or, if the compensation payment is to be reduced under section 94J or 94K, the injured person or another person who would receive the payment. The Scottish Ministers may also conduct a review on their own initiative. Any review must take place before the compensation payment is made and before any payment to the Scottish Ministers under section 94E. In particular, if the compensator makes a compensation payment without applying for a certificate of recoverable assistance, and one is issued under section 94F, the compensator will not be able to request a review of it.

117. The Scottish Ministers are to make regulations setting out further details of the review process and any request for a review will have to meet these requirements. Regulations will be subject to affirmative procedure (as the new regulation making power will be added to the list in section 96(2) of the 2018 Act). The Scottish Ministers may decide that something purporting to be a request for a review is not valid and if they do so, must inform the person who made the request.

118. Following a review, the Scottish Ministers may confirm the certificate of recoverable assistance, issue a modified certificate or revoke the certificate, and must give everyone who would have been entitled to ask for a review notice of the result of the review and the reason for that, in a way that leaves them with a record they can share with others. The Scottish Ministers cannot increase the total amount of recoverable assistance unless that is required because the person who applied for the certificate supplied incorrect or insufficient information (for example, the person gave the wrong dates for the relevant period).

119. Section 94N provides for a certificate of recoverable assistance to be reconsidered by the Scottish Ministers. A reconsideration can only be requested after payment to the Scottish Ministers under section 94E has been made and any claim giving rise to the compensation payment has been disposed of (bearing in mind that there may not be a claim if the compensation payment is being made voluntarily). An application for reconsideration can be made by a compensator who applied for or was issued with the certificate of recoverable assistance (but not the scheme administrator of the Diffuse Mesothelioma Payment Scheme) or, if the compensation payment is to be reduced under section 94J or 94K, the injured person or another person who has received the payment (or who has been treated as receiving it, where the compensation payment was reduced to nil under section 94J or 94K). There are limited grounds for reconsideration which are set out in subsection (6). The Scottish Ministers may by

regulations make further provision about the process for requesting a reconsideration. Those regulations will be subject to negative procedure (as the new regulation making power will be added to the list in section 96(3) of the 2018 Act).

120. Following a reconsideration, the Scottish Ministers may confirm the certificate of recoverable assistance, issue a modified certificate or revoke the certificate, and must give everyone who would have been entitled to ask for a reconsideration notice of the result of the reconsideration and the reason for that, in a way that leaves them with a record they can share with others. The Scottish Ministers cannot increase the total amount of recoverable assistance unless that is required because the person who applied for the certificate supplied incorrect or insufficient information (for example, the person gave the wrong dates for the relevant period).

121. Section 94O allows a person who is given notice of a reconsideration (other than the scheme administrator of the Diffuse Mesothelioma Payment Scheme) to appeal to the First-tier Tribunal for Scotland against the reconsideration. Subsection (5) sets out the limited grounds on which an appeal may be made.

122. On an appeal, the First-tier Tribunal may confirm the certificate of recoverable assistance, specify variations to be made or order the Scottish Ministers to revoke the certificate, and the Scottish Ministers must action those decisions accordingly.

123. Section 94P provides for the recalculation of payments where the certificate of recoverable assistance is reissued as a result of a reconsideration or appeal. It does not need to apply to reviews, because a review can only be brought before a payment has been made.

124. Any difference between what should have been paid by the compensator to the Scottish Ministers and what was actually paid is to be paid to or by the Scottish Ministers as the case may be. The Scottish Ministers must send a statement detailing that to the compensator and the person to whom the compensation payment was made. Where the compensator deducted recoverable assistance from the compensation payment it made, the compensator must recalculate the amount and pay any increase in the compensation payment to the person who received the original compensation payment (but only when the money is received from the Scottish Ministers).

125. If the injured person or the person who received the compensation payment supplied incorrect or insufficient information, and that is why a new certificate was required after reconsideration or appeal, then the compensator may require payment from that person of the increased amount which they are required to pay to the Scottish Ministers.

126. For example, if an injured person supplies the wrong dates to the compensator so that less recoverable assistance is deducted from a compensation payment, and that comes to light on reconsideration, then the injured person would be liable to pay the compensator the increased amount which is due to the Scottish Ministers.

