



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Social Security Committee

**Thursday 1 February 2018**

**Session 5**



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**SOCIAL SECURITY COMMITTEE**  
**3<sup>rd</sup> Meeting 2018, Session 5**

**CONVENER**

\*Clare Adamson (Motherwell and Wishaw) (SNP)

**DEPUTY CONVENER**

\*Pauline McNeill (Glasgow) (Lab)

**COMMITTEE MEMBERS**

- \*George Adam (Paisley) (SNP)
- \*Jeremy Balfour (Lothian) (Con)
- \*Mark Griffin (Central Scotland) (Lab)
- \*Alison Johnstone (Lothian) (Green)
- \*Ben Macpherson (Edinburgh Northern and Leith) (SNP)
- \*Ruth Maguire (Cunninghame South) (SNP)
- \*Adam Tomkins (Glasgow) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Jeane Freeman (Minister for Social Security)

**CLERK TO THE COMMITTEE**

Simon Watkins

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



# Scottish Parliament

## Social Security Committee

Thursday 1 February 2018

[The Convener opened the meeting at 09:00]

### Social Security (Scotland) Bill: Stage 2

**The Convener (Clare Adamson):** Good morning and welcome to the third meeting in 2018 of the Social Security Committee. I remind everyone to turn mobile phones and other devices to silent mode so that they do not disrupt the broadcasting.

There is only one item on today's agenda: consideration of the Social Security (Scotland) Bill at stage 2. It has been agreed that we will not proceed beyond part 1 today. There are 13 groups of amendments in part 1 and we may not get through them all this morning as we have to finish at around 11.30 to allow members to get to the chamber for question time.

I welcome the Minister for Social Security, Jeane Freeman, and her accompanying officials to the meeting.

#### Section 1—The Scottish social security principles

**The Convener:** Amendment 77, in the name of George Adam, is grouped with amendments 1, 102, 78, 5, 6, and 113.

**George Adam (Paisley) (SNP):** I wanted to move amendment 77 for one very important reason—I wanted to be the first committee member to speak. No—in all seriousness, I believe that it is important to set the foundations correctly for the bill. We all know how important it is. It is one of the biggest bits of legislation that the Parliament has produced since this place came into being.

It is important that we set out right from the beginning what we want to do. When people all over the world talk about documents, everybody remembers the founding principles that are mentioned right at the start of those documents, and stating that

“the delivery of social security is a public service”

sets out to everyone exactly what we are trying to achieve.

During the stage 1 debate, the minister said:

“The Social Security (Scotland) Bill comes to the Parliament as the legislative foundation for a new public

service for Scotland to deliver a rights-based social security system that is founded on the principles of dignity, fairness and respect.”—[*Official Report*, 19 December 2017; c 22.]

She is right, and that is a noteworthy and meaningful principle. Therefore, the founding principle of the bill should be that social security is going to be a public service. That sets out to the 1.4 million people in Scotland who will use the service how important it is to the Parliament and the Scottish Government. In putting these principles forward, we are showing that we see this as the way forward.

To summarise, it is very important—in any documentation and in anything that we do—to get the founding principles correct. I believe that putting this amendment at the very beginning of the bill would tell everyone exactly what we want from the social security system in Scotland.

I move amendment 77.

**Alison Johnstone (Lothian) (Green):** The principles section of the bill—section 1—is absolutely crucial, as my colleague George Adam has just pointed out. Laying out the foundation stones of the system sends out a really clear message that the new Scottish system will not chop and change at will or create uncertainty for applicants and recipients. The minister is absolutely right to take this approach, which I welcome. If every other aspect of the system is going to flow from the principles, which I believe is the policy intention, it is absolutely imperative that they are the right principles.

The principle that the system should reduce poverty, as is outlined in amendment 1, is absolutely key. Social security performs many functions, but one of them is the reduction of poverty on the basis of the belief that poverty is unacceptable. That is one of the fundamental tenets of the post-war social security system, and it should be a fundamental principle of the Scottish system that is now being built.

The principle has already been established in the Child Poverty (Scotland) Act 2017 and, as a result of the work of the committee, that act contains several references to the important role that social security plays in the reduction of child poverty. That being the case, it would be remiss of us not to have, in this bill, a similar recognition that social security is vital to the reduction of poverty. That recognition should be stated up front as one of the core principles of the new system.

**Mark Griffin (Central Scotland) (Lab):** I will support the two amendments that have just been spoken to.

The purpose of amendment 102 and the related amendments that I have lodged, which we will come to later in the debate, is to make sure that

equality is embedded in the legislation and, therefore, in the Scottish social security system.

My amendments have the support of Engender, Scottish Women's Aid and the Coalition for Racial Equality and Rights.

When equality is not embedded in policy from the beginning, the danger is that it becomes an add-on—something that happens after the fact but that has not been considered sufficiently to shape the system itself. The take-up of benefits among black and minority ethnic groups in Scotland is not routinely published—indeed, it is not monitored in order to see how significant disparities come about and to determine the best way to address them. I have lodged amendment 102 because we know that many equalities groups—particularly women, BME groups and disabled people—experience higher rates of poverty and, therefore, may depend more on the social security system.

I have lodged amendment 78 to start a debate on the issues that disabled people face in their daily lives, including higher costs. However, I do not intend to press the amendment, which has come about on the back of support from Disability Agenda Scotland. Almost half the people in this country who live in poverty have at least one disabled person in their household. Therefore, we must consider how the Scottish social security system would cover the additional costs of a disability, which can push someone into poverty, and how it would break down the barriers and enable disabled people to get into work and lift themselves out of poverty.

Amendment 78 has the support of Disability Agenda Scotland, Camphill Scotland, the Carers Trust, the Health and Social Care Alliance Scotland, the Scottish Independent Advocacy Alliance and Leonard Cheshire Disability. As I have said, the purpose of the amendment is to start a debate on the poverty that a lot of disabled people find themselves in and how the Scottish social security system could alleviate the situation.

**The Convener:** I invite the minister to speak to amendment 5 and the other amendments in the group.

**The Minister for Social Security (Jeane Freeman):** Good morning, committee. I will start with some of the other amendments in the group. I am pleased to support amendment 77, in the name of George Adam. As Mr Adam has said, we have always intended that the Scottish social security system should be delivered as a public service, and the new principle in amendment 77 fits well with the ethos that is expressed in the other principles.

I am also happy to support amendment 1, in the name of Alison Johnstone. The proposal recognises that the Scottish social security system

has a role in reducing poverty, and I understand that the amendment has the support of a wide range of stakeholders, including the Poverty Alliance.

I am grateful to Mr Griffin for his indication that he does not intend to press amendment 78, which I could not support. I do not consider that singling out a group at this point in the bill would reflect the spirit of the other principles. More fundamentally, amendment 78, as it is written, misunderstands the nature of disability assistance and the scope of our ministerial powers in relation to social security. Disability assistance is not designed to be an anti-poverty measure, although I accept that, for some people, it has that effect. It is not means tested and it does not seek to top-up or to replace income—its purpose is to help people who have a disability or a terminal illness with their living costs. The Scottish Government has no control over the forms of assistance that, in my view, could really make an impact on reducing poverty for disabled people, but I welcome the opening of a debate on the issue and I am sure that, through the committee and elsewhere, we will continue to have that debate.

Amendment 102, also in Mr Griffin's name, seeks to achieve broadly similar goals to those that amendments 5 and 6, in my name, seek to achieve, but the wording of amendment 102 is problematic. Devolved assistance will be capable of delivering equality of treatment, but it will not be possible or appropriate to seek to guarantee exactly the same outcomes for every person purely on the ground that they belong to a specific group. To ignore individual needs in that manner runs contrary to the international human rights framework, which, as a broad rule, puts meeting individuals' needs at the heart of a rights-based approach.

More technically, amendment 102 is silent on precisely which category of outcome it targets and with what group or other benchmark it seeks equality. That makes it difficult, if not impossible, to discern exactly how the system could live up to such a principle. The amendment also fails to recognise that the term "protected characteristics" can have meaning only if it is used comparatively. As all of us have age, sex and religion—which, for the purpose of legislation, includes having no religion—the use of the term in the amendment does not make sense, because everyone has some protected characteristics.

Mr Griffin will remember that his colleagues Ms Baillie and Ms McNeill lodged similar amendments to the Child Poverty (Scotland) Bill but were persuaded, on the basis of the arguments that I have outlined, not to press them. I hope that Mr Griffin will reach a similar view on amendment 102. However, because equality and non-

discrimination are important ideals to capture in the principles, I hope that Mr Griffin and other members will support amendments 5 and 6, in my name.

Amendment 113, in the name of Ms McNeill, seeks to introduce a new principle on matters that we would all agree are important and worthwhile. However, health and mental wellbeing are already strongly reflected in the principles of respect and dignity and in our human rights approach. Those existing principles should facilitate a system that is supportive, accessible and sensitive to individuals' particular needs. That is already taking shape through the commitments that have been made to local delivery, face-to-face pre-claims advice and the elimination of jargon in correspondence. All of that speaks directly to the realisation of a system that is in keeping with the culture that the amendment envisages. Therefore, I ask Ms McNeill not to move amendment 113.

**Pauline McNeill (Glasgow) (Lab):** Amendment 113 seeks to promote health and wellbeing. The social security system has a role in promoting improved health and wellbeing, and section 1 deals with the principles of the system. Evidence that has been provided by the Scottish Association for Mental Health supports the idea that some people who have had the employment and support allowance and personal independence payment have found the experience to be stigmatising and to have had a negative effect on their health. Studies by Heriot-Watt University show that work capability assessments for employment support have had a lasting and negative impact on some people with a mental health problem.

A well-designed social security system must have a commitment to eradicating stigma. I am a wee bit disappointed that the Government will not support specific mention of the importance of promoting mental health and wellbeing in the system, as there is a case for having that specifically in the principles.

**Adam Tomkins (Glasgow) (Con):** Section 1 is hugely important as a statement of political principles, but we remain concerned about the legal effect of the principles and will later speak to amendments that seek to clarify that effect.

Some of the amendments in the group will exacerbate those problems—particularly amendment 77, in the name of George Adam. It is completely unclear what including

“the delivery of social security is a public service”

in the bill will do and what difference it will make. The sentiment is clear but the legal effect is obscure, so we will not support the amendment. However, we will support the amendments in the minister's name.

