



OFFICIAL REPORT  
AITHISG OIFIGEIL

DRAFT

# Social Justice and Social Security Committee

Thursday 19 September 2024

Session 6



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**Thursday 19 September 2024**

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**SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE**  
**24<sup>th</sup> Meeting 2024, Session 6**

**CONVENER**

Collette Stevenson (East Kilbride) (SNP)

**DEPUTY CONVENER**

\*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

**COMMITTEE MEMBERS**

- \*Jeremy Balfour (Lothian) (Con)
- \*Katy Clark (West Scotland) (Lab)
- \*Roz McCall (Mid Scotland and Fife) (Con)
- \*Marie McNair (Clydebank and Milngavie) (SNP)
- \*Paul O’Kane (West Scotland) (Lab)
- \*Kevin Stewart (Aberdeen Central) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Shirley-Anne Somerville (Cabinet Secretary for Social Justice)  
David Torrance (Kirkcaldy) (SNP) (Committee Substitute)

**CLERK TO THE COMMITTEE**

Claire Menzies

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



**Scottish Parliament**  
**Social Justice and Social  
 Security Committee**

*Thursday 19 September 2024*

*[The Deputy Convener opened the meeting at  
 09:00]*

**Interests**

**The Deputy Convener (Bob Doris):** Good morning, everyone, and welcome to the 24th meeting in 2024 of the Social Justice and Social Security Committee. We have received apologies from Collette Stevenson, and I welcome David Torrance, who is attending as a substitute.

Under agenda item 1, I invite David Torrance to declare any relevant interests.

**David Torrance (Kirkcaldy) (SNP):** I have no relevant interests to declare.

**The Deputy Convener:** I understand that Jeremy Balfour also wishes to make a comment at this point.

**Jeremy Balfour (Lothian) (Con):** Just for the avoidance of doubt, I remind members that I am in receipt of a higher rate of personal independence payment. I am also a former member of the tribunals service.

**The Deputy Convener:** Thank you for putting that on the record.

**Social Security (Amendment)  
 (Scotland) Bill: Stage 2**

09:00

**The Deputy Convener:** Agenda item 2 is stage 2 consideration of the Social Security (Amendment) (Scotland) Bill. The Cabinet Secretary for Social Justice, Shirley-Anne Somerville, joins us. Thank you for coming along, cabinet secretary. You are joined by your officials, and I thank them for coming along, too, but only you can speak at this time.

Everyone should have with them a copy of the bill as introduced, the marshalled list of amendments, which was published on 6 September, and the groupings of amendments document, which sets out the amendments in the groups in order in which they will be debated. There will be one debate on each group of amendments. I will call the member who lodged the first amendment in the group to speak to and move that amendment and to speak to all other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate that by catching my attention.

The debate on the group will be concluded by my inviting the member who moved the first amendment in the group to wind up. Standing orders give any Scottish minister the right to speak on any amendment. I will therefore invite the cabinet secretary to contribute to the debate just before I call the member to wind up.

Following the debate on each group, I will check whether the member who moved the first amendment in the group wishes to press it or to seek to withdraw it. If they wish to press ahead, I will put the question on that amendment. If a member wishes to withdraw their amendment after it has been moved, they must seek the committee's agreement to do so. If any committee member objects, the committee immediately moves to a vote on that amendment.

If any member does not want to move their amendment when called, they should say, "Not moved." Please note that any other MSP may move such an amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote. Voting in any division is by a show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote.

The convener has a personal vote as a committee member and a casting vote in the event of a tie. As the convener is not available, I, as

deputy convener, am carrying out that function today. How I use my casting vote is entirely down to my discretion; there are no agreed conventions. However, if I use my casting vote, immediately before doing so, I intend to indicate the basis on which I am using it each time.

The committee is required to indicate formally that it has considered and agreed to each section of and schedule to the bill, so I will put a question on each at the appropriate point.

With that now all on the record, we move to the consideration of amendments.

### Section 1—Childhood assistance

**The Deputy Convener:** The first group is on childhood assistance. Amendment 15, in the name of the cabinet secretary, is grouped with amendments 16 to 23 and 7.

**The Cabinet Secretary for Social Justice (Shirley-Anne Somerville):** Good morning. The Scottish Government's amendments in this group would simplify our approach to providing income-based benefits for children and young people by broadening the scope of the childhood assistance provisions in section 1 and by repealing the associated existing provisions on early years assistance in the Social Security (Scotland) Act 2018.

The primary reason for taking the new childhood assistance powers is to allow the Scottish child payment to be put on a new legislative footing. I believe that we should progress with providing for eligibility to be the same for all our five family payments while we have the opportunity that is provided by the bill.

The changes will give the Scottish ministers more flexibility in how they develop regulations to support children in low-income families in the future and will allow for longer-term improvements to the experience of clients who access the range of support that is currently offered by the five family payments.

I will turn to some specific aspects of the amendments. Amendments 19 and 17 will add additional primary eligibility criteria to the childhood assistance provisions, broadly mirroring the existing early years provisions in the Social Security (Scotland) Act 2018, with some adjustments to the criteria in relation to the definition of pregnant women and persons with a relationship to them, and of persons who are to, or have,

“become responsible for a child”

and persons with a relationship to them.

Amendment 20 widens the scope for giving assistance in relation to a specific event in a

child's life. Amendment 18 allows for ministers to create regulations that support families that were receiving childhood assistance in cases when the child to whom the claim related passed away during the course of that claim.

Amendment 15 provides for the repeal of the existing early years provisions in the 2018 act, with amendment 18 making transitional provisions for best start grants.

Amendment 7, in the name of Jeremy Balfour, seeks to impose a duty on the Scottish ministers to define through regulations what being responsible for a child means for the purpose of receiving assistance. It would also require them to provide assistance in relation to a child to the individual who was responsible for them at any point. I absolutely share Mr Balfour's concern about making sure that we pay the money to the right person, and I am grateful for his continued interest in that issue and for our recent discussion on the topic. However, his amendment is unnecessary. The regulations under the 2018 act for our current low-income benefits for children already set out a child responsibility test and contain a competing claims process that can be used when child responsibility is disputed.

Amendment 7 is based on the assumption that there can be only one parent responsible for a child at any given time, which is often not the case. That approach could unintentionally undermine amicable shared care arrangements. Social Security Scotland has existing processes in place to resolve disputes between parents and to act promptly on any change in circumstances, and it is able to make a change in whom payments are made to if required. I have set out more information on that to Mr Balfour in recent correspondence, and I trust that he has had the opportunity to consider that.

I should also note that amendment 7, as drafted, might affect young people aged 16 and above who wish to manage their own assistance and have the capacity to do so, as is currently possible with child disability payment. The Government therefore does not support amendment 7, and I ask Mr Balfour not to move it.

I urge members to support my amendments in this group, which allow us to set the groundwork for improvements to the five family payments in the future, but to reject amendment 7.

I move amendment 15.

**Jeremy Balfour:** Good morning, cabinet secretary and colleagues. I confirm that we will support all the amendments in the name of the cabinet secretary in this group.

I thank the cabinet secretary for her engagement on my amendment 7 and for her

helpful letter of 16 September. She has said that we all wish to make sure that the money follows the child and that those who are responsible for the child get the money. I welcome the information in the letter, but that information might not be broadly understood by the wider third sector. It would be helpful if the Government and Social Security Scotland could make that information better known so that parents and third sector organisations that advise parents are aware of it. The feedback that I have had from organisations is that they are not aware of it.

My understanding is that this is guidance rather than regulation, so perhaps the cabinet secretary could also deal with that point when closing the debate on this group. My only concern is that guidance can be changed by Social Security Scotland or the Scottish Government without the Parliament knowing that that is happening. We are trying to proof the bill not just for now but for future years and generations, so I wonder whether the committee and the Parliament could be kept up to date on any changes in that regard.

In the light of what the cabinet secretary has said, I will not move amendment 7.

**The Deputy Convener:** As no other member wishes to speak at this point, I ask the cabinet secretary to wind up.

**Shirley-Anne Somerville:** I will do so very briefly. Again, I thank Jeremy Balfour for our discussions on those issues, because an important point has been raised. As he pointed out, his conversations with stakeholders have suggested that the third sector does not understand that area. It is the responsibility of the agency, not the third sector, to make sure that we do something about that. I confirm to Mr Balfour that I will speak to the agency and ask it to carry out further work with the third sector and engage with wider stakeholders to ensure that the guidance is understood.

Mr Balfour asked for further reassurances about changes in guidance. Again, that is an important point, not just on this issue but on others. If the agency makes significant changes to guidance, there should be a process to alert stakeholders and the committee to that. I will take his point away and reflect with the agency's senior team on how best to do that. I give my assurances that we will work to provide reassurance on the future proofing of that process.

*Amendment 15 agreed to.*

*Amendments 16 to 23 moved—[Shirley-Anne Somerville]—and agreed to.*

**The Deputy Convener:** The next group is on relaxation of application deadlines. Amendment

24, in the name of the cabinet secretary, is grouped with amendments 105 and 28.

**Shirley-Anne Somerville:** Amendments 24 and 28 amend the 2018 act in order to allow late applications for social security assistance. Stakeholders, including Scottish Action for Mental Health, One Parent Families Scotland and Stirling Council, called for that change, while noting that flexibility is already allowed for some benefits. Our public consultation and our work with our client and research panels showed strong support for late application in exceptional circumstances.

Amendments 24 and 28 will ensure a fairer system that will allow more people to access benefits, even if they sometimes miss deadlines. The committee might remember that, when I appeared before you at stage 1, I said that

“We absolutely agree that social security should be as accessible and accommodating as possible”

and that the Government considers it

“worth while, even if it helps only a handful of cases. After all, that handful of cases will involve people who are, potentially, exceptionally vulnerable and are in the most difficult of circumstances.”—[*Official Report, Social Justice and Social Security Committee*, 18 April 2024; c 7.]

The bill repeals section 52B of the 2018 act, which allowed for the relaxation of deadlines where Covid was the reason for a late application for assistance.

The Government considered whether to make a global provision in the bill, similar to section 52B, as Paul O’Kane has proposed in amendment 105, which would replace reference to reasons relating to Covid with a more general good reasons or exceptional circumstances test.

