

# **A New Future for Social Security**

**Consultation on Social Security in Scotland**

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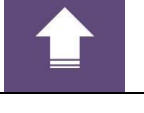
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## Ministerial Foreword



This consultation marks another important step in our journey towards delivering a Scottish social security system in line with the vision and principles set out in *A New Future for Social Security in Scotland*. It also represents the next stage in our work to ensure that the people closest to, and most impacted by, the devolution of social security powers have the opportunity to make their views known.

Every day, I'm conscious that we are laying foundations for the future. What we're doing right now, by establishing a social security system that will deliver our vision - **that social security is important to all of us and able to support each of us, when we need it** – won't just be important to the 1.4 million people who currently receive support from the benefits which will be devolved to Scotland; it will be important to communities, families and people in Scotland for generations to come.

These are exciting times, presenting a real opportunity to make a lasting difference to the lives of people across Scotland. I am delighted to play my part in delivering the promises that were made before this year's Holyrood elections. We are making strides in our work to increase Carer's Allowance, to expand maternity grants into a new Best Start Grant, and to tackle funeral poverty. And, partly as a result of this consultation, I am confident there will be a social security bill, before the end of the first year of this new Parliament.

I believe there are two things we must get right, as we begin to build our new, Scottish social security system. First, we must start as we mean to go on, by putting our principles at the heart of all that we do. Second, we must get off on the right foot – by taking the time to ensure that we have the right systems and people and processes in place to ensure continuity, making absolutely certain that everyone who currently receives the benefits being devolved - especially our carers and our disabled people - has their benefit transferred safely across to the new system.

We must also remember that the UK Government will remain responsible for 85% of benefit spend in Scotland, including benefits for pensioners and those seeking employment. So, while the Scottish Government believes that Scotland's citizens would be best protected if social security was fully devolved to the Scottish Parliament, both we and the UK Government have a duty to work together to deliver in the best interests of the people of Scotland.

We will only get one chance to do things for the first time and I am clear that the first time we exercise our new devolved powers will set the standard for all that follows.

If this means taking a little longer to get things right, then that is a balance that may have to be struck. It's more important to ensure that no-one falls through the gaps and that everyone is paid the money they need, at the right amount and when they need it. The Scottish Government has a steep learning curve in front of us, when it comes to social security, but with the help of Scotland's community of advisers, practitioners, public service professionals, representative groups and users, then I am confident that we will meet the challenges ahead.

This consultation is not just a listening exercise. As well as the extensive programme of events we are planning during the summer and into the autumn, to talk about this consultation, there will be opportunities over the months to come for us to provide further updates on what we're doing and the progress we're making. There is an enormous amount of other work going on, for example, to assess the options for delivery of our Scottish social security system. So, we will use these events as well as all of our other channels, to update you as we go along.

In taking forward this consultation, we will be open and inclusive and will welcome the views of those who will be affected the most. We will implement these new powers carefully and thoughtfully, taking the views of experts, practitioners and users into account. My firm belief is, the more people that are involved, the better the final outcome will be - so I hope that, over the coming months, as many of you as possible will join in and give us the benefit of your insights, your experience and your views.



**Angela Constance MSP**

Cabinet Secretary for Communities, Social Security and Equalities

## Introduction to the consultation

Throughout this document, we will refer to our paper, [A New Future for Social Security in Scotland](#)<sup>1</sup>, which we published in March. In that paper, the Scottish Government made a commitment to work with people across Scotland to determine how best to use the new social security powers which are being devolved by the Scotland Act 2016. We believe that there should be opportunities for everyone to participate in the debates and decisions that matter to them, regardless of their circumstances or backgrounds. This consultation document, and the events and engagement sessions that we will hold after its publication represent the next step in facilitating this participation. Holding an inclusive, informed and wide-ranging discussion will be essential to the successful implementation of our new social security powers.

It is important to set the context at the start of the conversation – which means being clear about some of the constraints we face and the limitations to what we can and can't do. This is not about making excuses – it is about being realistic and not making promises that can't be kept. The simple fact of the matter is that the proportion of the Scottish social security budget that will devolve to Scotland amounts to only £2.7 billion or 15% of the total £17.5 billion spent here every year. That said, the Scottish Government still intends to take an ambitious, new and distinctly different path to the one the UK Government has followed. Within the share of the system we will inherit, we will harness 100% of the powers we have to our values and our principles, in order to support our people, promote equality, tackle inequalities and take a step towards building a fairer Scotland.

Although this consultation is largely focussed on our work to develop social security legislation, there is also a great deal of other work going on in parallel. For example, we are currently carrying out Stage 2 of our appraisal of the options for the delivery of a new Scottish social security system. We published our findings at the end of Stage 1 of this appraisal exercise in March<sup>2</sup> and we expect to publish a report on Stage 2 as early in 2017 as possible.

Our report on Stage 2 of our options appraisal will say more about some of the costs which may arise, depending on the choices we make about changes to the devolved benefits in the years to come. The current spending environment has limited scope to accommodate this without reprioritising money which is currently being spent elsewhere - so there is a need for open, honest discussion about what can be realistically achieved and by when. We don't just want you to join this discussion - wherever possible, we would like you to lead it. That is why we are planning an extensive programme of post-publication consultation events, at locations around Scotland. The next section, "Responding to this consultation" explains how you can find out further details about these events. We hope as many of you that can attend

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<sup>1</sup> <http://www.gov.scot/Resource/0049/00496621.pdf>

<sup>2</sup> <http://www.gov.scot/Resource/0049/00494859.pdf>

these events do attend. And for those who cannot, there are different ways in which you can contact us to let us have your thoughts and views.

In the paper which we published in March, we set out our vision and a set of principles which will underpin all that we do to deliver a Scottish social security system. The first of our principles is that social security is an investment in Scotland. This means investment in people and their communities, a shared investment by each of us, in all of us. We hope you will invest some of your time and share your experiences with us as part of this consultation exercise. In doing so, you will help us build a social security system – and make an investment in a better future for Scotland, one that we hope will pay dividends for many years to come.



## **Responding to this Consultation**

We are inviting responses to this consultation by **Friday, 28 October 2016**.

We recognise that this consultation is lengthy and, at times, complex but we still want to make it as accessible as possible. That is why we have placed this consultation onto our consultation platform, Citizen Space, to allow for swift navigation and ease of use.

We use Citizen Space because we believe that responding online represents the best opportunity for respondents to give a full account of their views and opinions. However, we do understand that this is not possible in all cases, so we have published a shorter, summary version of the consultation document, to help you decide which sections of the longer document you want to complete. We have also made accessible alternative versions, including an EasyRead version, of the summary document available as well as a separate Consultation Questionnaire, if you would like to complete a clerical version of the consultation.

This consultation is also available in alternate formats on request, including large print, braille, BSL and other languages. We are happy to receive responses in alternative formats, e.g. spoken responses, other languages etc. British Sign Language (BSL) users can contact us via [contactSCOTLAND-BSL](#)

Please contact us by email at [socialsecurityconsultation@gov.scot](mailto:socialsecurityconsultation@gov.scot) or telephone on 0131 244 7763 or in writing at Social Security Consultation, 5th Floor, 5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU to request an alternative version.

**We are also arranging an extensive programme of stakeholder events, which will take place after the consultation has been launched.** These will be organised in partnership with a range of representative groups and other organisations. We hope that these events will provide opportunities for as many people who want to take part as possible, to come along to an accessible, friendly event and have their say.

We will circulate details of these stakeholder events in our weekly newsletter which is sent out every Friday. If you would like details of our stakeholder events, you can sign up for our newsletter either by following this link - <http://register.scotland.gov.uk/Subscribe/Step1> emailing us using the email address above or by phoning 0131 244 7763.

You can view and respond to this consultation online at <https://consult.scotland.gov.uk/social-security/social-security-in-scotland>  
You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of **Friday, 28 October 2016**.

If you are unable to respond online, please send your response, along with the completed Respondent Information Form (which you will find at Annex B, at the back of the consultation document) to:

[socialsecurityconsultation@gov.scot](mailto:socialsecurityconsultation@gov.scot)

or

Social Security Consultation  
5<sup>th</sup> Floor  
5 Atlantic Quay  
150 Broomielaw  
Glasgow  
G2 8LU.

### **Handling your response**

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>) you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form (which you will find at Annex B, at the back of the consultation document). If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Next steps in the process**

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

## Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Chris Boyland  
5<sup>th</sup> Floor  
5 Atlantic Quay  
150 Broomielaw  
Glasgow,  
G2 8LU.

or

[socialsecurityconsultation@gov.scot](mailto:socialsecurityconsultation@gov.scot)

## Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk> Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

## What happens next?

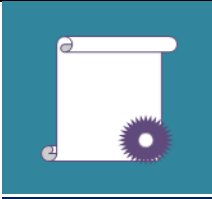
This consultation is an opportunity for people and organisations in Scotland to be involved in shaping our legislation. We have already announced that we will bring **Scotland's first social security bill to the Scottish Parliament next year.**

Between the end of the consultation period and the introduction of the bill, we will develop and draft our legislation. Outputs generated by the consultation and our stakeholder events will be taken into consideration during the development of both the bill and the secondary legislation (usually referred to as 'regulations') which will follow the bill. We aim to issue a report on this consultation process as early in 2017 as possible.

However, the consultation will not be the end of our engagement. We will continue to seek views and feedback, in the course of developing our policy proposals. For example, we hope to be able to consult and seek further feedback in the course of developing our secondary legislation which will follow the bill.

# **Consultation on Social Security in Scotland**

## **Part 1: A principled approach**



## 1. Fixing the principles in legislation

In Part 1 of this consultation document, we will talk about how we will develop a social security system that is based on a distinctively Scottish guiding vision and set of principles. We look at how our vision and principles can be reflected in the following ways:

- In our legislation;
- In our outcomes and the user experience;
- In deciding how to deliver social security benefits and services; and
- In addressing equality issues

We will also consider the role that independent advice and scrutiny can play, in keeping us to our promises and ensuring that we deliver what we say we will.

### **Our vision and principles**

In our paper, [A New Future for Social Security in Scotland](#)<sup>3</sup>, we set out our vision for social security in Scotland and our five key principles.

<p>Our Vision</p> <p><b>Social security is important to all of us and able to support each of us when we need it.</b></p>	<p>Principle 1.</p> <p>Social security is an <b>investment</b> in the people of Scotland</p>
<p>Principle 2.</p> <p><b>Respect</b> for the <b>dignity</b> of individuals is at the heart of everything we do</p>	<p>Principle 3.</p> <p>Our processes and services will be <b>evidence based</b> and <b>designed with the people</b> of Scotland</p>
<p>Principle 4.</p> <p>We will strive for <b>continuous improvement</b> in all our policies, processes and systems, <b>putting the user experience first</b></p>	<p>Principle 5.</p> <p>We will demonstrate that our services are <b>efficient</b> and <b>value for money</b></p>

<sup>3</sup> <http://www.gov.scot/Resource/0049/00496621.pdf>

We are pleased that many people and organisations in Scotland have now welcomed our vision. For example, a representative of the Scottish Council of Voluntary Organisations said, “We presented a strong message to the Scottish Government that we must use the new powers to build a fairer and stronger system which supports people when they need it most. It’s great to see that they listened and we look forward to seeing these principles be turned into [practice](#).<sup>4</sup>”

However we also recognise that, for the time being, the vision and principles are just words. The challenge which we must meet over the coming years is to turn those words into actions. This will not happen overnight. The transfer of social security powers to Scotland, while it is not as broad a transfer as the Scottish Government has argued for, still requires a large-scale programme of transition and implementation. This will be a challenge on a scale unlike anything experienced since devolution. We will be setting up – and running – a Scottish social security system that has to work in tandem to a UK social security system.

In doing this, we must make certain that no-one falls through the gaps. We are clear that our first and absolute priority is to ensure a smooth transition for everyone who looks to social security for help and support and who depends on the Scottish Government getting it right and paying the money they need to them, on time and at the right amount.

By the end of the process - when we have made our legislation, designed our systems and processes, opened our agency and started taking applications and making payments to people in Scotland – we will have gone a long way towards fulfilling that vision. At the same time, we will also have turned a corner, away from a social security system which many people say stigmatises and disempowers users, towards a future where social security in Scotland acts as a springboard to improve opportunities for everyone, providing protection and a safety net in times of need.

### **Fixing the principles in legislation**

We are considering ways in which we can support our principles through legislation. In this section, you will see two possible approaches to fixing principles, such as the right of the individual to be treated with dignity and respect, in legislation. We will explain these examples and ask for your views on whether we should adopt them, to underpin our new social security system in Scotland. This does not mean choosing the ‘best’ option. You may think that the best approach may be to adopt more than one option, if you think that the different approaches will work better together. We

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<sup>4</sup> John Downie; SCVO, Director of Public Affairs, writing for Third Force News - <http://thirdforcenews.org.uk/tfn-news/Scotland-to-create-a-fairer-social-security-system> (October 2015)

will also ask if you can tell us about any other approach that might support our principles through legislation. The two approaches that we have thought of are:

- A Claimant Charter
- Writing principles into legislation

### **Option A: A ‘Claimant Charter’**

We believe that the delivery of social security support and services in Scotland will require an implicit social contract between the Scottish Government and the people of Scotland. This means that the Scottish Government, its officials and its social security agency should commit to treating individuals claiming benefits in a certain way, in return for our staff being treated in the same way. Rather than just being implied or unwritten, this commitment could be set out in a claimant charter.

This could be developed on a similar basis to [The Charter of Patient Rights and Responsibilities](#)<sup>5</sup>. This Charter was suggested in response to the findings of a public consultation on patients’ rights and was introduced by the Patient Rights (Scotland) Act 2011.

The Scottish Government worked with Health Rights Information Scotland to develop the Charter, which is an information document that sets out what patients can expect when they use NHS services, and also details what the NHS in Scotland expects in return; to help it work effectively and make sure its resources are used responsibly. An advisory group provided guidance on the proposed format, and a detailed source document was produced, covering the full range of rights and responsibilities existing in legislation. Members of the advisory group were given the opportunity to comment on an early draft of the Charter. Thereafter, a period of user testing was carried out.

### **Option B: Writing principles into legislation**

Another approach which has been taken, to ensure that certain rights are protected including the rights to dignity and respect, is to write the principles into the legislation. Examples of this approach can be found in the [Tribunals \(Scotland\) Act 2014](#)<sup>6</sup> and the [Welfare Funds \(Scotland\) Act 2015](#)<sup>7</sup>.

When the Tribunals (Scotland) Bill was considered by the Scottish Parliament, the Parliament’s Justice Committee heard from groups such as the Child Poverty Action Group and Citizens Advice Scotland, who suggested that the Bill could contain principles which would “help guarantee openness, fairness and impartiality<sup>8</sup>”.

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<sup>5</sup> <http://www.gov.scot/resource/0039/00390989.pdf>

<sup>6</sup> <http://www.legislation.gov.uk/asp/2014/10/enacted>

<sup>7</sup> <http://www.legislation.gov.uk/asp/2015/5/contents>

<sup>8</sup> Justice Committee; [Stage 1 Report on the Tribunals \(Scotland\) Bill](#), para. 128



The Bill was amended to include a section<sup>9</sup> which required the Scottish Ministers, the Lord President and the President of Tribunals to have regard for the guiding principle that tribunal proceedings should be “handled quickly and effectively” and should be “accessible and fair”.

In a similar way, when the Welfare Funds (Scotland) Bill was considered by the Scottish Parliament, the Parliament’s Welfare Reform Committee gathered evidence from service users and their representative organisations. The Committee identified that one of the key themes running through all of the submissions and witness testimony was the danger that fund users would feel stigmatised. Third sector representatives emphasised the importance of maintaining dignity and respect when accessing the fund.

The Committee concluded that the Scottish Welfare Fund could be enhanced by outlining the importance of the principles of dignity and respect for users. The Scottish Government amended the Bill. When the Bill became an Act, it included a requirement in law<sup>10</sup>, for local authorities to take reasonable steps to ensure that those applying for assistance are treated with respect and that their dignity is preserved. This requirement was then carried forward into the Scottish Government’s published guidance which says that, “Local authorities should ensure that applicants applying for assistance are treated with respect and their dignity is preserved<sup>11</sup>”.

There are some key differences between the two approaches which we have identified. For example, it’s possible that we would be able to include more detail in a charter than we would be able to set out in legislation. A charter might be more accessible and more easily available for people to read and refer to than passages of legislation. On the other hand, writing the principles out in legislation might be easier to enforce in practice.

## Questions

**Which way do you think principles should be embedded in the legislation?**

- A. As a ‘Claimant Charter’?
- B. Placing principles in legislation?
- C. Some other way, please specify

If you think option A ‘ a Claimant Charter’ is the best way to embed principles in the legislation:

<sup>9</sup> Tribunals (Scotland) Act 2014; section 12, “Principle to be observed”

<sup>10</sup> Welfare Funds (Scotland) Act 2015; section 5, “Respect for, and dignity of, applicants for assistance”

<sup>11</sup> Scottish Welfare Fund – Statutory Guidance; <http://www.gov.scot/Resource/0049/00498598.pdf>, para. 4.1

**What should be in the Charter?**

**Should the Charter be drafted by**

- An advisory group?
- A wider group of potential user and other groups or organisations?
- Both
- Some other way, please specify.