09:15

**Ben Macpherson (Edinburgh Northern and Leith) (SNP):** Mr Tomkins mentions the amendments on the status of the principles, which we will get to in due course. I do not want to speak about the principles in detail now, but it is important to recognise that, as is detailed in the Government's response to our stage 1 report, they have been set forth to define the ethos and nature of the Scottish social security system.

I will support amendment 77, in the name of George Adam, because clarity and the statement that the Scottish social security system will be a public service are important in describing and explaining the ethos and nature of that system.

I will also strongly support amendment 1, in the name of Alison Johnstone, which is supported by Mark Griffin. It is a helpful amendment that is based on the recommendation that the committee made at stage 1. I definitely think that the Scottish social security system should play a part—it cannot do it by itself—in reducing poverty in Scotland. I am glad to see that we have not retained the word “eradication”, as that would have been problematic from legal and definitions perspectives.

The sentiment of amendment 102, in the name of Mark Griffin, is to make sure that equality is part of the system that we create, which chimes with a lot of the evidence that the committee took and evidence that I took in person at one of the outreach sessions that we had at MECOPP. The minister's wording on the promotion of the goals of equality and non-discrimination is more holistic and, therefore, more effective, so I urge Mr Griffin not to move amendment 102 and instead to support amendments 5 and 6.

Amendment 78, in the name of Mr Griffin, is problematic in that the Scottish social security system, as created under the Scotland Act 2016, does not have the power to create income replacement benefits. The amendment does not consider that position.

I turn to amendment 113, in the name of Pauline McNeill. Although we should be trying to improve health and mental wellbeing across the public sector, that is primarily a function of the national health service. The promotion of health and wellbeing is already taken into account in the existing principles of dignity, respect and human rights, as Ms Freeman said. Although, on the basis of the evidence that we took, committee members want to enhance the principles that were originally drafted, we need to be careful not to create an exhaustive list that might lose the meaning that I mentioned in my opening point about their setting out the nature and ethos of the Scottish social security system.

**Jeremy Balfour (Lothian) (Con):** The Scottish Conservatives will not support amendment 1, in the name of Alison Johnstone, as it places too strong an emphasis on what the social security system and benefits are for. I do not think that the primary reason for having benefits is to contribute to reducing poverty. In fact, I would almost adopt the minister's words, when she was speaking to another amendment, in saying that benefits are there to help those with a disability or terminal illness to live as normally as possible. That is the key point that we should make about benefits. Their contribution to reducing poverty may be an additional reason for having them, but it is not the primary reason for our giving people benefits. I say that because we have universal benefits such as PIP, which is not means tested in any way. The appearance of such words early on in the legislation could put some people off, because they might think, "I'm not poor, so I shouldn't apply for this award."

As a result, I do not think that amendment 1 is helpful; indeed, it deflects from what we want benefits for, which is to allow disabled people—whether their disability is physical or mental—to live as normal a life as possible, to give them the money to live that life and to help their families to get the support that is needed. Reducing poverty might be a secondary effect of benefits, but making it a principle in the bill could steer people away from applying for benefits, because they might say, "I don't fit into that category."

**Jeane Freeman:** I want to make it absolutely clear to the committee that our not supporting amendment 113, in the name of Ms McNeill, should not be taken as an indication that, with regard to the social security system or any other matter in which the Government is engaged, the Government does not have a responsibility to pay proper attention to the importance of mental health and wellbeing. Such a characterisation would be unfair. I made my reasons for not supporting the amendment very clear.

Ms Johnstone's amendment 1 is important, which is why the Government supports it.

The point has been made that disability assistance such as PIP and disability living allowance is a universal benefit that is not specifically targeted at anything other than providing additional financial support to those with a disability or health condition. However, I would point out that some of the other benefits that we will take responsibility for—for example, the best start grant, funeral expense assistance and others—will assist those who are on low incomes. Certainly, in the Government's view, it is important that—today and as we move through stage 2 to stage 3—we are mindful of the fact that we are laying the foundations for a social security system

that will have responsibility for 11 benefits. Nevertheless, it is my hope that the Government will have responsibility for significantly more parts of the system in the future.

**The Convener:** I invite George Adam to wind up and indicate whether he wishes to press or withdraw his amendment.

**George Adam:** I will press amendment 77, but first I want to make a point—I will do so very quickly, because I know that we have quite a lot on today.

Historically speaking, what people remember about documents are the principles. They are the most important part of a document because they allow you to state clearly and succinctly what you want to achieve. Therefore, it is extremely important to make it clear that the social security system is a public service that will serve the people of Scotland as and when they need it, because that sets out exactly what the service is for.

I do not want to get too involved in what has been discussed previously, but this must be how we take the matter forward. People might think that these are just words, but words can be extremely important; indeed, they can change history and people's lives. On this occasion, we are stating right from the outset the most important point: the service that we are setting up will serve the people of Scotland.

**The Convener:** The question is, that amendment 77 be agreed to. Are we agreed?

**Members:** No.

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

#### For

Adam, George (Paisley) (SNP)  
Adamson, Clare (Motherwell and Wishaw) (SNP)  
Griffin, Mark (Central Scotland) (Lab)  
Johnstone, Alison (Lothian) (Green)  
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)  
Maguire, Ruth (Cunninghame South) (SNP)  
McNeill, Pauline (Glasgow) (Lab)

#### Against

Balfour, Jeremy (Lothian) (Con)  
Tomkins, Adam (Glasgow) (Con)

**The Convener:** The result of the division is: For 7, Against 2, Abstentions 0.

*Amendment 77 agreed to.*

*Amendment 1 moved—[Alison Johnstone].*

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

**Members:** No.

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



**For**

Adam, George (Paisley) (SNP)  
 Adamson, Clare (Motherwell and Wishaw) (SNP)  
 Griffin, Mark (Central Scotland) (Lab)  
 Johnstone, Alison (Lothian) (Green)  
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)  
 Maguire, Ruth (Cunninghame South) (SNP)  
 McNeill, Pauline (Glasgow) (Lab)

**Against**

Balfour, Jeremy (Lothian) (Con)  
 Tomkins, Adam (Glasgow) (Con)

**The Convener:** The result of the division is: For 7, Against 2, Abstentions 0.

*Amendment 1 agreed to.*

**The Convener:** Amendment 4, in the name of the minister, is grouped with amendments 7, 7A, 7B, 114, 115, 140, 14, 126, 128, 129 and 51.

**Jeane Freeman:** This is a group on which I hope that we can reach consensus.

Amendments 4 and 7, which are Scottish Government amendments, were prepared in response to the view of the committee and stakeholders that the principle in section 1(d) should be strengthened to say that ministers have a duty rather than a role to promote benefit take-up. In practice, the amendments go considerably further than that by removing the principle and creating a separate and legally enforceable duty.

Amendments 7A and 7B, in the name of Mr Griffin, seek to change amendment 7 to state that ministers simply have a duty to ensure that everyone gets what they are entitled to. Although I am sure that they are intended to strengthen amendment 7, I ask Mr Griffin to consider that they make the duty weaker than what I propose. Ministers already have a duty to give people what they are eligible for. Under section 8 of the bill, it is ministers' basic duty to determine entitlement to assistance. Amendment 7 requires more than that. It frames the duty as something that requires continuous improvement, with ministers always keeping under consideration what more could be done.

A further problem with amendment 7A is that it would remove the discretion of ministers to take steps that they consider appropriate. To take the amendment through to its logical conclusion, that could mean that ministers should take any necessary steps, within the law, to fulfil the duty. It would remove discretion and the "keep under consideration" part of amendment 7, which would require ministers to continually consider what more could and should be done to increase benefit take-up. That would apply to all future Scottish Governments. Amendment 7 is a very active amendment. Furthermore, the language that amendment 7A seeks to remove fits much better

with the upcoming amendments on income maximisation.

Amendment 7B is ambiguous. It defines "other social security assistance" by referring to

"social security schemes other than those listed in exceptions 1 to 10 in Section F1 of Part 2 of schedule 5 of the Scotland Act 1998",

but those exceptions do not list social security schemes. I ask Mr Griffin to consider not moving his amendments on the basis that what he seeks to achieve is already delivered by amendments 4 and 7.

Ms McNeill's amendments 126, 128 and 129 are essentially aimed at making life easier for people who apply for assistance by providing them with information about what else they may be entitled to and, where appropriate, treating an application for one form of assistance as an application for another. I am pleased to support all three amendments. However, ahead of stage 3, I will look to discuss with Ms McNeill amending the duty to treat an application for one type of assistance as an application for any other type to make it clear that nothing should be done without the permission of the individual in question. That is in line with the person-centred approach that I have referred to, which I am sure Ms McNeill supports.

Amendments 140, 14 and 51, in the name of Ms Johnstone, seek to achieve something very similar, so it seems that there is broad agreement. I am sure that Ms Johnstone did not intend this, but the wording of her amendment does not meet her intention. In effect, it means that someone in the agency or on behalf of the Scottish ministers, who would have the duty placed on them, would need to consider any application that they received against eligibility criteria for every other form of assistance and make that decision for people. We think that Ms Johnstone would like to ensure that people would have information and that applications would be considered for other types of assistance, which Ms McNeill's amendments would achieve. I strongly urge Ms Johnstone not to move her amendments, as they would mean that the social security agency would have to judge whether an individual who applied for one type of assistance should be entitled to another.

09:30

I am pleased to support amendments 114 and 115, in the name of Mr Griffin. As I have outlined, we are serious about achieving improvements in take-up, and our approach to this group of amendments indicates that. I hope that my position on those amendments provides any further reassurance that Mr Griffin needs to

reconsider his position on amendments 7A and 7B.

To draw all of that together, the package of measures that we support in the group would provide a robust approach to improving take-up. I know that we all agree that that should be a priority in a system that is founded on the ideal that social security is a right.

I move amendment 4.

**Mark Griffin:** I will not support amendment 4, in the name of the minister, but I will support all other amendments in the group.

We feel that amendment 4 goes beyond the evidence that was given to the committee. The committee expected a one-word change in removing the word “role” and inserting the word “duty”, and that was included in the committee’s report. With the backing of Citizens Advice Scotland, we seek to reinstate the duty in a revised paragraph.

We feel that “keep under consideration” in amendment 7 is ineffectual wording that waters down any duty. The committee agreed on

“the amendment of the fourth principle in the Bill to introduce a duty on Scottish Ministers, rather than a role, to ensure that individuals are given what they are eligible to be given under the Scottish social security system”.