Section 52B, which was inserted into the 2018 act by the emergency bill that was delivered at the height of the global pandemic, takes an overarching approach to accepting late applications for assistance. In those unprecedented circumstances, where there were legal restrictions in place on everyday life, the provision was a suitable temporary solution to ensure that people were not penalised for missing application deadlines.

Thankfully, time has moved on and those restrictions have been lifted. The Scottish Government delivers 14 forms of assistance, all of which have different eligibility criteria and, crucially, different application deadlines.

09:15

Our view is that the approach in amendments 24 and 28 is, therefore, the best one. Drafting is framed broadly to allow the regulations for each kind of assistance to make provision about the circumstances in which a late application is

allowed, which gives the amendments three distinct advantages over the approach proposed in amendment 105.

First, I emphasise that it creates a very wide power to make provision in regulations about the entire circumstances for late applications generally. It does not limit the provision to a single principle, such as allowing for good reasons or exceptional circumstances for late applications, as amendment 105 would do. Instead, our approach would allow a tailored and potentially different provision to be made for each kind of assistance, in response to the agency's practical experience on the ground of delivering that assistance.

Secondly, as well as being more flexible, that way of doing it has the advantage that it should result in a more beneficial, responsive approach for individuals.

Thirdly, our approach will also ensure that all rules relating to a form of assistance will be in the same place.

A cross-cutting approach across the full range of payments would work less effectively, as it would require readers of the legislation to effectively superimpose the provision on top of various sets of rules that are contained in a number of different sets of regulations.

The application processes and deadlines for each form of assistance are set out in regulations, and it is appropriate that any relaxation of those deadlines be set out in those regulations, too, rather than in the bill. For those reasons, I ask Paul O'Kane not to move amendment 105.

I move amendment 24.

**Paul O'Kane (West Scotland) (Lab):** Amendment 105 would introduce the ability for assistance to be backdated where applicable. The power would allow Social Security Scotland to award entitlement in a range of circumstances that were not foreseen in the 2018 act and the subsequent regulations.

I am pleased that the amendment has the support of the Child Poverty Action Group in Scotland. Evidence from CPAG in Scotland's early warning system highlights that individuals can lose out on money that they would have been entitled to had they applied earlier, because entitlement cannot be backdated to a date before an application was received.

I believe that members will have received examples of where that is relevant in the briefing for stage 2 that CPAG produced. Some of those scenarios are: delayed applications in relation to a Scottish child payment being dependent on an individual receiving a qualifying benefit; applications that span reaching adult or pension age; terminal illness and issues therein; and

changes of circumstances between application, submission and decision for adult disability payment.

Amendment 105 seeks to speak to the principles behind the social security system, which is there to provide a safety net for the most vulnerable when they need it. The system should not have people losing out without good reason, particularly when the system responsible for the delay in accessing assistance has not been taken into account.

I recognise what the cabinet secretary said, that there can be practical implications—financial and otherwise—for the Government and Social Security Scotland to consider around the implementation of backdating. It is important, however, that we ensure that the principle of backdating is at the centre of the system. Amendment 105 would seek to do so for the situations that I referenced.

**Jeremy Balfour:** All three of the amendments in the group are important. It is a really helpful debate and it shows what the bill can do—reviewing what we did initially, how it has worked in practice and how it can be improved. On balance, on this occasion, the Scottish Government's amendments are probably more correct than Mr O'Kane's, although they seek to do almost exactly the same thing. For the reasons that the cabinet secretary has given, we will support amendments 24 and 28 and, with reluctance, we will not support amendment 105.

**The Deputy Convener:** No other member wishes to speak at this point. Cabinet secretary, would you like to wind up?

**Shirley-Anne Somerville:** I agree with Mr Balfour's point that we have broad agreement about the policy intent. It is important to ensure that what was designed in 2018 is fit for purpose and that we review what we have learned during this period.

I thank CPAG for its work on amendment 105 and Paul O'Kane for lodging it, because it demonstrates that there are different ways of achieving the same policy intent. However, for the reasons that I have given, I think that the Government's approach is better. Mr O'Kane pointed to the wide range of circumstances that we are trying to encapsulate; it is important that we do that through the regulations to ensure that they are fit for purpose for each type of benefit and payment. For those reasons, I request that Mr O'Kane does not move his amendment.

*Amendment 24 agreed to.*

**The Deputy Convener:** We move to a new group, on assistance given in error. Amendment



25 in the name of the cabinet secretary is grouped with amendments 26, 29 to 51 and 98.

**Shirley-Anne Somerville:** This group contains a total of 26 Scottish Government amendments, all about liability for assistance paid in error. During stage 1, we heard concerns from stakeholders and members that, although the provisions in the bill are welcome in principle, they are quite confusing. I have listened to those concerns and we have, accordingly, redrafted the provisions on overpayment liability in their entirety to set out more clearly our approach to that.

Before I turn to the substantive change, amendments 25, 26 and 51 in my name close a gap in the 2018 act in relation to assistance paid in error. As the committee is aware, liability for overpayments arises from section 63 of the 2018 act or, in the case of the Scottish child payment, the corresponding regulations made under section 79. Currently the provisions for deductions in the schedules for assistance paid under chapter 2 of part 2 of the 2018 act allow the Scottish ministers to make a deduction only in respect of overpayment of assistance paid under the 2018 act, whereas the Scottish child payment regulations provide for deduction for overpayments of assistance either under the 2018 act or under the Scottish child payment regulations.

In practice, that means that an overpayment of Scottish child payment or any other form of assistance that is created using top-up powers in the future, cannot be repaid by deduction from any other on-going benefit. If a person has an overpayment in their adult disability payment, that can be repaid by deduction from the Scottish child payment, but not the other way around.

Deductions are often a preferred and simple method for someone to repay an overpayment, as they are set at a manageable level. As, I am sure, the committee is aware, deductions may only be made at a reasonable level that takes into account individual financial circumstances and in order to prevent hardship, and there are challenge rights.

Amendment 51 therefore closes a gap and ensures that individuals have the convenience of knowing that deductions for overpayments from any form of on-going assistance can be recovered from another in accordance with our long-standing policy position. It does that by inserting a new provision into the deduction provisions in the schedules of the 2018 act to include any liabilities arising from any top-up assistance regulations.

Amendments 25 and 26 also future proof the 2018 act by mirroring the deduction provisions in the new schedule for childhood assistance and, if approved, they will ensure that the recovery of overpayments of Scottish child payment or any

future top-up payment is in line with all other forms of devolved assistance.

The Scottish Government's amendments 29 to 34 have one overarching purpose, which is to provide greater clarity around the liability for any assistance paid in error for individuals and for representatives who act on their behalf. When the bill was introduced, it had separate sections for the liability of individuals and for the liability of their representatives. As I noted at stage 1 of the bill, it became clear that some stakeholders were confused about what was being proposed and we have reflected on what we can do to make things easier and clearer.

The amended text in the proposed new sections 63, 63A and 63B of the 2018 act deals with the liability of individuals and their representatives and they simplify and clarify the provisions.

Despite the large number of amendments in the group, I reassure the committee that the two key principles at introduction remain unchanged. First, an individual's representative will be liable for overpaid assistance only where they have benefited from the overpayment. Secondly, liability for both individuals and representatives will arise from a decision of the Scottish ministers rather than automatically. That will allow us to create a system of reviews and appeals rather than people having to challenge liability in the sheriff court.

The amended section 63 will set out the circumstances in which Scottish ministers may decide where an individual or their representative is liable for an overpayment. Some stakeholders were concerned that the provisions did not make clear enough how liability would be decided between an individual and their representative, so we have clarified that. The new provisions retain key concepts from the 2018 act, such as definitions of error and fault and what should be considered in deciding whether an error is the sort of error that a person could reasonably have been expected to notice. I want to be crystal clear that the protections of the 2018 act will remain in place.

The proposed new section frames the questions around liability in a more straightforward manner, but the underlying concepts, the policy intent and the implementation remain the same. Whereas the 2018 act contains exclusions from liability, the provisions have been simplified and they now focus on establishing when someone is liable for an overpayment, rather than when they are not. I trust that the committee agrees that that is a clearer way to set out how liability applies.

Amendments 30, 31 and 32 will remove the sections of the bill that are replaced by the text in proposed new sections 63A and 63B.

Amendments 33 and 34 relate to section 69 of the 2018 act, which focuses on the liability for

assistance that is given for a period after death. Sections 12(2) and 12(3) of the bill as introduced would amend section 69 of the 2018 act, renaming and modifying it to specify that, if a decision was made on liability after a person had died, their estate would become liable to repay the sums that the person would have been liable for had they not died. We reflected on that following stage 1, and we have instead made provision for that in subsections (10) and (11) of the modified section 63 that is set out in amendment 29. That will make the drafting clearer by covering all liability decisions in the same place. Amendments 33 and 34 therefore delete the changes that the bill proposes to section 69 of the 2018 act.

Amendment 33 will also allow the Scottish ministers to recover any assistance that was paid in the period after an eligible person has died, whether that was a result of a determination or some other error, such as a systems error.

The remaining amendments in the group—amendments 35 to 50—are minor technical amendments that make consequential changes to the bill to ensure that the section numbers and references to individuals or their representatives are consistent with the newly inserted provisions.

I move amendment 25.

**Jeremy Balfour:** I am delighted that we have had nearly half an hour of consensus, although that might not continue.

I welcome what the Government has proposed, but it leaves a bit of concern about third-party representation. It is often very hard for people to find somebody who will represent them, and much representation is done on a voluntary basis. I am still concerned that the provisions will put people off giving assistance. When CPAG provided evidence to the committee, it said:

“We would not want to discourage people from being representatives”.

I appreciate that the Government is proposing to amend the bill, but I do not think that it has gone far enough.

Glasgow City Council and CPAG pointed out that it might be difficult in practice to disentangle how much liability rests with the individual and how much with the representative. Although there has been movement in that regard, the issue still arises. When will the representative get the benefit and when will the person who is making the claim get it? I am unable to support amendment 29. I ask the Government to think about the matter again and provide greater protection to third-party representatives, otherwise I fear that we will see people who volunteer not being willing to give their time.