127. Section 94Q applies where multiple compensation payments are made in respect of the same injured person and the same accident, injury or disease. This may occur, for example, if an injured person has requested an interim compensation payment from a single compensator to help with adverse personal circumstances arising from an accident, injury or disease. This may happen in the case of serious injuries, such as brain injury claims, spinal injury claims, serious medical injury claims and mesothelioma claims. There could also be occasions when multiple compensation payments are to be received from different compensators.

128. In circumstances where an earlier payment has been made to or in respect of an injured person, and subsequently a second, later payment is made to or in respect of the same injured person as a result of the same accident, injury or disease, the Scottish Ministers must determine the liability of the compensator for the second payment based on the total amount of recoverable assistance with a reduction for any amount already paid to the Scottish Ministers when the earlier compensation payment was made. This means that if sums due in relation to the recoverable assistance have already been recouped by the Scottish Ministers in relation to the first compensation payment, they will not be recouped a second time.

129. If the compensator does pay more than was due because the certificate of recoverable assistance does not reflect the earlier payment, the Scottish Ministers must pay the difference to the compensator. The Scottish Ministers must send a statement detailing the amounts to the compensator and the person to whom the compensation payment was made. Where the compensator deducted recoverable assistance from the compensation payment it made, the compensator must recalculate the amount and pay any increase in the compensation payment to the person who received the original compensation payment (but only when the money is received from the Scottish Ministers).

130. If the two payments are being made by the same compensator, the compensator may treat the two payments as aggregated and made on the date of the later payment, as set out in subsection (6).

131. The Scottish Ministers may by regulations make provision about the timescales for payments of any amounts due under this section. They may also make further provision for cases in which multiple compensation payments are made by multiple compensators in respect of the same accident, injury or disease. Those regulations will be subject to affirmative procedure (as the new regulation making power will be added to the list in section 96(2) of the 2018 Act).

132. In situations of serious injury where it has been decided that settlement by way of a single lump sum payment is not appropriate, the court can decide that all or part of the damages will be paid in the form of a continuing series of regular payments. These payments are known as periodical payments and involve the injured party receiving a regular payment for the rest of their life. Section 94R deals with the situation where an agreement is entered into for periodical payments to be made to an injured person (whether or not with lump sum payments).

133. Subsection (2) treats the periodical payments as aggregated into a single amount paid on the date of settlement, so that the compensator does not have to obtain a certificate of recoverable assistance every time a payment is made. The relevant period is treated as ending on the day of settlement, as defined in subsection (5), so that no further recoverable assistance will be deducted from payments made. However, if there is a payment made which falls outside the agreement, it will be treated as a compensation payment in the usual way and the relevant period will not be treated as having ended in relation to that payment.

134. Where another person is in fact making the payments (for example, because they are providing an annuity funded by the person who is liable), it is the person who is liable who is treated as the compensator and not the person making the payments.

135. Section 94S provides that where making an order for compensation, the court must specify the amount of the compensation payment which is attributable to each head of compensation listed in the table in Part 2 of schedule 12, so that that can then be used to make the calculation of the compensation payment under deduction of recoverable assistance.

136. Section 94T allows the Scottish Ministers to make regulations about the information to be provided where compensation is sought in respect of any accident, injury or disease. Subsection (2) sets out what the regulations are to contain. This is to ensure that the Scottish Ministers are provided with sufficient information to be able to recover assistance from compensation payments. Those regulations will be subject to affirmative procedure (as the new regulation making power will be added to the list in section 96(2) of the 2018 Act).

137. Section 94U allows the Scottish Ministers to make regulations about the investigation of any matter relating to the application of this Part to any payment made in consequence of accident, injury or disease suffered by an individual. This is to ensure that the circumstances of such payments can be properly investigated where required. Those regulations will be subject to affirmative procedure (as the new regulation making power will be added to the list in section 96(2) of the 2018 Act).

138. Subsection (2) sets out particular matters which may be included in the regulations. In particular, this allows for powers of entry to prescribed premises, and the creation of offences for obstructing an authorised person in their investigations or failing to comply with requirements as to the provision of information. The maximum penalty for such offences is a fine not exceeding level 3 on the standard scale (£1,000 at January 2025). The statutory time bar in section 136 of the Criminal Proceedings (Scotland) Act 1995 will automatically apply to these offences because they are statutory offences triable only summarily.

