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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Delegated powers in the Social Security (Amendment) (Scotland) Bill at Stage 1



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Introduction

1. At its meetings on 6 February and 19 March 2024, the Delegated Powers and Law Reform Committee considered the delegated powers contained in the [Social Security \(Amendment\) \(Scotland\) Bill](#) ("the Bill") at Stage 1.
2. The Committee submits this report to the lead Committee for the Bill under Rule 9.6.2 of Standing Orders.

Overview of the Bill

3. This Bill was introduced by the Scottish Government on 31 October 2023. The lead committee is the Social Justice and Social Security Committee.
4. The Scotland Act 2016 implemented further devolution of powers to the Scottish Parliament recommended by the Smith Commission. The Social Security (Scotland) Act 2018 (“the 2018 Act”) established the statutory framework for a new system of Scottish social security benefits. The Social Security (Amendment) (Scotland) Bill is an amending Bill which modifies the 2018 Act to create further Scottish benefits and make changes to the operational arrangements for social security.
5. The aim of this Bill is to enhance the Scottish system of social security in line with principles set out in section 1 of the 2018 Act, in particular recognising that delivery of social security is a public service, and that the system should be efficient and deliver value for money. The Bill includes provisions intended to improve the experience of people using the services provided by the delivery organisation, Social Security Scotland, as well as provisions designed to deliver increased efficiency and value for money. The Bill also implements the findings of an independent review into the remit and operation of the Scottish Commission on Social Security (“SCOSS”). It revokes emergency provision in the 2018 Act for late applications arising from the coronavirus pandemic and replaces this provision with a power to accept late applications for assistance in a wider range of circumstances.
6. Provisions in the Bill were subject to a public consultation entitled *Scotland’s Social Security System: Enhanced Administration and Compensation Recovery*. The consultation ran from August to October 2022 and included a series of public events as well as inviting written submissions. The findings from the consultation and related events were supplemented by research involving people with experience of claiming both reserved and devolved social security benefits. The research focused on areas addressed by the Bill, such as re-determination and appeals processes, alternatives to prosecution for low value fraud and special measures for late re-determinations, appeals and applications. The research has informed the development of policy implemented by the Bill.
7. The Bill contains 26 sections which are divided into nine Parts:
 - **Part 1** of the Bill consists of sections 1 and 2. Section 1 provides for Scottish Ministers to make regulations to establish a new Scottish benefit entitled Childhood Assistance. This is intended in due course to replace the Scottish Child Payment, a weekly top-up payment of £25 per week to certain reserved benefits for people with children. Section 2 introduces a new social security scheme entitled Care Experience Assistance which, in the first instance, will provide a one-off payment to people with experience of being looked after by local authorities in foster or residential care or other types of care placement.
 - **Part 2** contains section 3 and repeals emergency provision in the 2018 Act made during the pandemic to remove the statutory deadline for making an application for Scottish benefits where the reason for the delay is related to

coronavirus.

- **Part 3** consists of sections 4 to 8. It makes provision about determination and re-determination by Scottish Ministers of entitlement to social security benefits, and related appeals to the First Tier Tribunal. Section 4 enables a late application for re-determination of entitlement because of 'exceptional circumstances' rather than reasons related to coronavirus only, and similarly extends the deadline for appeals. Sections 5 to 7 clarify the duties placed on Scottish Ministers to make determinations and re-determinations within certain timescales and in certain circumstances, and appeal rights. Section 8 clarifies the powers of the First Tier Tribunal in appeals about the decision-making process, as well as determination outcomes, and what the Scottish Ministers must do in response to decisions of the First Tier Tribunal.
- **Part 4** consists of sections 9 to 13 and clarifies the liability of individuals and those acting on their behalf to repay social security assistance given by mistake and makes provision for appeals against liability for overpayments.
- **Part 5** consists of sections 14 and 15. Section 14 enables persons appointed by the Department of Work and Pensions to act on behalf of a person claiming reserved benefits to also act in relation to devolved benefits for a temporary period. Section 15 makes the appointed person liable to the person for whom they act for any harmful actions or failure to act. The appointee is not liable if the act or omission was reasonable and in good faith.
- **Part 6** contains section 16 which introduces provisions requiring persons to supply information when requested to do so by Scottish Ministers for the purposes of audit, correction of errors and the investigation of fraud.
- **Part 7** contains section 17 which provides for a scheme to recover the amount of social security assistance paid to persons entitled to compensation from a third party such as an insurer, for accident, injury or disease suffered by the injured person. This section also makes arrangements for investigations and appeals against liability for recovery.
- **Part 8** consists of sections 18 to 21. Sections 18 to 20 make changes to the scrutiny powers and organisational arrangements of the Scottish Commission on Social Security. Section 21 places a duty on the Commission to prepare and publish an annual report which must be laid before the Parliament.
- **Part 9** consists of sections 22 to 26. It makes general provisions including ancillary powers and procedure in relation to regulation-making powers in the 2018 Act, commencement and short title.

Delegated powers

8. The Bill confers thirty-one powers on the Scottish Ministers to make subordinate legislation.
9. The Scottish Government has produced a [Delegated Powers Memorandum](#) (“DPM”) which sets out its reasons for taking the delegated powers in the Bill and for the procedure chosen.
10. The Committee first considered the delegated powers in the Bill at its meeting on Tuesday, 6 February 2024. At that meeting, the Committee did not raise any queries in relation to the following delegated powers:
 - Section 1(3) - inserts section 32A - Childhood assistance
 - Section 2(2) - inserts section 93A(9) - Directions to persons administering the scheme for care experience assistance
 - Section 7(7) - inserts sections 49A-49C - Tribunal rules to end appeal after new determination for error
 - Section 9(4)(d) - inserts section 64(6) - Power to specify who may be included within the meaning of “individual’s representative” in respect of liability of individuals for assistance given in error
 - Section 13(2) - inserts section 69C(6) - Power in relation to reviews and appeals in respect of assistance given in error, the power to fix the period within which someone may request a review and to fix the period within which the review must be undertaken
 - Section 14(2) - inserts section 85F - Power to make provision in relation to appointments made by a Minister of the Crown
 - Section 16(2) - inserts section 87B(4) - Power to prescribe the form of response to a request for information for the purposes of audit of the social security system
 - Section 16(2) - inserts section 87C(1) - Power to fix the period within which an individual may request that a request for information be withdrawn
 - Section 16(2) - inserts section 87C(4) and (5) - Power to fix the period within which Scottish Ministers must make a decision about whether an individual has a good reason to request withdrawal of an information request and to make provision about cases where the Scottish Ministers fail to make a decision within the prescribed time period.
 - Section 17(2) - inserts the following newly created sections - Recovery from Compensation Payments:
 - Section 94A(3) - Recovery of value of assistance from compensation payments
 - Section 94A(5) - Power to make recovery of payments made under lump