For that reason, although amendment 30 is not perfect, we will vote for it in order to allow the Government to reflect again on the issues. I have some concerns about amendment 33 on the liability of a person's estate.

09:30

Perhaps it is my lack of understanding, but I am interested to know for how long a period a claim could be made against someone's estate. We could end up with families who want to distribute assets to other family members being unable to do so because the assets are held up in some kind of claim from Social Security Scotland. If we are going to include that in the bill, will the Government reflect on having some kind of timescale for it? What protection would be given to residue benefits?

Will the cabinet secretary also clarify that representatives will have a right to review, as individuals have? Amendment 39 removes that right. I think that that is covered by amendment 29, but it would be good to get that on the record.

We all have the same intention, which is that we want people to be represented in a way that we feel would be best for them. There is often representation by a third party who, in practice, is often a volunteer. I am concerned that, as the bill is drafted, people will be put off doing that. I think that there is an opportunity for us to reflect and see whether we can give greater protection to third parties.

**The Deputy Convener:** As no other member wishes to speak, I invite the cabinet secretary to wind up.

**Shirley-Anne Somerville:** Mr Balfour is quite right to say that third party representation is exceptionally important for people and I understand his position. There is no disagreement between us on the policy intent. I thank him for bringing the issue to the committee and to my attention. I recognise that it is still a concern, and I am more than happy to continue discussions with him and with stakeholders directly in order to see whether there is more that can be done to reassure them between stages 2 and 3 of the bill, because we do not want to do anything that puts people off, as volunteers are an exceptionally important part of the process. I am not entirely sure that an amendment is required at this stage, so Mr Balfour will forgive me if I do not put that reassurance to him today.

My understanding is that any claim on the estate would be part of the usual executory practice. The deadlines and timeframes for that are set out in regulations that are outwith social security, but there would be no delay because of social security. There would also be a right to review. I

hope that I have been able to provide some reassurance on those points. As I said in my opening remarks, many of the amendments are technical in nature. Mr Balfour has raised a particular point on third-party representation, which I am happy to further consider with him and others, should they so wish.

*Amendment 25 agreed to.*

*Amendment 26 moved—[Shirley-Anne Somerville]—and agreed to.*

*Section 1, as amended, agreed to.*

## **Section 2—Care experience assistance**

**The Deputy Convener:** The next group is on care experience assistance. Amendment 1, in the name of Jeremy Balfour, is grouped with amendments 27 and 2.

**Jeremy Balfour:** Section 2 introduces a new benefit called care experience assistance. Beyond that, we have no idea what we will be voting for. There is no substantial detail on how the benefit will work. What is it? Who will benefit from it? What timescales are involved? What process will take place? It seems slightly strange that we will be voting for a new benefit without having any of that detail.

We all want care experience assistance to be introduced. Yesterday afternoon, some of us attended an event at which we heard about the negative experiences that some people have when they are in care. However, I find it difficult to leave the timescale open-ended and let the Government go away and do whatever it wants. Regulations will come along at some point, but—I say this with due respect to the cabinet secretary—under the present Government, timescales seem to slip from time to time. I am seeking to make sure that care experience assistance comes about in a timely manner.

My amendment 2 seeks to provide that the regulations in question must be laid within 24 months of the bill receiving royal assent. That would give the Government plenty of time to engage with stakeholders, and it would give the committee and the Parliament as a whole plenty of time to scrutinise those regulations and to make sure that they were appropriate. It would also mean that the people who expect to receive such assistance would not be left not knowing when or if the new benefit will be introduced. None of us knows what will happen at the election in 14 or 15 months' time. A different Government with completely different priorities could be elected, and care experience assistance could simply disappear off the map and never be introduced.

We all have the same policy intent as the cabinet secretary. Amendment 2 simply seeks to

make the Government move slightly more quickly than it has done in the past and to give stakeholders and the committee reassurance that care experience assistance will be introduced.

I move amendment 1.

**Shirley-Anne Somerville:** All the amendments in this group relate to care experience assistance. The bill as introduced includes a broad regulation-making power to create one or more schemes to provide financial assistance to care-experienced people. Although the intention is to use that power to create the care leaver payment in the first instance, other forms of assistance may be delivered under the provision in the future.

Jeremy Balfour's amendment 1 seeks to place a statutory duty on the Scottish ministers to create one or more schemes to provide financial assistance to care-experienced people, and amendment 2 seeks to ensure that the relevant regulations are laid within two years of the bill receiving royal assent. Although I appreciate the intention behind Mr Balfour's amendments, I reassure the committee that the Scottish Government remains committed to the care leaver payment and resolute in our commitment to keeping the Promise by 2030.

Officials continue to progress focused work on the care leaver payment, including a public consultation and dedicated engagement sessions. An independent analysis report on that work was published on 18 June. That report is vital in ensuring that the voices of care-experienced people are at the heart of the policy that is developed on the payment. Although work is progressing at pace on the development of the care leaver payment, timelines for its delivery are dependent on the timescales for the bill and subsequent legislative processes, including the laying of regulations. However, I reassure Mr Balfour and the committee that the intention is very much to proceed so that the process is completed before the end of the parliamentary session.

The current provisions in the bill include a requirement to consult ahead of care experience assistance regulations being laid. That will provide a further opportunity to engage with care-experienced people and the wider public to ensure that the care leaver payment best meets the needs of young people before it is delivered. Regulations will be laid to deliver the care leaver payment once the results of that future consultation have been analysed and fully considered.

The wording that is proposed in amendment 1 would create inconsistency between care experience assistance and the regulation-making powers in respect of other assistance that are

provided under the 2018 act. There is no precedent elsewhere in that act.

On amendment 2, as I have mentioned, the new power in the bill could be used in the future to deliver other forms of assistance for care-experienced people in addition to the care leaver payment. The time restriction on the laying of regulations that is proposed in amendment 2 would cut across that and would restrict our ability to offer support to those who need it in the future. I am sure that members would not want to do that. I think that we would want to preserve the flexibility of the bill as introduced. On that basis, the Government does not support amendments 1 and 2, and I ask Jeremy Balfour not to press amendment 1 and not to move amendment 2.

Amendment 27, in my name, adds the power to make provision for redeterminations, which mirrors the language and processes that are currently used by Social Security Scotland and contained in the 2018 act. The inclusion of redeterminations in the provision future proofs the regulation-making power, should Social Security Scotland be the preferred delivery vehicle for any schemes that are created under care experience assistance.

I ask the committee to support amendment 27, and I urge it to reject Mr Balfour's amendments.

**Paul O'Kane:** Similar to what I have said previously, there is a desire to ensure that care leavers are well supported and that the payments come on stream at the right time.

I have a degree of sympathy with Jeremy Balfour's amendment 1 in ensuring that the Government produces relevant regulations. We have often seen things not happen, and having timescales is important. I would add the caveat that it is important for the system to be designed by people who are care experienced, who sit within the well-established structures across the work that has been done on the Promise and on other issues. When the committee took evidence at stage 1, we spoke about that. As I said, I have a degree of sympathy with the idea of trying to compel ministers to do that.

On amendment 2 and Jeremy Balfour's concern about the timing of the election and the implementation of regulations, there could be a negative impact, depending on the outcome of the election and who forms the Government, but it could go the other way, too, of course: someone might want to change the regulations to make them more wide ranging or do something different, depending on further consultation and on what happens with different groupings. It works both ways, so I perhaps have less sympathy with amendment 2.

We are happy to support amendment 27, in the name of the cabinet secretary, given the tidying-up, technical nature of it.

**Jeremy Balfour:** I clarify that we support amendment 27, in the cabinet secretary's name.

When you become old and cynical like me—I have been on the committee for seven years now, I think—you might get used to hearing certain words. If I had a pound for every time I heard about "the intention" to do something, I would be happily in the Bahamas, by myself. I am concerned that things could slip. None of us knows what is around the corner, and other priorities can come forward for the Scottish Government.

Yesterday afternoon, some of us attended a meeting with board members of The Promise Scotland, who are critical of the slow progress that is being made. They want to see something happen.

I absolutely agree with Mr O'Kane that it is important for the system to be designed with the appropriate stakeholders in mind. I think that that can be done within two years—if future Governments want to make alterations, they can do so. However, I am still concerned that the Parliament does not have a great track record on delivering the promises that we make. I will therefore press amendment 1 and put that timescale to the Government, in the hope that we can all get to where we want to be within a reasonable time.

**The Deputy Convener:** The question is, that amendment 1 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Convener:** There will be a division.

**For**

Balfour, Jeremy (Lothian) (Con)  
Clark, Katy (West Scotland) (Lab)  
McCall, Roz (Mid Scotland and Fife) (Con)  
O'Kane, Paul (West Scotland) (Lab)

**Against**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)  
McNair, Marie (Clydebank and Milngavie) (SNP)  
Stewart, Kevin (Aberdeen Central) (SNP)  
Torrance, David (Kirkcaldy) (SNP)

**The Deputy Convener:** The result of the division is: For 4, Against 4, Abstentions 0.

The vote is tied. In such circumstances, as convener, I have discretion to use my casting vote, and I intend to use it in the same way as I used my personal vote. I vote against the amendment, so amendment 1 falls.

*Amendment 1 disagreed to.*

*Amendment 27 moved—[Shirley-Anne Somerville]—and agreed to.*

*Amendment 2 not moved.*

09:45

**The Deputy Convener:** The question is, that amendment 2 be agreed to. Are we agreed?

**Jeremy Balfour:** I did not move the amendment.

**The Deputy Convener:** I thank members for stepping into the deliberate trap that I set for them. That being the case, consider yourselves suitably chastised.

Rather, the question is, that section 2, as amended, be agreed to.

*Section 2, as amended, agreed to.*

### After section 2

**The Deputy Convener:** The next group is on carer support payment. Amendment 3, in the name of Jeremy Balfour, is grouped with amendment 4.

**Jeremy Balfour:** The next few proposed sections all relate to increasing the amount of money that the Scottish Government pays to the most vulnerable in society. As we all know, we are in a difficult financial situation, which is likely to continue for the foreseeable future. However, I do not think that that means that we stop looking after the most vulnerable in our society. As the deputy convener likes to say on numerous occasions at this committee, we all have political choices to make, and these are political choices that we must now make as a committee and, ultimately, as a Parliament.