139. Sections 94V and 94W deal with the interaction between this Part and the equivalent provisions which apply in the rest of the UK (in England and Wales, the Social Security (Recovery of Benefits) Act 1997 and in Northern Ireland, the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997, in each case as amended and supplemented by regulations).

140. Section 94V allows the Scottish Ministers to modify this Part to make provision about the relationship between this Part and the enactments applying in the rest of the UK where both this Part and those enactments apply. This could happen, for example, if an individual who is to receive a compensation payment receives benefits in England and then moves to Scotland and receives recoverable assistance.

141. Section 94W allows the Scottish Ministers to modify this Part to make provision about the recovery of payments from a compensator where the compensation payment falls under the equivalent provisions in the rest of the UK but the compensator is resident in Scotland.

142. Regulations under sections 94V and 94W will be subject to affirmative procedure (as the new regulation making power will be added to the list in section 96(2) of the 2018 Act).

PART 9 – SCOTTISH COMMISSION ON SOCIAL SECURITY

Section 20: Scrutiny of regulations by the Commission

143. Section 21 of the 2018 Act establishes the Scottish Commission on Social Security ("the Commission") and makes it a body corporate. Section 22 sets out its functions, which are principally in the form of reporting duties to the Scottish Ministers and Scottish Parliament.

144. Under section 97, when the Scottish Ministers propose to make regulations under either Chapter 2 of Part 2 or section 79 of the 2018 Act, they must, before laying that instrument in Parliament, inform the Commission of the proposals in the form of draft regulations. Having been informed of the proposals, the Commission must then prepare a report setting out its observations and recommendations in relation to the proposals. This report is submitted to the Scottish Ministers and Scottish Parliament, and made publicly available. Section 20 of the Act amends section 97 of the 2018 Act to ensure that these requirements apply regardless of whether regulations are subject to the negative or the affirmative Parliamentary procedure.

145. The specific reporting requirements set out at section 97 currently only extend to regulations made under Chapter 2 of Part 2 or section 79 of the 2018 Act. Section 20 of the Act expands the scope of section 97 to apply those reporting requirements to more regulation-making powers within the 2018 Act, as follows:

- Section 11(2) – in relation to independent advocacy services to be delivered in terms of section 10 of the 2018 Act, there must be compliance with advocacy service standards. These standards are to be set out, in terms of section 11(2), by way of regulations.
- Section 13(3) – in connection with making a determination of what assistance an individual is eligible to be given through the Scottish social security system, they may be required to undergo an assessment. Where an assessment is to occur in terms of section 13(2), this must be carried out by a suitably qualified person. Section 13(3) allows Scottish Ministers to specify within regulations who is to be regarded as a suitably qualified person.
- Section 41(4)(a) – where an individual has a right to request a re-determination of their entitlement in terms of section 41(1), a request for a re-determination will only be valid if it meets the conditions set out at sections 41(3) and (4). This includes making a request within a period to be prescribed by the Scottish Ministers in regulations, as set out at section 41(4)(a).
- Section 43(5) – under section 43, on being requested to re-determine an individual's entitlement, the Scottish Ministers must aim to make the determination within the period allowed for re-determination. Section 43(5) sets out that the period allowed for re-determination is to be prescribed by the Scottish Ministers in regulations.
- Section 51(1) – this section allows the Scottish Ministers to make provision by way of regulations for a determination of entitlement to be made on the basis of ongoing entitlement to that type of assistance, and provide for exceptions to any such provision.