sum payment schemes

- Section 94B(2) - Power to modify the definition of "relevant assistance" and the table in Part 2 of inserted schedule 12
- Section 94C and sub-sections (4), (8) & (9) - Powers to provide for the day on which an application for a certificate is treated as received
- Section 94Q(9)- Power to make regulations about the timescales for payment of an amount due following a reconsideration or an appeal
- Section 94T(1) - Power to make regulations about the information to be provided to the Scottish Ministers where compensation is sought for an accident, injury or disease
- Section 94V(1) - Power to make provision between Part 7 and UK provisions
- Section 94W(1) - Power to make regulations about the relationship between Part 7 and the equivalent UK provisions
- Section 18 – inserts section 97(12) - Power to amend section 97(1) and (1A) of the 2018 Act to add, remove or vary the description of a delegated power conferred by this Act or any other enactment in respect of scrutiny by the Commission
- Section 23 - Power to make ancillary provision
- Section 25 - Power to make commencement provision

11. However, at that meeting, the Committee agreed to [write to](#) the Scottish Government to raise questions in relation to the following delegated powers:

- Section 2(2) inserts section 93A(1) - Power to provide for care experience assistance in regulations.
- Section 16(2) inserts section 87B(5) - Power to prescribe individuals who are not to be requested to provide information for audit of the social security system.
- Section 17(2) Inserts the following newly created Recovery from Compensation Payments sections:
 - Section 94H(4) - Power to make provision about the liability of insurers.
 - Section 94M(5) - Power to make regulations prescribing the requirements for a review of a certificate of recoverable assistance.
 - Section 94O(11) - Power to make regulations about the non-disclosure of medical advice or medical evidence given or submitted in connection with an appeal brought under this section.
 - Section 94U(1) - Power to make regulations in connection with the investigation of compensation recovery (including criminal offences).

12. The Scottish Government [responded](#) on 19 February 2024.
13. The Committee's consideration of these questions, and the other delegated powers contained in the Bill, are set out in the next section of the report.

Review of relevant powers

Section 1(3) - Childhood assistance

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Provision

14. Section 1 of the Bill inserts a new section 32A and schedule 6A into the 2018 Act which provide for a new scheme of childhood assistance which will provide payments to an individual to help meet some of the costs associated with having a child in the family. It is intended that childhood assistance will replace the Scottish Child Payment which is currently linked to receipt of a qualifying UK social security benefit. The primary criterion for eligibility will be that the individual is responsible for a child. A delegated power is conferred upon the Scottish Ministers requiring that they make regulations to set out the eligibility for and nature of the childhood assistance to be provided with provision in the schedule prescribing the content of the regulations and identifying other aspects which the regulations may include.

Committee consideration

15. The DPM explains that there is already an established process of taking regulation-making powers in the 2018 Act to specify in regulations the eligibility rules to determine if a person will be entitled to a given form of assistance and what they will be entitled to receive. It states that from time to time some elements of the eligibility criteria for childhood assistance may have to change and, therefore, that setting them out on the face of the Bill is inappropriate. Furthermore, setting out the operational arrangements of the scheme in subordinate legislation enables the Scottish Commission on Social Security to scrutinise any proposals in draft regulations as they are required to do by the 2018 Act.
16. The power is framed in a way which mirrors how provision has been made in the 2018 Act for new Scottish social security benefits. Detailed provision is made on the face of the Bill in the newly inserted schedule 6A as to what may be included in the regulations. The regulations will be subject to the affirmative procedure. This level of parliamentary scrutiny appears appropriate given that the regulations will establish the criteria determining an individual's eligibility for financial assistance and the form which the assistance may take, together with aspects of the operation of the scheme.

17. **The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

Section 2(2) inserts section 93A(1): Power to provide for Care experience assistance in regulations

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Provision

18. Section 2 of the Bill inserts a new Part 5A (care experience assistance) into the 2018 Act. Section 93A(1) grants the Scottish Ministers the power to establish by regulations one or more schemes of financial assistance to individuals with care system experience. The detail of the scheme is to be set out in regulations.

Committee consideration

19. The Committee asked the Scottish Government why the Bill included provision to introduce a care experience assistance scheme where the detail of the policy and its implementation have yet to be established. The Scottish Government responded that this “is consistent with the approach taken for other forms of social security assistance that the Scottish Ministers may provide for within the Scottish social security system.”
20. It added that the enabling powers may be used for “multiple forms of assistance” with the power being used to introduce Care Leaver Payment but may be used for other forms of assistance in future. It also added that “public consultation on the Care Leaver Payment was launched on 3 November 2023 and closed on 26 January 2024.” The Scottish Government stated that it intends to use the consultation responses to inform policy development and implementation.
21. Finally, the Committee also asked the Scottish Government to provide an outline or timetable setting out its plans for laying these regulations. It responded that this is consistent with the approach for other forms of assistance with further consultation scheduled to commence in early 2025.
22. The DPM explains that the intention of care experience assistance is to provide financial support to young people as they move on from being in care to adulthood and more independent living.
23. The eligibility criteria, processes and delivery model of the assistance are still to be determined. The formal consultation is expected to run into 2025 and so the delegated power scrutiny does not benefit from a fully developed policy. There is not much available information on how the delegated power is to be exercised. This can make it difficult to assess whether the power should be delegated and if so whether the scope is appropriate.
24. The consultation appears to be ongoing between the Scottish Government and stakeholders, and that there appears to be limited opportunity for the Parliament to scrutinise the conclusions of such consultations.
25. The Committee notes that the care experience assistance has considerably less detail than the childhood assistance also introduced by the Bill.
26. The Committee is concerned that it is being asked to scrutinise a delegated power at a time when the policy has not been developed. It is also concerned that the

delivery model for any provision to be made under this power has not yet been agreed. Developing the policy and delivering any care experience assistance in this way means that there will be less Parliamentary opportunity to scrutinise the policy choices for which the power is to be exercised.