In its response to the stage 1 report, the Scottish Government said:

“The Scottish Government agrees with this recommendation ... this proposal would more accurately reflect the work that it will take forward to remove stigma and to improve the take-up of assistance.”

It went on to say:

“the Scottish Government is committed to bringing an amendment to the Bill at Stage 2 to place a duty (rather than a role) on Scottish Ministers to ensure people get what they are entitled to from the Scottish social security system.”

My amendments 7A and 7B more accurately and in stronger words reflect the committee’s recommendation and the Government’s response.

In amendment 7B, I have attempted to recognise the minister’s comments at stage 1. She did not think that it would be appropriate for the Government to have a duty to maximise the uptake of benefits that were not its responsibility. That is why the amendment was drafted to say that the Government should have

“a role in encouraging individuals to apply for”

social security assistance that the Government is not responsible for. The amendment attempts to improve the uptake of around £2 billion-worth of benefits that go unclaimed every year, most of which are reserved. We have made the argument before that that money could lift families and

communities out of poverty and boost local economies. It was reflected in the debate that we have already had that no such duty can be applied to the Government. The amendment was drafted to accommodate that point.

I appreciate the Government’s support for amendments 114 and 115. They set out wide-ranging requirements for the Scottish Government to make its duty to promote take-up a reality, record progress and set out in detail the areas in which more work is required. They are target based. They require the Government to come forward with measurable outcomes for which statistics should be released regularly.

I ask committee members to support my amendments.

**Alison Johnstone:** Throughout the stage 1 evidence, we heard much about how the new Scottish system could be more streamlined and easier for claimants to navigate. We are all aware of the complexities of the current system.

In October, Derek Young from Age Scotland told us:

“People would find it extremely advantageous if there were an opportunity to look at the different forms of assessment ... and how the processes could be streamlined. We hear quite a bit from older people who complain about having to answer the same questions several times.”—[*Official Report, Social Security Committee*, 26 October 2017; c 26.]

In written evidence, NHS Greater Glasgow and Clyde said:

“Glasgow City Council has explored automatic payment of benefits and have successfully implemented this approach for school clothing grants by identifying eligible families.”

Amendment 140 seeks to create a right for individuals who apply for any form of assistance to be considered for all other assistance that ministers have reason to believe they might be entitled to. I see it as a companion amendment to amendment 128, in the name of Pauline McNeill, which seeks to establish that process in the part of the bill that deals with determinations. Amendment 140 is also in the spirit of the minister’s amendment to create a duty on the Scottish ministers to

“keep under consideration what steps they could take to ensure that individuals are given what they are eligible to be given under the Scottish social security system”.

Amendment 140 would be such a step.

I know that the minister shares the intentions behind the amendment because she has made a very similar proposal to improve the interface between the Scottish system and other systems at the United Kingdom and local levels. Just last week, on 24 January, the minister proposed the excellent idea of sharing an application that was

made for Scottish benefits with another agency—the Department for Work and Pensions or a local authority—for another benefit provided by it, so that multiple applications do not need to be made. Amendment 140 proposes something similar—as I believe, does Pauline McNeill’s amendment 128—but for within our Scottish system. When someone applies for one benefit, they should be considered for any other benefits that ministers think that they might be entitled to.

The minister or other committee members might have reservations about the wording. I am happy to discuss how that might be improved at stage 3.

What I propose in amendment 140 is uncontroversial. It is about helping people, some of whom find the benefits system really difficult to navigate, to ensure that they receive everything to which they are entitled. That is a theme that runs through the bill.

**Pauline McNeill:** We are discussing a very important part of the bill. From what has been said so far, it is clear that there is some common ground between us all in a desire to design a progressive system that ensures that someone who asks for assistance is given support to find out what other assistance they might be entitled to. We know that there is a huge issue about unclaimed benefits.

Amendment 128 specifies that

“Where it appears to the Scottish Ministers that an individual who has applied for a particular type of assistance may be entitled to another type of assistance described in Chapter 2, the application may be treated ... as an application for that other type of assistance as an alternative, or in addition”.

I welcome the minister’s support for amendments 126, 128 and 129. I am delighted about that, and I give a commitment to work with the Scottish Government at stage 3.

In previous debates, the minister has raised the concern that individuals should be clear about what is being done in their name every step of the way. I am happy to work with ministers at stage 3 if any adjustments need to be made in that respect.

Amendment 129 is important because it specifies that the claimant must be informed where it appears to ministers that they may qualify for other benefits.

**Ruth Maguire (Cunninghame South) (SNP):** I am a bit concerned about amendments 7A and 7B, which I find ambiguous. Despite Mark Griffin’s explanation, I am not sure what he is trying to achieve. My reading of them suggests that they would dilute amendment 7, in the minister’s name, and I would be concerned about that loss of continuous improvement.

I would also like to speak to amendment 14, in the name of Alison Johnstone. I fully agree with the thinking behind it, but I believe that it is covered by amendments 114 and 115. The bit of amendment 14 that is problematic for me is about setting targets for take-up. I hope that the target for take-up would always be 100 per cent and that we would measure against that. I would be interested to hear from the minister whether we have baseline take-up at the moment.

**Adam Tomkins:** My party’s intention is to support the amendments in the name of the minister in this group, but not the amendments in the names of Mark Griffin, Alison Johnstone or Pauline McNeill. It seems to us that a number of the Opposition amendments in this group are overly prescriptive and do not need to appear in primary legislation. For example, amendments 128 and 129, in the name of Pauline McNeill, would be better in the operating manual of the new Scottish social security agency than in primary legislation, and amendments 114 and 115, in the name of Mark Griffin, on income maximisation strategy, seem to us to be overprescriptive for primary legislation. We are not opposed to the policy intent underpinning those provisions, and indeed we would encourage that policy intent, but we do not see the need for them to be in primary legislation.

I pause to note amendment 140, in the name of Alison Johnstone, which I understand the minister is not supporting. That is an indication of just how difficult it is going to be to navigate the meaning of section 1, which states that Scottish social security will be a rights-based system. Alison Johnstone’s amendment probes the extent to which that rights-based system will become a reality. If I have understood the minister correctly, the Government does not intend to support that amendment, and that illustrates the real difficulty that we are going to have in implementing the legislation once it is passed, in terms of knowing what is a right within the Scottish social security system and what is not.

**George Adam:** I echo the words of my colleague Ruth Maguire. I think that I know what Mark Griffin is trying to achieve with amendments 7A and 7B, and that is part of the problem. I am not totally convinced of their purpose. If they are about eligibility and income maximisation, amendments 114 and 115 achieve those things anyway, so I am not too sure what he is trying to achieve with them, which is what puts me in doubt at this stage. If I am confused, there is probably something confusing about the amendments. I might just be in a state of confusion all the time, right enough, and that is for others to judge and not for me to comment on, but my point is that if I am struggling to understand what the amendments are trying to achieve, that is a

problem. I will therefore not be supporting amendments 7A and 7B.

**Jeane Freeman:** Let me start with amendments 4 and 7, in my name, which I believe go beyond what has been asked by stakeholders, by not only transforming the role to promote take-up into a duty but placing it in a distinct, legally enforceable position in the bill, in a manner that requires Scottish ministers to continuously consider what more can be done as part of on-going policy improvement.

On amendments 7A and 7B, making a principle a duty does not make sense, in my view. Mr Tomkins has already touched on this, but the principles are not the place to impose legal duties. I am happy to support Mr Griffin should he move amendments 114 and 115, which would strengthen the duty that Scottish ministers will have to ensure maximum possible take-up of Scottish social security assistance. I am also happy to support Ms McNeill's amendments 126, 128 and 129, as I have said, and I am grateful to her for her indication that we could work together before stage 3 to ensure that individuals retain decision making in that exercise.

I would ask Ms Johnstone not to move amendments 140, 14 and 51. I do not believe that amendment 140 is a companion amendment. The problem is that it requires the agency to make the judgment, and I believe firmly that, in a rights-based system, the decision and the choice should remain with the individual. Ms Maguire also touched on the question of targets, and it is the case that we would have a limited baseline to start from in terms of benefit take-up.

We would, of course, look to the DWP for the current position on benefit take-up. As members know from discussions elsewhere on the matter, the DWP does not routinely collect such statistics, and in those that it collects, it does not routinely distinguish between Scotland and the rest of the United Kingdom. Therefore, there would be a practical difficulty in meeting the requirements of amendment 14, and I am not keen to support amendments that I do not believe we would be able to deliver on. There is also the question of what target would be set. Given that I am sure that all of us would set a target of 100 per cent, amendment 14 would not take us much further forward.

That said, I think that the package of amendments that we have lodged, along with those that we are minded to support, will create the strongest possible duty on the Scottish ministers to maximise the uptake of Scottish assistance.

09:45

**The Convener:** The question is, that amendment 4 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Motherwell and Wishaw) (SNP)  
Balfour, Jeremy (Lothian) (Con)  
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)  
Maguire, Ruth (Cunninghame South) (SNP)  
Tomkins, Adam (Glasgow) (Con)

**Against**

Griffin, Mark (Central Scotland) (Lab)  
Johnstone, Alison (Lothian) (Green)  
McNeill, Pauline (Glasgow) (Lab)

**The Convener:** The result of the division is: For 6, Against 3, Abstentions 0.

*Amendment 4 agreed to.*

*Amendment 102 moved—[Mark Griffin].*

**The Convener:** The question is, that amendment 102 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Griffin, Mark (Central Scotland) (Lab)  
Johnstone, Alison (Lothian) (Green)  
McNeill, Pauline (Glasgow) (Lab)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Motherwell and Wishaw) (SNP)  
Balfour, Jeremy (Lothian) (Con)  
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)  
Maguire, Ruth (Cunninghame South) (SNP)  
Tomkins, Adam (Glasgow) (Con)

**The Convener:** The result of the division is: For 3, Against 6, Abstentions 0.

*Amendment 102 disagreed to.*

*Amendment 78 not moved.*

*Amendments 5 and 6 moved—[Jeane Freeman]—and agreed to.*

*Amendment 113 moved—[Pauline McNeill].*

**The Convener:** The question is, that amendment 113 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Griffin, Mark (Central Scotland) (Lab)  
Johnstone, Alison (Lothian) (Green)  
McNeill, Pauline (Glasgow) (Lab)

**Against**

Adam, George (Paisley) (SNP)  
 Adamson, Clare (Motherwell and Wishaw) (SNP)  
 Balfour, Jeremy (Lothian) (Con)  
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)  
 Maguire, Ruth (Cunninghame South) (SNP)  
 Tomkins, Adam (Glasgow) (Con)

**The Convener:** The result of the division is: For 3, Against 6, Abstentions 0.

*Amendment 113 disagreed to.*

*Section 1, as amended, agreed to.*

**After section 1**

**The Convener:** Amendment 57, in the name of Adam Tomkins, is grouped with amendment 138.

**Adam Tomkins:** At paragraph 143 of the committee's stage 1 report, we recommended

"that the Scottish Government clarify the legal status of the principles contained"

in section 1

"and where appropriate amends the Bill to achieve this clarity."