We all recognise that carers in our society do an immense amount of work—work that goes unseen and which saves the taxpayer billions of pounds a year. The sacrifices made by those who care for loved ones, whether they be a husband or a wife, a child or another relative, are immense. Many of them have to change or give up their jobs, and many have to change their social life. Sadly, towards the end of the individual's life, carers often see the pain that they are going through and the lack of fulfilment in their life. Many carers make that sacrifice because they love the person whom they are caring for, but that comes at a cost.

I am pleased that the Government has moved to some extent in that regard by extending the carer support payment post death. However, I think that we can go further. My amendment 3 seeks to extend the payment for six months, so that the person who has given so much can readjust to a whole new life—emotionally and physically—as well as readjust their financial situation with regard

to what they want to do next. Many will have to seek training or upskill to get a job; some will have to do CVs and go for job interviews; others will simply need the time and space to grieve the loss of someone whom they have poured so much into.

I do not think it unreasonable for us as a society to acknowledge that and to extend the payment to six months; indeed, I have spoken to many carers organisations, and they say that one big change that they would look to make is for such an extension to be brought in. I appreciate that the cabinet secretary will say, rightly, that that will come at a cost, but I ask members to think of the cost to those people of what they have given the rest of us in society.

As for my amendment 4, the issue of the hard cliff edge has come up again and again. If a person simply steps over the line, they lose everything. That is true for the carer support payment and for other payments. I am not suggesting that this is an easy issue for us to deal with—I know that greater minds than mine have tried to look at it.

However, I think that, with the right wind and the right engagement with the sector, Government and lawyers, we can identify a tapering system that means that, if somebody's financial situation changes only slightly, they get less of a payment but do not lose all of it. I think that that can be done fairly quickly through regulation. I would like the Government to commit to looking at a tapering process that would give a bit of flexibility to individuals who are caring for someone, so that they do not lose the whole benefit, just because of a small change in their circumstances.

I believe that, together, amendments 3 and 4 readdress where carers are at the moment. They will not address all the issues, but they would be a massive step forward. If we, as a Parliament, were to agree to them, it would send a very positive message to the many hundreds who care for people across Scotland.

I move amendment 3.

**The Deputy Convener:** Before I bring in the cabinet secretary, I will make a brief contribution, which the cabinet secretary might reflect on in her reply.

I understand that there are already plans for the Scottish Government to extend the run-on of the benefit. Does that require to be detailed in the bill? Is it a policy decision, with a budget implication, that can be taken at a later date? Irrespective of how long we wish the support payment to run for, I wonder whether it requires an amendment to be placed in the legislation.

**Shirley-Anne Somerville:** I thank Mr Balfour for lodging his amendments and for his and other

members' continued support for carers across the country. Mr Balfour is right to state once again the important role that carers play.

However, the Government cannot support Mr Balfour's amendments 3 and 4. The Scottish Government is transforming financial support for unpaid carers in Scotland, by recognising the value of unpaid care and providing greater stability and support. Carer support payment, which is available in 13 local authority areas and will launch nationally from November, is already extending support to more carers and providing an improved service, with further key changes planned. The committee will also be well aware that, when social security powers were devolved, one of the first actions was to make additional payments to carers.

Mr Doris is quite right to point out that the Government is already committed to extending, from eight to 12 weeks, support for carers after the loss of a cared-for person. My officials are already working to deliver that, including engaging with the Department for Work and Pensions to ensure that the necessary arrangements are made to protect carers' wider support. To ensure that carers who are already getting carers allowance are not disadvantaged, we will make that change once the process of case transfer is complete.

Amendment 3 seeks to extend that run-on to 24 weeks. It would be best if we looked at that in the future, once we have delivered the extension to 12 weeks, to allow more detailed consideration of implications for budgets.

Mr Balfour will agree that any change to entitlement that would result in increased costs for the Scottish Government, which are not covered through the block grant adjustment, needs to be carefully considered. Indeed, many of his colleagues remind me of that responsibility in the chamber and point out that the Scottish Government already invests £1.1 billion in social security, on top of the block grant adjustment. His colleagues raise that as a concern, rather than something that the Government should be proud of. However, I am proud of it.

Further consideration and discussions with the DWP would be needed on any extension to 24 weeks. As we have discussed before in the committee, that is important, because we do not want to adversely affect any other support that carers rely on. Many carers receive extra support and other benefits, such as universal credit, because of their entitlement to the carer support payment, in the same way as carers who get carers allowance. The more carer support payment diverges from carers allowance, the greater the risk to carers' continued eligibility for that extra support. I urge members not to pass anything into legislation that would put other

payments in jeopardy, no matter how good the intent behind those amendments.

I turn to amendment 4, which seeks to amend provisions in the 2018 act so that carers assistance regulations can provide for assistance to be tapered when carers' earnings increase. We recognise the concerns that carers and support organisations raised about the impact that earnings rules can have on carers' ability to take on paid work.

We have made improvements to earnings processes in carer support payment, working with carers and support organisations to provide clearer information for clients, and calculating carers' average earnings to help to provide more stable support where earnings vary. We also took feedback through our public consultation on changes that we could make in the future once case transfer for carers allowance was complete.

An earnings taper, with carer support payment being gradually reduced as earnings increased—that is, as I understand it, the aim of amendment 4—would be one approach to changing the earnings rules. The idea was considered ahead of the consultation as part of a multicriteria appraisal process undertaken with stakeholders, and it found that a taper would add significant complexity to the benefit with regard to build, operational delivery, clients' understanding of eligibility and how the benefit would interact with wider support, such as universal credit. The fact that carer support payment affects the amounts of universal credit that carers receive and that universal credit itself has an earnings taper would add significant complexity, in addition to the fact that the divergence from carers allowance could again put at risk the extra support—the carer element—that is currently available under universal credit for those who get carer support payment.

We explored other, potentially more effective, ways of improving the earnings rules in our consultation, such as a run-on of support when carers earn over the threshold and increasing the overall threshold. We are continuing to consider the responses to the consultation, as well as further considering the potential input on carers' wider support and affordability and sustainability in the wider Scottish budget.

Finally, I highlight that, even if a decision were taken in the future to introduce an earnings taper for carers assistance, it is already possible to do so under existing enabling powers in the 2018 act. The proposed amendment is therefore unnecessary.

For all those reasons, I urge the committee to reject amendments 3 and 4, should Mr Balfour choose to press them.

**The Deputy Convener:** I call Jeremy Balfour to wind up and press or withdraw amendment 3.

**Jeremy Balfour:** The cabinet secretary has raised quite a number of issues. At a high philosophical level, the issue—which I think that the cabinet secretary and others will come back to time and again—is about the divergence we were to do things differently in Scotland to the rest of the United Kingdom, and how the DWP would respond to it. However, at some point, we will have to see how that challenge works in practice.

I see no point in having a devolved social security system that simply mirrors what happens in the DWP all the way through—that seems to me an administrative cost for Scotland to be carrying. I accept that, because of Social Security Scotland, we can introduce new benefits, which we will come to in a moment. However, if we are not going to, at some point, change our approach from what happens in the DWP, why do we have Social Security Scotland here, as it is set up at the moment? At some point, this or a future Government will have to see how the DWP reacts to it.

**Shirley-Anne Somerville:** I see where the member is coming from. However, the way to test out what the DWP will do is not by putting provisions in primary legislation, which is exceptionally difficult to unpick. We do not want to find out what the DWP will do if what it does will adversely affect clients, because undoing primary legislation is exceptionally challenging. Although I understand the member's point, I strongly urge him not to use primary legislation to attempt to force the DWP's hand or to find out what it thinks.

**Jeremy Balfour:** I accept the cabinet secretary's point. However, we are at stage 2. If the amendment were to be agreed to today, I am sure that she could pick up a telephone or send an email to the new cabinet secretary down south to find out how they would react and, at stage 3, we could have the debate again.

Mr Doris and the cabinet secretary have picked up on the challenges of doing this through primary legislation rather than by regulations. As the deputy convener will know, however, the trouble with regulations is that you cannot vote against just one bit of them—you have to either accept them all or reject them all. Regulations might come forward from the Government in which 99 per cent is right, but 1 per cent is the key financial thing. I would not want to vote against somebody getting something except by amendment, which is why primary legislation is a better way of doing this.

10:00

I accept the cabinet secretary's comments about budget, but that is about political choices. She

often makes the point to me in the chamber that we have political choices. The money that the Scottish Government has would be much better spent on supporting carers than on some of the other projects that the Government seems to be pushing forward. For that reason, I will be moving amendment 3.

As for amendment 4, I accept what the cabinet secretary has said, and I will go away and reflect on it. For that reason, I will not be moving that amendment, but I reserve the right to see what happens at stage 3.

**The Deputy Convener:** Mr Balfour, you have already moved amendment 3. Are you pressing or withdrawing it?

**Jeremy Balfour:** I am pressing it hard, convener.

**The Deputy Convener:** Okay—that is certainly on the record.

The question is, that amendment 3 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Convener:** There will be a division.

#### For

Balfour, Jeremy (Lothian) (Con)  
Clark, Katy (West Scotland) (Lab)  
McCall, Roz (Mid Scotland and Fife) (Con)  
O'Kane, Paul (West Scotland) (Lab)

#### Against

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)  
McNair, Marie (Clydebank and Milngavie) (SNP)  
Stewart, Kevin (Aberdeen Central) (SNP)  
Torrance, David (Kirkcaldy) (SNP)

**The Deputy Convener:** The result of the division is: For 4, Against 4, Abstentions 0.

We again have a tie. As convener, I have a personal vote and a casting vote, and I will again use my casting vote in the same way that I use my personal vote. I therefore vote against amendment 3, so the amendment falls.

*Amendment 3 disagreed to.*

*Amendment 4 not moved.*

**The Deputy Convener:** We move to a new group, on winter heating assistance. At the end of this group, we will stop for a short comfort break—I am just giving members that information in advance. Amendment 5, in the name of Jeremy Balfour, is the only amendment in the group.

**Jeremy Balfour:** As I spent the summer considering possible amendments to the bill, this amendment was one that came forward as I was drafting. It happened before the announcement by the UK Government, and the announcement by

the Scottish Government, in regard to winter heating payments.