27. In absence of any detail on the face of the Bill, the Parliament would be accepting that the exercise of these powers by the Scottish Ministers for the delivery of care experience assistance policy would be subject to parliamentary scrutiny which allows only for approving or rejecting regulations following debate.
28. The Scottish Ministers have elected for the affirmative procedure for the use of this power. However, the Committee considers that, given the lack of detail currently available on how this power may be used and the Scottish Government's plans, it should be subject to enhanced or additional parliamentary scrutiny than that afforded by the affirmative procedure.
29. **The Committee highlights the power to the lead committee, noting that it is a broad power with limited detail on the face of the Bill as to its intended use.**
30. **The Committee suggests that the lead committee may consider taking further evidence from the Scottish Government regarding its intended use of this power.**
31. **The Committee also recommends that this power's exercise should be subject to additional parliamentary scrutiny, commonly referred to as the "super affirmative procedure", such as laying draft regulations in Parliament on which representations may be made.**

Section 2(2) inserts section 93A(9): Directions to persons administering the scheme for care experience assistance

Power conferred on: the Scottish Ministers

Power exercisable by: Direction

Parliamentary procedure: None

Provision

32. Section 2(2) introduces new section 93A(3)(a) which allows the Scottish Ministers to decide who should be responsible for delivery of the care experience assistance schemes (the regulation-making power discussed above). Section 2(2) introduces a further power at section 93A(9) for the Scottish Ministers to give directions in relation to the giving of assistance under care experience assistance schemes to the persons responsible for giving it which those persons must comply with. They must publish any directions they give.
33. The direction making power is not subject to any parliamentary procedure. However, the Bill requires that directions must be published.

Committee consideration

34. The DPM explains that it is possible that care experience assistance will not be delivered by the Scottish Ministers through Social Security Scotland. The Scottish

Government explains that this delegated power will allow the Scottish Ministers to set out requirements within directions for delivery of care experience assistance to any organisation involved in delivery of the schemes. The Committee is content that the Scottish Ministers will have power to direct the delivery organisation regarding the giving of care experience assistance. The directions are to be published and this means that there will be appropriate transparency. Directions are not usually subject to any parliamentary procedure.

- 35. The Committee finds the direction making power acceptable in principle and is content that it is not subject to any parliamentary procedure.**

Section 7(7) – Tribunal Rules to end appeal after new determination for error

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative

Provision

36. Section 7 modifies the 2018 Act and section 7(7) adds new sections 49A-49C to the 2018 Act to allow the Scottish Ministers to make a new determination after a person has lodged an appeal against a benefit decision where there has been an error which has resulted in the person receiving less assistance than they would have been entitled to had the error not been made. Making a new determination of the person's entitlement would stop the appeal. Section 49C(1) enables the Scottish Ministers to make regulations providing rules which mean that appeal proceedings in the First Tier Tribunal may be ended by operation of law if the Scottish Ministers make a new determination about the appellant's entitlement in relation to any type of assistance which results in the individual receiving more assistance than they would have under the decision originally appealed.
37. Before making any regulations under this section the Scottish Ministers must consult the President of the Scottish Tribunals and such other persons as they consider appropriate. The power is exercisable only until the commencement of relevant sections of the Tribunals (Scotland) Act 2014 after which the Court of Session will assume responsibility for exercise of this power.

Committee consideration

38. The Policy Memorandum states that disputes which are resolved by way of Tribunal hearings can sometimes take a long time to resolve. The power is designed to speed up benefit payments and reduce unnecessary Tribunal hearings. The new provision in section 7 amends the 2018 Act to enable Tribunal proceedings to be ended only in the event of a new decision being in the claimant's favour and to give notice of that new decision. The claimant has a right to request review of the new decision and to appeal if unhappy with its content.
39. The delegated power is designed to enable Scottish Ministers to ensure that Tribunal rules align with these new provisions. The power to make tribunal rules will be exercisable by the Lord President when schedule 9 of Tribunals (Scotland) Act

2014 comes into force. The Committee considers that the negative procedure is appropriate for making changes to rules of the Tribunal which are procedural.

40. **The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

Section 9(4)(d) – Liability of individual for assistance given in error

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Provision

41. Section 9 modifies section 63 of the 2018 Act which makes provision for an individual to be held liable to repay assistance given to them in error. Section 64 limits the circumstances in which an individual can be required to repay assistance they have received in error. The Bill amends section 64 to clarify that an individual remains liable to repay assistance given in error caused by their representative, provided that the assistance given in error was not used for a purpose in breach of the duties or responsibilities of that representative.
42. Section 10 of the Bill inserts new sections 64A into the 2018 Act which makes the individual's representative liable to repay assistance given in circumstances where they are in breach of their responsibilities to the individual they represent. New section 64B then limits the circumstances in which the individual representative will be held liable.
43. Section 9(4)(d) inserts section 64(6) into the 2018 Act which provides that the Scottish Ministers may specify by regulations the persons or categories of persons who are included in the meaning of 'the individual's representative' for the purposes of sections 64, 64A and 64B.

Committee consideration

44. The DPM explains that the power will allow flexibility for any amendments needed to the list of people who can be individual representatives, to include future forms of representatives or to account for any alterations to the legal basis for different types of representative. This power has the potential to have a significant impact on the personal and financial liability of individuals and their representatives to repay sums of money as Scottish Ministers may change who may be defined as and empowered to act as a claimant's representative.
45. The Committee considers it appropriate to include such provision in regulations to enable additions, variations and removals in response to policy and legal changes. However, a high level of scrutiny afforded by the affirmative procedure is justified given the potential impact on liability of persons who represent individuals in receipt of assistance.