**We are considering whether or not to adopt the name, “Claimant Charter”. Can you think of another name that would suit this proposal better? If so, what other name would you choose?**

**Do you have any further comments on the ‘Claimant Charter’?**

If you think option B ‘placing the principles in legislation’ is the best way to embed principles in the legislation.

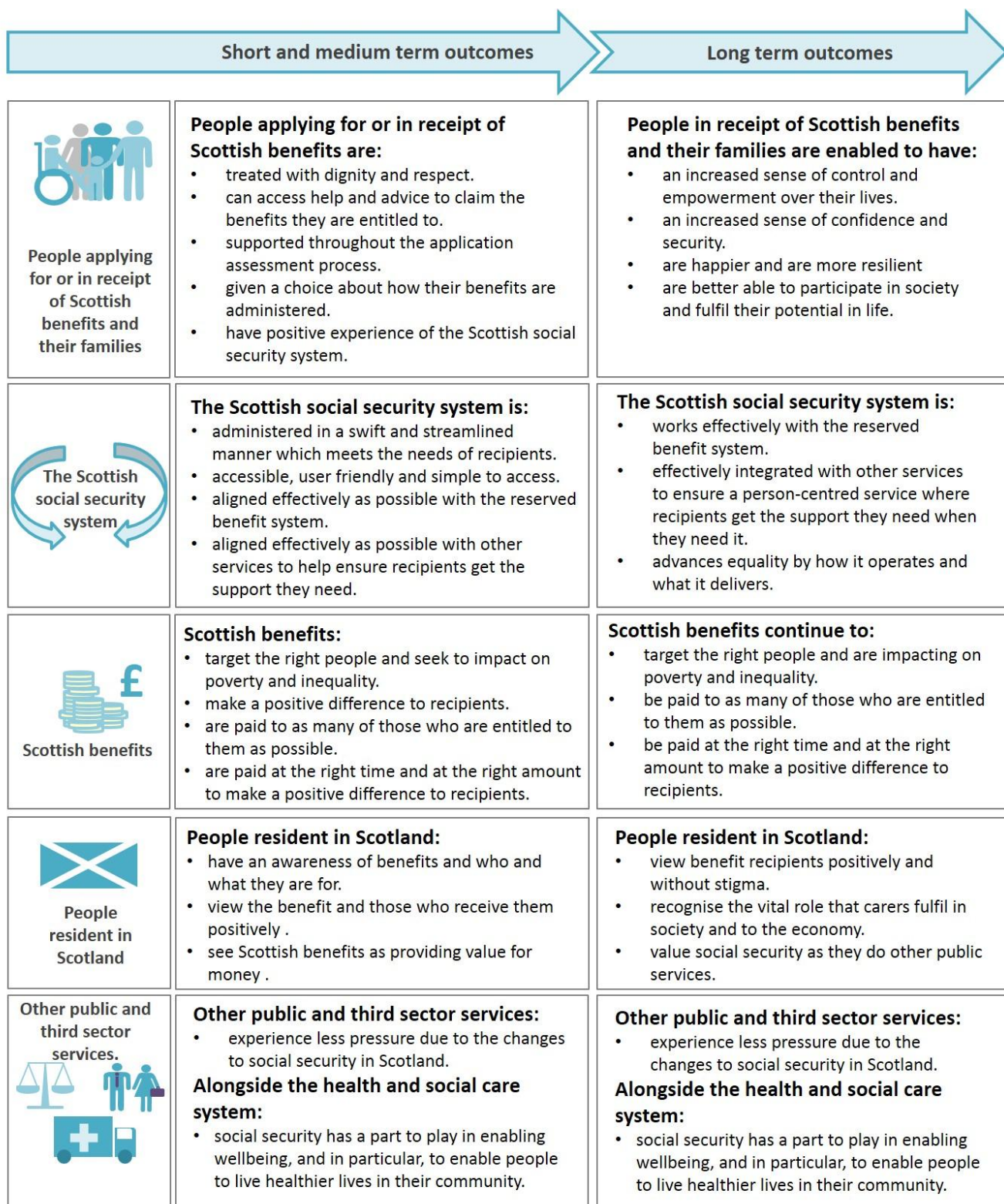
**On whom would you place a duty to abide by the principle that claimants should be treated with dignity and respect?**

- The Scottish Government
- The Scottish Ministers
- The Chief Executive of the Social Security Agency
- Someone else, please specify

**Do you have any further comments on placing principles in legislation?**

**Do you have any further comments or suggestions in relation to our overall approach, to fix our principles in legislation? For example, do you feel that there is no need to fix principles in legislation?**

**Please explain your answer?**





## 2. Outcomes and the user experience

In March, we published a paper called, "[The Strategic Case for Change and the Governance of Social Security in Scotland](#)"<sup>12</sup>, which included a set of short/medium and long-term outcomes. These outcomes will inform the development of social security in Scotland and help us to evaluate its functions into the future. In other words, this list of outcomes is a statement of what we want our system to achieve. Since March, further work across the Scottish Government and with external organisations has taken place which has informed a revised set of outcomes. **These are shown in the table on the previous page.**

### Questions

**Are the outcomes (shown in the table on the previous page) the right high level outcomes to develop and measure social security in Scotland?**

- Yes, please explain why
- No, please explain why

**Are there any other outcomes that you think we should also include (and if so, why?)**

### The user experience

As well as thinking about the outcomes we want to achieve, we are also considering the way in which we want to go about providing social security services in Scotland. We know from our '[Fairer Scotland' conversations](#)'<sup>13</sup> that the way in which existing organisations communicate with the individual can impact hugely on the user's experience and their wellbeing. The social security powers being devolved provide us with an opportunity to take a different approach.

The Scottish Parliament's Welfare Reform Committee, in its report on the [Future Delivery of Social Security in Scotland](#)<sup>14</sup>, recommended that all social security communications should be clear, accessible and written in plain English. Individuals should have the option to choose the method of communication that they were most comfortable with.

<sup>12</sup> <http://www.gov.scot/Resource/0049/00494859.pdf>

<sup>13</sup> <http://www.gov.scot/Resource/0047/00479666.pdf>

<sup>14</sup> [http://www.parliament.scot/S4\\_Welfare\\_Reform\\_Committee/General%20Documents/6th\\_Report\\_Future\\_Delivery\\_of\\_Social\\_Security\\_in\\_Scotland.pdf](http://www.parliament.scot/S4_Welfare_Reform_Committee/General%20Documents/6th_Report_Future_Delivery_of_Social_Security_in_Scotland.pdf)

How we communicate makes a difference. Users have told us that one of the key problems with the current system is the negative way it makes them feel. We are aware that, for many people, accessing support can feel difficult and disjointed, adding stress to what is already often a difficult situation. In order to address this, we will ensure that the language and tone that we use when communicating with people is respectful, considered and does not stigmatise. For example, we describe the powers that are being devolved to us as powers over ‘social security’ and not ‘welfare’. This distinction is intentional and important to us. We will work with users to ensure we use appropriate words, and challenge others to do the same.

We will also ensure that our processes and services are designed effectively to enable anyone who needs support to understand the system and access it in the way that best suits them. Modern IT systems could underpin a more sensitive approach to this. For example, existing data could be shared, to enable online interactions that are designed for ease of use and accessibility for applicants.

We are committed to involving people who receive the devolved benefits in the design, development and testing of new systems, to ensure the technology works well for the people who need to use it. We will follow the principles of the Scottish Government’s Digital First approach outlined in [Scotland Digital Future](#)<sup>15</sup> and those of [Inclusive Communications](#)<sup>16</sup>, to deliver our information services more effectively and ensure our information and guidance is accessible to all.

We will provide information in a range of accessible formats to help people understand the system and also ensure that the Scottish Government meets its statutory duties under the [Equality Act 2010](#)<sup>17</sup> and responsibilities under [the United Nations Convention on the Rights of Disabled People](#)<sup>18</sup> to guarantee that that disabled people are not disadvantaged by communication barriers.

An important term for us, in thinking about delivering a Scottish social security system is ‘co-production’. This is not a new term. The Scottish Government has actively promoted co-production in other areas such as health and social care for

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<sup>15</sup> <http://www.gov.scot/Resource/Doc/981/0114237.pdf>

<sup>16</sup> <http://www.gov.scot/Publications/2011/09/14082209/5>

<sup>17</sup> View the Equality Act 2010 at <http://www.legislation.gov.uk/ukpga/2010/15> contents for further information. You can download the Equality Act in Easy Read here: [http://www.equalities.gov.uk/equality\\_act\\_2010.aspx](http://www.equalities.gov.uk/equality_act_2010.aspx)

<sup>18</sup> View the UN Convention on the Rights of Persons with Disabilities at: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

View in Easy Read at: [www.equalityhumanrights.com/uploaded\\_files/publications/uncrpd\\_guide\\_easyread.Pdf](http://www.equalityhumanrights.com/uploaded_files/publications/uncrpd_guide_easyread.Pdf)

some time. However, because the devolution of social security to Scotland is new, this is the first time we will 'co-produce' social security systems and processes.

Co-production means enabling people to shape and co-design the services they use. It involves a process of on-going dialogue with service users and organisations, to achieve improved outcomes. There are some key principles of co-production, which are:

- People and communities who use services are actively involved in design and delivery choices and are recognised as having assets that can help improve those services
- People and communities are not viewed as passive consumers of services designed and delivered by someone else
- Service users act as catalysts for change through active engagement in identifying what services are needed and how they are designed and delivered
- Neither government nor citizens have all the resources needed to solve complex social problems on their own
- Individuals and communities bring a real-life understanding of complex issues and have the potential to make services more efficient, effective and responsive to community need
- Professionals, service users, families and communities are encouraged to join in active dialogue and engagement to achieve positive change

In order to co-produce social security services, we need to hear from users and people with real-life experience of the current system. That is why we will set up a range of social security 'user panels' made up of existing Scottish DWP claimants, to work with us as we design and develop a Scottish social security system. We will also consult prior to the publication of regulations and guidance and, in line with our Digital First approach, we will make sure information about how decisions are made is placed online. We intend to provide up-to-date information in a way that is responsive to the needs of service users and offers a more tailored service to deal with complex enquiries.

We have learned from the work of the Northern Ireland Social Security Agency (NISSA) that it is possible for devolved administrations to deliver benefits cost-effectively while, at the same time, providing a user experience which maintains high-levels of user friendliness and customer satisfaction. NISSA's approach focuses on communication via the telephone to ensure that application forms, letters and other information to provide clear and timely communication throughout all processes.

## Questions

**How can the Scottish social security system ensure all social security communications are designed with dignity and respect at their core?**

**With whom should the Scottish Government consult, in order to ensure that the use of language for social security in Scotland is accessible and appropriate?**

**Are there any particular words or phrases that should not be used when delivering social security in Scotland?**

Yes

No

Please state which words or phrases should not be used.

**What else could be done to enhance the user experience?**

- When people first get in touch
- When they are in the processes of applying for a benefit
- When a decision is made (for example, about whether they receive a benefit)
- When they are in receipt of a benefit

**How should the Scottish social security system communicate with service users? (For example, text messaging or social media)?**

**What are your views on how the Scottish Government can ensure that a Scottish social security system is designed with users using a co-production and co-design approach?**

**We are considering whether or not to adopt the name “User Panels”. Can you think of another name that would better suit the groups of existing social security claimants which we will set up?**



### **3. Delivering social security in Scotland**

In this section, we would like you to consider how we should deliver social security in Scotland. In the report which we published in March<sup>19</sup>, we said that:

“The social security system in Scotland can be seen to have a number of levels of delivery. This ranges from the governance of the entire system, the ‘back room’ delivery functions which will process applications and arrange for payments to be made etc. to the user interface where customers will interact with the system. This system is in the process of being appraised over two stages.”

The paper went on to report on our initial high level appraisal around the governance of social security in Scotland and the strategic case for change. It found that the governance body should have close links to Scottish Ministers and be flexible enough to respond as the social security landscape in Scotland unfolds.

Flexibility means having the capacity to expand and take on new work as well as being able to change to doing things in a different way. For example, in the event that further social security powers are devolved to Scotland sometime in the future, the agency will need to increase its resource and expand its services to take on these new responsibilities. A central agency with access to the wider resources of the Scottish Government family was seen as being able to deliver this flexibility. So, it seemed best for social security in Scotland to sit within the Scottish Government family in order that it might be able to draw upon the strengths and resources of the parent organisation, when needed.

On the basis of the evidence we gathered, the then Cabinet Secretary for Social Justice, Communities and Pensioners Rights, Alex Neil MSP, announced to the Parliament in a debate on 1 March that, “we intend, after having examined all the available options, to set up a new social security agency for Scotland<sup>20</sup>.” We now need to determine precisely what this agency does and how it works with existing public and third sector organisations in Scotland.

In time, our new social security system, operating as a single cohesive whole, with the agency at its heart, will deliver the outcomes which we described in the previous section. This means that, in the future, we will evaluate how well our Scottish social security system is working based on (for example) its ability to ensure that people receiving Scottish benefits are treated with dignity and respect as well as the other outcomes. This section seeks your views on the best way to deliver these outcomes.

<sup>19</sup> <http://www.gov.scot/Resource/0049/00494859.pdf>

<sup>20</sup> Scottish Parliament; Official Report, Meeting of the Parliament 1 March, col. 42



The Scottish Government has carried out a series of workshops with internal and external stakeholders. These workshops generated a list of core capabilities which must form part of the social security system in order to deliver the outcomes. (For example, the system must have the capability to make payments to claimants.)

However, the overall system, with the agency and these core capabilities embedded, could still deliver the outcomes in different ways. At one end of the possible spectrum, the system could be configured with the agency at the centre delivering all benefits, at the other end, the role of existing Scottish public sector organisations could be extended, where possible, to take on responsibility for social security.

To help us design the appropriate configuration for our Scottish social security system, we would like you to consider a Scottish social security system, with a new agency at its heart and then answer the series of questions set out below. These questions seek to gather evidence on peoples' preferences, in terms of the different ways in which the overall system could be configured.

Responses to this section will be used in of the second Stage of our appraisal of the options for delivery of social security in Scotland. Stage 2 of our options appraisal is on-going in parallel with this consultation exercise. A report on the outcome of this Stage 2 appraisal is expected to be published in early 2017, following the consultation. In that report, the Scottish Government will set out the evidence which it has gathered, on the most appropriate configuration for our Scottish social security agency and the wider system.

### Questions

**Should the social security agency administer all social security benefits in Scotland?**

Yes

No

Please explain you answer.

**Should the social security agency in Scotland be responsible for providing benefits in cash only or offer a choice of goods and cash?**

Yes

No

Please explain you answer.

**How best can we harness digital services for social security delivery in Scotland?**

**Should social security in Scotland make some provision for face to face**

**contact?**

Yes

No

Please explain you answer.

**Who should deliver social security medical assessments for disability related benefits?**

**Should we, as much as possible, aim to deliver social security through already available public sector services and organisations?**

Yes

No

Please explain you answer.

**Should any aspect of social security be delivered by others such as the 3<sup>rd</sup> sector, not for profit organisations, social enterprises or the private sector?**

Yes

No

If yes, which aspects?



## **4. Equality and low income**

**A partial Equality Impact Assessment (EqIA) has been developed to support the Consultation. This is available as an Annex, at the back of this document, and is ‘partial’ in the sense that it reflects our thinking to date. We now need your help and advice to produce a full and final EqIA to accompany the Social Security Bill.**

The EqIA provides detail on the Scottish Government’s engagement so far to understand the equality implications of the new social security powers. It then sets out general barriers people might face, many of which have equality implications, before discussing the individual benefits, including where we are proposing changes to existing UK benefits and how these impact on equality. There is also a brief discussion of the equality implications of the new social security agency and of appeals and tribunals.

The EqIA closes with a set of questions to enable a full EqIA to be developed once the consultation is complete and your feedback is received. These questions are set out below. However, these are not the only questions relevant to equality in this consultation – please feel free to reference equality concerns and considerations in your response to any question in this consultation.

Note that this partial EqIA also considers implications for households living on low incomes. This reflects the priority the Scottish Government places on tackling poverty and inequality, and reflects the introduction of a new socio-economic duty on public bodies in the near future. This will require public bodies to take account of socio-economic disadvantage in strategic decision-making.

### **Questions**

**How can the Scottish Government improve its partial EqIA so as to produce a full EqIA to support the Bill?**

These prompts could be helpful in framing your answer:

- What does the Scottish Government need to do, as it develops a Scottish social security system, to ensure that equality implications are fully taken into account?
- What does the Scottish Government need to do, as it develops a Scottish social security system, to ensure that any implications for those on low incomes are fully taken into account?

- Are there equality considerations for individual benefits that you would like to draw to our attention?
- Are there considerations about individual benefits for those on low incomes that you would like to draw to our attention?
- What are your views on how we can best gather equality information for the new Scottish benefits?
- What does the Scottish Government need to do to ensure that its social security legislation (including secondary legislation and guidance) aligns its vision and principles with equality for all those who need assistance through Social Security support?
- What does the Scottish Government need to do to ensure that a Scottish social security system provides the right level of support for those who need it, and what are the possible equality impacts of this?