The decision that the UK Government has made is very disappointing, and it affects many individuals. I understand why the Scottish Government made its decision, but that was also a disappointing announcement.

Amendment 5 does not seek to give all older people a kind of winter heating payment; it seeks to give such a payment to a specific vulnerable group in our society.

We all know that many older people spend a lot more time at home than other people do. We understand that older people often live in houses that do not have the best heating or insulation but are unable to move, for many different reasons. Amendment 5 says that those who are on attendance allowance—or on the new Scottish benefit that is equivalent to that—and so are over 65, and are on the high rate, should receive the winter heating payment. We already do that for children under 16 who are on a high rate of care, because the Parliament and the Government recognise that those children are often at home and so their heating costs are higher.

The amendment seems to me to offer a reasonable mitigation of where we are at the moment. It will give those who are at home the most the protection of some financial help in meeting their winter heating payments.

We all understand that next month heating prices are likely to go up across the UK. We recognise that many people in Scotland live in colder conditions than other people in the United Kingdom.

It is a political choice to say that we want to look after and protect the most vulnerable people in our society. To me, that seems to be the right way forward. We were right to pass legislation that allowed the Government and, ultimately, the Parliament to create new benefits. This new benefit would help people who are at home, who are often cold. It is not often that I agree with Richard Leonard, but, at last week's meeting of the cross-party group on older people, age and ageing, he pointed out that he was concerned that we might go back to the conditions of the 1970s and 1980s, and that we will see people dying in their homes because they are cold. We need to mitigate that risk as much as we can. The people who are most likely to be affected are those with disabilities, who cannot move around as much as others.

My proposal is not part of a wish list or just something that we could do. We need to do it if we are to protect the most vulnerable people in our society.

I move amendment 5.

**Paul O'Kane:** I note what Mr Balfour said in his contribution. More widely, I note that the pension age winter heating payment is a benefit that has been created under powers that have been newly devolved to the Parliament. We have not discussed the benefit in recent months, but we did so in the lead-up to that devolution process.

As Mr Balfour mentioned, we must also acknowledge the context of the decision to extend the benefit only to people who are in receipt of pension credit, and the Scottish Government's agreement to that rule. I have said that it is for the Parliament, and this committee, to continue to work on the new benefit. It is fair that they should decide what any new benefit in Scotland should look like. It is appropriate that such a discussion should be had. I think that all members across the Parliament are willing to come together and debate the relevant criteria.

However, we must recognise, too, that regulations have not yet been introduced. The Government has intimated its intention to pass the benefit back for a temporary period of a year, in order to deliver it to people who are in receipt of pension credit. We have not yet seen regulations or held a debate on that. I have not yet been able to scrutinise and understand Social Security Scotland's system, to learn why it cannot deliver a different one and why the handing back has had to happen. We must recognise where we are on that.

It is fair to say that we must consider several issues affecting how the benefit could best be delivered and what changes there might be. Mr Balfour has proposed two enabling benefits in this area. More widely, more work needs to be done—for example, on how pension credit and housing benefit interact, and on what decisions and outcomes might arise from any future fiscal events at UK level.

I understand why Mr Balfour has lodged amendment 5. It is important that, as a committee and as a Parliament, we consider the benefit in a Scottish context. However, there are unanswered questions around his proposal, not least in terms of who the benefit would reach, the cost, how the rules would be applied and whether the system could deliver the benefit that he seeks.

Given that we have a period of a year before the benefit is enacted and will be carried by Social Security Scotland, I consider that it would be wise for us to consider it in the round. I do not reject his proposal out of hand, but I think it important that we have further scrutiny and debate. Stage 3 could be an appropriate point to continue that process.

**Katy Clark (West Scotland) (Lab):** I very much welcome the fact that we are having this



discussion, although, as Paul O’Kane has said, it is part of a far wider one that I suspect we will have over the coming weeks.

I have a number of questions. I have already had a discussion with Jeremy Balfour, in which I indicated that I hoped that I would be able to do cross-party work with him on the issue. I am sure that other colleagues would want to do so. I know that Scottish Labour very much wants to work with the Scottish Government in this area.

It would be helpful to know whether we have any information on the cost of the proposal that is before us today on the specific benefits—the highest rate of attendance allowance and the highest rate of pension age disability allowance. I appreciate that Mr Balfour might have that information, but it is more likely that the Scottish Government might be able to provide that information either today or before stage 3.

It would also be helpful to know what the cost would be if the amendments were to be expanded to include other benefits. Mr Balfour has restricted the provisions of amendment 5 to the highest rates of attendance allowance and pension age disability allowance. I hear what he said about the amendments having been drafted before the decision of the UK Parliament. However, there is clearly a relationship between the winter fuel payment and the potential new allowance. From what Mr Balfour is saying, his intention is that the proposed assistance would be in addition to the winter fuel payment, which perhaps addresses one of the questions that I was going to ask about those who will still receive winter fuel payment because they receive pension credit. I think that Mr Balfour envisages that it would be additional to the winter fuel payment. I am clear on that, but it would be helpful to know whether any costings work has been done or could be done on other rates of attendance allowance, pension age disability allowance, housing benefit or, indeed, whether any other timescales are being envisaged.

There is some indication from the Scottish Government of timescales for when the benefit might realistically be implemented. However, given that we know that there often seem to be considerable administration issues, I wonder whether the cabinet secretary could provide that information today.

I suspect that, before stage 3, we might have more information on consequentials, which would be useful to know. I know that the First Minister made a statement this week that mentioned a figure, but there will be further consequentials. A number of councils in England are considering taking similar steps. As I say, this is something that this Parliament will want to look at on a cross-party basis and I hope that, as the debate

continues, a similar amendment, or maybe one that includes other benefits, could be lodged at stage 3.

**Kevin Stewart (Aberdeen Central) (SNP):** I recognise that the amendment was lodged before the UK Government’s decision to slash winter fuel payments. In itself, amendment 5 means an extension to the social security system, which I am not against.

Mr Balfour talked about mitigation. Again, I am not agin mitigation; we have mitigated a lot of cuts in the Parliament previously. However, it annoys me when advocates for the union, such as Mr Balfour, come here with the expectation that the Scottish Government should be able to extend, expand and mitigate when the resources are not coming from the UK Treasury. Let us face facts. The cabinet secretary is going to have to deal with some of these issues, knowing fine that £160 million that she expected has now been pulled by the UK Treasury.

I get the points that Mr O’Kane and Ms Clark have made about further exploration of all this; it needs to be done. We also need to be blunt with the UK Treasury about the scenario that we now face.

Ms Clark talked about consequentials. I believe that we should always interrogate consequentials to see what can be done with them. In this case, however, we are facing negative consequentials, with £160 million being pulled out of the Scottish Government’s budget with a snap of the fingers. That is not good enough.

10:15

I think that committee members, instead of talking about expansion right now, have to look at the cards that we have been dealt by the UK Treasury and the Westminster Government, and recognise that we cannot mitigate the impact of every single decision, in particular when £160 million has disappeared just like that.

**The Deputy Convener:** Before I bring in the cabinet secretary, I will make a brief contribution. It is not in a political vein—I clearly have some very strong views on what the UK Government has done with regard to winter fuel payments, but, as I am chairing today’s meeting, I will put those views to one side for the purpose of this debate.

I say to Mr Balfour that, in my view, this is where a politically very well-intentioned amendment meets the harsh realities of budgetary constraints and the sobering fiscal position in which the Scottish Government finds itself, which is directly related to Westminster fiscal positions and spending decisions. That makes it incredibly

difficult to land where Mr Balfour has landed, as well intentioned as the policy that he proposes is.

Ms Clark made some reasonable points. If—if, I say to Mr Stewart—it was remotely possible to mitigate the impact of the decision on winter fuel payments, despite the huge and severe financial pressures on this place, that would need to be considered in the round, so Mr Balfour's amendment is not necessarily the way to do it.

I just want to put that on the record. I hope that I have not strayed into the political arena; it is more about the practicalities of what we would like to do.

Cabinet secretary, I will bring you in.

**Shirley-Anne Somerville:** Amendment 5, from Jeremy Balfour, is focused on expanding eligibility to provide winter heating assistance via the winter heating payment to people who are on the higher rates of the pension age disability payment and attendance allowance.

From the outset, I say that the way to protect people of pensionable age is for the UK Government to reverse the decision to means test the winter fuel payment, and to reinstate the payment for all pensioners. To pick up on one aspect of what Mr O'Kane said, the Scottish Government does not agree to the change—we are reluctantly being forced into a position, given the aforementioned £160 million cut from the UK Government.

We are doing so, therefore, very much against our wishes on the issue. It is not too late for the UK Government to reconsider its position on the matter, and we would all be in a better place for it.

**Paul O'Kane:** In the context of a wider debate about the devolution of the winter fuel payment, the Poverty and Inequality Commission's advice on whether the payments should be means tested said that that should be explored. What is the cabinet secretary's view on that advice, which came from her own commission?

**Shirley-Anne Somerville:** I do not think that the commission actually meant that we were going to take that money away entirely. I do not want to speak for the commission, but when I read the report, I took from it that, if we are looking at means testing, the commission may wish us to use that money in another way to provide support for other pensioners; it is not for the money to be whipped away by the UK Government so that it is not available for anything at all.

The commission raised a point around targeting, but I think that that was for better use of the entire pot, not for most of the pot to be completely disappeared and not available to anyone.

As has been mentioned, Mr Balfour's amendments do not include disabled people who

might receive other disability benefits. Even if his intent was to assist, therefore, he has missed some individuals out. I will come back to that point when we come to cost.

Before winter heating assistance was introduced in 2023, the Scottish Government listened to our experience panels and carried out public consultation. We decided to provide a stable £50 payment, which will be increased to £58.75 this winter, to replace the previous complex and weather-dependent system.

Making further changes to eligibility at this time is not the correct approach, because that would present financial, legal and operational challenges, including, but not limited to, the negotiation of a new set of data-sharing agreements with the DWP. Depending on a number of factors, Mr Balfour's proposals are also likely to add around £6 million to the money spent on the winter heating payment for 2025-26. If others were to be included—I have already mentioned that there are other people on disability payments that this payment misses—that cost would increase. That is additional money that is not covered by the Scottish block grant and would have to be found from somewhere else.