46. **The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

Section 13(2) – Assistance given in error: reviews and appeals

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative

Provision

47. Section 13(2) inserts sections 69A – 69L into the 2018 Act in respect of reviews and appeals against an assessment of liability for assistance given in error. An individual may request that the Scottish Ministers review their decision regarding liability after being informed of a decision by the Ministers of the individual's liability. Under new section 69A(5) the request must be made before the end of a period to be prescribed by the Scottish Ministers in regulations, subject to the possibility of extension of the deadline for a review request if there is good reason or exceptional circumstances.
48. New section 69C(6) provides that the period within which the Scottish Ministers must complete the review once a request is made is also to be prescribed by the Scottish Ministers in regulations.

Committee consideration

49. The DPM explains that it is necessary to prescribe a period of time within which individuals may request reviews of determinations about their liability for assistance given in error and to prescribe the period within which such reviews may be carried out, and that to do so by regulations enables the timescales to be refined in the light of experience and to ensure the correct balance is struck between fairness to the individual and administrative certainty. The power to provide timescales within which a review of a person's liability to repay benefits paid to an individual in error can be requested provided it is in the required form and within which the review must be carried out by the Scottish Ministers appears an appropriate administrative function to be provided for by regulations.
50. The Committee considers that the negative procedure affords an appropriate level of scrutiny of proposals which are likely to be consistent with comparable review timescales and therefore unlikely to be controversial.

51. **The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

Section 14(2) – Power to make provision in relation to appointments made by a Minister of the Crown

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Provision

52. Section 14 inserts section 85F into the 2018 Act and provides a power to enable persons appointed by the Department of Work and Pensions to act on behalf of a person claiming reserved benefits to also act in relation to devolved benefits for a temporary period. Section 85F(1) enables the Scottish ministers to make provision in regulations prescribing the circumstances in which they may treat specified persons appointed by UK Ministers as if they were appointed by the Scottish Ministers.
53. The regulations are to specify the category of individuals to whom the regulations apply and the appointed persons to whom they apply by reference to the provisions under which they were appointed. If an individual is in receipt of certain forms of assistance to be specified in the regulations Scottish Ministers are to consider whether conditions for making the appointment are met in relation to the individual, whether the appointment made by virtue of the regulations should be terminated and if so, whether to appoint a person to act under sections 85A (appointee for child) or 85B (appointee for adult by consent or where incapax) of the 2018 Act.

Committee consideration

54. This is a power to treat DWP appointees as appointees for the purposes of Scottish benefits on a temporary basis pending formal appointment under section 85A (appointee for child) or section 85B (appointee for adult by consent or where incapax) of the 2018 Act. The Policy Memorandum explains that the power will allow individuals to be put into payment quickly while thereafter ensuring that their appointee has been appropriately recognised. The DPM explains that doing so by regulations will enable different provisions to be made across different benefits and ensure that the policy is implemented proportionately and in the best interests of recipients of assistance. As the regulations will impact significantly on who may act as an appointee the Scottish Ministers consider a higher level of scrutiny is justified.
55. The Committee considers that this is a pragmatic arrangement to enable prompt administration of benefits for individuals unable to act for themselves and enacting the power by way of regulations appears appropriate to enable changes where necessary.
56. The regulations will specify categories of individuals for whom temporary appointees are appropriate as well as those who may be appointed and given the status of appointee has a substantial impact on both the individual and the responsibilities of the appointee the affirmative procedure affords a high level of scrutiny.

57. **The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

Section 16(2) inserts the section 87B(5) power to prescribe individuals who are not to be requested to provide information for audit of the social security system

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Provision

58. Section 16 inserts section 87B to 87E into the 2018 Act making provision for obtaining information for audit of the social security system. At present information may only be requested from an individual for the purposes of determining their entitlement to assistance. Section 87B allows the Scottish Ministers to request that an individual who is entitled to assistance provide information about their entitlement to assistance and payment of that assistance for the purpose of audit in addition to determination of their entitlement.
59. Section 87B(5) enables the Scottish Ministers to prescribe by regulations categories of individuals who are not to be requested to provide information for the purposes of audit.

Committee consideration

60. The Committee asked the Scottish Government whether consideration had been given to the criteria to be applied to determine whether the exemption categories should be stated on the face of the Bill. The Scottish Government responded to say that it considers that “secondary legislation is the most appropriate place to specify those categories of individual that do not need to provide information”.
61. The Committee also asked whether a consultation requirement should be required. In its response, the Scottish Government considered that introducing a consultation requirement would be in line with its “person-centred approach to social security”.
62. The response further added that the introduction of audits and requiring individuals to provide information to Social Security Scotland will require the implementation of new processes with policies and procedures evolving and so necessitates the flexibility offered by secondary legislation.
63. The use of this power is intended to designate individuals who are to be exempted from providing information to Social Security Scotland. The Scottish Government in its response highlights that it is appropriate for the detail of the administrative matters related to audit and information requests to be dealt with by subordinate legislation to allow for greater flexibility.
64. As highlighted by the Scottish Government's response on the question about the lack of a formal consultation requirement, it said that although it would have consulted in absence of a consultation requirement it has agreed that a consultation provision on face of Bill would provide clarity.

65. **The Committee recommends that a consultation requirement be added before the Scottish Government exercises this power. The Committee also welcomes the Scottish Government's commitment to making an amendment to this effect at Stage 2.**

66. **The Committee accepts the Scottish Government's explanation regarding the preference to exempt categories of people by delegated legislation, and is therefore content with the power and that it is subject to the affirmative procedure.**

Section 16(2) inserts section 87B(4) – Information for audit of the social security system

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative

Provision

67. Section 16 inserts section 87B to 87E into the 2018 Act making provision for obtaining information for audit of the social security system, within which there are powers to make regulations relating to requests for information from individuals for audit purposes. Section 87B(4) provides that Scottish Ministers may by regulations prescribe the form of response which an individual must make to a request for information including when the response must be in writing or in another format.