We made that recommendation unanimously because we took evidence, principally from academic lawyers, that there was likely to be grave doubt about the legal status of the principles. My amendment 57 is designed to avoid what would otherwise be, I think, wholly unnecessary and very expensive and potentially quite protracted litigation designed to obtain an answer from the tribunals or the courts to the question, "What is the status of these principles?"

Professor Mullen, my colleague at the University of Glasgow law school and one of Scotland's leading administrative lawyers, said in written evidence to the committee:

"If the legal status of the principles is not clarified, citizens and their advisers may be unsure what their rights and the Scottish Government's obligations under social security legislation are and there may be wasteful litigation to determine their meaning and effect."

That is in our stage 1 report, but I want to read it into the record for today. My amendment 57 is designed to ensure that we do not have to endure that unnecessary and, as Professor Mullen puts it, "wasteful" litigation to ensure their meaning and effect.

The wording of amendment 57 is drawn from wording that we already have on the statute book in the Criminal Justice (Scotland) Act 2016, which provides for the legal status of codes of practice on police searches that are to be made by ministers.

Amendment 57 takes a similar approach to that taken in section 75 of the Criminal Justice

(Scotland) Act 2016, and says that courts or tribunals in relevant proceedings

"may take the Scottish social security principles into account when determining any question arising in the proceedings to which the principles are relevant",

but that

"Breach of the principles does not of itself give rise to grounds"

for a fresh legal action.

That, I hope, will clarify the legal doubt that exists with regard to section 1 of the bill, meet the concerns that Professor Mullen and others put to us at stage 1, and satisfy this committee's unanimous recommendation in paragraph 143 of our stage 1 report that this issue needed to be put right at stage 2.

I move amendment 57.

**Mark Griffin:** I lodged amendment 138 because I felt that, without any link to the principles, there was a real gap around ensuring that the principles are enforced and that ministers are bound by them.

We have been in discussion with the Government about amendment 138. I understand that how it is drafted could have unintended consequences and that there is a potential for payments to claimants to be stopped as a result of a court decision. I will not be moving the amendment at this point because of those unintended consequences, and before stage 3 I hope to explore further with members and the Government how we can go about closing that accountability gap in relation to placing a duty on ministers to abide by the principles.

**Ben Macpherson:** I am glad that Adam Tomkins lodged amendment 57, because it covers a really important point that we need to consider. Both he and I asked questions on this matter during stage 1.

We are creating an important and leading piece of legislation in terms of the devolution of powers to the Scottish Parliament and the Scottish people. It is an innovative and forward-looking approach to have these principles within a piece of legislation. The importance of that cannot be stressed enough.

Their inclusion is defining the ethos and nature of the system within the legislation of creation, in a similar manner—to my mind—to what was done in the creation of this Parliament under the Scotland Act 1998, which stated in section 1:

"There shall be a Scottish Parliament."

To me, the principles in section 1 of the bill that we are debating today set the tone, character, ethos and nature of the Scottish social security system.

They are principles that should be made easily accessible to individuals all across Scotland who will be interacting with the system. Therefore, I welcome their position at the beginning of the bill, where they define the nature, value and ethos of the social security system.

The place for considering the principles' legal status and their relationship with individuals and their rights is in the charter. That is why I am not inclined to support Adam Tomkins's amendment 57. However, I absolutely support his amendment 61, on the charter.

I am glad that Mr Griffin has decided not to move amendment 138 and thank him for that. As he stated, it could have potential unintended consequences for claimants and cohesion.

**Pauline McNeill:** I want to speak to amendment 57, because if it is passed at stage 2 it will create a really important section of the bill. Often, courts are not clear what sources or references are competent for them to use. The amendment makes it absolutely clear that any

"court or tribunal in civil or criminal proceedings may take the ... social security principles into account when determining any question".

It is important to note that the second part of the amendment says that

"Breach of the principles does not of itself give rise to"

grounds for legal action. That is an important caveat. I am always in favour of clarity where the courts are concerned. There is less scope for the courts to make things up if they have a parliamentary reference. The provisions in amendment 57 will prove to be a useful aspect of the bill when it comes to determining how to apply the principles in the cases that I am sure will arise in the future.

**Ben Macpherson:** In my earlier remarks, I should have touched on the fact that if we give the principles the sort of legal effect that amendment 57 envisages, we will need to go through them afresh and think about how we create a large set of complex legal definitions around them. There is a whole set of possible unintended consequences.

**Pauline McNeill:** I do not see it that way, because of the way that amendment 57 is worded. If it had said that the courts "must" take the principles into account, that would be different. That is my reading, and I am sure that Mr Tomkins will talk about that when he sums up.

I can envisage a situation in which it might be argued that the principles are not a competent reference point for a court or tribunal. Amendment 57 provides some clarity. It is because of the proposed subsection 2 that I am inclined to support it, because that says that breach of the

principles does not give rise to grounds for any legal action.

I do not believe that, as the amendment stands, we would have to go back and provide any further detail on the principles, but that is just my view.

10:00

**Jeane Freeman:** On the basis of my intention to support Mr Tomkins's amendment 61 on the enforceability of the charter, which we will come to later, I invite him not to press amendment 57. Section 2 makes it clear that the charter is the expression of the principles in concrete terms. Therefore, it is right that judges take that into account, and that is why I will support his amendment on the charter when we come to it. However, I do not support amendment 57.

The principles define the ethos of social security in Scotland. They are high-level statements because they express ideals that are intended to hold over time, but what upholding those ideals looks like will change, in practical terms, as society changes.

That is where the charter comes in. Its purpose is to translate the principles into the specific actions that ministers must take, and the standards that they must meet, to ensure that the principles and ambitions are realised. The charter is the bridge between the ethos and the services that people will receive on the ground. Every five years, through a process of consultation with the people of Scotland, the charter will be looked at again. Where necessary, it will be updated so that it continues to reflect what society thinks the principles should mean in practice.

In addition to informing the charter, the principles will inform social security regulations, as members will see when we discuss the amendments on the independent Scottish commission on social security. The commission will assess and report on whether proposals for regulations are consistent with the principles. The commission's report will then form part of the Parliament's consideration of the draft regulations. The principles will be translated through that process, with people who have direct experience of the current system, into standards that are outlined in the charter and into legal rules through regulations. Therefore, by taking account of the charter and applying the regulations, courts and tribunals will already be part of the system for upholding the principles.

In my view, it is neither necessary nor appropriate for judges to look behind the charter to the principles. By doing so, they would be substituting the views expressed through the charter with their own views about what the

principles mean. I do not believe that the judiciary would thank us for giving it that job.

Like Mr Macpherson, I am grateful to Mr Tomkins for raising those issues, as he has done consistently, because it is important that they are debated, and that we are all absolutely clear. As I have said, it is right that courts and tribunals have a role in ensuring that the standards that are set by the Scottish people are met. That is why I will support amendment 61, in the name of Adam Tomkins, in relation to the charter. However, it should not be for the judiciary to look behind those standards, so I invite Mr Tomkins not to press amendment 57.

I am grateful to Mr Griffin for not moving amendment 138, and welcome the opportunity of a discussion with him in advance of stage 3 to see whether we can find an appropriate way to meet his intention.

**The Convener:** I invite Mr Tomkins to wind up and to press or withdraw amendment 57.

**Adam Tomkins:** This has been a really important debate and I am grateful to the minister and all the members who have spoken in it. It is important because, as the committee said in its stage 1 report, we believe

“that the current confusion on the legal status of the principles contained in the Bill is not helpful and that their status must be clarified.”

There is no other amendment at stage 2 that clarifies the legal status of the principles, so I will press amendment 57. I will do so because the amendment provides the clarity that we are seeking without being overly prescriptive.

It is very important that, as legislators, we do not tell courts how to decide cases. Amendment 57 does not do that, because it provides that courts or tribunals “may” take the principles into account in proceedings when they deem them to be “relevant”, so it leaves all the discretion in the hands of the courts and tribunals; it does not tell courts and tribunals how to decide individual cases.

We are translating political principles that we all share—notwithstanding the fact that we come from different political perspectives—into law. In moving amendment 77, which was the first amendment on which we voted, Mr Adam referred to principles in documents. The bill is not a document; it will be an act of Parliament, a statute and a law. It is incumbent upon us, as lawmakers, to ensure that courts and tribunals, and the people who will use them, have clarity and not vagueness about the meaning of the words that we put on to the statute book in Scotland. In the committee’s stage 1 report, we took the unanimous view that section 1 does not have that clarity, and amendment 57 seeks to bring it.

I very much welcome the support from Mr Macpherson and the minister for amendment 61, on the charter, to which we will come, but legal clarity on the charter and legal clarity on the principles are both important; they are not substitutes for one another. Amendment 61 will do work that is different from the work that will be done by amendment 57. For that reason, I press amendment 57.

**The Convener:** The question is, that amendment 57 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Balfour, Jeremy (Lothian) (Con)  
Griffin, Mark (Central Scotland) (Lab)  
Johnstone, Alison (Lothian) (Green)  
McNeill, Pauline (Glasgow) (Lab)  
Tomkins, Adam (Glasgow) (Con)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Motherwell and Wishaw) (SNP)  
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)  
Maguire, Ruth (Cunninghame South) (SNP)

**The Convener:** The result of the division is: For 5, Against 4, Abstentions 0.

*Amendment 57 agreed to.*

*Amendment 138 not moved.*

*Amendment 7 moved—[Jeane Freeman].*

*Amendment 7A moved—[Mark Griffin].*

**The Convener:** The question is, that amendment 7A be agreed to. Are we agreed?

**Members:** No.

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

**For**

Griffin, Mark (Central Scotland) (Lab)  
Johnstone, Alison (Lothian) (Green)  
McNeill, Pauline (Glasgow) (Lab)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Motherwell and Wishaw) (SNP)  
Balfour, Jeremy (Lothian) (Con)  
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)  
Maguire, Ruth (Cunninghame South) (SNP)  
Tomkins, Adam (Glasgow) (Con)

**The Convener:** The result of the division is: For 3, Against 6, Abstentions 0.

*Amendment 7A disagreed to.*

*Amendment 7B not moved.*

*Amendment 7 agreed to.*

**The Convener:** Amendment 8, in the name of the minister, is grouped with amendments 9, 58, 59, 112, 139, 39 and 75. I invite the minister to

move amendment 8 and to speak to all the amendments in the group.