However, I have already committed to continuing to review eligibility, as we continue to deliver this important payment, and that review should be informed by analysis and an impact assessment that capture a wider group of people than the groups that Mr Balfour's amendments identify.

For those reasons, the Government does not support amendment 5, and I ask Mr Balfour not to press it. I have no doubt that we will have further discussions on the UK Government's decision to take away the universality of the winter fuel payment. We will come back to what happens to support people who are living in fuel poverty. However, with the greatest respect, Mr Balfour, all that must be done in the financial context in which we live. I point to comments that Liz Smith made in the chamber. She said:

"The Scottish Fiscal Commission has made it abundantly clear that much of the pressure that is faced by the country's finances is down to the Scottish Government's own decisions. For example ... the extent of the gap between the spending on devolved social security and the associated block grant adjustment".—[*Official Report*, 3 September 2024; c32.]

The decision by the Scottish Government to invest more than the block grant adjustment is a political choice, but, with the greatest respect to all members, the ability to come forward with amendments to place additional pressures on the block grant adjustment, with regard to not only benefits expenditure but the costs of implementation, is something that I strongly

suggest needs to be discussed in the round, not in relation to a stage 2 amendment.

**The Deputy Convener:** I invite Jeremy Balfour to wind up and to press or withdraw amendment 5.

**Jeremy Balfour:** This has been a helpful debate, and I think that we will come back to it again and again. I agree, for once, with the cabinet secretary. The UK Government's decision to take away £160 million for the winter fuel payment is deeply disappointing. For your first big policy decision to attack some of the most vulnerable people in society is not a great way for any Government to start.

I point out to Mr Stewart that, under the previous Conservative Government, the block grant has gone up every year ahead of inflation—

**Kevin Stewart:** Not in real terms.

**Jeremy Balfour:** Yes, in real terms, Mr Stewart. Therefore, there has been more money to spend. That comes back to the point that we keep making, namely that these are political choices that each party has to make about how we spend the money.

This goes back to previous points, so I will not labour it, but what is the role for Social Security Scotland? Are we simply, as I think that Mr Stewart seems to be saying, going to provide a mirror image of what happens at DWP level, or are we going to do something that is best for the people whom we represent here in Scotland?

**Kevin Stewart:** We do not mirror everything that is happening south of the border. For example, look at the investment in the Scottish child payment and the fact that benefits here have risen above inflation, which has not happened south of the border.

However, we also have to deal with the realities. As I said earlier, Mr Balfour is a supporter of the union. That is up to him, but he also has to recognise that the actions of the UK Treasury have implications for spend here in Scotland. When £160 million disappears, that does not leave much room for manoeuvre, and it certainly does not leave any room for the expansion of benefits or for further mitigation. I think that Mr Balfour has to deal with that reality.

**The Deputy Convener:** I gave you a bit of latitude, Mr Stewart, because this is quite an emotive issue, but that was more of a speech than an intervention. However, your points are now on the record.

Mr Balfour, please bring your remarks to a close.

**Jeremy Balfour:** I will respond briefly to what Mr Stewart has said. He talked about new benefits, but he has not talked about existing

benefits. Existing benefits at the moment in regard to criteria and eligibility—

**Shirley-Anne Somerville:** Will Jeremy Balfour give way?

**Jeremy Balfour:** Can I finish this one point?

The criteria and eligibility for adult disability payment exactly mirror those of PIP. There is no difference.

**Shirley-Anne Somerville:** I appreciate that the convener might wish to move things on but, on a point of clarity, of the £1.1 billion that we invest in addition to the block grant adjustment, £500 million is spent on the Scottish child payment. It is true that some of it is spent on additional payments, but additional money also goes into adult disability payment because of the way in which we are running the system.

I am afraid that Mr Balfour is not correct in saying that we have the same system, either in terms of culture or in terms of delivery. Quite frankly, Mr Balfour, we would not be spending £1.1 billion more if I was just doing a cut and paste of the DWP system.

**Jeremy Balfour:** Perhaps the cabinet secretary has intervened slightly too early. I did not talk about culture or process; I talked about eligibility, and the eligibility rules, except for those on terminal illness, are identical in the two systems. It is important to get that on the record.

**The Deputy Convener:** Will you talk about pressing or withdrawing your amendment?

**Jeremy Balfour:** Yes, I will. I just have two quick points to make in summing up.

I am very happy to work together with all parties to move the issue forward, but my concern is that, if we keep talking about it for too long, nothing will happen. This is an opportunity for us as a Parliament to make a decision, and I hope that we can revert to it at stage 3.

Mr Stewart, the cabinet secretary and Mr Doris have talked about money. It is true that we get the money that is given to us by Westminster; however, we then get to choose how we spend that money. Perhaps if we stopped getting our shipbuilding contracts so badly wrong, we would have more money to spend. Perhaps if we did not put people and open embassies in other parts of the world, we would have more money to spend. Those are political choices that Governments make. I think that people would prefer that we gave money to the most vulnerable in society, rather than giving it to projects that the Government simply cannot run.

On that basis, I will—

**The Deputy Convener:** I am now giving you some latitude, Mr Balfour. Please draw your remarks to a close.

**Jeremy Balfour:** Can I have a point of order before I close?

**The Deputy Convener:** There is no provision for a point of order, Mr Balfour.

**Jeremy Balfour:** In that case, I press my amendment.

**The Deputy Convener:** Thank you—that is helpful. The question is, that amendment 5 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Convener:** There will be a division.

#### For

Balfour, Jeremy (Lothian) (Con)  
McCall, Roz (Mid Scotland and Fife) (Con)

#### Against

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)  
McNair, Marie (Clydebank and Milngavie) (SNP)  
Stewart, Kevin (Aberdeen Central) (SNP)  
Torrance, David (Kirkcaldy) (SNP)

#### Abstentions

Clark, Katy (West Scotland) (Lab)  
O’Kane, Paul (West Scotland) (Lab)

**The Deputy Convener:** The result of the division is: For 2, Against 4, Abstentions 2.

*Amendment 5 disagreed to.*

**The Deputy Convener:** Just one moment, Mr Balfour, if you will bear with me.

There are no point of order procedures in committee, Mr Balfour—I was just getting clarity because, as deputy convener, I do not normally convene the committee. We are about to suspend for a comfort break. If you want to discuss something informally with me, we can work out how we handle what your point of order might have been when we go back into open session. We suspend until about 10.35.

10:29

*Meeting suspended.*

10:36

*On resuming—*

**The Deputy Convener:** Welcome back, everyone. Our stage 2 considerations continue. We move to the next group, on uprating assistance for inflation. Amendment 6—*[Interruption.]* You are having a bad day when you get things right and the clerks are still checking on you.

Amendment 6, in the name of Jeremy Balfour, is the only amendment in the group.

**Jeremy Balfour:** When I lodged my amendments, I confess that I did not expect great success with many of them, but I expected cross-party support for this amendment because the Scottish Government has been uprating assistance for inflation since it has had powers over the benefits that are run here in Scotland. It has uprated benefits for inflation appropriately.

The reason for amendment 6 is to future proof the bill for future Governments. There would be mass outcry from this Parliament if the UK Government did not uprate for inflation benefits that it has control of every year. The disability community and many others in society would be outraged, so the same thing should be done in Scotland. The benefits that are run in Scotland should go up with inflation—that seems a fair and appropriate thing to do.

I appreciate that that comes with a cost, but if assistance is not uprated for inflation, surely that cost will be met by the disabled and the most vulnerable in our society. When I lodged the amendment, I felt that it was more of a technical amendment, because it allows the Scottish Government to do something that it has done previously and which I hope it will do again in the next 14 to 15 months. The amendment future proofs the uprating by future Governments that might have a different view.

The amendment is reasonable and proportionate, and I hope that the committee will support it.

I move amendment 6.

**Kevin Stewart:** I do not think that amendment 6 would be completely unreasonable if Parliament had full control over finance, which we do not. All roads lead to Westminster, as Wes Streeting said during the election campaign.

I am quite sure that the cabinet secretary would wish to support the amendment in other circumstances. Of course, under her watch, devolved benefits have increased by more than inflation recently. However, we have to recognise that the UK Treasury still holds the purse strings. There have been some surprises of late, and there might be more to come, given that the Prime Minister has said that things are only going to get worse.

The reality is that the cabinet secretary and I have no idea what future block grant provision will look like. We would be asking the Scottish Government to ensure that everything rose by the rate of inflation, not knowing whether we would get the block grant required to be able to do that. That is a simple fact. I point out again that, as a

supporter of the union, Mr Balfour is quite happy for the UK Treasury to hold those purse strings. I am not, but, while we live in that world, the amendment puts the cabinet secretary and the Scottish Government in an almost impossible position, because they do not know what future financial provision there will be from the UK Treasury.

**Paul O’Kane:** I will speak briefly in support of the amendment. The principle is well established: the principle of uprating UK benefits has been established and the new Government has committed to it. Organisations that support people, particularly those in the disabled community, expect uprating. On the basis of the principle and intent, it is the right thing to do.

**Shirley-Anne Somerville:** As the committee is well aware, the Social Security (Scotland) Act 2018 requires that benefits for disability, carers, employment injuries, funeral expenses and the Scottish child payment are uprated annually in line with inflation. However, as things stand, that duty does not extend to best start grants, best start foods and winter heating payments.

In our most recent budget, the Scottish Government uprated Social Security Scotland payments by 6.7 per cent, including by increasing our game-changing Scottish child payment to £26.70 a week. We know that those payments contribute to the Government’s core mission of ending child poverty and are helping to keep 100,000 children out of poverty this year. We also know that, as prices soar in supermarkets, our annual uprating of social security payments protects the real value of pounds in people’s pockets.

The committee will be aware that, since the first Scottish uprating exercise in 2019, the Scottish Government has consistently chosen to uprate payments that are subject only to discretionary uprating. Twice, we have also responded quickly to changing conditions to increase benefits beyond inflation, as measured by the September consumer prices index.