Committee consideration

68. This is a power to fix administrative procedure and the Committee considers it is appropriate to provide for such procedure by way of regulations subject to the negative procedure.

69. **The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

Section 16(2) inserting sections 87C(1) and (4) – Information for audit of the social security system

Powers conferred on: The Scottish Ministers

Powers exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative

Provision

70. Section 16 inserts section 87B to 87E into the 2018 Act making provision for obtaining information for audit of the social security system, within which there are powers to make regulations relating to requests for information from individuals for audit purposes. Individuals may ask that they be withdrawn from the requirement to provide information for audit and these powers fix the administrative timescales within which requests must be made and decisions about whether the individual has good reason for the request in response must be taken.

71. Section 87C(1) requires that Scottish Ministers shall fix a period within which an individual who has received a request for information for audit purposes may ask that the request be withdrawn. The Scottish Ministers may only withdraw the request if the individual has a good reason for the request to be withdrawn.
72. Secondly, section 87C(4) requires that Scottish Ministers must fix the time period within which they must decide whether the individual has good reason to request withdrawal of the information request and, when read with section 87C(5), those regulations must also make provision about cases in which the Scottish Ministers fail to make a decision within the prescribed period. The Scottish Government states that it will develop the policy around what good reasons might be taking account of ECHR considerations to ensure that no individual will be required to provide information if it would be disproportionate to require this in the circumstances.

Committee consideration

73. The Policy Memorandum states that robust and reliable audit mechanisms are required to ensure that benefit payments are correct and where they are not to accurately quantify rates of overpayment, underpayment and fraud. The DPM explains that these powers are necessary to allow Scottish Ministers to be adaptive and responsive to the practical implementation of the policy and real-life experiences, and that timescales such as these are commonly prescribed in secondary legislation to allow for flexibility and responsiveness to changing circumstances.
74. The powers to fix timescales for administrative processes are themselves administrative in nature. The Scottish Government does not anticipate that any of the timescales to be fixed under these powers are likely to be controversial matters and therefore considers that the negative procedure is warranted.

75. **The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

Part 7 – Recovery from compensation payments

76. Scottish Ministers do not currently have powers to recover devolved social security assistance from compensation paid to persons by liable third parties. The next 12 delegated powers this paper considers are created by Part 7 of the Bill, (Section 17(2): Recovery of value of assistance from compensation payments).
77. Section 17 of the Bill introduces a new Part 6A into the 2018 Act – Recovery from compensation payments. This part introduces new sections 94A-94W of, and schedule 12 to, the 2018 Act which allow the Scottish Ministers to recover payments from third parties as detailed below.
78. A person affected by accident, injury, or disease due to the fault of a third party may be entitled to both social security assistance and compensation from the third party at fault. In such circumstances, the Scottish Ministers may recover relevant forms of Scottish social security assistance to avoid a person being compensated twice for the same incident.

79. Part 6A is framed in terms of a liable third party described as the “compensator”. It is understood that this third party will typically be represented by an insurer. The third party – via their insurer – will then be due to pay the Scottish Ministers an amount of “recoverable social security assistance” to recoup the funds paid out by the Scottish Ministers to the injured person.


Section 94A(3) & (5) – Powers to modify the funds liable to and exempt from compensation recovery scheme

Powers conferred on: Scottish Ministers

Powers exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

80. Section 94A(3) provides the Scottish Ministers with power to modify the payments exempt from compensation recovery listed in schedule 12 to:
- Add a payment
 - Remove a payment
 - Vary the description of a payment
81. Paragraph 1 of schedule 12 specifies payments made under statutory powers related to injuries caused by a criminal offence or military service. This is supplemented by provision in paragraph 3 of inserted schedule 12 which provides the Scottish Ministers with a power to prescribe trusts which will also be exempt from payment.
82. Section 94A(5) enables the Scottish Ministers to make financial recoveries from lump sum payments made as well as compensation payments made in relation to an accident, injury or disease. Section 94A(6) further specifies the detail that may be included in regulations.
83. The DPM states that section 94A(5):
-  provides the Scottish Ministers with a power to make provision within regulations about the recovery of payments made under schemes providing for compensation in the form of a lump sum payment in consequence of any accident, injury or disease, where a compensation payment in respect of the same accident, injury or disease has been paid to or in respect of that person (paragraph 60).

Committee consideration

84. The DPM states that Part 1 of Schedule 12 specifies “payments which are to be exempt from recoveries, because they are paid from a source or for a purpose which would make recoupment illogical or unreasonable (e.g. redundancy payments).”
85. The DPM explains that the power in section 93A(3) is required “so that if any alterations are required to the list of assistance to which the provisions apply, or to

the exempted payments, these changes can be made by secondary rather than primary legislation”.

86. The section 94A(3) power allows the Scottish Ministers to make amendments to the list of exempted payments after the Bill is passed. This power appears to be appropriate to achieve the policy intention of recovering sums paid out, and to allow for changing circumstances. Without such a power, any changes would require to be made by primary legislation, which would not be an effective use of either the Parliament's or the Scottish Government's resources.
87. The DPM adds that the power contained in section 94A(5) relates to “complex and technical matters and scenarios, for which flexibility within secondary legislation will be suitable.”
88. The Committee considers it is appropriate for such technical matters to be specified in delegated legislation to retain the flexibility to make regulations about compensation recovery without primary legislation.

89. The Committee finds the powers acceptable in principle and is content that they are subject to the affirmative procedure.

Section 94B(2) – Power to modify the definition of "relevant assistance"

Powers conferred on: the Scottish Ministers

Powers exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

90. Section 94B(1) defines a “compensator” as the third party making the compensation payment (and includes the Diffuse Mesothelioma Payment Scheme Administrator). The third party (this may be an employer, individual or business) will typically be represented by an insurance provider.
91. In addition, section 94B(1) defines “relevant assistance” as being assistance listed in the schedule inserted into the 2018 Act (specifically column 2 of the table in Part 2 of Schedule 12), as well as any short-term assistance given as a result of its reduction or discontinuation.
92. The Scottish Ministers may by regulations modify the definition of “relevant assistance” and the table in Part 2 of Schedule 12 with the power in section 94B(2).