## **5. Independent advice and scrutiny**

In our paper “[A New Future for Social Security in Scotland<sup>21</sup>](#)”, which we published in March, we said that:

“Once we implement our new powers, the Scottish and UK Governments will ‘share competence’ and both will be accountable for delivering elements of social security in Scotland. This will require new and innovative approaches to inter-governmental working, scrutiny and oversight. We believe that the work of our agency, and our social security policy choices, should be supported by independent, expert analysis and scrutiny – both of the impact that we are able to have on devolved areas of responsibility and of the impact that the UK social security system has in Scotland.”

In this section we will consider key points in relation to the independent, advice and scrutiny of our new Scottish social security arrangements.

### **Current arrangements**

At the present time, there are two independent, statutory UK social security advisory committees which scrutinise draft regulations and provide advice to DWP Ministers on social security matters. These two committees are:

- The Social Security Advisory Committee (SSAC)
- The Industrial Injuries Advisory Council (IIAC)

Members of both Committees are appointed by the Secretary of State for Work and Pensions and are drawn from representatives of business, employees, social security law, academia, and in the case of the IIAC, the scientific sector. Each committee is supported by a secretariat of DWP staff.

The UK Government has decided that, after devolution, the role of the SSAC and IIAC should remain unchanged and that both Committees should provide advice to UK Ministers and NISSA only. In the House of Lords debate on the Welfare Reform and Work Bill, Lord Dunlop (speaking for the UK Government) said that:

“The roles of the SSAC and IIAC are to remain unchanged. Scottish Ministers, however, will not be able to refer their draft regulations to these bodies for consideration. Once legislative competence has been given to the Scottish Parliament it may, if it wishes, put in place separate scrutiny bodies to consider

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<sup>21</sup> <http://www.gov.scot/Resource/0049/00497219.pdf>

legislative proposals made by the Scottish Government within the scope of the legislative competence and report back to Scottish Ministers.”

The UK Government’s position is that the UK and Scottish Governments would be best served by separate scrutiny bodies that can advise each government on their respective proposals. This means that the Scottish Parliament will be able to determine arrangements for the future scrutiny of social security in Scotland. These could include provision for a body to report independently to the Holyrood Parliament, in addition to advising the Scottish Ministers.

The Scottish Government wishes to consult with individuals and users on the way in which a Scottish social security scrutiny body might be set up. In considering these questions, it may be helpful to be aware of the way in which the Committees are currently established.

The existing UK Committees are set up on a statutory basis<sup>22</sup> and the Secretary of State for Work and Pensions has a duty in law, to refer proposals for changes to secondary legislation (regulations) to the Committees. Further details as to the operation of the Committees, how the Secretary of State should go about appointing members, the number of members, the length of time for which individuals may serve as members of the Committees, powers to reimburse Committee members and pay expenses and other practicalities are also set out in legislation<sup>23</sup>.

At present, the Committees assist DWP in the following ways:

- They scrutinise most of the proposed regulations that underpin the social security system and provide advice on them to the Secretary of State
- They provide advice and assistance, whether in response to a specific request or on their own initiative
- They respond to public consultation exercises, where appropriate
- They respond to specific requests for advice from ministers and officials
- They undertake detailed studies as part of their independent work programme providing comment on draft guidance and communications produced by DWP and HMRC

### **Proposals for independent scrutiny**

The Scottish Government has a good record of engaging positively with expert advisors on social security and welfare matters as it did when it formed the Expert Working Group on Welfare. We are now seeking views on whether there should be

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<sup>22</sup> See the [Social Security Administration Act 1992](#), sections 170 – 174

<sup>23</sup> See the [Social Security Administration Act 1992](#), Schedule 5

an independent body, however constituted, to provide expert analysis and scrutiny of our new Scottish social security arrangements.

Although the Expert Working Group was not set up on a statutory basis and did not scrutinise draft legislation, it was able to provide valuable insight and advice to the Scottish Government. It may be, therefore, that there is no need for a scrutiny body to be set up on a statutory basis - provided it is able to maintain positive relationships with the Scottish Government of the day and other relevant interest groups. Over time, custom and practice would also provide a degree of permanence as it would be difficult to disestablish an independent scrutiny body without good reason.

That said, the Scottish Government recognises that setting up an independent scrutiny body on a statutory basis sends a clear message to the membership of the body as well as other interest groups, that the body's constitution and permanence is assured. It is less clear, however, that the UK approach to fixing various practical arrangements for the operation of the existing SSAC adds value, particularly the way in which the SSAC remit, is fixed on the face of the Act by reference to a long list of legislation<sup>24</sup>, rather than the more general way that the remit of the IAC is described<sup>25</sup>.

### Questions

**Do you think that there is a need for an independent body to be set up to scrutinise Scottish social security arrangements?**

Yes

No

Please explain your answer.

**If you agree, does the body need to be established in law or would administrative establishment by the Scottish government of the day be sufficient?**

Yes

No

Please explain your answer.

**If yes, what practical arrangements should be made for the independent body (for example, the law could state how appointments to it are made and the length of time an individual may serve as a member of the body)?**

### Further considerations

<sup>24</sup> See the [Social Security Administration Act 1992](#), section 170

<sup>25</sup> See the [Social Security Administration Act 1992](#), section 171, which sets the remit by a general reference to industrial injuries benefit and its administration

There are also further questions to address such as: the role that an independent body could play in relation to the existing Committees of the Scottish Parliament, how it could tackle cross-border issues and how it could interact with the UK social security system. If the Government decides to set up an independent scrutiny body (whether it is established in statute or not), then it would propose to consult in more detail on these issues.

### **Independent scrutiny of standards**

Finally, in this section - in addition to scrutiny, we are exploring whether there might be a need for an independent function to oversee standards. In the past, DWP had a Decision Making Standards Committee, which reported to the Chief Executives of Jobcentre Plus, the Pensions Service and the Disability and Carers Service. The committee advised on the accuracy of reports, on standards of decision making, recommended improvements in decision making and considered specific issues on request. That body was abolished and the Administrative Justice & Tribunals Council (AJTC) took on the task, until it too was abolished. The AJTC also had a wider role across government.

### **Questions**

**Should there be a statutory body to oversee Scottish social security decision making standards?**

Yes

No

Please explain your answer.

**If yes, should this be a separate body in its own right?**

Yes

No

Please explain your answer.

**Do you have any other views about the independent scrutiny of social security arrangements in Scotland (e.g. alternative approaches)?**



# **Consultation on Social Security in Scotland**

## **Part 2: The Devolved Benefits**

## Part 2: Devolved Benefits

In Part 1 of this consultation document, we talked about the Scottish social security system overall. In Part 2, we would like to discuss powers over specific benefits which will transfer to Scotland. We will refer to these as the 'devolved benefits'. We understand that, when thinking about a new Scottish social security system, many people will think first and foremost about how this will affect the benefits that they currently receive. That is why we want to be clear, in relation to all of the devolved benefits, what we are considering and how we will take people's views into account.

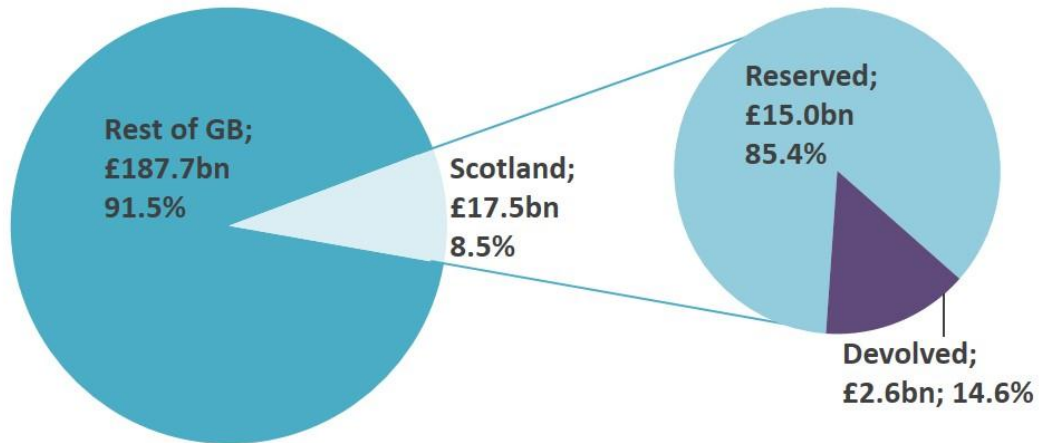
It may be helpful to bear in mind that the devolved benefits only represent a part of the overall social security system in Scotland. DWP will continue to administer a number of benefits in Scotland on behalf of the UK Government. There are currently no plans for the following benefits to be devolved to Scotland:

- **Universal Credit** (which replaces Jobseeker's Allowance, Income Related Employment Support Allowance, Working Tax Credits, Child Tax Credits, and Housing Benefit)
- **State Pension and Pension Credit**
- **Contributory Employment Support Allowance**
- **Child benefit**
- **Maternity and Paternity Pay**

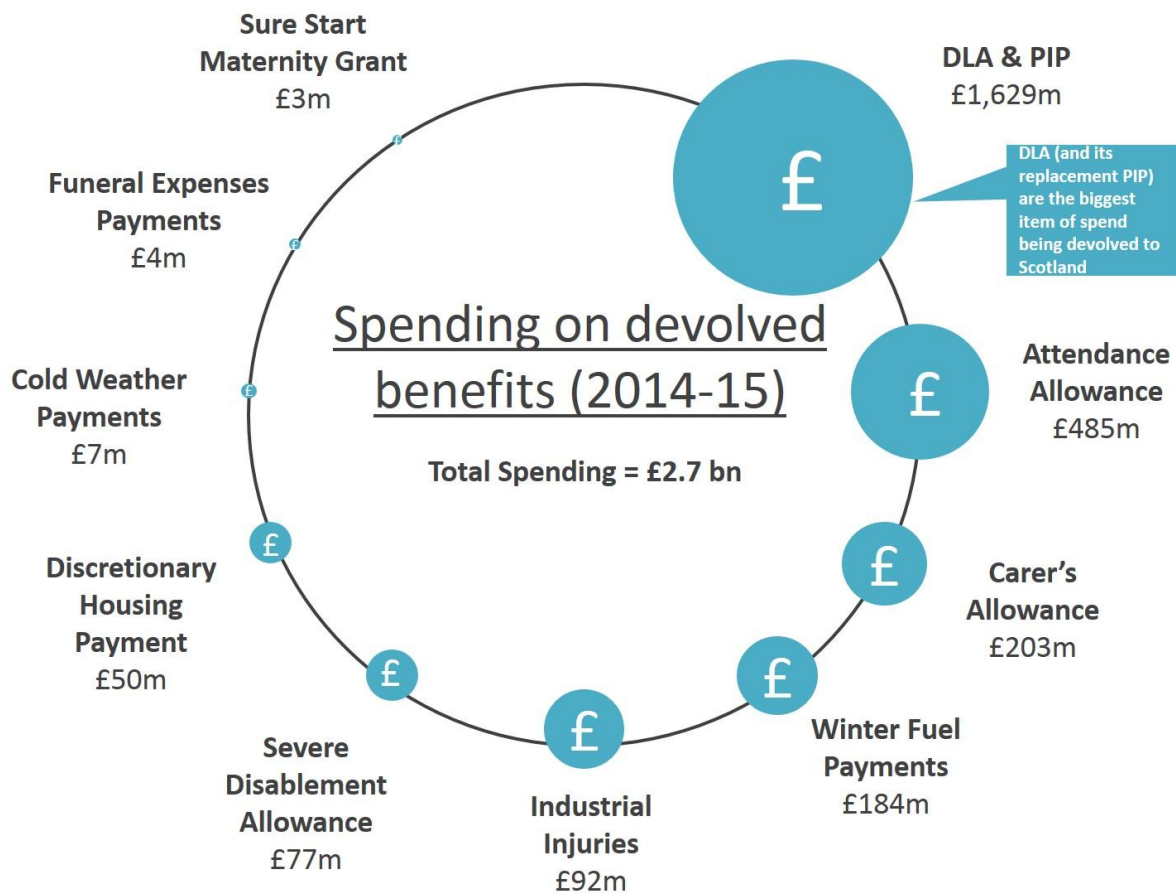
Powers are being devolved over the following benefits:

- **Ill Health and Disability Benefits** which means - Disability Living Allowance (DLA), Personal Independence Payment (PIP), Attendance Allowance (AA), Severe Disablement Allowance (SDA) and Industrial Injuries Disablement Benefit (IIDB)
- **Carer's Allowance**
- Sure Start Maternity Grants (which we propose should be replaced by the **Best Start Grant**)
- **Funeral Payments**
- **Cold Weather Payments and Winter Fuel Payments**
- **Discretionary Housing Payments**
- Some powers in relation to **Universal Credit** (i.e. to split payments between household members)

The Scottish Government also proposes to introduce a new **Job Grant** for young people, who have been unemployed for more than 6 months, and who are entering the labour market.



The UK Government currently spends around £18 billion on social security benefits in Scotland every year. The diagrams below show that the devolved benefits only account for about £2.7 billion or 15% of this spending. The remainder (£17.9 billion or 85%), remains under the control of the UK Government.



As we have made clear in Part 1 of this document, a safe and secure transition of payments is our priority. Around 1.4 million people in Scotland will be entitled to claim one or more of the devolved benefits. These people must not be caught in the middle of a transition from DWP to the Scottish Government and they absolutely must be able to depend on us to get it right and get their benefits paid to them on time, every time.

Our first and guiding priority will be ensuring a smooth transition for people receiving benefits, particularly disabled people and carers. This will be reflected in the approach we take, the changes we make and the timescales we set. In the sections to follow, we will outline how each of the existing schemes currently operates and then we will ask you - as users, practitioners and community representatives – to tell us about the different ways in which we can develop the existing schemes further and make improvements.

We will continue to engage with users in various ways (for example, via user panels, face-to-face events, bi-lateral meetings with representative groups, round table discussions and digital engagement). This will enable us to consider fully the potential impact of policy decisions, in particular how the devolved benefits interact with reserved benefits and the wider Scottish social security landscape and related policies. It will also enable a mature discussion about priorities and what will produce the best outcomes given the tight fiscal environment in which we currently operate.

We hope that you will see the questions in Part 2 as an invitation – to actively take part in designing and shaping Scotland’s new, devolved benefits. As well as publishing this document itself, we are running a series of events, to enable users to meet with us and tell us more about their experiences, their ideas and their ambitions for social security in Scotland. There is more information about these events in the section, “[Responding to the consultation](#)”. We hope that as many of you as possible will be able to join us and we look forward to hearing your views.

**Part 2 may be relevant to anyone with an interest in any of the devolved benefits and we are keen to hear your views on our proposals. Once you have considered this section you may also be interested in Part 3, where we look at the over-arching framework for the Scottish social security system. We would be grateful if you could also take the time to read through and answer the questions in that section as well.**

**Please note that discussion of the equality implications of these benefits is set out in the Partial Equality Impact Assessment (EqIA) that is attached as a separate Annex to the consultation document.**



## **6. Disability Benefits**

### **Summary**

- In this section, we will seek your views on the operation of the existing UK-wide disability benefits and ask you some questions which will help us plan the transfer of powers over these benefits to the Scottish Government.
- The Scottish Government is committed to maintaining the current level of disability benefit payments once the powers have been transferred.
- A secure and smooth transition is our priority, ensuring all recipients continue to receive their benefits. Over the longer term, we will reform aspects of the devolved disability benefits, working in partnership with disabled people and the organisations that support them.

### **Introduction**

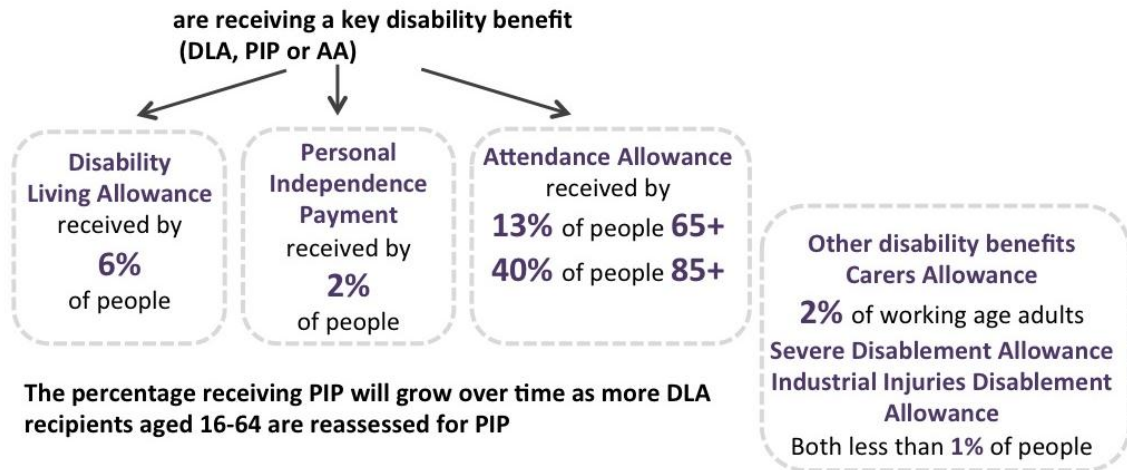
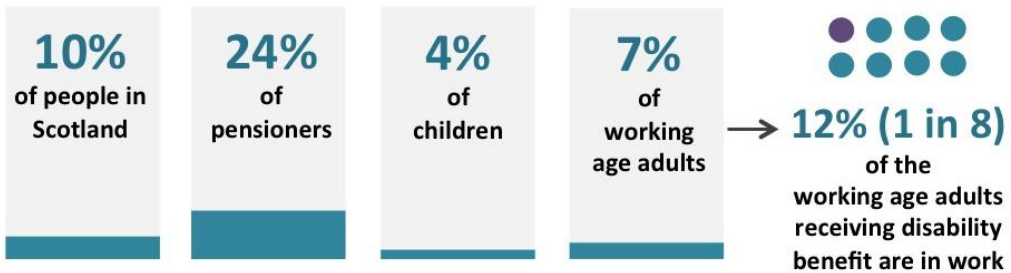
The Scottish Government will receive powers to provide cash benefits for people with a disability, impairment or health condition and their carers. These powers are currently delivered in the UK through: Disability Living Allowance (DLA), Personal Independence Payment (PIP), Attendance Allowance (AA), Industrial Injuries Disablement Benefit (IIDB) and Carer's Allowance (CA). We will also take responsibility for Severe Disablement Allowance for those people still receiving it. Although remaining reserved, benefits the Scottish Government will be given the power to top up employment-related benefits or tax credits such as Employment and Support Allowance and Working Tax Credits.