The points that Kevin Stewart raised are correct. Decisions to uprate impact on Scottish block grant adjustments. There is a slight difference in that regard in comparison with some of the other measures that we have just discussed. As I mentioned, in previous years we have uprated all benefits by inflation. In fact, as Mr Stewart said, we have gone further in some cases. However, the financial cost to the Scottish Government is heightened by the fact that the UK Government is not legally obligated to uprate all benefits annually and, under devolution, the funding for uprating in Scotland through the block grant adjustment fully covers only those payments that have an equivalent in the rest of the UK that are also

statutorily uprated. Not all benefits in the UK are uprated by inflation.

Members will therefore appreciate that Scotland’s pioneering approach to social security has been possible only with the bold decisions that we have taken in our budget. Against the backdrop of continued Westminster austerity under the new UK Government, I am determined that the Scottish National Party Government does whatever it can to provide further support for families and households.

10:45

I am pleased to say that the Scottish Government intends to lodge an amendment on uprating at stage 3. That will extend the existing statutory uprating duty, so it will apply to all the payments that are provided for by the Social Security (Scotland) Act 2018. That will mean that the Government will deliver more money for families who are in receipt of the best start grant and best start foods, and, of course, it will include our winter heating benefits—a commitment that I am particularly eager to confirm given the devastating decision by the UK Government to cut winter fuel payments.

Let me be very clear: the Parliament must not, and should not, be continuously forced to mitigate the worst of the excesses of Westminster Government decisions. That is the price that we pay for the union. On the anniversary of the nation’s independence referendum, that decision simply amplifies the urgent need for full control of economic powers, so that we can build a future that invests in our communities with the decisions that we make in Scotland.

I am afraid that there are technical issues in the drafting of Jeremy Balfour’s amendment 6, so I cannot support it in its current form. I have made a commitment to lodge a Government amendment that has the same intent, so I ask Jeremy Balfour not to press his amendment.

**Jeremy Balfour:** I welcome the cabinet secretary’s commitment to lodge an amendment at stage 3. I look forward to seeing it and I hope that it will be as she has set out.

If I may, I will make one quick remark. Rightly, Mr Stewart and the cabinet secretary have talked about the cost—and there is a cost. However, we must also think of it as an investment in some of our most vulnerable people. I would find it very hard to imagine any Government not wanting to invest in the most vulnerable in our society by uprating assistance for inflation.

**Kevin Stewart:** Will Mr Balfour give way?

**Jeremy Balfour:** No.

I think that there is a moral duty on a Government to do that. I acknowledge that the cabinet secretary and her predecessors have done so, but I am seeking to ensure that that practice continues into the future—and I think that the Scottish Government is seeking to do that, too.

I welcome the Scottish Government's move and I look forward to seeing the amendment that it will lodge. On that basis, I will not press amendment 6.

*Amendment 6, by agreement, withdrawn.*

*Amendment 7 not moved.*

**The Deputy Convener:** Group 8 is on discretionary housing payments: military compensation. Amendment 8, in the name of Jeremy Balfour, is the only amendment in the group.

**Jeremy Balfour:** The previous few groups of amendments have been fairly politicised, but I think that this group will be less so. I am grateful to Poppyscotland, which reached out to suggest an appropriate amendment on the effect of compensation on discretionary housing payments. I look forward to hearing what the cabinet secretary will say about amendment 8. There is a principle that, if a person is involved in a civil claim and receives money from that, those funds will not be included in discretionary housing payment decisions. However, if someone has received military compensation, that would be included. To me, that seems unfair on those who have served our country. I look forward to seeing how the cabinet secretary will deal with the amendment, which I feel is appropriate.

I move amendment 8.

**Shirley-Anne Somerville:** The Scottish Government does not support amendment 8, which seeks to make local authorities disregard military compensation as income when deciding whether to provide a discretionary housing payment. That is not because we think that military compensation should be counted as income in those circumstances, but because there are potential issues with Mr Balfour's amendment and, in any case, we do not consider the bill to be an appropriate place for the policy.

Although the Government is keen to encourage consistency across different parts of the country, it is important to retain a level of discretion that allows for applications to be assessed on a case-by-case basis. Discretion is baked into that design. That said, my officials will soon be undertaking a review. Given that, in the debates on other groups of amendments, Mr Balfour has expressed concerns about timeframes, I reassure him that that review is due next month, so there is not too long to wait. Officials will undertake a review of the statutory discretionary housing payment guidance,

which we consider to be a more appropriate place for the policy than primary legislation.

We have concerns that the amendment would leave out recipients of other forms of compensation, which we may, when we undertake the review, also wish to include in addition to military compensation. We are more than happy to work broadly with all stakeholders, including, of course, Poppyscotland and Mr Balfour directly, to ensure that the intent behind the amendment is integral to the work that is undertaken as part of that review.

I recommend that the committee does not support the amendment if Mr Balfour presses it, not because it is wrong in principle but because the policy does not belong in primary legislation and because we want to ensure that any approach does not leave out other people who may be awarded other types of compensation.

**Jeremy Balfour:** I welcome the cabinet secretary's comments, and I look forward to that consultation taking place. I am grateful that she will include all stakeholders in it. I absolutely acknowledge that my amendment leaves out other potential groups who might be affected by the issue, but it was important to have the debate here so that Poppyscotland and other organisations are assured that the process will happen in a timely manner. I look forward to the new guidance reflecting where we are today and, I hope, protecting those who have served our country and others who have had compensation given to them.

On that basis, I seek to withdraw my amendment.

*Amendment 8, by agreement, withdrawn.*

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

*Amendment 105 not moved.*

*Section 3 agreed to.*

#### **After section 3**

*Amendment 28 moved—[Shirley-Anne Somerville]—and agreed to.*

*Sections 4 to 6 agreed to.*

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

**The Deputy Convener:** The next group is on new determination of entitlement after error. Amendment 106, in the name of Jeremy Balfour, is grouped with amendments 107 to 115.

**Jeremy Balfour:** This is a fairly technical group of amendments, and I am grateful to CPAG and Citizens Advice Scotland for the discussions about

the issues. Currently, Social Security Scotland does not have the power to make a new determination while waiting for an appeal to be heard. For example, if a client is waiting for a Scottish child payment appeal but the Social Security Scotland appeals officer has conceded that the decision is incorrect and should have been changed at redetermination, Social Security Scotland does not have the power to make a new determination and stop the appeal. Instead, it can only invite the tribunal to award the Scottish child payment.

That causes unnecessary stress relating to the appeal for the individual and unnecessary administration for Social Security Scotland and the tribunals service. That happens more frequently than we might expect. As I said in my declaration of interests, I previously sat on tribunals. Fairly frequently, a representative of the DWP would come along and say, "I've looked at the papers afresh and disagree with the original decision," and would then ask the tribunal to make the decision that the claimant had wanted in the first place. Obviously, that wastes time, energy and money, and, most important, causes stress for the claimant.

Section 7 introduces a duty for Social Security Scotland to make a new determination but only under three categories: where the First-tier Tribunal for Scotland has not yet decided the appeal; where it has been identified that the original determination is less generous than it should have been due to an error; and where the individual has consented to a new determination being made. I welcome those provisions, as they will allow individuals to access their full entitlement without having to wait for an appeal and will reduce unnecessary stress and administration. However, the bill would benefit from some modification, and my amendments seek to do that.

Proposed new section 49A(1)(b) to the Social Security (Scotland) Act 2018 specifies that there has to have been an "error" in the original determination. The requirement for an error to be identified requires the decision maker to look for something that is legally wrong with the previous determination, whereas there could simply be a different view of the same facts. There are already examples of that in case law. For example, in *NB v Social Security Scotland*, the same points were awarded at the determination and redetermination stages, and those points were insufficient to award adult disability payment. Even though there did not appear to be any new evidence available to Social Security Scotland, its written submission to the tribunal departed from the previous two decisions, recommending that additional points be awarded that were sufficient for ADP to be awarded at the enhanced rate. That submission did not identify an error in law with the previous decision; it simply

identified a different interpretation of the evidence that had been presented.

The policy intent is to allow decision makers to make a more favourable determination. I suggest that the requirement to identify an error inserts an unnecessary and additional test that could be applied in quite a restrictive way, despite the intention that the definition of "error" is quite broad. To remove that would be helpful.

I move amendment 106.

**Shirley-Anne Somerville:** The Scottish Government supports Jeremy Balfour's amendments 109 to 111. We consider that the definition of "error" in proposed new section 49A is very broad and that the bill as drafted will allow a new determination to be made and an appeal stopped in a wide range of scenarios, including where a decision maker reaches a different conclusion on the same facts. However, I am content that amendments 109 to 111 as drafted meet the policy intention that a decision maker should be able to make a more favourable determination for the client during an appeal. On that basis, the Scottish Government is happy to support those amendments. We may lodge amendments at stage 3 to make small technical changes to the provisions, but I assure Mr Balfour that such amendments would not alter the policy.

The Scottish Government does not support amendment 112, which seeks to remove the definition of "error" in the bill as far as it relates to allowing Social Security Scotland to make a new determination and an appeal to stop as a result. Although we are supportive of that, and support Mr Balfour's other amendments that seek to remove the need for error in the process, amendment 112 also seeks to remove the need for any new determination to be advantageous for the client.

We believe that an important aspect of the process is that a client be offered an advantageous award only in order to stop an appeal. That has been the intention behind the proposal since it was first introduced through the bill, and it remains an important aspect of the offer that would be made to a client. Removing it might result in Social Security Scotland contacting a client to offer them a lower award than that which they were challenging in the first place.

11:00

Therefore, the Government does not support amendment 112, and I ask Jeremy Balfour not to move it. However, if amendments 109 to 111 are agreed to, we will, at stage 3, remove the unnecessary definition of error that amendment 112 identifies.

The Scottish Government also cannot support amendments 106 to 108 or 113 to 115, in the name of Jeremy Balfour. The amendments seek to remove the requirement for a client to request a redetermination of the determination that stopped the appeal.

Our focus is on getting the decisions right first time. However, if a client disagrees with the determination that stopped the appeal, a right of redetermination provides the opportunity to correct any mistakes at an early stage through an independent rerun. Giving people redetermination and appeal rights in that scenario gives people the same range of challenge rights that are given to people who challenge all other determinations that are made under the 2018 act.