Committee consideration

93. The Scottish Ministers are granted a power to modify the definition of “relevant assistance” in primary legislation. The devolved benefits specified may require to be changed from time to time.
94. The Committee considers that the Scottish Government should have the ability to make such technical changes to the legislation without primary legislation.

95. **The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

Section 94C(4), (8) & (9) – Powers to regulate the operation of the certificate of recoverable assistance

Powers conferred on: the Scottish Ministers

Powers exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

96. The compensator is required to apply for a “certificate of recoverable assistance” before reaching a settlement agreement with the injured person. Section 94C details the administrative process that the compensator must comply with to receive a certificate. The compensator is required to apply for a certificate before the settlement funds are paid over to the injured person.
97. Section 94C sets out the procedure for that application and associated delegated powers:
- Sub-section (4) grants the Scottish Ministers a regulation making power to specify the time frames related to the issuing of the certificate.
 - Sub-section (8) grants the Scottish Ministers a regulation making power in relation to further certificates, if required.
 - Sub-section (9) grants the Scottish Ministers a regulation making power to specify the date for which an application is to be treated as received.

Committee consideration

98. It is normal practice that the detail of administrative procedures is specified in regulations rather than appearing on the face of the Bill. The form and content may also require to be updated from time to time and therefore a power to make regulations provides flexibility to respond to such requirements.

99. **The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

Section 94H(4): Power to make provision about the liability of insurers

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Provision

100. Section 94H(1) provides that where a compensation payment is made and is covered by an insurance policy, that policy will also be deemed to cover the recoverable assistance payment due to the Scottish Ministers under section 94E. Section 94H(4) provides the Scottish Ministers with a delegated power to make provision about the liability imposed on insurers by subsection (1).

Committee consideration

101. The Committee highlighted to the Scottish Government that the equivalent UK provision contains a more restricted power to limit the amount of the insurer's liabilityⁱ. The provision, as introduced by the Scottish Government, contained a power with wide discretion. In response to the question, the Scottish Government agreed that "wider discretion is not required". It made a commitment to make a government amendment to this effect at Stage 2, to narrow the terms of the section 94H(4) power.
102. The Scottish Government also confirmed that it intends to use the power to limit the liability imposed on insurers similar to the provision contained in the Social Security (Recovery of Benefits) Act 1997.
103. In contrast, the delegated power contained in section 94H(4) grants the Scottish Ministers wide discretion "to make provision about the liability imposed on the insurer under subsection (1)."

104. **The Committee welcomes the Scottish Government's commitment to bring forward a Stage 2 amendment to narrow the terms of the delegated power in section 94H(4).**

105. **In light of this, the Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

Section 94M(5): Power to make regulations prescribing the requirements for a review of a certificate of recoverable assistance

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Provision

106. Section 94M provides for reviews of certificates of recoverable assistance. An application for review can be made by the injured person or a compensator (except for the Diffuse Mesothelioma Payment Scheme Administrator). This review is an optional stage and does not affect the right to reconsideration or appeal. In addition, a certificate may be reviewed by the Scottish Ministers on their own initiative, provided the compensation payment has not yet been made.

ⁱ Health and Social Care (Community Health and Standards) Act 2003, section 164.

107. A power is taken in section 94M(5) to prescribe in regulations the period in which a request for a review may be made, the cases and circumstances in which such a request may be made, and the cases and circumstances in which the Scottish Ministers may undertake a review on their own initiative.
108. The potential outcomes of the review include the Scottish Government confirming, modifying or revoking the certificate initially issued. Section 94M(7) requires the Scottish Government to provide a note of a decision and reasons to the person who requested the review.

Committee consideration

109. The Committee asked the Scottish Government what kind of circumstances it may undertake a review on their “own initiative”.
110. In its response, the Scottish Government stated that it intends to use the power in the following cases and circumstances:
- where a mistake has been made in the preparation of the certificate of recoverable assistance; and
 - where incorrect or insufficient information has been provided by the compensator resulting in inaccurate information stated on the certificate.
111. The response also highlighted that the provision mirrors the UK position, where section 10 of the Social Security (Recovery of Benefits) Act 1997 provides that a review can be carried out in “prescribed cases or circumstances” including on the UK Ministers “own initiative”.
112. On balance, considering that there is precedent for this approach and the fact that the exercise of the power will be used to make administrative arrangements for certificates of recoverable assistance, the Committee is content that the power is appropriate in principle and that the affirmative procedure applies to this power.

113. **In light of the above, the Committee is content with the Scottish Government's explanation provided for the power in principle and is content that it is subject to the affirmative procedure.**

Section 94N(7) – Power to regulate a request for a reconsideration

Powers conferred on: the Scottish Ministers

Powers exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

114. Section 94N makes provision for the reconsideration by the Scottish Ministers of the certificate of recoverable assistance. A reconsideration can only be requested after a recovery payment has been made to the Scottish Ministers.
115. 94N(7) gives the Scottish Ministers the power to make provision within regulations

about how and when a request for reconsideration can be made.

Committee consideration

116. The power to regulate the reconsideration procedure is limited by the grounds for reconsideration which are set out in section 94N(6) such as the certificate being incorrect. The section 94N(7) power is concerned with the form in which a reconsideration request may be made, and the time period for making that request. It is standard practice for the applicable administrative procedures to be specified by delegated legislation.

- 117. The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

Section 94O(6) – Power to regulate appeal stages

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

118. An injured person or compensator (i.e. the liable third party) may ask for a reconsideration of the certificate of recoverable assistance after receiving a compensation payment (the “reconsideration” stage). The reconsideration process affords the Scottish Ministers the opportunity to assess the certificate and consider any further evidence. Following the reconsideration of the certificate, the Scottish Ministers may confirm the initial certificate decision as correct. It may alternatively change or revoke its earlier compensation recovery decision.