**Jeane Freeman:** I am grateful for the opportunity to open the discussion on this group of amendments. I start by stressing the areas on which I think that we all agree.

We agree on the importance of independent advocacy and advice, we agree that it is vital that people have a right to receive information about how to access the support that they need when interacting with the new social security agency and we agree that there should be a statutory duty on ministers to ensure that people know about the independent advocacy and advice services that are available. All that said, I take this opportunity to ask Jeremy Balfour not to move his amendments 58, 59 and 75 because—as other members and I know—there remain disagreements among stakeholders about the appropriate definition of the group of people who should receive that support.

I well understand the difficulty, and I am sure that Mr Balfour and colleagues do, too. It is not easy, but I want us to try to reach agreement. I ask Mr Balfour not to proceed on the basis of disagreement, but to work with us to see whether we can reach an agreement with stakeholders and representative organisations in advance of stage 3. I think that an agreement can be reached, but I want us to use our time before stage 3 to get this right and ensure that we provide support for those who need it.

As things stand, amendment 9 sets out the Scottish Government's starting point—our baseline, if you will—that we are prepared to move on, if we can reach an agreement in advance of stage 3 on how far we need to move. Amendment 9 provides a specific right to advocacy and places the Scottish Government under a direct duty to ensure that sufficient advocacy services are available. We have used the definition of “mental disorder” set out in the Mental Health (Care and Treatment) (Scotland) Act 2003 as our starting point—I stress that this is only a starting point—to define the group who will have the statutory right to advocacy.

I consider that individuals covered by the definition in the 2003 act, which includes those with learning difficulties, mental illness or a personality disorder, are those who would most benefit from an advocate to assist them in discussions with the social security agency. However, I realise that there might be others who do not fall into that category but who require such advocacy and, as I have said, I am open to further discussion with regard to developing the definition in advance of stage 3.

I believe that our proposals are further strengthened by amendment 39, which establishes a right for an individual to have “a supporter” if they need or want one. A supporter could be a friend, a family member or someone from any of the excellent organisations that provide independent advocacy and advice services across Scotland. As I have heard—indeed, Pauline McNeill raised this during the stage 1 debate—the right to a supporter is not consistently honoured in health assessments under the current DWP system. That runs contrary to our rights-based approach. If we truly want our system to have fairness, dignity and respect at its heart, we should give people the right to have a person to support them when they need it.

Amendments 58, 59 and 75, in the name of Mr Balfour, also address the issue of advice and advocacy. Amendment 58 would put in the bill a right for independent information and advice to be provided to anyone applying for—or thinking about applying for—Scottish social security assistance. Although I agree with the intent in principle—indeed, it is similar to the aims of my amendment 8—Mr Balfour's amendment provides a list of information and advice topics that should be provided, and I do not think that we should restrict what information and advice should be provided. I believe that providers of independent advice, who are, by definition, independent from the system, should be allowed to advise on any aspect of social security, as well as operate in a manner that best serves their clients. Moreover, much of what is listed in amendment 58, such as the assistance that an individual is entitled to or the content of the social security charter, is covered by other aspects of the bill. As a result, I ask Mr Balfour not to move amendment 58 and urge the committee to support amendment 8 in my name.

Amendment 59, in the name of Mr Balfour, widens the entitlement of independent advocacy services to everyone who has applied for Scottish social security assistance. As I have said, we know that our stakeholders are divided on this matter and, before we get to stage 3, I want to reach agreement on a definition of the group that requires this support. I therefore urge Mr Balfour to work with us, our stakeholders and indeed the committee to ensure that we secure that agreement in advance of stage 3. As for amendment 75, which is also in the name of Mr Balfour, it is merely technical and, as such, would not be required if he were to choose not to move amendments 58 and 59.

I am pleased to support amendment 112 in the name of Ms Maguire on inclusive communication, as it goes to the heart of our ambitions to take a rights-based approach and to place the needs of individuals at the centre of this new public service.



Indeed, I know that stakeholders have pressed for such an amendment.

Of course, amendment 112 means that amendment 139, in the name of Mark Griffin, is not required, because their aims are essentially the same. Moreover, in my view, amendment 139 has difficulties, because it is overly prescriptive with regard to the kinds of information that it lists, such as claim forms and notices of determination. If amendment 112 is agreed to, those basic and fundamental documents will be provided to people in an accessible format as a matter of course. In addition, it is important to remember that two of the founding ideals of our system are co-production and a rights-based approach. The people who will use the system are, through experience panels and other means, helping us design correspondence and forms and are therefore helping us to make sure that they and other aspects of the system are accessible.

I have already asked Mr Balfour not to move amendments 58, 59 and 75 but, if he chooses to go ahead with them, I urge the committee to support neither them nor amendment 139 from Mr Griffin. Instead, I ask members to support amendments 8, 9 and 39 in my name and amendment 112 in the name of Ms Maguire. I believe that these amendments, alongside previous amendments, will provide a much stronger legislative framework for advocacy, advice and support for those who will use the social security system. We have the opportunity not only to move forward on this matter today but to continue discussions in advance of stage 3 in order to reach further agreement on the question of independent advocacy.

I move amendment 8.

10:15

**Jeremy Balfour:** I will work through the amendments backwards. We will be supporting Mark Griffin's amendment 139 and Ruth Maguire's amendment 112, both of which are important. They deal with different disabilities and different forms of inclusion, so it would be helpful to have them both in the bill. Although the minister has indicated that the Government is working with stakeholders to design forms and everything is going to be cuddly, we have to pass legislation that will be in place for years to come, and I think that it is helpful to have protection for people who have visual and communication impairments.

I turn to the three amendments in my name. As someone who has spent 20 years sitting on tribunals and who has also had to apply for DLA and the new PIP, I think that my amendments address an important area for claimants. I welcome the fact that there is now a clear

recognition from the committee and from the Government that there is a difference between advocacy on one hand and information and advice on the other. I think that, particularly in the committee's thinking, those two elements were seen as the same thing, but it is important to pull them apart. I therefore welcome the recognition of that and the fact that the Government has lodged two separate amendments.

I intend to move amendment 58. The legislation must clearly set out the fact that claimants will be entitled to information and advice, starting from the level at which somebody goes into their local citizens advice bureau or advice shop or contacts a service that is run by another charity or organisation and says, "I do not know how to fill out this form." I was talking to a family member who has a daughter who has Down's syndrome and is in the process of transferring from DLA to PIP. She is extremely well educated but trying to fill in that form without any help caused immense stress and difficulty. A lot of issues will be resolved if people seek advice and assistance at an early stage and get the form filled out in a way that is helpful and correct. If that is done, the system should flow much more clearly. However, for others, help will be required in relation to attendance at tribunals, if that is necessary, and other legal issues. Therefore, I think that it is important that amendment 58 is agreed to.

On independent advocacy, I am grateful that the minister has lodged amendment 9, although I believe that the definition of mental disorder that it uses is too limiting and excludes people who would need independent advocacy. I recognise that my amendment would open independent advocacy to anybody and everybody, and I accept that the definition in it might be too wide. Therefore, I will not move amendment 59, and we will support the Government's amendment. However, we do so with the caveat that we need to have a better definition of mental disorder. If we cannot get that by stage 3, I will reintroduce my amendment. If we cannot get a definition that we agree on, it is better if the definition is too wide than too narrow.

The wording that the minister and Pauline McNeill have used on having somebody present is helpful. For some people, advocacy will require professional help—someone who is paid to do it—but, for many people, advocacy will simply be somebody who can sit with them, such as a family friend. It must be seen holistically and in a wide-ranging way. I hope that, by using the advice of stakeholders and other people, we can get to a definition that allows people to feel that they will have somebody there for the whole process to give them the support that they require.

**Ruth Maguire:** I am grateful to Kim Hartley Kean from the Royal College of Speech and Language Therapists as well as Inclusion Scotland, Citizens Advice Scotland and Camphill Scotland for all their work on amendment 112.

Inclusive communication is communication that is inclusive of the largest number of people in the population. The key message is that inclusive communication is for everyone and no one has ever complained that a public service was too easy to understand or get their point across to.

Communication disadvantage is strongly associated with socioeconomic disadvantage, and we all know that difficulties in understanding complex instructions, in expressing yourself verbally and with the ability to read and write are a major barrier to education, employment and outcomes in general. Studies have shown that 80 to 100 per cent of young people who are not in employment, education or training have underdeveloped communication skills. Communication disability is also experienced by many people who live with disabilities and long-term conditions, including everyone who has an autism spectrum disorder, dementia or Parkinson's disease, around 80 per cent of people with a learning difficulty and at least 30 per cent of people who have had a stroke.

If communication is not inclusive, we can expect that actual and potential recipients of entitlements will not respond to advice and information, will not turn up, will make mistakes in applications and will not fulfil their obligations.

**Jeremy Balfour:** Does Ruth Maguire acknowledge that her amendment does not help people who have a visual impairment? People cannot communicate if they cannot read the form, which is why the form needs to be right before they can communicate.

**Ruth Maguire:** Your question gets to the key of the matter. Inclusive communication is not about forms; it is about giving information, and letting people provide the information that we seek, in whatever form—I mean mode, not paper form—that they need. If we do not have inclusive communication, which would include Braille, we will have a lower take-up of entitlement, processes will take longer, there will be reduced efficiency—which can mean more cost—and, troublingly, there will be increased potential for frustration and challenging interactions between staff and recipients.

We need inclusive communication in the bill. There is an opportunity for Scotland to lead transformational change. It took legislation to implement communication inclusion for British Sign Language users and we need it for all communication-disadvantaged groups. A

centralised approach supported by primary legislation will facilitate consistency and mainstreaming of quality inclusive communication practice for everyone.

I urge everyone to support amendment 112.

**Mark Griffin:** I will come on to amendments 112 and 139, but first I will speak about the committee's recommendation that independent advocacy be included in the bill, and the Government's response to that.

