



## SOCIAL SECURITY (SCOTLAND) BILL: STAGE 3 AMENDMENT - SCRUTINY PROCEDURE

### We strongly support amendment 145 lodged by Pauline McNeil MSP

#### Strengthening scrutiny of secondary legislation

1. The Social Security (Scotland) Bill establishes the framework within which devolved social security will be delivered. Many important details, for example on eligibility, amounts, applications, assessment, overpayments and decision making will be set out in secondary legislation. It is vital that these regulations are given adequate independent expert as well as parliamentary scrutiny. The Bill's creation of a statutory Scottish Commission on Social Security and commitment to a 'super-affirmative' procedure for scrutiny of specific regulations are strongly welcomed.

2. However, as the Bill stands, there are important regulations (for example on applications and decision making, on overpayment and fraud<sup>1</sup>) that do not need to be referred to the new Commission. These kinds of regulations have real impacts on people's money and experience of the system.

3. Amendment 145 establishes a 'light touch' scrutiny process for those regulations that do not require the full super-affirmative procedure. It ensures that there are "no exceptions to Scottish social security regulations that are within scope for scrutiny" by the new Commission - as recommended by the Scottish Government's Expert Advisory Group on Disability and Carers Benefits (DACBEAG).<sup>2</sup>

2. The amendment places a duty on Scottish Ministers to refer proposals for regulations that are not already covered by s55 to the newly established Scottish Social Security Commission. The Scottish Social Security Commission would then have an *opportunity* to prepare a report on the proposed regulation, drawing on its knowledge of the formulation, implementation and evaluation of social security policy. If a report is prepared, the Commission would then have a duty to submit a copy of it to the Scottish Parliament to

<sup>1</sup> See page 2 of SPICe briefing at [http://www.parliament.scot/S5\\_Social\\_Security/Meeting%20Papers/PublicPapers\\_20180125.pdf](http://www.parliament.scot/S5_Social_Security/Meeting%20Papers/PublicPapers_20180125.pdf) SC/S5/18/2/2

<sup>2</sup> [http://www.parliament.scot/S5\\_Social\\_Security/Inquiries/Scrutiny\\_Workstream\\_DACBEAG\\_final\\_report.pdf](http://www.parliament.scot/S5_Social_Security/Inquiries/Scrutiny_Workstream_DACBEAG_final_report.pdf), (p5)

inform their scrutiny. Scottish Ministers would also be obliged to lay their response to the Commission's report before Parliament.

2. Such a procedure would allow for expert, independent scrutiny of often complex secondary legislation which has the potential to impact individual rights, entitlements and experience of the Scottish social security system. The Commission's discretion as to whether a report was necessary will ensure scrutiny is provided in a proportionate way, without encroaching unnecessarily on the Scottish Parliament's time or the time and resources of the Commission.

3. This amendment would not affect section 55A of the Bill, under which the Commission has a *duty* to lay reports before parliament in relation to regulations on the scope and nature of new Scottish benefits and the use of top-up powers.

### **Potential impact on dignity, entitlement and experience of individuals**

9. Without the opportunity for additional expert scrutiny of regulations, we are deeply concerned that consequences that could have been avoided or mitigated will only come to light once the impacts are being felt on people receiving assistance, or on the agency in its operations. This is contrary to the principles of dignity, continuous improvement and efficiency intended to underpin Scotland's social security system.

10. Scrutiny of all regulations should be informed by the expertise of Commission members which, as set out in Schedule A1, is expected to include experience and knowledge of the formulation, implementation and evaluation of social security policy in the UK and Scotland, social security research and the impact of living with a disability.

### **Proportionality of the approach**

11. We understand the Minister's comments to the Social Security Committee during Stage 2 of the Bill's passage<sup>i</sup> that the scrutiny procedure attached to regulation-making powers has to fit with the importance of regulations, and agree with comments made in the Stage 2 debate that using a super-affirmative procedure for all regulations may not be a good use of Parliamentary time.

12. The proposed amendment therefore takes a light touch approach and avoids scrutiny 'overkill'. In scrutinising the proposals, the Commission can respond in the most appropriate and proportionate way, taking the importance of the regulations into account. This might involve making no report, responding with advice in an informal way or laying a formal report before the Scottish Parliament. It is likely that a formal report would only be undertaken in a small minority of cases.

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<sup>i</sup> col 32, Official Report, Social Security Committee, 1 March 2018, col 32