### **Operation of existing benefits**

The diagram below illustrates some key facts about devolved disability benefits. You can find out more information about how these benefits currently operate and who receives them in Scotland at: <http://www.gov.scot/Topics/Statistics/Browse/Social-Welfare/SocialSecurityforScotland>.



## Devolved disability benefits – Key Facts



**DLA, PIP** and **AA** are paid weekly to disabled people to help meet the additional costs of living with a disability, impairment or long-term health condition. DWP is gradually transferring people aged 16-64 from DLA to PIP. Once this transfer is complete: people aged under 16 will receive DLA, people aged 16-64 will receive PIP and people who become disabled at 65 or over will receive AA. Some people aged 16-64 are still being moved from DLA to PIP.

To be eligible for DLA or PIP, applicants must have personal care needs and/or difficulty with walking because of physical or mental health issues. AA is paid on the basis of personal care needs only.

**IIDB** differs from the other disability benefits because it provides financial support to people who have become ill or disabled due to their work. IIDB is paid on a weekly basis to workers who are injured or who develop certain “prescribed diseases” through work, such as certain asbestos-related cancers. The amount paid varies according to the degree of disablement but it must be above a certain threshold. IIDB can be claimed alongside other disability benefits. **Questions on IIDB are at the end of this section.**

Over the past 12 months, we have gathered a wealth of information, views and

experiences on all aspects of ill health and disability benefits from people who receive the benefits, people who deliver them, and organisations that either represent recipients or have an interest in what the benefits look to achieve. We have also gathered evidence and reports from other bodies such as the [Scottish Parliament's Call for Evidence](#)<sup>26</sup> on the new powers, and reports from organisations such as [Citizens Advice Scotland](#)<sup>27</sup>, [Inclusion Scotland](#)<sup>28</sup> and [Engender](#)<sup>29</sup>.

We will continue to engage, listen and develop policy and practice that places our principles, including the commitment to dignity and respect, at the heart of the process as well as addressing the issues that we've been told about. We welcome insights on any area of our work that relates to disability benefits but especially: benefit coverage and eligibility criteria, the assessment process, awards, benefit administration, advocacy and support, whether disability benefits could be paid 'in kind' as an alternative to cash, and alignment with other policy and delivery areas. We will continue to consult and engage as we develop and refine our policy proposals.

### **Options for devolved disability benefits – DLA, PIP and AA**

The broad purpose of DLA, PIP and AA is to recognise the impact of living with a disability or health condition and the additional costs this can incur. Many people that receive benefits have told us that they want these benefits to continue to have this purpose.

The Scottish Government is committed to maintaining the level of the disability benefits paid to individuals, once the powers are transferred, and to raising them annually by at least the rate of inflation, using the [Consumer Price Index](#)<sup>30</sup> as a starting point.

We will not change current UK disability benefits policy without good reason and where there is a clear consensus and support for the existing arrangements. For example, we will replicate the special rules for people with terminal illnesses which establish an urgent approach to providing benefits without the need for the standard assessment process.

In the short term, a secure and smooth transition to devolved disability benefit payments, which ensures that transfer arrangements are well communicated and every recipient continues to receive their benefits, will be our priority. But we are

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<sup>26</sup> <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/90832.aspx>

<sup>27</sup> <http://www.cas.org.uk/spotlight/social-security-benefits>

<sup>28</sup> <http://inclusionScotland.org/welfare-reform-impacts-on-disabled-people-the-facts/>

<sup>29</sup> <http://www.engender.org.uk/gendermattersinsocialsecurity/>

<sup>30</sup>

<http://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/consumerpriceinflation/previousReleases>

committed to improvements as soon as practicable. For example, a consistent theme that has emerged from our engagement with people over the past year has been that there should be a transparent and easy-to-access process of application, assessment/consideration<sup>31</sup>, decision-making and award for people claiming the benefits.

We want to make sure that the process from start to finish is clear and accessible, and that people understand how and when their claim will be dealt with. We are also looking at ways in which we can help lower costs for disabled people and carers. One way of doing this could be by looking to learn from the success of the Motability scheme. We would like to offer recipients the option to spend some their award on other services. For example, we have heard how disabled people face higher energy costs and we would like to offer discounted energy tariffs.

Additionally, we would like to explore whether more could be done on adaptations to the home. **These would be wholly voluntary offers and recipients of disability benefits would be free to continue to receive a cash award if they wished.** We envisage these options providing disability benefits recipients with additional choices, rather than replacing access to existing schemes that exist around adaptations and energy measures.

We also have bold aspirations for the longer term. For example, we want to ensure that disability benefits work as effectively as possible with other devolved services such as health and social care and housing, and to explore the potential for a 'whole life' disability benefit that is responsive to people's needs at different stages of their lives.

## Questions

**Thinking of the current benefits, what are your views on what is right and what is wrong with them?**

### **Disability Living Allowance**

What is right with DLA?

What is wrong with DLA?

### **Personal Independence Payment**

What is right with PIP?

What is wrong with PIP?

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<sup>31</sup> Where we use the phrase assessment, we mean some form of appraisal of eligibility, wherever possible this will not be conducted on a face-to-face basis.



## **Attendance Allowance**

What is right with AA?

What is wrong with AA?

**Is there any particular change that could be made to these disability benefits that would significantly improve equality?**

**How should the new Scottish social security system operate in terms of:**

- A person applying for a disability related benefit
- The eligibility criteria set for disability related benefits
- The assessment/consideration of the application and the person's disability and/or health condition
- The provision of entitlements and awards (at present cash payments and the option of the Motability Scheme)
- The review and appeal process where a person isn't content with the outcome

We want to make sure that the process is clear and accessible from start to finish, and that people claiming devolved benefits understand how and when their claim will be dealt with.

**With this in mind, do you think that timescales should be set for assessments and decision making?**

Yes

No

Please explain your answers

## **Evidence**

There will always be a need for medical and other evidence (such as evidence from social care or the education service) to support the application and assessment/consideration process for disability benefits. We recognise that medical evidence, including people's medical records must be protected. In Part 3 of this consultation, we talk more about "[Protecting your personal information](#)" and discuss sharing information, between public sector organisations, to support the delivery of social security services in Scotland.

We are also highlighting this, in this section, because, sharing information between public sector organisations could offer significant advantages to the application process for Scottish disability benefits. These advantages could include: reducing the burden on applicants, as information could be used from other public sources

(such as NHS Scotland) to pre-populate application forms, and developing a more integrated and efficient approach to delivering services.

## Questions

**What evidence and information, if any, should be required to support an application for a Scottish benefit?**

Who should be responsible for requesting this information?

Who should be responsible for providing it?

Please explain why

**Should the individual be asked to give their consent (Note: consent must be freely given, specific and informed) to allow access to their personal information, including medical records, in the interests of simplifying and speeding up the application process and/or reducing the need for appeals due to lack of evidence?**

Yes

No

**If no, please explain why**

**If the individual has given their permission, should a Scottish social security agency be able to request information on their behalf?**

Yes

No

**If no, please explain why**

## Proposals for eligibility

Eligibility for disability benefits, as they are currently structured, is determined by taking the care (or daily living) and mobility needs of an individual as proxies for the impact of their condition and the additional costs they are likely to incur. For DLA and AA, the criteria are based on broad definitions of care, and for DLA mobility, whilst the criteria for PIP have specific descriptors relating to the impact of disability or ill health. Awards for AA are for care/daily living only and there is no mobility component. Awards for DLA and PIP can be made for care/daily living needs arising from the impact of the impairment and/or for mobility needs. IIDB on the other hand, is focused on where a person becomes injured or contracts a condition, in addition to the disability or condition itself.

Entitlement differs across the age range, and those under 16 (DLA), of working age (PIP), and over the state pension age (AA), are entitled to different benefits. There are also other rules for care home stays and hospital stays, which determine how long people can stay in these places before their benefits are suspended. For people who have been certified by a medical professional as having less than six months to live, special rules mean they automatically qualify for some elements of PIP, AA or DLA.

### Questions

**Do you agree that the impact of a person's impairment or disability is the best way to determine entitlement to the benefits?**

Yes

No

If yes, which aspects of an individual's life should the criteria cover and why?

If no, how do you suggest entitlement is determined?

**Currently there are only special rules for the terminally ill but should there be others?**

Please explain why

How could this be determined?

We are considering the feasibility of introducing 'automatic entitlement' for disability-related awards. This means that people with certain conditions, which meet the eligibility criteria because their condition is particularly severe or it will have a significant impact on the individual, would receive benefits without the standard application and assessment. This is a complex matter that would require consideration over the longer term, with specific input from medical professionals and from people with direct experience of conditions.

### Questions

**What do you think are the advantages and disadvantages of automatic entitlement?**

**Would applicants be content for their medical or other publicly-held records, for example prescribing and medicines information or information held by HMRC, to be accessed to support automatic entitlement where a legal basis existed to do this?**

Current DWP practice is to provide a separate and fast-tracked approach to

providing benefits to people with terminal illnesses. The process focuses on speed and simplicity, with commitments within PIP and AA to process cases through a separate and concise application process, to provide benefits to people that are eligible within 14 days of application, and to remove the need for a face-to-face assessment by establishing the necessary information from GPs.

### Questions

**Do you agree that the current UK-wide PIP and AA process for supporting people with terminal illnesses is responsive and appropriate?**

Yes

No

If yes, should this approach be applied to all disability-related benefits for people with a terminal illness?

If no, how could the approach be improved?

**Should there be additional flexibility, for example, an up-front lump sum?**

Yes

No

Please explain your reasons.

### 'Whole of life' approach

In the longer term, we want to make sure that our devolved Scottish social security system is responsive to the different needs that people will have at different times in their lives. We have heard that transitions from one benefit to another (for example, the move from DLA to PIP at age 16) can be challenging, and we are looking at options to improve the process.

Before the introduction of PIP, DLA was available for children and working-age adults, with largely the same criteria in place for both age groups. Also, the eligibility criteria for the lower and higher rates of AA are largely the same as the eligibility criteria for the middle and higher rate care component of DLA.

A single benefit across the age range could remove age-related requirements for people to re-apply for a different benefit. For example, it might not be necessary for everyone to apply for a new or different benefit when they reach a specific age. A whole-of-life approach would allow a more person-centred approach to reassessments and potentially offer a secure and more flexible benefit for disabled people.

### Questions

**In the longer term, do you think that the Scottish Government should explore the potential for a consistent approach to eligibility across all ages, with interventions to meet specific needs at certain life stages or situations?**

Yes

No

Please explain why

**What would the advantages and disadvantages of a single, whole-of-life benefit be?**

### Proposals for assessments

Different benefits have specific criteria in order to address different issues. This is why the current DWP system adopts different approaches, in order to determine whether a person is eligible or not and to make a decision on the level of their award. For example, for DLA and AA, decision makers in DWP make judgements based on the application form and other supporting evidence. For PIP a face-to-face assessment by an independent professional using detailed descriptions and 'points' is the norm.

We intend to design a Scottish assessment process which is robust and person-centred, which treats people with dignity and respect, and which embeds compassion and support into the system and the day to day culture. That is why the Scottish Government will look to reform assessment procedures, minimising the number of face-to-face assessments where possible and ensuring assessments work for service users. As we say elsewhere in this document (For example, in the section on The User Experience in Part 1) - modern IT systems can underpin a more sensitive approach to this, from the potential for existing data to be shared, to online interactions that are designed for ease of use and accessibility for applicants.

### **Questions**

**Could the current assessment processes for disability benefits be improved?**

Yes

No

Please explain how

**For those people that may require a face-to-face assessment, who do you think should deliver the assessments and how?**

For example, private organisation, not-for-profit organisation, public sector body or professional from health or social care.

**What are the advantages and disadvantages of different types of assessments?**

e.g. paper based, face-to-face, telephone

**How could the existing assessment process be improved?**

**Could technology support the assessment process to promote accessibility, communication and convenience?**

**Yes**

**No**

Please explain why

**If yes, please explain what technology would be helpful**

e.g. Skype, video conferencing

### **Proposals for awards**

Scottish Ministers are committed to introducing long-term awards for conditions that are unlikely to change, across all disability benefits. This would remove the need for unnecessary re-assessments, which are often distressing and frustrating for people whose circumstances are unlikely ever to change, and for their families. For such awards we could include the expectation that if there is a change, the claimant has a responsibility to inform the social security system. However, we need to strike the balance between lengthy awards and ensuring we have a flexible system that recognises the role of medical advances and that conditions can fluctuate.

### **Questions**

**If the individual's condition or circumstances are unlikely to change, should they have to be re-assessed?**

**Yes**

**No**

Please explain why

**What evidence do you think would be required to determine that a person should / or should not be reassessed?**

**Who should provide that evidence?**

### **Alternatives to cash**

We know that people receiving disability benefits face higher costs for many daily essentials as a direct result of the impact of their disability. We are considering ways of providing optional alternatives to cash payments which could help meet some of these higher costs. Areas we are exploring include discounted energy tariffs, which could also be appropriate for carers, and adaptations to the home.

Careful consideration would be required as to how any initiatives such as these complemented existing provision. However, we are keen to explore ways of helping people reduce their costs, or access services they may not be able to access at the moment. Key to this would be making use of the Scottish Government's collective purchasing power to create a range of good value options. This is the model used in the Motability Scheme to provide affordable leased cars, scooters and powered wheelchairs to disabled people in exchange for their mobility allowance. The individual's right to choose between cash and any alternatives would be protected at all times.

### Questions

**Do you think people should be offered the choice of some of their benefit being given to provide alternative support, such as reduced energy tariffs or adaptations to their homes?**

**Yes**

**No**

Please explain why

What alternative support do you think we should be considering?

**Would a one-off, lump sum payment be more appropriate than regular payments in some situations?**

**Yes**

**No**

Please explain why

If yes, what are they?

**What would be the advantages and disadvantages of such an approach?**

### Mobility component

Receipt of the mobility component of DLA and PIP can allow recipients to access other services, such as the Blue Badge parking scheme, concessionary travel schemes and Motability. Motability is a [scheme, run by an independent charity](http://www.motability.co.uk/)<sup>32</sup> that enables disabled people to choose to use their higher rate mobility component to lease a car, powered wheelchair or scooter. Currently DWP diverts payments to Motability if requested to do so by a recipient. The scheme is highly regarded by those who use it and can often enable people to access employment and take part in other activities they might not otherwise be able to do.

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<sup>32</sup><http://www.motability.co.uk/>

Those already receiving DLA or PIP with the mobility component will continue to receive it beyond retirement age, but new claimants of retirement age need to apply for AA which does not contain a mobility component. This means that they cannot currently access the Motability scheme. The Scottish Government is currently considering how it might address this issue.

### **Questions**

**Should the new Scottish social security system continue to support the Motability scheme?**

**Yes**

**No**

Please explain why

**How could the new Scottish social security system support older people with mobility problems not eligible for a mobility allowance?**

**How could the new Scottish social security system better support people of all ages with mobility problems who are in receipt of a mobility allowance?**

### **Additional support**

Applying for and being assessed for disability benefits can often be a challenging process for people with particular health conditions and impairments. Even with an open and accessible social security system, featuring clear advice and application processes, some people will need additional support.

### **Questions**

**What kind of additional support should be available for people who need more help with their application and during assessment?**

Please also refer to the section in [Part 3](#) on Advice, Representation and Advocacy in relation to this issue.

### **Alignment with other devolved services**

Representative groups and people who claim disability benefits have said we could get better at joining up with other devolved services to share information already held to support their claims. As we have made clear elsewhere in this document, this can only be done where there is legislation underlying the collection of information, which allows it to be used for the specific purposes it is being requested for - for example, to support a disability benefit application. In the longer term, we also wish to ensure that the social security system works more effectively with other devolved services with the person at the centre.



## Questions

**How could disability benefits work more effectively with other services at national and local level assuming that legislation allows for this** e.g. with health and social care, professionals supporting families with a disabled child.