Committee consideration

119. An applicant must exhaust the reconsideration stage before making an appeal to the tribunal. Section 94O(6) gives the Scottish Ministers the power to make provision about how and when an appeal can be progressed. The DPM states that:

” Section 94O(6) gives the Scottish Ministers the power to make provision in regulations about the manner in which and the period within which appeals may be brought and the circumstances and manner in which a purported appeal under this section may be treated instead as a request for a reconsideration under section 94N(paragraph 64).

120. Section 94O(6) provides the Scottish Government with the power to set out when an appeal request is to be treated as a request for a reconsideration. The policy objective provided is “to limit unnecessary appeals progressing through the [First-Tier] Tribunal”. The reconsideration is therefore a requisite intermediary stage before an appeal process.
121. The power is concerned with matters of administrative and procedural detail. It is standard practice for such detail to be provided in delegated legislation rather than on the face of a Bill. The regulation of contentious procedures may require to be

adapted in time without resort to primary legislation and so benefits from the flexibility of delegated legislation.

122. **The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

Section 94O(11): Power to make regulations about the non-disclosure of medical advice or medical evidence given or submitted in connection with an appeal brought under this section.

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Provision

123. Section 94O(11) confers a regulation making power on the Scottish Ministers to provide for the non-disclosure of medical advice or medical evidence given or submitted in connection with an appeal brought under this section.

Committee consideration

124. The Committee asked the Scottish Government for further details about the anticipated use of the power and consideration given to individual rights.

125. In its response, the Scottish Government confirmed the intention was:

” to provide the power to restrict the disclosure or release of medical information provided to the First-tier Tribunal, similar to section 12(7) in the Social Security (Recovery of Benefits) Act 1997.

However, on reconsidering the Scottish Government has come to the view that rule 14 in the schedule of the First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, already in practice, makes sufficient provision in relation to the disclosure of documents and information.

As a result, it is recognised that it is not necessary to include section 94O(11) within the Bill and the Scottish Government commits to a government amendment at Stage 2 to remove it.

126. The Committee's view is that a power should only be delegated if necessary. The Scottish Government conceded that a near identical provision can be found in existing First Tier Tribunal regulations. It is therefore not necessary to delegate the power contained in section 94O(11) and the Scottish Government confirmed it will take action to revoke this power.

127. **In light of the above, the Committee welcomes the Scottish Government's commitment to bring forward a Stage 2 amendment to remove the power contained in section 94O(11) from the Bill.**

Section 94Q(9) – Power to make regulations about the timescales for payment of an amount due following a reconsideration or an appeal

Powers conferred on: the Scottish Ministers

Powers exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

128. Section 94Q applies where multiple compensation payments are made in respect of the same injured person and the same accident, injury or disease.

Committee consideration

129. The DPM states that:

” Section 94Q(9) includes a power to make provision in regulations about the timescales for payment of any amount due, and make further provision for any case in which two or more compensation payments in the form of lump sum payments are made by two or more compensators to or in respect of an injured person in consequence of the same accident, injury or disease.

130. The Explanatory Notes provides that the provisions are intended to operate to apportion liability in the case of multiple compensators being liable in connection with the same incident or deal with overpayments to the Scottish Ministers. This power is concerned with matters of administrative detail (i.e., the accounting for payments due to or by the Scottish Government).

131. **The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

Section 94T(1) – Power to make regulations about the information to be provided to the Scottish Ministers where compensation is sought for an accident, injury or disease

Powers conferred on: the Scottish Ministers

Powers exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

132. Section 94T(1) gives a power to the Scottish Ministers to make provision in regulations about the information to be provided where recovery of compensation is sought in respect of any accident, injury or disease. Section 94T(2) further sets out what those regulations must require, from whom, and in what manner, place and time period.

Committee consideration

133. The Explanatory Notes state that, "this is to ensure that the Scottish Ministers are provided with sufficient information to be able to recover assistance from compensation payments (paragraph 126).
134. The DPM acknowledges that the use of this delegated powers may impact injured individuals and so it is appropriate to apply the affirmative procedure.
135. The Committee considers that this power extends no further than is appropriate because the regulations to provide information are circumscribed by the terms of section 94T(2). The power is limited to the provision by those who are connected to the injury, illness or disease of information that may relate to the eligibility of a person to receive devolved social security assistance.
- 136. The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

Section 94U(1): Power to make regulations in connection with the investigation of compensation recovery

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Provision

137. Section 94U(1) delegates to the Scottish Ministers the power to make regulations for the investigation of social security payments made to individuals. Section 94U(2) provides a list of matters that the regulation making power may in particular include:
- prescribing persons who are authorised to investigate on behalf of the Scottish Ministers and the terms on which they may be authorised;
 - the powers those authorised persons may exercise, including entry to premises and access to information; and
 - creation of offences related to the obstruction of investigations as well as refusing or neglecting to provide information requested.

Committee consideration

138. The Committee asked the Scottish Government to provide an outline of the behaviours this power is intended to capture. In its response it explained that the intention is to use the power in relation to any person who is or has been liable for making a compensation payment, or a payment to the Scottish Ministers under 94E (liability of a compensator to pay the Scottish Ministers amount equal to recoverable assistance). The Scottish Government indicated that this includes insurance providers.
139. In its response, the Scottish Government also said it intends to address behaviours such as the intentional delaying or obstruction of an investigation by an authorised officer in the exercise of their functions, as well as addressing the refusal or neglect

in complying with any requirement to provide information or give access to electronic information to an authorised officer.