I welcome the minister's amendment 9. I also welcome her comment that it sets out a baseline of entitlement and that, to ensure that everyone who needs advocacy or would benefit from it is adequately supported, we will work towards a stage 3 amendment that more adequately fits what stakeholders seek. Therefore, I will support her amendments 8, 9 and 39.

Amendment 139, in my name, is supported by the Royal National Institute of Blind People, which I thank for the work that it has done with me. Stakeholders and I do not feel that amendment 112 fully covers accessible formats. It recognises the importance of communicating in an inclusive way, which we welcome, but it does not ensure that all documents relating to the system will be accessible. Ministers could quite easily

"have regard to the importance of communicating in an inclusive way"

but not follow through on it with any real adjustments that would achieve that. My amendment 139 sets out exactly which information will need to be accessible. As a result, stakeholders and I feel that it is much more comprehensive.

I also argue that the amendment goes—

**Ruth Maguire:** Will the member take an intervention?

**Mark Griffin:** Yes.

**Ruth Maguire:** I thank Mr Griffin for taking my intervention. Amendment 139 is quite prescriptive about what is needed. If additional forms or papers were needed, would we need to amend the primary legislation in order to update it?

**Mark Griffin:** I will be happy to come back at stage 3 and amend again to reflect that further information could be required and that it could be added at a later stage, but I will press my amendment 139 as it is at this point.

**Adam Tomkins:** Will Mr Griffin take a further intervention on that point?

**Mark Griffin:** Yes.

**Adam Tomkins:** Is the point that Ruth Maguire makes not covered by proposed new subsection (2)(h) in the amendment, which says

“any other document which the Scottish Ministers are required to publish”?

**Mark Griffin:** Yes. I thank Mr Tomkins for that helpful intervention. I will close there.

**Alison Johnstone:** I will support all the amendments in the group that we have discussed so far. I do not see Ruth Maguire’s and Mark Griffin’s amendments on inclusive communication and accessible information as being mutually exclusive, and I thank them both for the work that they have done in those areas.

I very much hope that, at stage 3, we will arrive at a strengthened position on the right to advocacy. I appreciate the minister’s commitment to look at that issue more broadly, and I agree whole-heartedly with Mark Griffin when he says that the current position is a baseline. If Mr Balfour is content to not move amendment 59 with the guarantee that a strengthened amendment will be lodged at stage 3, then I, too, am content with that.

It is right to say that the committee has devoted a good time to discussing the need for advocacy and for advice, and there is recognition that some people will require one while other people require the other or both. It is important that the completed bill gets that absolutely right.

**Pauline McNeill:** As other members have said, this is a very important aspect of the bill. I whole-heartedly welcome the Scottish Government’s approach, in principle, to recognising the importance of advocacy in the system. There is a differentiated position between professionals who advocate on behalf of others and those who are there to support. I will clarify that. When I spoke about that at stage 1, many professional advocates said that they were not allowed to speak on behalf of claimants because there was no formal recognition of their role. We should therefore all welcome the fact that the principle will be contained in the bill. Perhaps we will get some consensus between now and stage 3 about how wide it will be.

I find stage 2 procedure rather odd. If a member moves the lead amendment in a group, they have a chance to sum up, but if they have an amendment in the middle of the group, there is no procedure for summing up. That means that interventions are important.

**Adam Tomkins:** Do you want me to intervene?

10:30

**Pauline McNeill:** I would like Jeremy Balfour to intervene in order to answer my question. His amendment 58 is about information and advice.

As he points out, there is a difference between advocacy and support on the one hand and information and advice on the other. I want to be absolutely clear about the implications of amendment 58, which provides that

“An individual applying, or considering applying, for assistance through the Scottish social security system is entitled to independent information and advice about”

a range of things, such as how to apply. Does that mean that the provision has a financial implication for the Government? How does he envisage amendment 58 being financially supported if it becomes part of the bill?

**Jeremy Balfour:** I do not see the amendment changing how things work at the moment. The Scottish Government, through local authorities and other means, already funds citizens advice bureaux, advice shops in some cities, and so on. In Edinburgh, we also have bodies such as Granton Information Centre, which is in Mr Macpherson’s constituency. Such groups would continue to do the work. I do not see it as a major change. Money would have to be provided, but it is already being provided, either by the Scottish Government or by the local authority.

In answer to the minister’s point, I add that the list in paragraphs (a) to (e) of proposed new subsection (1) in amendment 58 can be looked at. However, I have worded it so as not to be prescriptive—those are not the only things that can be covered. The amendment does not make a major change to what is already happening, but it would make that statutory.

**Pauline McNeill:** Thank you. That is very helpful.

**The Convener:** Helpful interventions are welcome, but I will try to let members in if they want to come back in on issues before the summing up.

**George Adam:** I agree that it is important that we get this point right. We have talked about advocacy and advice and have been round the houses on that. I have concerns that, although such services are already provided by advice centres, as Mr Balfour mentioned, provision is quite patchy across the country. In my area we have a CAB and council advice as well as other organisations, but that is not necessarily the case in other areas. In order to get it right, we must know exactly what we are trying to deliver. That is why I have problems with amendment 58, in particular.

Jeremy Balfour says that he wants people to be able to have someone with them and that their advocate might be a friend or a family member. That right to have a supporter is exactly what the minister is offering.

**Jeremy Balfour:** We are getting confused on that issue. Depending on a person's disability, they may require a friend or an advocate to give them the support that they need at a tribunal or medical assessment or whatever, but they might also need someone to put their case across in a way that is legally understandable. There is a difference in function between the two.

Tribunals often result in a good situation where the claimant has a parent, friend or sibling there to give them emotional support but they also have someone there from the CAB who is able to put their case across and explain why they are entitled to the benefit. That is right. It is not an either/or situation: it could be one or the other or it could be both. That is what amendment 58 seeks to provide.

**George Adam:** That makes me even more concerned. I mentioned that some areas do not have CAB support or other advice services, and the member is muddling advice, information, advocacy and moral support. We must ensure that we are clear in that regard and that we create a system in which everybody gets access to the advice that they need. I do not think that amendment 58, however well intentioned it might be, does that for us.

I have a question that I hope the minister and Mr Balfour will respond to when summing up. Who would provide those services? How would they be provided? At this stage, it seems as though we have only warm words, because there does not seem to be anything in place.

**Ben Macpherson:** I thank all those who lodged amendments on these matters. I absolutely recognise the importance of independent advice and independent advocacy, and the evidence that we took throughout stage 1 was crucial in delineating their different aspects. Sometimes, particularly at the beginning of our evidence taking, the evidence on those issues was muddled. We must be clear and distinct about the differentiation between advocacy and advice, as Jeremy Balfour has stated.

The importance of both advocacy and advice is recognised and will be taken forward by amendment 8, in the name of the minister, so I will support it, and the right to advocacy will be taken forward by amendment 9, in the name of the minister, so I will support that, too.

I have difficulties with amendment 58. As I said, independent advice and independent advocacy are important, but the amendment would place an entitlement to "independent information and advice". We need to be pragmatic and consider the fact, which Mr Balfour alluded to in his comments, that the local government funding settlement currently covers that provision in this

city and elsewhere. It is important to give an entitlement to the right to advocacy, but an entitlement to the right to independent advice is something different. To seek a right to information and advice would have been a more pragmatic option to consider, but "independent information and advice" is much more problematic to deliver and, as I said, it is covered by the local government funding settlement.

I appreciate Mr Balfour's position on amendment 59 and that he will not move it.

I fully support Ruth Maguire in recognising the importance of inclusive communication. The holistic and comprehensive approach that is set out in amendment 112 covers the points that Mark Griffin seeks to add in amendment 139. Although I appreciate Adam Tomkins's point that proposed new subsection (2)(h) in amendment 139 would give accessibility to new documents, we do not need the list to be as exhaustive as it is in that amendment.

I will not support amendment 139, but I will support amendment 112, because it rightly recognises the importance of inclusive communication.

**The Convener:** I am conscious of the time, so I ask Ms Maguire to make her comment quickly.

**Ruth Maguire:** I will be brief, convener. I want to add to what Ben Macpherson said about advice. My main concern about amendment 58 is that, when people who need advice get it from citizens advice bureaux, local authority money matters advice teams or housing teams, that advice is about all aspects of their life, because issues cannot be dealt with in isolation. To make "independent information and advice" an entitlement would make the situation very complicated, because information and advice is provided by multiple providers.

**The Convener:** I see that Mr Balfour wants to come back in. Please be brief.

**Jeremy Balfour:** I will pick up on two points that have been raised. First, on how "independent information and advice" would be implemented, proposed new subsection (4) in amendment 58 states that the functions may be delegated by ministers—that is how it would work.

Secondly, I am slightly intrigued by George Adam's comments. I agree that good advice is being provided in places such as Paisley, the Scottish Borders and here in Edinburgh and that the situation is patchy in other parts of the country, but the fact that it is patchy in those areas does not mean that the people there should not be entitled to the same advice and assistance that those in big cities or certain rural areas can get.

**George Adam:** We are making it a right for those people to get advice, but what I am saying is that this is a bit of a cart-before-the-horse situation. If you admit that advice and assistance is not available in certain parts of the country but say that the people there have the right to that advice and assistance, my question is: where is the structure? How would you deliver that?

**Jeremy Balfour:** We would deliver it through support for more citizens advice bureaux across the country. That would be one very practical way of doing it.

**Ruth Maguire:** It is really important to note that citizens advice bureaux and Citizens Advice Scotland do magnificent work but, locally, I know of a number of housing associations and community associations and, indeed, work by the local authority, and there needs to be space and room for all of them. There is just not a simple answer to this.

**Jeremy Balfour:** Absolutely, and it will be up to the individual claimant to decide which organisation to go to. That is what happens at the moment in Edinburgh, where people can go to the CAB, the advice shop, Granton Information Centre and so on. I am not being prescriptive here—I want it to be up to the claimant to decide who to get advice from.

**The Convener:** With that, we move to the minister for the summing up.

**Jeane Freeman:** I will be as brief as I can be, convener. I am grateful to Mr Balfour for saying that he will not move amendment 59 and for supporting the Government amendment. I am also grateful for the understanding that he and other committee members have shown for the approach that I want to take.

Amendment 9 provides what many stakeholders have asked for but, as I have made clear, I fully appreciate that it sets out our baseline, and I look forward to the constructive discussions that we will have with stakeholders, Mr Balfour and others as we move towards stage 3 to try, if possible, to improve on that position.