**How do you think this might be achieved?**

**What are the risks?**

## Industrial Injuries Disablement Benefit (IIDB)

This section focuses on issues which apply specifically to IIDB and its supplementary allowances such as Constant Attendance Allowance and the Reduced Earnings Allowance.

Some of the key legislation underpinning support for people who have suffered ill health and disability as a result of their work – employment, and some areas of health and safety legislation - remains the responsibility of the UK Government. However, there are opportunities to use the powers we do have to make significant improvements.

In our discussions over recent months, recipients and stakeholders have told us about a range of issues and opportunities with the current scheme. This includes:

- People with a range of diseases and disabilities receive IIDB. Some recipients contract life shortening diseases, such as asbestos related cancers. Some people have conditions which improve over time or which have a less severe impact
- Some stakeholders expressed the view that the awards given through the IIDB scheme are inequitable. This is because the benefit is paid on a weekly basis like a pension. Recipients suffering from terminal diseases who only receive the award for a short time may receive less overall than recipients who have less severe injuries or illnesses
- There is potential to better join up IIDB with wider disability benefits and services. Where appropriate, people in receipt of the benefit could be offered support to help them back to work, such as rehabilitation and training
- Questions over the list of 'prescribed diseases' - some people feel it is too restricted and focused on male dominated heavy industries
- Circumstances have changed significantly since the benefit was introduced in 1946 – workplace health and safety has improved, there is greater health and social care provision, and disability and income replacement social security benefits are available

## Questions

**If DLA and PIP help meet the additional costs of disability, what is the role of IIDB and its supplementary allowances (Constant Attendance Allowance, Reduced Earnings Allowance etc) in the benefits system?**

Please explain your answers

In addition to the issues set out above, please tell us:

**What is right with the IIDB scheme?**

**What is wrong with the IIDB scheme?**

Please explain your answers

**Should different approaches be taken for people with life limiting conditions compared to people with less severe conditions?**

Yes  No

What would be the advantages or disadvantages of such an approach?

**Are there situations where a one off lump sum payment would be more appropriate than a regular weekly IIDB benefit payment?**

Yes  No

What are they, and why? What would be the advantages and disadvantages of such an approach?

People have also told us that the scheme should promote safer work places, by linking it to risk based employer contributions and by using data from the scheme to inform health and safety activity. As we said at the start of this section, employment legislation and key parts of health and safety legislation remain the responsibility of the UK Government, so we will need to consider how to best address concerns about the scheme affected by these areas. It is worth noting that the UK Government plan to review IIDB as part of their Green Paper on disability and employment.

## Questions

**Should the Scottish Government seek to work with the UK Government to reform the IIDB scheme?**

Yes  No

If yes, what should be the priorities be? What barriers might there be to this approach?

### **Severe Disablement Allowance**

Severe Disablement Allowance (SDA) was available to people unable to work for at least 28 weeks in a row because of illness or disability. It was closed to new applicants in 2001. The equivalent benefit available now is Employment Support Allowance (ESA) which is not being devolved, and working age recipients of SDA are being transferred onto ESA. It is our understanding that by the time this benefit is devolved there will only be a very small number of pension age recipients of SDA in Scotland. The Scottish Government intends to ensure that this group of people who are still receiving this benefit when the powers are transferred, continue to receive this level of award through Scotland's social security system.

### **Questions**

**Do you agree with the Scottish Governments approach to Severe Disablement Allowance?**

Yes

No

Please explain why



## 7. Carer's Allowance

### Summary

- There are around 759,000<sup>33</sup> unpaid adult carers in Scotland who fulfil a vital role in our society by caring for family, friends and neighbours, including people with multiple and complex needs.
- Caring can be a rewarding and positive experience for both carers and the cared for. However, it is also associated with poor psychological wellbeing and physical health, a higher risk of poverty, and often restricts opportunities to participate fully in society, including work and education.
- The Scottish Government is committed to increasing Carer's Allowance so that it is paid at the same level as Jobseeker's Allowance. That is almost an 18% increase and eligible carers will each get around £600 more a year. We will also consider the introduction of a Young Carer's Allowance to provide extra support for young people with significant caring responsibilities.
- We want to develop a Scottish Carer's Benefit which helps deliver positive experiences and outcomes for carers and is embedded in our wider carer's strategy. This has to be within the resources available and integrate with the wider social security system.
- We will also consider the introduction of a Young Carer's Allowance to provide extra support for young people with significant caring responsibilities.

### Introduction

Carers make an immense contribution to our society by caring for family, friends and neighbours who are disabled or are in poor health. There are around 759,000 unpaid adult carers in Scotland providing care to one or more people – 17% of the adult population – and an estimated 29,000 young carers in Scotland aged under 16<sup>34</sup>.

Between them, carers save the Scottish economy over £10.8 billion per year<sup>35</sup>. However, only a small proportion of them - 67,050 - receive Carer's Allowance to help them look after someone with substantial caring needs. The Scottish Government is on record as having acknowledged the contribution that all of our

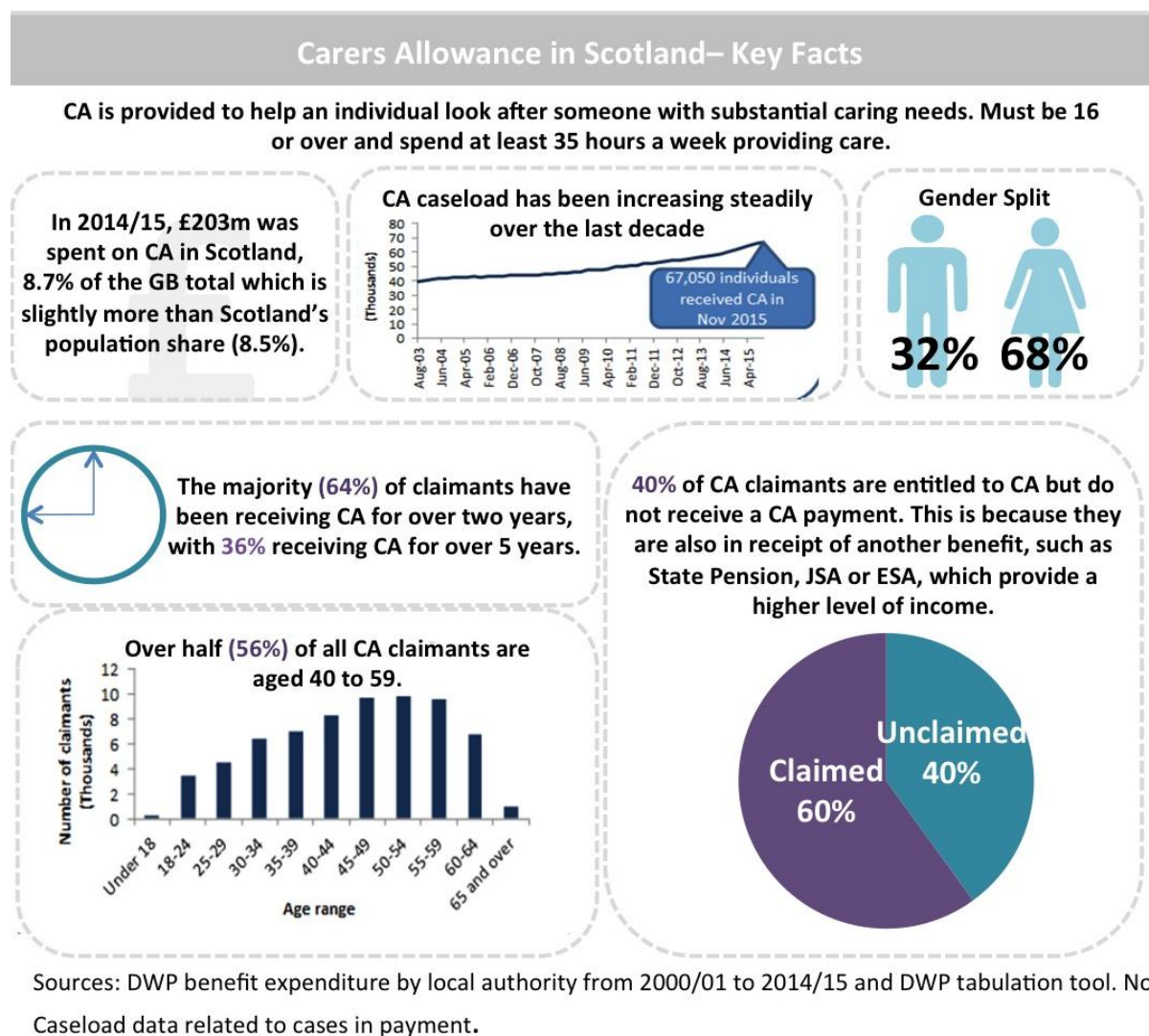
<sup>33</sup> Scotland's Carers - <http://www.gov.scot/Resource/0047/00473691.pdf>

<sup>34</sup> Scotland's Carers - <http://www.gov.scot/Resource/0047/00473691.pdf>

<sup>35</sup> Valuing Carers (2015): Carers UK - <http://www.carersuk.org/for-professionals/training>

carers make and we believe it is essential that they are supported in this role. The devolution of Carer's Allowance provides us with an opportunity to better recognise this through the benefits system and we are seeking your views on how we can ensure that this happens.

### Operation of the existing benefit



The current UK Government eligibility criteria requires a recipient to:

- be aged 16 or over
- spend at least 35 hours a week caring for a person who qualifies for specified disability benefits<sup>36</sup>
- not earn more than £110 per week (after deductions)
- not be in full-time education

<sup>36</sup> Personal Independence Payment - daily living component; Disability Living Allowance - the middle or highest care rate; Attendance Allowance; Constant Attendance Allowance at or above the normal maximum rate with an Industrial Injuries Disablement Benefit; Constant Attendance Allowance at the basic (full day) rate with a War Disablement Pension; Armed Forces Independence Payment

40% of people who are eligible for Carer's Allowance do not receive it because they are also in receipt of another income replacement benefit (known as the 'overlapping benefit rule') such as State Pension, contribution based Jobseeker's Allowance or Contributory Employment and Support Allowance which is paid at an equivalent or higher rate. However, carers on lower incomes with an 'underlying entitlement' to Carer's Allowance may receive an additional amount in the form of a premium or addition. This is extra money included in the calculation of means tested benefits such as Income Support and Pension Credit. People receiving Universal Credit, who are also caring for 35 hours a week, may also qualify for extra money (carer element). These additional payments remain reserved to the UK Government.

Carer's Allowance sits outside Universal Credit which also remains reserved to the UK Government, although the Scottish Parliament will receive new flexibilities for the frequency of Universal Credit payments and over housing costs for people who rent their accommodation.

There are a number of rules relating to the stopping and starting of Carer's Allowance. These include taking a break from caring, travelling abroad, if the person being cared for goes into hospital or residential care, or if the person being cared for dies.

The UK Government has imposed a cap on the total amount of benefit that working-age households can get. However, following a ruling by the High Court in November 2015, all of Carer's Allowance will be exempted from the benefit cap. The UK Government will introduce the exemption by regulations.

### **Proposals for a future Scottish carer benefit**

The UK Government pays Carer's Allowance at a rate of £62.10 per week. We believe that it is unfair that the support carers receive in the form of Carer's Allowance is the lowest of all working age benefits. We are committed to increasing Carer's Allowance for everyone aged 16 and over and in receipt of Carer's Allowance, so that it is paid at the same level as Jobseeker's Allowance (currently £73.10 per week for jobseekers aged 25 and over). That is almost an 18% increase, and eligible carers will each get around £600 more a year. The First Minister announced on 25 May 2016 that we will also consider the introduction of a Young Carers Allowance, to provide extra support for young people with significant caring responsibilities. The Scottish Government is committed to increasing Carer's Allowance to those looking after more than one disabled child.

Our ambition is to develop a Scottish Carer's Benefit which, through the new Scottish social security system, and although not a payment for care, provides some financial support and recognition for those who choose to, or who have had to give up or limit their employment or study because of caring responsibilities. It will be non-means tested. Although Carer's Benefit is, and will continue to be, a vital component of household income, we do not view it as a standalone policy. Our intention is to

embed it in our wider strategy for supporting carers set out in the Carers (Scotland) Act 2016. This twin-track approach will maximise the opportunity to deliver positive experiences and outcomes for carers.

### Questions

**Do you agree with the Scottish Government's overall approach to developing a Scottish Carer's Benefit?**

Yes

No

Please explain why

### Proposals for the short to medium term

To deliver our carer ambitions we propose a comprehensive package of actions covering the short, medium and long term, which recognises that we cannot do everything at once and takes into account existing financial constraints. This has been informed by discussions with representative groups, in particular the Carer Benefit Advisory Group, which includes National Carer Organisations, frontline practitioners and COSLA.

Scottish Ministers have already announced that they will implement the increase in Carer's Allowance as soon as practicable, taking into account financial, legal and delivery issues. There are no exact timescales yet, but we will keep everyone updated. The increase will apply to everyone in receipt of Carer's Allowance. It will not include those who are receiving only a carer premium, addition or element, as this remains reserved to the UK Government.

We have already begun to explore a Young Carer's Allowance. We are mapping financial and non-financial provision for young carers, and considering our evidence on the particular issues for and needs of younger carers. Some young carers are very well supported by young carers' projects and other services. However, others continue to face challenges to their health and well-being. The Carers (Scotland) Act 2016 will open up new possibilities for young carers. Young carers will, for the first time, have the opportunity to have their own Young Carer Statement to identify needs and support. We are determined that young carers can sustain their caring role, if they so wish, while having fulfilling life outside caring and access to opportunities that are the norm for other young people. Being a carer should not be a barrier to education and training, employment or personal development.

In the short to medium term, we will also focus on improving the carer's experience so that people are treated with dignity and respect, can easily access help and advice, and feel that the application process for Carer's Benefit is quick and user-friendly.

We will join up services more effectively so that carers can access a range of carer support and that Carer's Benefit works well with other devolved services such as health and social care, employment support and reserved benefits. This will provide a foundation for our longer term aspiration that services should be person-centred.

The [Carers \(Scotland\) Act 2016](#)<sup>37</sup> already makes provision for each local authority to establish and maintain an information and advice service, including income maximisation and education and training. We want carers to have the same opportunities as everyone else and it is important we support them to remain in work or study, if they choose, or return to work when their caring requirements change or cease and they are ready. Equally, we recognise that some carers are unable to work due to the extreme intensity of their caring responsibilities. Employment can have a positive impact on health and wellbeing and reduce financial pressures. We are already committed to expanding the '[Carer Positive](#)'<sup>38</sup> scheme for employers and employment will be a key issue for consideration in developing a new Scottish Carer's Benefit.

In the short to medium term, we will also look at the potential for alternatives to cash payments for carers to help reduce the costs of caring, for example reduced utility tariffs, complementing existing programmes and policies. These would be offered as a choice, rather than being the only option and would require exchange of some of the carer's allowance in return for an 'in kind' benefit.

### Questions

**Do you agree with our proposed short to medium term priorities for developing a Scottish carer's benefit?**

Yes

No

Please explain why

**How can we improve the user experience for the carer (e.g. the application and assessment process for carer's benefit)?**

**Should the Scottish Government offer the choice of exchanging some (or all) of a cash benefit for alternative support (e.g. reduced energy tariffs)?**

Yes

No

Please explain why

**What alternative support should be considered?**

**How can we achieve a better alignment between a future Scottish carer benefit and other devolved services?**

**How can we improve the support given to young people with significant caring responsibilities – beyond what is currently available?**

<sup>37</sup> <http://www.legislation.gov.uk/asp/2016/9/contents/enacted>

<sup>38</sup> <http://www.carerpositive.org/>



## Proposals for the longer term

The [Scotland Act 2016](#)<sup>39</sup> provides flexibility to change the definition of a carer for the purposes of paying a benefit<sup>40</sup>. We propose that any such changes are taken forward over the **longer term**. We are committed to working collaboratively with carers in a measured and considered way, to develop the policy in a manner that ensures the safe and secure transition from the existing UK benefits to new Scottish arrangements. For the reasons set out above, we will also be consulting separately, and in detail, on changing the definition of a carer. This will include the rules relating to the starting and stopping of Carer's Allowance. We have already held a wide variety of conversations, meetings, events and focus groups with users who have told us that:

- Carer's Allowance gives recognition to the important role that carers have in society
- It should continue to be non-means tested and paid directly to the carer
- The assessment process is reasonably clear
- The way that a carer is currently defined, for the purpose of paying a benefit, limits capacity to study or work
- It is unfair that Carer's Allowance is only received for one person even if you are caring for more people
- Many older carers find the replacement of Carer's Allowance with the State Pension when they reach pension age unjust

Through our Carer Benefit Advisory Group, and its short-life working groups, we have already embarked on the process of seeking views on options for changing the definition of a carer and the accompanying rules relating to the stopping and starting of the benefit. We need to consider fully the potential impact of policy decisions and what will produce the best outcomes for carers given the tight fiscal environment in which we currently operate. This programme of work will continue into 2017 and beyond.

### Questions

**Do you agree with our proposed long term plans for developing a Scottish Carer's Benefit?**

Yes

No

Please explain why

<sup>39</sup> <http://www.legislation.gov.uk/ukpga/2016/11/contents/enacted>

<sup>40</sup> Carers (Scotland) Act 2016 contains a definition of a carer, adult carer and young carer. This will remain even if the definition of a carer, for the purposes of paying a benefit, changes.