- Section 52 – this section provides that Scottish Ministers may in regulations specify circumstances in which they are to make a determination of an individual's entitlement to a particular type of assistance without receiving an application; the regulations may also make provision about the information to be used and assumptions to be made in making a determination without receiving an application.
- Section 63(12) – this provision allows the Scottish Ministers to make regulations defining the meaning of "the individual's representative" for the purpose of determining liability for assistance given in error.
- Section 69A(4)(a) – this section provides that the Scottish Ministers are to prescribe the period within which an individual or individual's representative may request a review of a decision that they are liable to repay assistance given in error.
- Section 69C(6) – this section provides that the Scottish Ministers are to prescribe the period within which a review of a decision that an individual or individual's representative is liable to repay assistance given in error should be carried out.
- Section 79(1) – this section allows the Scottish Ministers to make regulations to provide for financial assistance to be given to top up a reserved benefit.
- Section 81(8) – this section makes provision for a 'carer's allowance supplement' to be paid to qualifying individuals. Section 81(2) and (2A) detail who will be a qualifying individual, and section 81(8) allows modification of this section by way of regulations, to alter the definition of who is a qualifying individual.
- Section 82 – this section allows the Scottish Ministers, by way of regulations, to repeal section 81 and revoke any regulations made under it, and repeal section 82.
- Section 84A(1) – this section allows the Scottish Ministers to make provision, by way of regulations, about investigation of offences under the 2018 Act or regulations made using section 79.
- Section 85B(5) – this provision requires the Scottish Ministers to make regulations defining the meaning of an "appropriate person" for the purpose of certifying an appointment to act on behalf an individual in connection with the determination of the individual's entitlement to assistance.
- Section 85F(1) – this section allows the Scottish Ministers to treat a person appointed by the UK Department for Work and Pensions for a limited time as though they are an appointee under the 2018 Act.
- Section 87B(4)(c) – this provision allows the Scottish Ministers to make regulations setting out the circumstances in which a written response is required by an individual to a request for information for audit.
- Section 87B(4)(d) – this provision allows the Scottish Ministers to make regulations setting out other required forms of responses to requests for information for audit.
- Section 87B(5) – this provision allows the Scottish Ministers to make regulations exempting categories of individuals from requests for information for audit.

- Section 87C(1) – this provision allows the Scottish Ministers to make regulations setting the deadline for an individual to ask Ministers to withdraw a request for information for audit.
- Section 87C(4) – this provision allows the Scottish Ministers to make regulations setting the deadline for Ministers to decide whether an individual has a good reason for seeking the withdrawal of a request for information for audit.
- Section 93A(1) – this section allows the Scottish Ministers, by regulations, to establish one or more schemes to give financial assistance to individuals who have had experience of being in the care system.
- Section 95 – this section allows the Scottish Ministers to make ancillary provision as they consider appropriate for the purposes of, or in connection with, or for giving full effect to the 2018 Act or any provision made under it. Where this power is used in combination with another section to be included within the section 97 scrutiny requirements, its exercise will also be included within those requirements.

146. In addition to these further regulation-making powers in the 2018 Act, section 20 of the Act also provides for scrutiny by the Commission of regulations made in relation to Best Start Foods. This is a benefit which is legislated for under regulation-making powers set out at section 13 of the Social Security Act 1988 and section 175(4) of the Social Security Contributions and Benefits Act 1992. When exercised together, these powers are now included within the terms of section 97 as per the insertion made by section 20(2)(b) of the Act.

147. Finally, section 20(2)(e) of the Act allows the Scottish Ministers to make regulations amending the list of powers in section 97 which are subject to scrutiny by the Commission by adding, removing or varying the description of a power.

Section 21: Removal of Commission's status as body corporate

148. This section of the Act repeals the Commission's status as a body corporate under the 2018 Act. A body corporate is an entity with its own legal existence, making it capable of legal functions such as entering into contracts or employing staff. Since the coming into force of the 2018 Act the Commission has not used any functions which its status as a body corporate would allow, so this section aligns its status with how it has operated in practice. It will continue to be recognised as an advisory non-departmental public body.

Section 22: Removal of Commission's accounting and auditing duties

149. As an advisory non-departmental public body within the Scottish Administration, the Commission does not itself require to meet auditing requirements. This is because under section 19(1) of the Public Finance and Accountability (Scotland) Act 2000, there is a duty for the Scottish Ministers and every other person to whom funds are paid out of the Scottish Consolidated Fund in a financial year to prepare accounts of their expenditure and receipts for that year. Since it receives funding in this way, the Commission's accounts are covered within the Scottish Ministers' duty under section 19 of the 2000 Act, and the Commission's accounting and auditing duties under the 2018 Act are legally otiose. Section 22 of the Act therefore repeals those duties.