Likewise, I urge support for amendment 8, which states that

“Scottish Ministers must have regard to the role”

of independent advocacy and advice in ensuring that an individual is given what they are eligible for under the Scottish social security system. That must include

“providing, or ensuring the provision of, information”

about independent advocacy and advice to those individuals.

That brings me to my difficulty with amendment 58, which I urge Mr Balfour not to move—and which, if he chooses to move it, I urge the committee not to support, for a number of reasons. First, it is overly prescriptive with regard to the nature of the advice that must be delivered. To me, it is not appropriate to put such a prescription on independent providers of advice. Moreover, although I am sure that this is not intended, the wording of the amendment is ambiguous with regard to the implications for resource allocation and demand. That kind of ambiguity and lack of clarity over the potential expenditure of public resource does not make for good law. Again, I urge members not to support amendment 58.

I am grateful for the support for amendment 39, which establishes a right for an individual to have a supporter if they need or want one. If I may say so, I think that this is a significant aspect of the bill. No one has pressed for it very much, but I know that stakeholders have greatly welcomed it, and I think it will make a significant difference to everyone who uses the social security system in Scotland. After all, we all at some point need someone beside us to give us a helping hand. I have three such people beside me at the moment, and I fully appreciate the importance of that sort of thing simply in psychological terms, if in no others.

10:45

I am happy to support amendment 112, in the name of Ruth Maguire. Inclusive communication is precisely as it says, and it supports the rights-based approach that is at the very centre of the Scottish system.

I ask Mark Griffin not to move amendment 139, for two reasons. First, there is a standard associated with inclusive communication that the Scottish Government has signed up to; it was set out in the argument that was made by stakeholders, and it has now been translated by Ms Maguire into her amendment. Individuals with visual or hearing impairments are, of course, included in that.

Moreover, the Equality Act 2010 places an additional duty on all of us to ensure that communication is accessible. Of course, we all appreciate that communication goes much wider than forms and bits of paper, but I must point out again that the social security system that we are establishing will not cover 11 benefits alone; it must be capable of growth should the opportunity arise. Consequently, it is reasonable to expect that the kinds of written and other communication that the agency might wish to use will change over time.

I also remind members that we are committed to co-production in how the agency communicates

with those who seek the assistance that they are entitled to. I would not want to unintentionally exclude our experience panels or others to whom we have made that strong commitment, or to cut them out as a result of anything that we might, for the best of reasons, have done.

With that, I urge members to support the amendments in my name and in the name of Ms Maguire, and I again express my gratitude to Mr Balfour for not moving amendment 59.

**The Convener:** I am very mindful of the time, but I felt that it was important to the stage 2 proceedings to let that debate run on. I am minded to give members a five-minute comfort break, but I must ask everyone to be back in their seats by six minutes to 11 so that we can continue.

10:46

*Meeting suspended.*

10:54

*On resuming—*

**The Convener:** The question is, that amendment 8 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Motherwell and Wishaw) (SNP)  
Griffin, Mark (Central Scotland) (Lab)  
Johnstone, Alison (Lothian) (Green)  
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)  
Maguire, Ruth (Cunninghame South) (SNP)  
McNeill, Pauline (Glasgow) (Lab)

**Against**

Balfour, Jeremy (Lothian) (Con)  
Tomkins, Adam (Glasgow) (Con)

**The Convener:** The result of the division is: For 7, Against 2, Abstentions 0.

*Amendment 8 agreed to.*

*Amendment 9 moved—[Jeane Freeman]—and agreed to.*

*Amendment 58 moved—[Jeremy Balfour].*

**The Convener:** The question is, that amendment 58 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Balfour, Jeremy (Lothian) (Con)  
Griffin, Mark (Central Scotland) (Lab)  
Johnstone, Alison (Lothian) (Green)  
McNeill, Pauline (Glasgow) (Lab)  
Tomkins, Adam (Glasgow) (Con)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Motherwell and Wishaw) (SNP)  
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)  
Maguire, Ruth (Cunninghame South) (SNP)

**The Convener:** The result of the division is: For 5, Against 4, Abstentions 0.

*Amendment 58 agreed to.*

*Amendment 59 not moved.*

*Amendment 112 moved—[Ruth Maguire]—and agreed to.*

*Amendment 114 moved—[Mark Griffin].*

**The Convener:** The question is, that amendment 114 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Motherwell and Wishaw) (SNP)  
Griffin, Mark (Central Scotland) (Lab)  
Johnstone, Alison (Lothian) (Green)  
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)  
Maguire, Ruth (Cunninghame South) (SNP)  
McNeill, Pauline (Glasgow) (Lab)

**Against**

Balfour, Jeremy (Lothian) (Con)  
Tomkins, Adam (Glasgow) (Con)

**The Convener:** The result of the division is: For 7, Against 2, Abstentions 0.

*Amendment 114 agreed to.*

*Amendment 115 moved—[Mark Griffin].*

**The Convener:** The question is, that amendment 115 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Motherwell and Wishaw) (SNP)  
Griffin, Mark (Central Scotland) (Lab)  
Johnstone, Alison (Lothian) (Green)  
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)  
Maguire, Ruth (Cunninghame South) (SNP)  
McNeill, Pauline (Glasgow) (Lab)

**Against**

Balfour, Jeremy (Lothian) (Con)  
Tomkins, Adam (Glasgow) (Con)

**The Convener:** The result of the division is: For 7, Against 2, Abstentions 0.

*Amendment 115 agreed to.*

*Amendment 139 moved—[Mark Griffin].*

**The Convener:** The question is, that amendment 139 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Balfour, Jeremy (Lothian) (Con)  
Griffin, Mark (Central Scotland) (Lab)  
Johnstone, Alison (Lothian) (Green)  
McNeill, Pauline (Glasgow) (Lab)  
Tomkins, Adam (Glasgow) (Con)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Motherwell and Wishaw) (SNP)  
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)  
Maguire, Ruth (Cunninghame South) (SNP)

**The Convener:** The result of the division is: For 5, Against 4, Abstentions 0.

*Amendment 139 agreed to.*

*Amendment 140 moved—[Alison Johnstone].*

**The Convener:** The question is, that amendment 140 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Griffin, Mark (Central Scotland) (Lab)  
Johnstone, Alison (Lothian) (Green)  
McNeill, Pauline (Glasgow) (Lab)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Motherwell and Wishaw) (SNP)  
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)  
Maguire, Ruth (Cunninghame South) (SNP)

**Abstentions**

Balfour, Jeremy (Lothian) (Con)  
Tomkins, Adam (Glasgow) (Con)

**The Convener:** The result of the division is: For 3, Against 4, Abstentions 2.

*Amendment 140 disagreed to.*

**The Convener:** Amendment 10 is in a group on its own. I invite the minister to speak to and move amendment 10.

11:00

**Jeane Freeman:** Thank you, convener. I will be as brief as I can.

I have always been clear that profit should never be a motive for or play any part in making decisions on or assessing people's eligibility for disability assistance. I gave a commitment to this Parliament and to the people of Scotland in April 2017 that the private sector would not be involved in assessments for Scotland's benefits. I lodged amendment 10 in response to calls that that commitment should be made clear in the bill.

The amendment makes it clear that the Scottish ministers can never require an individual to attend an assessment by anyone who is not employed in the public sector, and it applies that rule across the social security system in Scotland. The amendment allows decision makers to consider evidence that is derived from the private sector—for example, where the person has private health care arrangements—but only where the individual is content with that being done.

It also provides that receipt of United Kingdom benefits or other assistance can be made a condition of eligibility where entitlement to those benefits depends on private sector assessments. That provision may be relevant in relation to early years assistance, for example, because, as members who have looked at the Government's published illustrative regulations will know, it is proposed that eligibility will depend on being in receipt of certain UK benefits.

All of that said, I hope that members can support the amendment, as it translates my stated commitment on to the face of the bill.

I move amendment 10.

**The Convener:** Does any member wish to speak?

**Adam Tomkins:** We will not support the amendment. The committee was divided on the issue at stage 1, but the majority, including the Scottish Conservatives, believed that including a formal ban on private sector contractors in the bill could lead to unintended consequences. The majority of the committee did not support the proposal at that time and the Government did not support the proposal in its response to our stage 1 report. The minister has said before to the committee, and in the chamber, that she does not support a statutory ban on the private sector because of the danger of unintended consequences.

This is an unwelcome U-turn on the minister's part. It is disappointing that she has caved in to ideological pressure from the left, but it is not entirely surprising. We will not support the amendment.

**Mark Griffin:** As one of the minority on the committee who supported this proposal during our stage 1 evidence and reporting sessions, I pushed strongly for the Government to consider translating into legislation its policy ambition to exclude the private sector from any assessments. It will be no surprise that I am delighted to see the Government do so.

Stakeholders were clear in their evidence that they wanted to see a statutory ban. It would ensure that the private sector would have no role in assessments for social security under any

incoming Government that did not share Labour and Government members' support for the policy. It would give helpful assurance and clarity to the 100,000 or so disabled people who still have to go through PIP assessments and are desperate to see this policy enacted.

It is a very welcome U-turn, rather than unwelcome, as Mr Tomkins said. I am glad that the minister and other members have caught up with Labour's position. We have always felt that a ban could be placed in the bill to give people who go through an assessment the assurance that profit will never be a consideration.

**Pauline McNeill:** I add to what Mark Griffin said; the Scottish Government is to be commended for lodging the amendment. When I joined the committee, the subject was quite new to me. I was shocked at the extent to which the assessment affected people claiming benefits and at the manner in which it was conducted.

The amendment is quite clear that it is a restriction on the private sector only in relation to conducting

“an assessment of physical condition or mental health”.

It does not preclude the use of the private sector for other, appropriate activities, such as learning aspects of a social security system, which is what I think the minister meant by unintended consequences when we debated the issue at stage 1.

It is important to read the amendment in conjunction with what we have already debated—that this system is to be designed to promote the dignity and respect of people. The rules that accompany the restriction are the important things. I believe that amendment 10 represents substantial and important progress towards the type of social security system that we have the chance to design in Scotland, and I will wholeheartedly support it.

**Alison Johnstone:** I add my support, and thank the minister for lodging amendment 10. If we want our social security system in Scotland to be all that we wish it to be, we really want to move away from the Westminster model on this aspect. Those assessments are some of the most loathsome and loathed aspects of the system that is in place. It is absolutely clear that the private companies that have been carrying out the assessments have not been doing a good job; otherwise, there would not be so many successful appeals. I wholeheartedly welcome the amendment and will be pleased to support it.