Some clients might find a tribunal process intimidating and stressful, and might prefer the opportunity to have Social Security Scotland look at their case again rather than having to appeal to the tribunal. In addition, not everyone who has lodged an appeal will have had a previous redetermination outcome. Some people might have appealed because their redetermination was not concluded by Social Security Scotland within the timescale that is set out in the regulations.

It should be noted that, even if the Government agreed in principle with the amendments, they would not, as currently drafted, achieve the intended purpose. Some references to redeterminations have not been removed and, therefore, the legislation would not work properly.

For those reasons, I urge the committee to support Mr Balfour's amendments 109 to 111 but not to support amendments 106 to 108 or 112 to 115. I ask Jeremy Balfour not to move the latter amendments.

**The Deputy Convener:** I call Mr Balfour to wind up and to press or seek to withdraw amendment 106.

**Jeremy Balfour:** I will keep this fairly brief. I welcome the Government's approach to amendments 110 to 112, and thank the cabinet secretary for that. I look forward to her redrafting of amendment 112 at stage 3, and I am certainly happy to work with her on that. I accept the cabinet secretary's points about amendments 106 to 108 and 113 to 115. I will reflect on that, and I acknowledge that the drafting was not as complete as it should be, which is my fault. I will withdraw amendment 106 and see what happens at stage 3.

*Amendment 106, by agreement, withdrawn.*

*Amendments 107 and 108 not moved.*

**The Deputy Convener:** I call amendments 109 to 111, in the name of Jeremy Balfour—

**Jeremy Balfour:** Apologies, but can we not move those amendments en bloc? I do not want to move amendment 109, but I want to move the others.

**The Deputy Convener:** Okay. I call amendment 109—

**Jeremy Balfour:** My apologies, convener, I cannot read my own notes. I again bow to your superior knowledge.

**The Deputy Convener:** I am glad that I was so persuasive from the chair, Mr Balfour.

*Amendments 109 to 111 moved—[Jeremy Balfour]—and agreed to.*

*Amendments 112 to 115 not moved.*

*Section 7, as amended, agreed to.*

### **Section 8—Appeal to First-tier Tribunal against process decisions**

**The Deputy Convener:** We move to a new section, on appeals to the First-tier Tribunal against process decisions. I call amendment 116, in the name of Jeremy Balfour, which is grouped with amendments 117 to 125.

**Jeremy Balfour:** These are technical but important amendments in regard to how cases are determined. Proposed new sections 61A(2) and 61A(4) to the Social Security (Scotland) Act 2018, as drafted, will mean that, if the First-tier Tribunal decides that further information is required before an application or a redetermination request can be deemed to have been made correctly, Social Security Scotland must first try to obtain that information, and, if the information is not obtained, it must make a decision to reject the application or redetermination request and notify the individual of their right to lodge a process appeal to the First-tier Tribunal again. My amendments would mean that, if the First-tier Tribunal decided that further information was required before the application or redetermination request could be deemed to have been made correctly, Social Security Scotland may seek that information and, whether or not the information is obtained, it must make a decision on entitlement based on the information that it has.

I will give an example. An individual claimed adult disability payment and submitted parts 1 and 2 of the form, but Social Security Scotland could not verify the identification. The First-tier Tribunal decided that more information was required before his ID could be verified. The individual was unable to provide the information that was required, so Social Security Scotland rejected his claim again and advised him of his right to make a process appeal again. The amendments would introduce a right of appeal to the Upper Tribunal for Scotland in process appeals, which would allow the development of case law in this area. Case law



develops precedents about how legislation should be interpreted and applied. Developing case law on process appeals could contribute to the continuous improvement of the social security system, which is one of the principles that is set out in the 2018 act.

Section 8 of the bill provides further clarity for the First-tier Tribunal on how to respond to process appeals, which suggests that the current legislation is not clear. Further clarity might be required, which would not become evident until more process appeals were requested. The Upper Tribunal could consider issues of ambiguity and develop legally binding case law, preventing the need for further amendment to the primary legislation before this can be addressed.

I move amendment 116.

**Shirley-Anne Somerville:** The Scottish Government cannot support amendments 118 to 125, in the name of Jeremy Balfour. The amendments relate to process appeals at the First-tier Tribunal. That is where clients can challenge process decisions such as if Social Security Scotland rejects an application or a redetermination request as invalid if it was not submitted in the correct form or was incomplete.

The First-tier Tribunal can decide whether a process decision made by Social Security Scotland was right. In addition, it can decide that more information is needed to make an application or a redetermination request valid, and it can instruct Social Security Scotland to seek that information from the client.

Process appeals only look at process decisions. They do not cover the level of an award or overall entitlement, which are covered as part of redeterminations and appeals.

Amendments 118 to 125 would mean that, following a process appeal, Social Security Scotland would have to make a determination of entitlement in scenarios in which the tribunal has said that more information is needed, regardless of whether that additional information is provided by the client. That is unfair, as clients who have made a process appeal would be treated differently from clients who have also submitted an invalid application but who did not seek a process appeal. It could also disadvantage anyone who received a decision from the tribunal during a process appeal that Social Security Scotland was correct to reject their application or redetermination request.

In practical terms, if Scottish ministers do not have the required information, as set out in the 2018 act, they are not in a position to make a determination of entitlement. An example of that would be a client not submitting part 2 of an application for a disability benefit, because part 2

of the application contains information about a client's needs and eligibility for that disability benefit.

The Government does not, therefore, support amendments 118 to 125, and I ask Mr Balfour not to press them.

The Scottish Government does not support amendments 116 and 117, which would allow people to appeal a decision of the First-tier Tribunal in the Upper Tribunal. We do not consider the amendments necessary. Most process appeals are based on the facts of the appeal—for example, whether a client has completed a benefit application correctly or submitted a redetermination request on time—while Upper Tribunal appeals can be brought only on a point of law. The number of process appeals received to date is very small, and my understanding is that, if required and where appropriate, the First-tier Tribunal may seek guidance from the Upper Tribunal in circumstances in which a First-tier Tribunal has to consider whether the appellant had a good reason for requesting a redetermination late.

As such, the Government does not support amendments 116 and 117. I ask Mr Balfour not to press amendment 116 and not to move amendment 117.

**The Deputy Convener:** I call Mr Balfour to wind up and to press or seek to withdraw amendment 116.

**Jeremy Balfour:** With due respect to the cabinet secretary, I disagree with her reasoning. I accept that the First-tier Tribunal can seek guidance in that regard, but that guidance is not binding. It would be helpful if we in Scotland could build up case law that would give certainty to the First-tier Tribunal in making decisions.

I also come to a different view on amendments 118 to 125. I press amendment 116.

**The Deputy Convener:** The question is, that amendment 116 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Convener:** There will be a division.

#### For

Balfour, Jeremy (Lothian) (Con)  
McCall, Roz (Mid Scotland and Fife) (Con)

#### Against

Clark, Katy (West Scotland) (Lab)  
Doris, Bob (Glasgow Maryhill and Springburn) (SNP)  
McNair, Marie (Clydebank and Milngavie) (SNP)  
O'Kane, Paul (West Scotland) (Lab)  
Stewart, Kevin (Aberdeen Central) (SNP)  
Torrance, David (Kirkcaldy) (SNP)

**The Deputy Convener:** The result of the division is: For 2, Against 6, Abstentions 0.

*Amendment 116 disagreed to.*

*Amendment 117 not moved.*

*Amendment 118 moved—[Jeremy Balfour].*

**The Deputy Convener:** The question is, that amendment 118 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Convener:** There will be a division.

**For**

Balfour, Jeremy (Lothian) (Con)  
McCall, Roz (Mid Scotland and Fife) (Con)

**Against**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)  
McNair, Marie (Clydebank and Milngavie) (SNP)  
Stewart, Kevin (Aberdeen Central) (SNP)  
Torrance, David (Kirkcaldy) (SNP)

**Abstentions**

Clark, Katy (West Scotland) (Lab)  
O’Kane, Paul (West Scotland) (Lab)

**The Deputy Convener:** The result of the division is: For 2, Against 4, Abstentions 2.

*Amendment 118 disagreed to.*

*Amendments 119 to 125 not moved.*

*Section 8 agreed to.*

11:15

**Before section 9**

*Amendment 29 moved—[Shirley-Anne Somerville].*

**The Deputy Convener:** The question is, that amendment 29 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Convener:** There will be a division.

**FOR**

Clark, Katy (West Scotland) (Lab)  
Doris, Bob (Glasgow Maryhill and Springburn) (SNP)  
McNair, Marie (Clydebank and Milngavie) (SNP)  
O’Kane, Paul (West Scotland) (Lab)  
Stewart, Kevin (Aberdeen Central) (SNP)  
Torrance, David (Kirkcaldy) (SNP)

**Against**

Balfour, Jeremy (Lothian) (Con)  
McCall, Roz (Mid Scotland and Fife) (Con)

**The Deputy Convener:** The result of the division is: For 6, Against 2, Abstentions 0.

*Amendment 29 agreed to.*

**Section 9—Liability of individual for assistance given in error**

*Amendment 30 moved—[Shirley-Anne Somerville]—and agreed to.*

**Section 10—Liability of individual’s representative for assistance given in error**

*Amendment 31 moved—[Shirley-Anne Somerville]—and agreed to.*

**Section 11—Consequential modification of the Prescription and Limitation (Scotland) Act 1973**

*Amendment 32 moved—[Shirley-Anne Somerville]—and agreed to.*

**Section 12—Liability of individual’s estate**

*Amendments 33 and 34 moved—[Shirley-Anne Somerville]—and agreed to.*

*Section 12, as amended, agreed to.*

**Section 13—Assistance given in error: reviews and appeals**

*Amendments 35 to 50 moved—[Shirley-Anne Somerville]—and agreed to.*

*Section 13, as amended, agreed to.*

**After section 13**

*Amendment 51 moved—[Shirley-Anne Somerville]—and agreed to.*

**The Deputy Convener:** That takes us to a fresh group, but I intend to end the first day’s stage 2 consideration there. I thank the cabinet secretary and her team for joining us.

That concludes our public business for today. We will return for the conclusion of stage 2 consideration on Thursday 26 September.

11:20

*Meeting continued in private until 11:25.*

This is a draft *Official Report* and is subject to correction between publication and archiving, which will take place no later than 35 working days after the date of the meeting. The most up-to-date version is available here:  
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