Section 23: Duty on Commission to publish annual report

150. This section creates a new annual reporting duty for the Commission by amending section 22 of the 2018 Act on the Commission's functions. This report is to be prepared and published as soon as practicable after the end of each financial year. The Commission are also required to submit a copy of the report to the Scottish Ministers, who are then required in turn to lay a copy of the report before the Scottish Parliament. The report is to provide information about the Commission's performance of their functions over the course of the year.

PART 10: FINAL PROVISIONS

Section 24: Meaning of "2018 Act"

151. This section provides that the Social Security (Scotland) Act 2018 is referred to throughout the Act as the "2018 Act".

Section 25: Ancillary provision

152. This section gives the Scottish Ministers a freestanding regulation-making power to make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, or in connection with, or for giving full effect to, the Act.

153. Subsection (2) allows such regulations to modify any legislation, including the Act itself: in doing so the regulations would be subject to the affirmative Parliamentary procedure. Otherwise they are subject to the negative procedure.

Section 26: Regulation-making powers

154. This section amends section 96 of the 2018 Act in order to set out the Parliamentary procedure for the regulation-making powers amended into the 2018 Act by this Act. The affirmative powers are listed in section 96(2) of the 2018 Act and the negative powers in section 96(3).

Section 27: Commencement

155. This section provides that Part 10 of the Act comes into force on the day after Royal Assent.

156. All other provisions of the Act are to come into force on a day appointed by regulations made by the Scottish Ministers. These regulations may make transitional, transitory or saving provision related to commencement and may make different provision for different purposes. These regulations are also required to be laid before the Parliament under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010, but they are not otherwise subject to any Parliamentary procedure.

Section 28: Short title

157. This section provides that the Act will be referred to as the Social Security (Amendment) (Scotland) Act 2025.

PARLIAMENTARY HISTORY

158. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage.

Proceedings and reports	***Reference***
Introduction	
Bill As Introduced – 13 June 2023	Social Security (Amendment) (Scotland) Bill
Stage 1	
Social Justice and Social Security Committee	
Meeting on 09 November 2023	Official Report
Meeting on 07 March 2024	Official Report
Meeting on 14 March 2024	Official Report
Meeting on 21 March 2024	Official Report
Meeting on 28 March 2024	Official Report
Meeting on 18 April 2024	Official Report
Meeting on 09 May 2024	Official Report
Stage 1 Report on the Circular Economy (Scotland) Bill	Stage 1 Report on the Social Security (Amendment) (Scotland) Bill
Response to Stage 1 Report from the Cabinet Secretary for Social Justice	cabinet-secretary-for-social-justice--social-security-amendment-scotland-bill-stage-1-report-respons.pdf
Delegated Powers and Law Reform Committee	
Delegated Powers in the Circular Economy (Scotland) Bill Stage 1 Report	Delegated powers in the Social Security (Amendment) (Scotland) Bill at Stage 1
Consideration by Parliament	
Stage 1 Debate – 04 June 2024	Official Report
Stage 2	
Social Justice and Social Security Committee	
First Meeting on Amendments – 19 September 2024	Official Report
Second Meeting on Amendments – 26 September 2024	Official Report
Bill As Amended at Stage 2	Social Security (Amendment) (Scotland) Bill
Delegated Powers and Law Reform Committee	
Delegated Powers in the Circular Economy (Scotland) Bill (As Amended At Stage 2) Report – 21 June 2024	Delegated powers in the Social Security (Amendment) (Scotland) Bill (as amended at Stage 2)

Proceedings and reports	***Reference***
Stage 3	
Debate on Proposed Amendments and Final Debate on Bill – 03 December 2024	Official Report
Bill As Passed – 26 June 2024	Bill as passed
Royal Assent	
23 January 2025	Social Security (Amendment) (Scotland) Act 2025

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Published by TSO (The Stationery Office), a Williams Lea company, and available from:

Online
www.tsoshop.co.uk

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PO Box 29, Norwich, NR3 1GN
Telephone orders/General enquiries: 0333 202 5070
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Textphone: 0333 202 5077

ISBN 978-0-10-592089-2

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