140. Further, the Scottish Government was asked if the offence provision intended to capture offences by omission as well as purposive acts. In its response, the Scottish Government confirmed that failure to comply with the requirements of an investigation by omission will be caught within the terms of any offences made under these provisions. It noted that the offences only applied when an investigation occurred in terms of regulations made under section 94U.
141. The Scottish Government was also asked why, given the potential impact on individuals whose behaviour may be criminalised in regulations made under this power, it has not chosen to specify the criminal conduct on the face of the bill? In its response, the Scottish Government stated that the power in section 94U allows for the detail of how investigations will be carried out, which includes offences. The reasons provided for not specifying the criminal conduct on the face of the Bill include allowing for additional time to engage and consult with stakeholders, to allow alignment with investigatory provisions and to apply them correctly to corporate bodies.
142. In considering the response from the Scottish Government, the Committee is satisfied that a degree of flexibility is needed to adjust the offence provisions to align with the investigatory power and the wider scheme of the Bill.
143. However, the Committee also notes that where offences are created in legislation, the terms of each offence must be clear in its terms and properly understood by those who may find themselves accused of committing an offence.
144. In its response, the Scottish Government stated that this power is intended to capture intentional acts including “the intentional delaying of obstruction of an investigation by an authorised officer in the exercise of their functions”. This is consistent with equivalent powers for reserved social security matters.
145. However, the Scottish Government also stated that it intends to use this power to criminalise “neglect to comply with any requirement to provide information or give access to electronic information by an authorised officer”. This does not appear to be in line with modern legislative practice. The reach of this delegated power extends beyond what the Committee would normally expect to see. There is doubt as to when a person has neglected to comply. It is not clear for persons to understand when they are complying with the criminal law when a social security offence is framed by reference to “neglect”.

146. The Committee is content with the power in part, specifically the powers to prescribe authorised persons and their associated powers, such as those to enter premises and access to information.

147. The Committee highlights this power, and the response from the Scottish Government, to the lead committee, noting that it is a broad power which includes the creation of criminal offences. Specifically, the Committee highlights to the lead committee that the power is not limited by detailed

provision made on the face of the Bill.

148. **The Committee asks the lead committee to seek further evidence from the Scottish Government in relation to the inclusion of the power to create “neglect” offences, and consider whether an amendment to remove the reference to “neglect” in section 94U(2)(i) is necessary.**

149. **In considering this, it may be helpful in particular for the lead committee to seek the Scottish Government's views on how it proposes that the regulations will define when a person is committing an offence due to the neglect to comply with any requirement to provide information or give access to electronic information by an authorised officer.**

Sections 94W(1) and 94V(1) – Power to make provision for cross-border cases and consistency with equivalent schemes in the rest of the UK

Powers conferred on: the Scottish Ministers

Powers exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

150. Sections 94V deals with the interaction between the Scottish devolved benefit recovery scheme and when the equivalent provisions which apply in the rest of the UK also apply (in the jurisdictions of Northern Ireland as well as England and Wales).
151. Section 94W allows the Scottish Ministers to make provision about the recovery of payments from a compensator where the compensation payment falls under the equivalent UK regime but the compensator is resident in Scotland.

Committee consideration

152. The DPM states that:

” This will allow the Scottish Ministers to ensure that the provisions within Part 6A of the 2018 Act work alongside the provisions within UK legislation, in any cross-border cases (paragraph 68).

153. The Explanatory Notes provide the following example:

” 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 (paragraph 130).

154. The equivalent body of UK legislation is lengthy and complex. It is reasonable that the Scottish Ministers require the power to make regulations to ensure that the

Scottish regulations operate effectively and adapt to provisions made in the rest of the UK. This is particularly relevant in cases where a compensator may be based in Scotland but takes out an insurance policy with a company registered in England and Wales.

155. The power is limited to the extent that it can only be used to ensure that cross-border cases are legislated for adequately and in connection with the recovery of payments due from a compensator where the rest of the UK provisions apply.

156. **The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

Section 18 – Scrutiny of regulations by the Commission

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Provision

157. The SCOSS was established by the 2018 Act and has a number of reporting duties to the Scottish Ministers and the Scottish Parliament. The Scottish Ministers are required to consult the SCOSS on draft proposals to exercise certain delegated powers and the SCOSS must then scrutinise and report on those proposals. Section 18 of the Bill modifies section 97 of the 2018 Act to specify and extend the number of delegated powers on which SCOSS must report when they are to be exercised. A delegated power is added at section 97(12) to allow the Scottish Ministers to add to, remove from or modify the list of delegated powers for which there is a requirement to consult the SCOSS on draft regulations before they are made.
158. The delegated power will allow amendment of primary legislation and has therefore been assigned the affirmative parliamentary procedure.

Committee consideration

159. The DPM explains that this power will allow flexibility should further powers be determined to be suitable for scrutiny by the SCOSS or if powers are no longer considered to be suitable for such scrutiny. The provision extends the reach of the SCOSS in scrutinising government proposals to exercise delegated powers in relation to the social security system. The delegated power enables the scope of scrutiny by SCOSS to be modified as circumstances change or new provisions for benefits and administration of benefits are developed, subject to a high level of parliamentary scrutiny of any changes proposed.

160. **The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

Section 23 – Ancillary provision

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative procedure if making textual amendments to an Act but otherwise negative

Provision

161. Section 23 provides that the Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act. Regulations made under this section are subject to the negative procedure, unless they add to, replace or omit any part of the text of an Act in which case they are subject to the affirmative procedure.

Committee consideration

162. The DPM states that this power is sought to provide flexibility to make any necessary adjustments needed to the Bill after enactment.
163. This is a standard ancillary clause bounded by the functions of the Act and the appropriate procedure is specified, depending on whether the regulations seek to modify any primary legislation.

164. **The Committee finds the power acceptable in principle and is content with the specified parliamentary procedures which are dependent on whether or not the power is exercised to amend primary legislation.**

Section 25 – Commencement

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Laid, no procedure

Provision

165. Section 25(2) provides that the Scottish Ministers may by regulations appoint days on which provisions of the Bill will come into force other than sections 22, 23, 25 and 26 which come into force on the day after Royal Assent. Regulations under section 25 may include transitional, transitory or saving provision and may make different provision for different purposes.

Committee consideration

166. The DPM explains that the power will enable the Scottish Ministers to bring the provisions of the Bill into force whilst managing the effects of their commencement including managing the transition of existing schemes. This is a standard commencement provision which is generally laid only and not subject to any procedure as the provision will have been considered throughout the passage of the Bill. Under section 30 of the Interpretation and Legislative Reform (Scotland) Act

2010 regulations are laid before parliament as soon as practicable after being made.

167. **The Committee finds the power acceptable in principle and is content that it is not subject to any parliamentary procedure.**