**Jeremy Balfour:** This is ideology against good practice. If we go back 20 years, private companies were carrying out medical assessments without any complaints. What an

individual wants is a good assessment. Frankly, they do not care who does it. Yes, we need to improve the assessments, but I think that ruling out private companies from doing that will have unforeseen consequences. I am interested in the minister's answer to the question of who will do the assessments. Where are the people who are available to carry them out? Secondly, when assessments were done at home by the private sector, no one complained. We need good assessments, and to ensure that they are done properly. The claimants do not care whether they are done by private companies or the state.

**Ruth Maguire:** It is probably a bit unfair to characterise this as a U-turn, whether you are on the far right or the far left. As I am sure that the minister will want to clarify, from my view it addresses the concerns that we had about unintended consequences. My reading of the amendment is that a claimant is able to use medical evidence from a private provider if they choose, but no one will ever be compelled to attend an assessment by a private contractor. Perhaps the minister would clarify that.

**George Adam:** I think that the minister has been pretty consistent throughout. This has been specifically about the cases that we have had in front of us with regard to PIP in general and the disaster from the Westminster Government in the way that people have been dragged through that system by one specific private company in particular. That shows the difference.

In all honesty, I do not see how it is a U-turn, because from day 1 the minister has said that we did not want those private companies involved in that specific process. I do not agree with Mr Balfour that the public do not care who assesses them. I am quite sure that if he mentions a certain private company, he will end up with a whole stack of people complaining. Let us stick to the issue that we are talking about and remind ourselves why we are in this position.

**Jeane Freeman:** I will make a few points. This is not ideology set against good practice. All of the practice that we have seen in relation to how the Westminster system delivers health assessments tells us that that is very poor practice indeed. There are two reasons for that.

First, it is because the system is operated in such a way that the initial decisions are made without adequate information. In part, that is because of the time targets that the UK system imposes on the DWP staff who are making those assessments. Secondly, any private company quite legitimately pursues profit. For me, the pursuit of profit should not be the driver in how we deliver social security. It is simple.



In relation to previous practice, I am certain that I am older than Mr Balfour and I recall the days when assessments for benefits were done by people otherwise employed in the public sector—primarily, in health—who undertook those assessments in addition to their day job.

That is the model, to some extent, that the expert advisory group and the work chaired by Dr McDevitt from the British Medical Association general practitioner group and Ms Burke from the Glasgow Disability Alliance, working on behalf of the expert advisory group, are taking forward for me. The aim is to develop a model of how we will deliver the limited number of health assessments that may be required for disability assistance, which will not require people to undertake an assessment delivered by the private sector.

This is not a formal ban on private contractors; members will recall my concern about that idea because of the unintended consequences that others have referred to. Nor is it a U-turn because, as colleagues have said, this has been my consistent position. I have sought to translate that public commitment on to the face of the bill in a way that makes sense, does not incur unintended consequences, is clear about what ministers will not do, but sensibly also allows individuals to introduce evidence in support of their application for the financial support that they are entitled to if that evidence comes from a private sector assessment, through the means that I have already described.

I think that amendment 10 is clear; it allows us to translate that very public commitment, as requested, into primary legislation while still retaining the right of the individual to choose the evidence that they introduce to support their application. All the way through this process, I have been very clear about the centrality of individuals in our system—it is about individuals choosing what happens to them and our system facilitating that.

I think that our amendment is worthy of support. It is not a ban on the private sector inside social security; it is a translation of the public commitment that the private sector, driven as it is—understandably so, in its terms—by a profit motive, should not be the deliverers of health assessments inside social security in Scotland.

**The Convener:** The question is, that amendment 10 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Motherwell and Wishaw) (SNP)  
Griffin, Mark (Central Scotland) (Lab)  
Johnstone, Alison (Lothian) (Green)

Macpherson, Ben (Edinburgh Northern and Leith) (SNP)  
Maguire, Ruth (Cunninghame South) (SNP)  
McNeill, Pauline (Glasgow) (Lab)

**Against**

Balfour, Jeremy (Lothian) (Con)  
Tomkins, Adam (Glasgow) (Con)

**The Convener:** The result of the division is: For 7, Against 2, Abstentions 0.

*Amendment 10 agreed to.*

## Section 2—The Scottish social security charter

**The Convener:** Amendment 141, in the name of Pauline McNeill, is grouped with amendments 142 to 144, 146, 147, and 150.

**Pauline McNeill:** The amendments are concerned with the charter being approved by regulations put before the Parliament. The purpose is to make such regulations subject to parliamentary scrutiny so that they would go before the Parliament if the amendments are agreed to. The amendments put more impetus behind the charter.

Amendment 141 adds the words:

“The Scottish Ministers are, by regulations, to set out and from time to time revise”.

Amendment 142 leaves out the words:

“to be prepared, published and from time to time reviewed in accordance with sections 3 to 5.”

Amendment 143 leaves out “publish the charter” and inserts:

“lay before the Scottish Parliament draft regulations”

in relation to the first charter.

Amendment 144 inserts a reference to the draft regulations for consultation. Amendment 146 ensures that only once the Scottish Parliament has approved the regulations will they be made publicly available. Amendment 147 adds that where the Scottish Government has

“decided to make changes to the charter,”

regulations that do so must be laid before the Parliament. Amendment 150 is a technical amendment for completeness.

I move amendment 141.

**Ben Macpherson:** I am unable to support the group of amendments in the name of Pauline McNeill because, as we heard during the stage 1 evidence, the charter will be a document of co-production and its key elements are accessibility and accessible language, as well as clarity about redress. Having considered many regulations during my time as an MSP, I know that they tend not to be drafted in accessible language, so my concern is that the amendments will undermine

accessibility and the co-production of the charter. I cannot support them.

11:15

**Jeane Freeman:** I have no difficulty with the principle that Ms McNeill is attempting to realise in her amendments, which is that the Parliament should have a role in approving the charter and any changes to it. My difficulty with the amendments as they stand is that they make the charter a form of regulations. Regulations are a particular form of legal document and there are rules around how they are expressed, formatted and published, none of which are appropriate for the charter, which is intended to be an easy-to-read document, rather than a legalistic one.

If the intention is to give the Parliament a role in approving a final version of the charter, I ask Ms McNeill not to press the amendment, but to work with us in advance of stage 3, so that she can lodge an amendment at that stage that would give the Parliament such a role without undermining the intention of the charter.

Members will recall that we said that the charter would be the concrete expression of the principles and should be co-produced with stakeholders. It is also something in which the commission would have a role. As the amendments stand, they do not support that approach to the charter, so I cannot support them.

At stage 1, the committee heard expert after expert give evidence welcoming the charter as a valuable and innovative step that could make a real difference to the people who will rely on the system. It is true that many said that the charter should have more teeth, which is something that the Scottish Government's amendments 17 and 18 would deliver. However, what was universally agreed at the debate was that, above all else, the charter must be a clear and accessible statement of what people are entitled to expect from the new system.

We have already debated several amendments that aim to improve the clarity of communication. As they stand, Ms McNeill's amendments will not deliver that. Not only would they require a regulations document that is legally precise, they would require a document that would constitute part of the law of Scotland itself. Far from offering something clear and accessible, we would be issuing people with detailed and complex legal provisions. Furthermore, we would be forced into a position of potentially restricting what could appear in the charter, because no matter how much people wanted something to be included, it might not be compatible with direct legal application. That is not what people have told us that they

want from the charter or what we have promised to deliver.

In and of itself, the idea of the Parliament having a role in approving a finalised version of the charter is not an issue. As long as the process by which the charter is developed has co-design at its heart and is transparent and research-led, and as long as we are able to translate that engagement and research into a clear, accessible document, then I have no objection to the end result being laid before the Parliament for its approval. However, that is not what the amendments would achieve.

I ask Ms McNeill once again not to press amendment 141 and not to move the other amendments, but to have further discussion with us in advance of stage 3, at which point she could lodge an amendment that would realise her intention to allow Parliament to have a final say on the charter and subsequent reviews of the charter. If Ms McNeill is unwilling to do that, I urge the committee to reject the amendments.

**Pauline McNeill:** I am persuaded by the minister's argument that, in trying to seek the maximum and appropriate level of parliamentary scrutiny, amendment 141 perhaps does not quite square with the idea of the charter being a co-produced document. I acknowledge all those points. I am very happy to discuss the issue at stage 3, so that there is the appropriate level of parliamentary scrutiny before Parliament simply sees the final version. I am persuaded that that is the right way to proceed. In view of that, I seek leave to withdraw amendment 141 and I will not move amendment 142.

*Amendment 141, by agreement, withdrawn.*

*Amendment 142 not moved.*

**The Convener:** I am very mindful of time but, if we finish the next grouping, we will finish section 2 of the bill. Amendment 11, in the name of the minister, is in a group with amendment 60. I invite the minister to move amendment 11 and to speak to both amendments in the group.

**Jeane Freeman:** Amendment 11, in my name, is a minor amendment that makes it clear that the social security charter can set expectations about all the Scottish ministers' functions under parts 1, 2 and 3 of the bill. That is important, because amendments are being lodged to part 1 of the bill that add functions for ministers, such as the duty to promote take-up. Those functions should also be captured by the charter.

I ask Mr Balfour not to move amendment 60, because I believe that it is unnecessary. The Scottish Government has no intention of delegating any of its functions in the bill to another body. Indeed, our amendment 10, which would

restrict private sector involvement in assessments, and our support for amendment 77, in the name of George Adam, make clear the strength of our commitment to social security being delivered as a public service. If it is the agency that Mr Balfour has in mind, I would say that there is no legal distinction between ministers and the agency. The functions of ministers are therefore the functions of the agency, and the charter therefore binds the agency, as it binds ministers, because they are the same legal person. Even if a future government sought to outsource or delegate some of its functions, legally they would nevertheless continue to be functions of ministers, who would rightly be held accountable for exercising those functions in the various ways that are required by the bill.

I move amendment 11.

**Jeremy Balfour:** In light of the minister's remarks, I will not move amendment 60.

*Amendment 11 agreed to.*

*Amendment 60 not moved.*

*Section 2, as amended, agreed to.*

**The Convener:** That completes our scrutiny for today. I thank committee members and the minister for your contributions.

I remind members that the deadline for lodging amendments up to the end of part 2, chapter 2 is tomorrow at noon. We will consider further amendments next week. An updated marshalled list and list of groupings will be issued to committee members on Monday.

*Meeting closed at 11:23.*



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