**Do you have any other comments about the Scottish Governments proposals for a Scottish Carer's Benefit?**



## 8. Winter Fuel and Cold Weather Payments

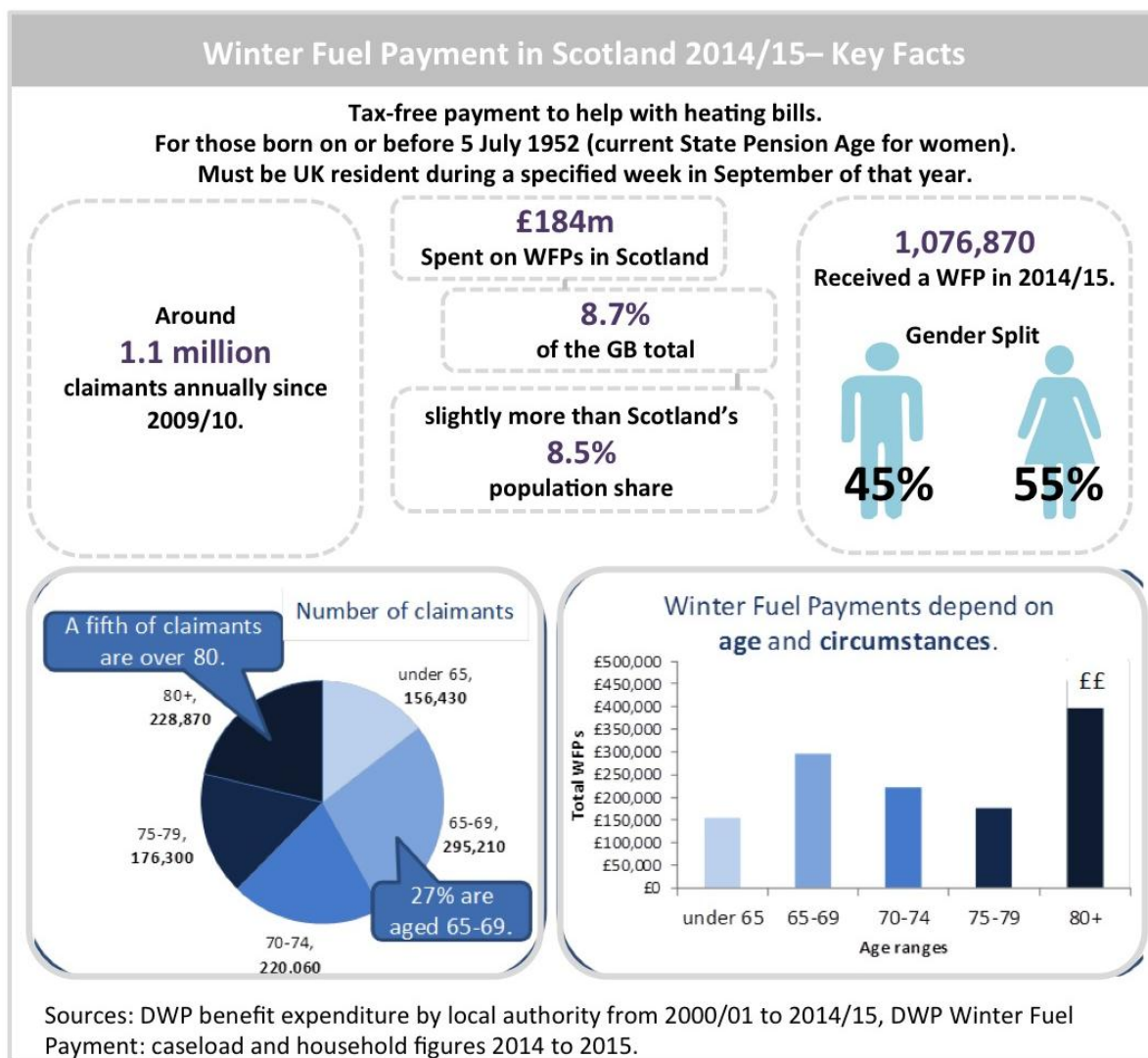
### Summary

- The Winter Fuel Payment is a universal, annual tax-free payment made to pensioners to help towards their winter heating costs. In 2014-15 (the most recent statistics), over 1 million individuals received a Winter Fuel Payment in Scotland, with a total expenditure of over £180m.
- Cold Weather Payments are means-tested payments designed to help those on low incomes meet additional fuel costs during periods of cold weather. In 2015-16, there were an estimated 415,000 individuals eligible for Cold Weather Payments in Scotland with 119,000 actually receiving a payment and a total expenditure of £3.4m.

In this section, we will seek your views on what, if any, changes could be made to Cold Weather Payments and Winter Fuel Payments in order to tackle fuel poverty in Scotland more effectively. The Scottish Government has always been committed to reducing fuel poverty, which is why we have allocated over half a billion pounds since 2009, to make Scottish homes more energy efficient, and we have provided assistance to over 700,000 of the most vulnerable households in our society have, to help them heat their homes affordably.

Last year, we launched our new flagship national fuel poverty scheme – Warmer Homes Scotland. This new scheme, which is focussed on the installation of a wide range of energy efficiency and heating measures, is expected to help around 28,000 of the poorest and most vulnerable households, including pensioners and fuel poor families, across Scotland during its lifetime. Warmer Homes Scotland has been designed to ensure that customers are not disadvantaged because of where they live, so householders in Orkney and the Highlands and Islands will receive the same high quality service as those in the central belt.

## Current arrangements



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## Winter Fuel Payment

The Winter Fuel Payment is a universal, annual tax-free payment made to pensioners to help towards their winter heating costs (though it is not tied to bills; recipients can spend it as they choose). People in Scotland born on or before 5 May 1953 are currently eligible for a tax-free payment of between £100 and £300. Most payments are made automatically between November and December. The age at which an individual becomes eligible changes every year and is linked to on-going changes in the State Pension Age.

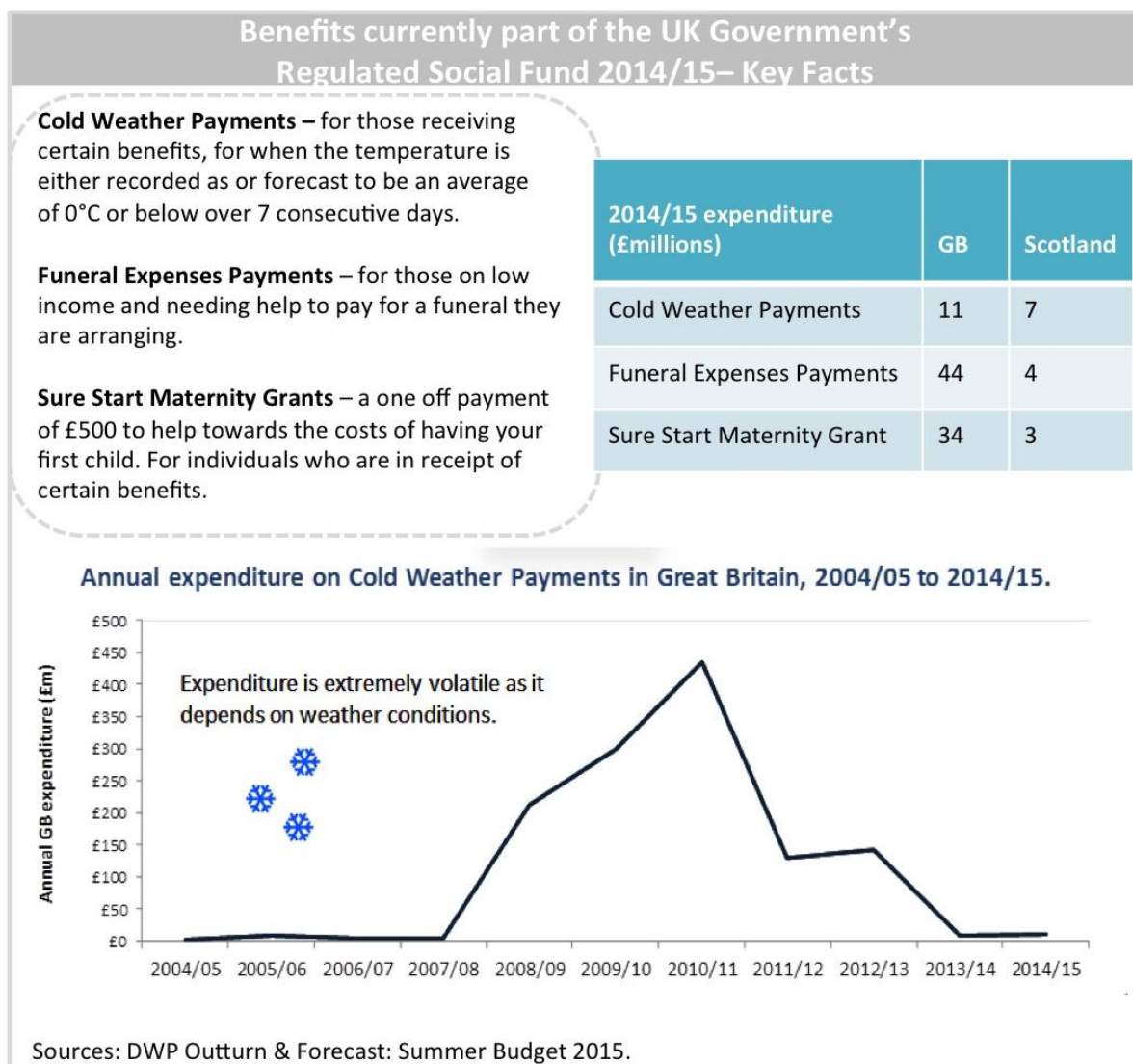
In 2014-15 (the most recent statistics), over 1 million individuals in Scotland received a Winter Fuel Payment, with a total expenditure of over £180 million. Although the benefit operates as a pensions top-up, rather than being targeted at those in fuel

<sup>41</sup> <http://www.gov.scot/Resource/0049/00494410.pptx>

poverty, the estimated impact on the rate of fuel poverty for this amount of expenditure was about a one percentage point reduction.

Since winter 2012-13, people living in the European Economic Area (EEA) or Switzerland with a link to the UK are potentially eligible to receive a payment. From 2015-16, this was restricted to countries where the average winter temperature is warmer than the warmest region of the UK (South West England, where the average temperature is 5.6 Celsius).

### Cold Weather Payments



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Cold Weather Payments are means-tested payments designed to help those on low incomes meet additional fuel costs during periods of cold weather. Eligibility is based on receipt of certain benefits (primarily Pension Credit and income-related

<sup>42</sup> <http://www.gov.scot/Resource/0049/00494410.pptx>

benefits where there is a disabled person or a child under five in the household).

Payments are made when local temperature is either recorded as, or forecast to be, an average of zero degrees Celsius or below over seven consecutive days.

Recipients will get a payment of £25 for each seven day period of very cold weather between 1 November and 31 March. Payments are issued within 14 working days of the temperature trigger.

In winter 2015-16, there were an estimated 415,000 individuals eligible for Cold Weather Payments in Scotland with 119,000 actually receiving a payment and a total expenditure of £3.4 million.

### **Options for Winter Fuel and Cold Weather Payments**

The Scottish Government is committed to extending Winter Fuel Payments to families with disabled children on the higher rate of DLA and to making early payments to households who live off the gas grid. Also, because Winter Fuel and Cold Weather Payments are both nominally fuel poverty-related benefits, we want to understand how they can be used to tackle fuel poverty more effectively. Both the independent, short-term Fuel Poverty Strategic Working Group and the Scottish Rural Fuel Poverty Task Force are considering, among other things, how these payments could be used to better tackle fuel poverty in Scotland.

Both of these expert groups are due to report later this year and their recommendations will inform a longer-term strategy for tackling fuel poverty. As well as their recommendations, we would welcome views on what, if any, changes should be made to either Winter Fuel or Cold Weather Payments.

In terms of Cold Weather Payments, we are aware that the current temperature threshold doesn't recognise weather conditions in certain parts of Scotland, for example wind chill factor. We would look to work with rural stakeholders and the Met Office to identify trigger points more suitable to Scottish conditions.

### **Questions**

**Do you have any comments about the Scottish Government's proposals for Winter Fuel and Cold Weather Payments?**

**Could changes be made to the eligibility criteria for Cold Weather Payments?**

For example, what temperature and length should Cold Weather Payments be made on in Scotland?



## 9. Funeral Payments

### Summary

- The DWP funeral payment is a grant for people on certain low income benefits who are responsible for paying for a funeral.
- We see the funeral payment as one of the ways to help tackle funeral poverty.
- We want to reach more people with the funeral payment to reduce the need for borrowing.
- We want to create a more predictable benefit, so that people can make better informed decisions when they are committing to paying for a funeral.
- We are seeking views on how you think this could be achieved.

Funeral payments are for individuals on low incomes who need help to pay for a funeral they are arranging.

There are well documented concerns about the existing funeral payment. More information can be found in our publication on [Creating A Fairer Scotland](#).<sup>43</sup> We propose to set up a new benefit which is more streamlined, predictable and better integrated with Scottish policy and services. We want to make payments faster so that people don't have to delay organising a funeral. The Scottish Government recognises the impact of rising funeral costs on families on low incomes and the long term impact this can have on their finances and how they experience their grief. We want to reach more people with the new funeral payment to reduce this burden.

In response to growing concern about rising funeral costs, the Scottish Government commissioned a review to identify opportunities for preventative work in relation to “funeral poverty” in Scotland and the roles that different organisations should take in this. The [Funeral Poverty Report](#)<sup>44</sup>, by John Birrell, chair of the Scottish Working Group on Funeral Poverty, and Citizens Advice Scotland, and the [Scottish Government response](#)<sup>45</sup> were published on 3 February 2016. The report found that

<sup>43</sup> <http://www.gov.scot/Publications/2015/10/3498/5>

<sup>44</sup> <http://www.cas.org.uk/publications/funeral-poverty>

<sup>45</sup> <http://www.gov.scot/Topics/People/fairerscotland/future-powers/Publications/FuneralPoverty>

the rise in funeral costs means that paying for a funeral can be a significant financial shock for some and there is a substantial shortfall between the cost of a funeral and what people can afford. The funeral payment cannot solve all of these problems. Building on the work in response to the review of funeral poverty, we will publish a funeral costs plan to tackle issues relating to the affordability of funerals. This will include considerations around introducing a funeral bond to help people save for their own funerals. A series of Ministerial round table events and a national conference on funeral poverty will inform the funeral costs plan. We have also set up a reference group to advise on the development of the funeral payment.

### Operation of the existing benefit

Benefits currently part of the UK Government's Regulated Social Fund 2014/15– Key Facts			
<p><b>Cold Weather Payments</b> – for those receiving certain benefits, for when the temperature is either recorded as or forecast to be an average of 0°C or below over 7 consecutive days.</p> <p><b>Funeral Expenses Payments</b> – for those on low income and needing help to pay for a funeral they are arranging.</p> <p><b>Sure Start Maternity Grants</b> – a one off payment of £500 to help towards the costs of having your first child. For individuals who are in receipt of certain benefits.</p>	2014/15 expenditure (£millions)	GB	Scotland
	Cold Weather Payments	11	7
	Funeral Expenses Payments	44	4
	Sure Start Maternity Grant	34	3
Sources: DWP Outturn & Forecast: Summer Budget 2015.			

The DWP funeral payment covers the costs for the purchase of graves and burial or cremation fees. The amount awarded to meet these fees is uncapped. The payment also covers up to £700 towards other costs associated with a funeral, such as a coffin, a hearse, funeral director fees, minister's fees and flowers.

In order to be eligible for a payment you must be in receipt of one of the low income qualifying benefits and be considered responsible for the funeral. In order to apply you must take responsibility for the funeral and meet the DWP rules on your relationship with the deceased. An application should be submitted within 3 months from the date the death was registered, this needs to include evidence of the costs associated with the funeral including receipts.

The amount awarded can be recovered from the estate of the deceased. Any money put aside by the deceased to cover funeral costs, eg life insurance, pre-paid funeral plans, is deducted from the award. Deductions are also made for contributions, for example from family members.



There is very little data available on the funeral payment and it is difficult to make estimates going forward because, while we have estimates for overall death rates, it is not possible to predict the circumstances of the families who will be bereaved.

In 2014/15 there were 6,300 Scottish applications to the DWP Social Fund for a funeral payment and 4,300 of those resulted in an award. The average DWP funeral payment for the UK was £1,375.

**Proposals for Funeral Payment: What should the benefit cover?**

Depending on what format the benefit takes, we may need to decide which elements of a funeral are covered by the funeral payment. We would also find it useful to have your views on what a standard low cost funeral should include, to inform discussions on funeral costs.

**Questions**

**Which of these elements do you think should be paid for by the Funeral Payment?**

	YES	NO
Professional funeral director fees – advice and administration etc.		
Removal or collection of the deceased		
Care and storage of the deceased before the funeral		
Coffin		
Hearse or transport of the deceased		
Limousines or other car(s) for the family		
Flowers		
Death notice in a paper/local advertising to announce details of funeral (time and location)		
Fees associated with the ceremony e.g. for the minister or other celebrant		
Order of service sheets		
Catering for wake/funeral reception		
Venue hire for a wake/funeral reception		
Memorial headstone or plaque		
Travel expenses to arrange or attend the funeral		

**Are there other elements that you think should be included or explicitly excluded?**

Yes

No

Please explain why

## **Proposals for Funeral Payment: Eligibility**

The Scottish Funeral Payment will be for people on low incomes. The current benefit uses an award of certain benefits to determine that the claimant is on a low income. This means that the claimant does not have to fill in information about their income and administrative staff can easily make the necessary checks. At the moment qualifying benefits are:

- Income Support
- Income-based Jobseeker's Allowance
- Income-related Employment and Support Allowance
- Pension Credit
- Housing Benefit
- The disability or severe disability element of Working Tax Credit
- Child Tax Credit (at more than the family element)
- Universal Credit

In some cases, deciding who is responsible for a funeral among family members is a matter of judgement. The DWP asks questions to find out whether the person who is applying for the funeral is the responsible person and whether there is someone else who could reasonably be expected to pay. We have heard that the questions asked to determine whether someone is estranged from the deceased are intrusive and distressing. The questions also make the application form very long and claimants may not have access to the information asked for, for example the financial status of other family members.

We are looking at ways to make this process less intrusive or to avoid having to make judgements about family relationships.

### **Questions**

**How can we improve the process for identifying whether someone is responsible for the funeral and should receive the funeral payment?**

**In terms of the Scottish Funeral Payment, are there any qualifying benefits (e.g. Pension Credit) that you would add to or take away from the current qualifying benefit list?**

Yes

No

Please explain your answer

## **Proposals for Funeral Payment: Application window and process**

Claimants must make an application for a funeral payment within 3 months of the date on which the death was registered.

### **Questions**

**Is the three month application window for a Funeral Payment sufficient time for claimants to apply?**

Yes

No

If no, please explain your answer and suggest an alternative length of time in which a claim could be made

## **Proposals for Funeral Payment: Simplification**

We have heard that the DWP funeral payment is complex and unpredictable. We are considering ways to simplify and speed up the payment. Recognising that one of the stresses caused in the process is delays in hearing about an award decision, we aim to process applications for the new benefit within ten working days of receipt of a completed application and make payments as soon as practicable thereafter. We believe that this will create more certainty for funeral directors, allowing them to give appropriate advice and potentially eliminating the need to take a deposit from those who make a successful application.

Some ways in which we might make the funeral payment more predictable are:

- Paying a fixed amount to contribute to funeral expenses rather than checking actual expenses with an upper limit. This would not include the costs for disposal of the body by burial or cremation, which would be dealt with separately
- A decision based on certain conditions being met, under which an claimant would be told that they would receive a grant at a later date, once they have submitted evidence e.g. a funeral director's bill
- DWP form DS1500 is used to identify people who have been diagnosed with a terminal illness. It fast-tracks applications for benefit. The form is used where a person is not expected to live longer than six months. We could allow people who have been issued with this form to apply for the funeral payment and receive a decision in principle on their case before they die. This may help them and their families to make plans
- An on-line eligibility checker for claimants, so that claimants can see whether they are likely to be eligible and what they are likely to receive if they get a payment. Eligibility checkers can be misleading if benefits are complicated

## Questions

**What are your views on the options for speeding up and simplifying the payment?**

## Proposals for Funeral Payment: Deductions

DWP makes deductions for contributions to funeral costs, eg. contributions from family members, funeral plans etc. We think that it is right that money that is available for a funeral contributes to the cost. However, we have heard that some claimants have been disadvantaged when contributions from friends and family have been deducted from the payment. We are therefore proposing that contributions from friends and families are not considered in Scotland.

## Questions

**The other funds which are deducted from the DWP funeral payment are listed below. What sorts of funds do you think it is appropriate to deduct from a Scottish FP?**

	YES	NO
Funds in the deceased's bank account		
Funeral plan/insurance policy		
Contributions from charities or employers		
Money from an occupational pension scheme		
Money from a burial club		

**Are there any other funds that you think are appropriate to deduct?**

## Proposals for Improving take up

We know that there is a patchy awareness of the funeral payment and that take up is low. It is important that people are able to access and receive the support that they are entitled to and are aware of the payment before they make decisions. We think that we can improve take up of the funeral payment by ensuring that it is promoted by services that people commonly come in to contact with, for example, registrars and bereavement services.

## **Questions**

**Which services should promote awareness of the funeral payment to ensure that claimants know about it at the relevant time?**

**Are there any other points that you would like to raise in connection with the new Scottish Funeral Payment?**



## 10. Best Start Grant

### Summary

- This section will discuss the new Best Start Grant, which will replace the existing Sure Start Maternity Grant.
- The support provided through the Best Start Grant will play an important part in reducing inequalities and will help close the gap in educational attainment.
- Our aim is to design a benefit that is easy to access and that provides effective support to families at key transitions in the early years, as part of a wider package of early years support.
- We will use this section to explore the important decisions to be made in designing the new benefit and consider the various options available.

We will replace the current Sure Start Maternity Grant (SSMG) with a new, expanded Best Start Grant (BSG<sup>46</sup>). The new BSG will pay qualifying families £600 on the birth of their first child and £300 on the birth of any second or subsequent children. Qualifying families will also receive £250 when each child begins nursery, and a further £250 when they start school. The support provided is staggered and each payment has a different focus for giving children the best start in life. For a family with two children, the BSG means £1900 worth of support over the period of their early years, compared to £500 that is available to them now from the SSMG.

The Scottish Government recognises that the earliest years of life are crucial to a child's development and affect inequalities in health, education and employment opportunities later in life. We are committed to reducing these inequalities and aim to give every child in Scotland the best start in life by identifying and reducing the factors that cause inequality at an early stage. Our approach will involve a combination of universal support, such as the new baby box, and elements of targeted support for low income families, such as the BSG. The BSG will give families on low incomes some additional money when their children make transitions in the early years, adding to the family budget and avoiding the need for borrowing.

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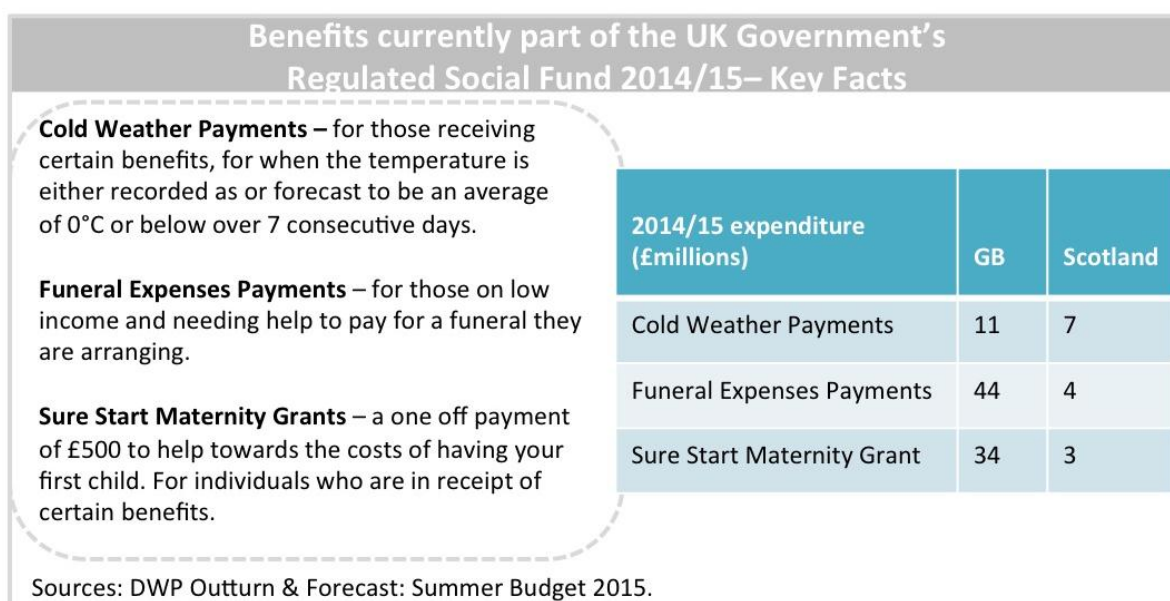
<sup>46</sup> This was previously referred to as the Maternity and Early Years Allowance

We have heard from families living on low incomes about the frustration and hardship they experience because the current grant no longer provides support for second or subsequent children. The reality for low income families is that many of the costs associated with having a child are not ‘one-off’ expenses, but rather recur when they have second or subsequent children. This change to entitlement has particularly affected vulnerable people, who are less likely to be able to plan ahead, and larger families.

We recognise that the disadvantages of poverty affect children, not just at birth, but also at other key stages of their young lives. So we will support them and their parents through early transitions, reducing the need for debt and money related stress, and the consequences these can have for families. By supporting families through the important transitions as children enter the education system, we can help reduce disadvantages facing children from the poorest households and contribute towards closing the attainment gap.

In this consultation, we are considering how the new BSG will work in practice, and how it will fit with other support provided during early years.

### Operation of Existing Sure Start Maternity Grant



The existing SSMG provides £500 to qualifying low income families on the birth of their first child. The SSMG uses an award of certain DWP benefits to determine that someone is on a low income. These are:

- Income Support
- Income-based Job Seekers Allowance
- Income-related ESA

- Pension Credit
- Child Tax Credit, at a rate higher than the family element
- Working Tax Credit that includes a disability or severe disability element
- Universal Credit

There were an estimated 10,500 applications in Scotland in 2014/15, resulting in 6,000 awards, with an estimated expenditure of £3 million for the year.

We have been told by service users and their representatives that the existing benefit is viewed positively in so far as it is relatively straightforward and meets an identified need. However, we have also heard that information about the grant is poor, that narrowing of the entitlement to the first child was unfair, and that the application window is too short. More information can be found in our publication on [Creating A Fairer Scotland](#).<sup>47</sup>

### **Proposals for identifying eligible families**

We are considering whether there are particular groups that the BSG can support and how those groups can best be reached through eligibility criteria. For example, looked after children and young parents. We are also considering the roll out of Universal Credit and the effect that will have on eligibility. Some families who do not work enough hours to qualify for Working Tax Credits will be eligible for Universal Credit, and therefore for the BSG once they transition. However, some families who would currently qualify for the BSG under Tax Credits will not qualify under Universal Credit, because the upper threshold for Universal Credit is lower.

We recognise that social security in Scotland must be delivered in a difficult financial context. This means that we have to allocate our financial resources where the need is greatest, and where they can have greatest impact. That is why we are thinking about which low income families the BSG should be paid to and how best to identify these families. For example, it could be paid to:

- Families on very low incomes – e.g. those entitled to [free early learning and childcare at two years of age](#). This criteria includes approximately 27% of two year olds and would produce a broadly similar result when applied across the three BSG payments. An alternative but similar approach would be to use the [free school meals criteria](#)
- Families who are on slightly higher incomes, eg who are at or below the living wage of £8.25 an hour, which equates to an income of approximately £16000 per year for one adult working full time. This would be around 37% of all children but would be more complicated to administrate, as incomes fluctuate

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<sup>47</sup> <http://www.gov.scot/Publications/2015/10/3498/5>



- Anyone in receipt of any Tax Credit or Universal Credit, which can include families with incomes of over £30,000 in some circumstances. This is closest to the current eligibility for the SSMG, although there are currently limitations on the Tax Credit criteria that this would remove, simplifying eligibility. It would cover around 45% of all children

## Questions

**What are your views on who should receive the Best Start Grant?**

## Proposals on identifying who is responsible for a child

Currently a claimant is considered to be responsible for a child if they receive Child Benefit for that child or, where there is no Child Benefit, if they live with the child.

The SSMG can currently be awarded more than once for the same child in some limited circumstances. The BSG will be a longer term benefit than the current SSMG, and will follow the child as they progress through early years. Children may move nursery and school reasonably often. Because of this difference, we are considering making each of the three payments payable only once per child, although it may be necessary to make exceptions in certain circumstances.

## Questions

**Should we continue to use the same system to determine who is responsible for a child for the purposes of the BSG application?**

Yes

No

Please explain why

**Do you agree that each of the three BSG payments should only be made once for each child?**

Yes

No

If no, what exceptions would you make to this rule?

## Proposals on the maternity payment

The BSG will re-introduce payments for second and subsequent children, but at a lower rate, so we will need to identify whether a child is the first in the household. The SSMG does this by identifying whether there is a child in the household already under the age of 16 rather than looking at family relationships.

Currently, in order to receive the SSMG, a certified health professional must confirm that the mother has received medical advice. There is a clear correlation between poorer pregnancy outcomes, including higher rates of maternal and infant deaths in women who book later for antenatal care, attended infrequently or never attend for care. At present in Scotland, women and babies who are at the greatest risk of poor health outcomes are the least likely to access it. We are keen to reinforce the importance of attending for antenatal care and therefore plan to retain the requirement for mothers to have received medical advice in order to qualify for the BSG maternity payment.

### **Questions**

**Should we continue to use the same method as the SSMG to determine whether a child is the first child in a household?**

Yes

No

Please explain why

**If no, what alternative method should we use?**

**Do you agree that we should retain the requirement to obtain advice from a medical professional before making a maternity payment?**

Yes

No

Please explain your answer

### **Proposals on the nursery payment**

The BSG will pay low income families £250 to support them as their children begin early learning and childcare. We want to provide support when people need it, but the practicalities may be difficult as everyone's situation is different and plans for nursery and childcare can change right up until the last minute. We would like to understand the pressures that families face, when they face them and how the payment can add most value, without becoming too complicated.

There are a range of early learning and childcare options available to parents in Scotland, funded both publicly and privately. There are also a range of childcare settings, such as child minders and informal childcare.

We need to work out what conditions a family would need to meet to qualify for the nursery payment. Every child in Scotland is entitled to Free Early Learning and Childcare from age three onwards, with some children qualifying at age two. One

option is to use entitlement for a funded early learning and childcare place as the trigger for entitlement to the nursery element of the BSG.

### **Questions**

**Are there other points during the first five years of a child's life when families face greater pressure than at the start of nursery (other than birth and the start of school)?**

**What are your views on defining 'the start of nursery' as the point of entitlement to a funded early learning and childcare place, for the purposes of making the second payment?**

**Are there any particular issues related to the nursery payment that you think we should consider?**

### **Proposals on the school payment**

The BSG includes a third payment when children begin school for the first time. For some children this will be at the age of four, while for others it will be at the age of five, depending on the month of their birth. Children will not always follow the same pathway into school, and will not always begin their education at the same age. We want to make sure that the benefit design acknowledges and accommodates these differences.

### **Questions**

**Are there any particular issues related to the school payment that you think we should consider?**

**Should the school payment be payable to all eligible children who begin primary school for the first time in Scotland, or should an upper age limit be included?**

### **Proposals for the application process**

The current SSMG has a single application for a single payment. The BSG will be made up of three payments over a five year period. Some families will not receive the initial maternity payment, but will then meet criteria for later payments, either because of a change of circumstances or because they were eligible but did not apply for the initial payment. We think that the three payments should be treated separately because of the time lapse between them and the likelihood that people's circumstances will change.

For the existing SSMG, the claim must be made within the prescribed timeframe. The grant can be claimed from 29 weeks into the pregnancy until three months after

birth. We have heard concerns that the relatively short application window following birth contributes to difficulty in accessing the grant, particularly for those who qualify through Child Tax Credit which can only be applied for after birth. We propose to extend the application window for the first payment to six months after birth.

There will be some overlap in eligibility between the BSG and Healthy Start vouchers, powers over which are also devolved to Scottish Ministers by the Scotland Act 2016. Healthy Start vouchers are intended to improve nutrition for mothers and children. There is an opportunity to streamline the provision of information about and application processes for the two benefits.

### **Questions**

**What are your views on our proposals in relation to the BSG application process?**

**What are your views on establishing an integrated application process for the BSG and Healthy Start?**

**What are the advantages and disadvantages of this approach?**

### **Proposals for alternative support**

Currently the DWP makes payments to the claimant, via bank details specified in the application form. While we know that providing items rather than money without a choice would be inconsistent with some views on dignity and respect, a choice of alternative provision could add value in some cases. For example, a catalogue of items for people who can't travel to shops, adapted items for disabled people or help in the house rather than a cash payment.

For some families, managing a large lump sum could present a challenge. A catalogue of items could also be useful for a support worker who is helping someone to make choices. The collective purchasing power involved in this approach could also offer value for money if take up were sufficient.

However, we understand the importance of flexible support to service users and that any alternative forms of support should remain optional.

### **Questions**

**Would the option to receive items rather than a cash payment as part of the BSG have benefits?**

Yes

No

Please explain why

### **Proposals for Improving take up**

We know that there is a patchy awareness of the SSMG and that take up is low. It is important that people are able to access and receive the support that they are entitled to. We think that we can improve take up of the BSG by ensuring that it is promoted by services commonly used by people who will need support, for example the family nurse partnership and health visitors. We also think that the new baby box which will be available for all new mothers will be a good opportunity to raise awareness of the BSG.

### **Questions**

**Which services should promote awareness of the BSG to ensure that claimants know about it at the relevant time?**



## 11. Discretionary Housing Payment

### Summary

- Discretionary Housing Payments (DHPs) are currently made by local authorities, with guidance from DWP, and are aimed at helping people who need further financial assistance to meet their housing costs.
- Individuals whose Housing Benefit or Universal Credit has been reduced as a result of welfare reforms such as the 'bedroom tax', the benefit cap or Local Housing Allowance can be awarded a DHP.
- We are proposing that DHPs continue to operate in the same way once the Scottish Parliament has full control over all DHP funding.

### Discretionary Housing Payments in Scotland 2014/15– Key Facts

Help to meet rent payments for Housing Benefit Recipients. Paid at Local Authority Discretion.

**£50.5m** spent

A portion of this was spent to counter the effects of the "bedroom tax".

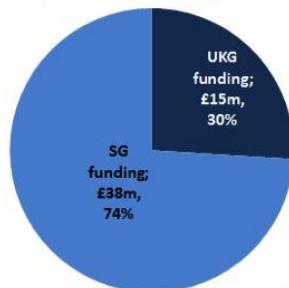
**118,000** DHPs awarded.

Includes cases affected by the RSRs "Bedroom Tax", where Local Authorities make up shortfalls in rent.

The average DHP award was **£429...**

...up from £335 in 2013/14.

The Scottish Government provided the majority of the funding in 2014/15



Local Authorities received **132,000** DHP applications (of which 130,000 were decided)



Sources: DWP benefit expenditure by Local Authority from 2000/01 to 2014/15; Scottish Government Discretionary Housing Payments in Scotland: 1 April 2014 to 31 March 2015.

## Operation of the existing benefit

The Scotland Act 2016 gives the Scottish Parliament legislative competence for DHPs. DHPs are currently made by local authorities, under guidance from DWP, and are aimed at helping people who need further financial assistance to meet their housing costs. Local authorities can award DHPs to individuals who are entitled to Housing Benefit or Universal Credit where it includes a housing element for rent.

DHPs can be awarded to tenants in the private and social rented sectors, or those who have yet to take up a tenancy. In addition to rental costs DHPs can be awarded to cover other housing related costs including rent in advance, deposits and removal costs. Individuals whose Housing Benefit or Universal Credit has been reduced as a result of welfare reforms such as the 'bedroom tax', the benefit cap or Local Housing Allowance can be awarded a DHP. Local authorities have discretion over how they assess claims for DHPs and how much is awarded. Guidance for local authorities is provided by [DWP DHP Guidance 2016](#).<sup>48</sup>

As part of the our Fairer Scotland consultation, the Scottish Government asked about people's experience of DHPs and whether they worked well as a form of financial assistance. In general the feedback was positive and we are therefore proposing that DHPs continue to operate in the same way once the Scottish Parliament has full control over DHPs.

## **Questions**

### **Could the way that DHPs are currently used be improved?**

Yes

No

Please explain why

### **Could the administration of DHP applications be improved?**

Yes

No

Please explain why

### **Does the guidance for local authorities on DHPs need amending?**

Yes

No

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/524321/discretionary-housing-payments-guide.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524321/discretionary-housing-payments-guide.pdf)

Please explain why



## **12. Job Grant**

### **Summary**

- The Scottish Government proposes to introduce a new Job Grant to help young people aged 16-24 who are returning to work after a period of six months unemployment.
- This would be a payment of £100, or £250 for those who have children.
- We plan to supplement this cash payment with free bus travel for a three month period.

The Scottish Government recognises that young people are the future for our economy, and that future economic growth will be dependent on our being able to support as many young people as possible into rewarding, sustainable, long-term careers. That is why we are keen to extend further support to young people returning to work after a period of unemployment, beyond the support that will be offered through new devolved employment services. The Job Grant will supplement new and existing support for young people to enter the workplace.

A number of academic studies suggest that unemployment can have a damaging effect on young people's earnings potential for many years afterwards. The longer the period of unemployment, the greater the future wage penalty tends to be.

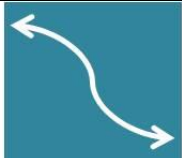
### **Proposals for the Job Grant**

The Job Grant is intended to help smooth the young person's transition back into work. It would help cover some initial basic costs, particularly with bus travel. We estimate that this will help around 6,500-8,500 young people aged 16-24 to return to work and will have a positive effect on work incentives. It would be a payment of £100, or £250 for those with children, and would be supplemented with free bus travel for a three month period.

### **Questions**

**What should the Scottish Government consider in developing the Job Grant?**





## 13. Universal Credit flexibilities

### Summary

- The Scotland Act 2016 provides Scottish Ministers with some flexibilities over the way Universal Credit (UC) is calculated and paid. These include changing the frequency of payments, splitting payments between members of a household instead of a single payment, and paying landlords direct for housing costs in Scotland. This will enable us to ensure that the implementation of UC will be better suited to our needs.
- We have already committed to enabling people to have the option of the rent element being paid direct to social landlords and the option of the frequency of their UC payments being twice monthly instead of calendar monthly.
- We are now consulting on two other potential options:
  - i.* extending payment of the rent element direct to landlords for tenants in the private rented sector *and*
  - ii.* providing the option to split the household payment between members of a household.

### Introduction

UC is a new single payment for working age people introduced by the UK Government. UC is intended to improve work incentives, simplify the benefit system and reduce fraud and error. UC remains reserved to the UK Government, however the Scottish Government have some administrative powers to change payment arrangements for UC.

### Operation of existing benefits

The main differences between UC and other current welfare benefits are: UC will be available to people who are in work and on a low income, as well as to those who are out of work; most people will apply online and manage their claim through an online account; claimants will usually receive one single monthly payment per household, paid into a bank account; and support with housing costs (rent) will go directly to the claimant as part of their monthly payment.

## Proposals for Universal Credit flexibilities

The Scottish flexibilities are being introduced to make it easier for claimants to manage their UC payments. These changes are intended to give the claimant more choice and control over their UC payments. Draft regulations for the first two flexibilities are being written and a further technical consultation is planned for these. These are:

- Having the option of being paid UC twice a month rather than monthly
- Having the option of the rent element being paid direct to social landlords

We also have the potential to introduce other flexibilities including the opportunity to offer tenants in the private rented sector the same choice of having their rent paid directly to their landlord and the power to vary the existing plans for single household payments of UC. This means that payments could be split between members of a household rather than a single household payment. These are the proposals we want to ask about in this consultation.

DWP are currently able to split payments in certain exceptional cases. This is technically challenging however and requires detailed knowledge about the family situation and who has lead responsibility for family costs and other bills and payments. We do not yet know if DWP would be able to introduce changes of this scale to their current systems. We will use the findings from this consultation to inform our discussions with them.

### Questions

**Should the choice of managed payments of rent be extended to private sector landlords in the future?**

Yes

No

Please explain why

**Should payments of Universal Credit be split between members of a household?**

Yes

No

Please explain why

If Yes, please indicate if you think the default position should be:

a) automatic payments to individuals, with the option to choose a joint payment

Yes

No

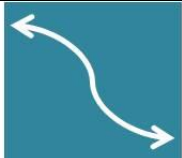
b) automatic household payments, with the option to choose individual payments?

Yes

No

**If Yes, how do you think payments should be split? For example 50/50 between members of a couple or weighted towards the person who is the main carer if the claim includes dependent children?**

**Do you have any other comments about how the Scottish Government's powers over Universal Credit administrative flexibilities will be delivered?**



## **13. Universal Credit housing element**

### **Summary**

- The Scotland Act 2016 also provides Scottish Ministers with some flexibility to vary the calculation of the housing element of UC for people in rented accommodation.
- We have already committed to using this power to abolish the bedroom tax for those on UC and will consult separately on the technical aspects of the legislation for this.
- We welcome views on how the Scottish Government could use this power in future to help those who need assistance to meet their housing costs.

### **Questions**

**Do you have any comments about the Scottish Government's powers over the housing element of Universal Credit?**

# **Consultation on Social Security in Scotland**

## **Part 3: Operational policy**

## **Part 3: Operational Policy**

**This section will be relevant to anyone with an interest in social security in Scotland. Even if you have only answered questions in one of the sections in the preceding part, we would be grateful for your views on the questions in Part 3 as well.**

Parts 1 and 2 of this consultation have been about the establishment of a new social security system and the specific benefits it will deliver. Part 3 looks at the strategic functions that the social security system will need to carry out in order to operate competently. This means functions that aren't specific to any individual benefit but could apply to any of the devolved benefits. We refer to these functions as 'operational policy' areas'.

This section asks for your views on the following operational policy areas:

- Advice, representation and advocacy – understanding the impact on advice services
- Getting things right – how we can deal with complaints, reviews and appeals
- Where you live – residency criteria for entitlement to devolved benefits
- Managing overpayments – how we can deal with claimant debt
- Fraud - how we can protect against intentional wrongdoing
- Information assurance – why we need to hold claimants' information, how we will look after it and what we will do with it
- Uprating – how we can maintain the value of benefits, in line with inflation

For each of these areas, we will set out the background, explain our thinking and seek your views.



## **14. Advice, representation and advocacy**

### **Summary**

- The Scottish Government has a proven track record of supporting and funding advice services in Scotland.
- We understand that the transfer of responsibility for the devolved benefits, from DWP to a Scottish social security agency will have an impact on the Scottish advice sector landscape.
- We want to understand whether the transfer of responsibility for the devolved benefits can be harnessed to drive holistic improvements to the provision of publicly funded advice in Scotland – for example, by improving the way advice services and a Scottish social security agency might work together.
- We are gathering evidence on the existing system and seeking people’s views on the scope for improvement.

The Scottish Government would like to ensure that people who need to access services are empowered to do so. There is a clear consensus that the right advice can have a transformative effect on service delivery by guiding people in need to the right support at the right times, assisting with processes such as applications and appeals and increasing take up. The Scottish Government agrees with the Scottish Campaign on Welfare Reform (SCoWR), where they say that, “In any time of change the potential for confusion will increase and therefore measures should be taken to mitigate this risk . . . there must be a well-resourced advice sector to ensure support is accessible to everyone<sup>49</sup>”.

The Scottish Government’s intention is to design a social security system that is person-centred, accessible and supportive and we believe that our track record of supporting and funding advice services supports this. However, it is fair to say that the transfer of responsibility for the devolved benefits, from DWP to a Scottish social security agency is likely to have an impact on the advice sector landscape in Scotland and the way in which the Scottish Government supports advice services. In this section, we will discuss the broad framework within which advice is currently provided in Scotland, and seek your views on the ways in which we should approach the provision of advice and information, in the context of a Scottish social security system.

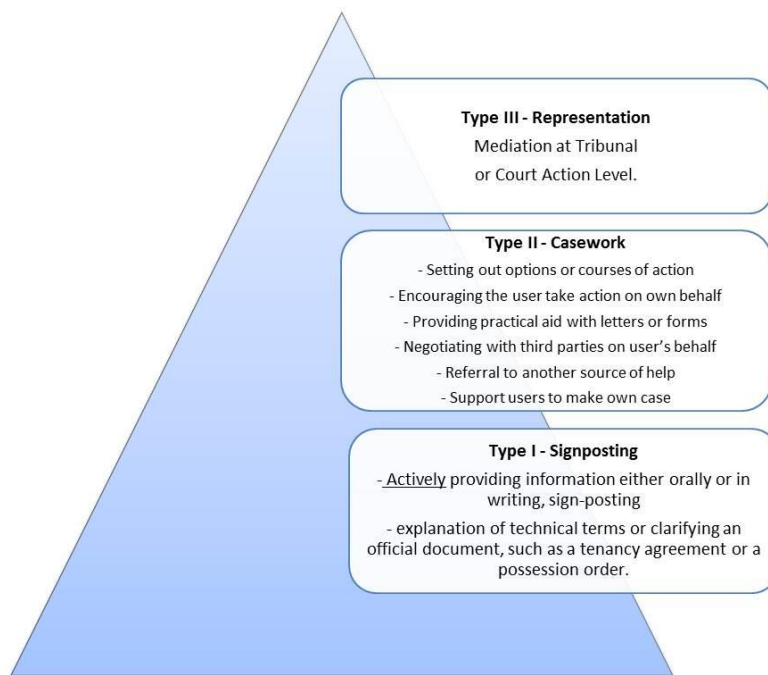
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<sup>49</sup> Please see SCoWR’s supplement to their [Manifesto for Change](#)

## Current arrangements

The 11 devolved benefits span a range of issues, needs and circumstances; they have different eligibility criteria and interrelate with other aspects of the social security system in various ways. Many people, therefore, will access advice services to support them to understand their entitlement and to resolve issues.

There is currently a range of publicly funded, free at point of access information and advice available in Scotland, covering matters which could be relevant to individuals claiming one or more of the devolved benefits. This includes welfare rights, money and financial capability, debt, energy efficiency and health. For each of these topics, different types of advice are offered. The [Scottish National Standards for Information and Advice Providers](#)<sup>50</sup> (SNSIAP) defines these as: signposting, casework and representation. Further details of these three types are shown in the diagram below.



## Type I and II advice - Signposting and Casework

Various organisations in Scotland, such as Shelter and Citizens Advice Scotland, provide Type I and II advice. DWP also provide a range of level 1 information on the devolved benefits and related services via the Gov.uk web platform. This includes:

- Contact information for on-line, telephone and postal enquiries
- An overview of each of the devolved benefits, along with information on eligibility, entitlement and how to claim

<sup>50</sup> <http://www.gov.scot/Topics/Justice/policies/widening-access/standardsforadvisers>



- General advice on entitlement to other government benefits and some local government services, categorised by a person's circumstances e.g. parent, pensioner, etc
- On-line application forms and guidance notes for most of the devolved benefits except for PIP, Severe Disablement Allowance and Cold Weather Payments
- Advice on further support which includes signposting people to local authorities, Citizens Advice, some charities who may be able to help (such as Carers UK and Family Fund Trust) and other government departments (e.g. Jobcentre Plus and HMRC, etc.)
- Free on-line benefit calculators

In addition, local authorities and a wide range of third sector organisations provide casework services in one or more of the different areas covered by the Standards, and may also signpost to other services for enquiries outside their area of specialism. Casework can involve developing a detailed understanding of a particular area of the law.

### **Type III advice – Representation**

Some of these organisations will also provide Type III representation services. This involves applying a detailed knowledge of a particular area of the law in the context of a tribunal, court or medication setting. The role of the representative is often similar to that of a lawyer in court, although advisers may not be legally trained. It is important not to confuse representatives with 'advocates' working for advocacy services, as described later in this section.

### **Impact of the devolved benefits**

The transfer of responsibility for the devolved benefits will place new requirements on the advice sector in Scotland that will need to be understood and managed. We also need to ensure that - once our new Scottish social security system has been established - our approach to the provision of advice and information reflects our overall principles. This means:

- Providing the right advice for individuals' needs and circumstances is an investment in the whole of Scotland and an important tool for tackling poverty and inequality
- Providing the right advice for individuals' needs and circumstances, to help ensure that users of the Scottish social security system are treated with dignity and respect
- Ensuring that the processes and services which are put in place to deliver the right advice are evidence based and designed with the people of Scotland

- Putting the user experience first to ensure continuous improvement of national and local policies, and processes and systems that support delivery of advice, demonstrating that processes and services put in place to deliver the right advice are efficient and offer value for money

The Scottish Government intends to work closely with the publicly funded advice sector to assess its current capacity and capability and identify strengths, weaknesses, opportunities and key risks. This will help us to:

- Understand the key drivers affecting advice services now and in the future
- Identify ways in which organisations and individuals can make the most of new opportunities, and manage any additional complexity resulting from the transfer of responsibility for social security to Scotland

As part of this work, we want to use this consultation to ask for peoples' views on the publicly funded advice that is currently provided. We aim to find out if we can harness the transfer of responsibility for the devolved benefits to drive improvements to the provision of publicly funded advice in Scotland, to better support vulnerable people and help deliver holistic advice services. This will ensure people seeking to access the social security system are not only given the right information, according to their needs and circumstances, but are also offered support in other aspects of their lives that could make a difference - for example, support with housing issues, energy efficiency measures or debt management.

### **Questions**

**What role[s] should publicly funded advice providers to play in the development of a new Scottish social security system?**

**What steps need to be taken, to understand the likely impact of the transfer of the devolved benefits on publicly funded advice in Scotland?**

**How could the transfer of the devolved benefits to Scotland be used to drive improvements in the provision of publicly funded advice?**

### **Advocacy**

The Scottish Government recognises that applying for and being assessed for social security benefits is a challenging process for people, especially for those with long-term health conditions and impairments. We also know that those with particular needs will always need additional support that sometimes goes beyond what can be expected of the advice sector. Advocacy, for those most at risk, has proved to be of significant assistance in providing one-to-one tailored support.

We have purposefully separated this section on advocacy from the sections on advice, signposting, casework and representation. This is because independent

advocacy organisations are usually separate from organisations that provide other types of services, and also provide support in all areas of a person's life. There is usually a sequence of support - individuals with particularly intense or complex needs will be transferred by information and advice workers onto an advocacy service.

For those people most in need of support, it is important to ensure that they are fully supported to engage effectively with the process. For some, levels of anxiety can be such that opening mail when it arrives or making telephone calls to initiate the claim process are intimidating, and attending meetings or interviews completely overwhelming. The resultant anxiety can have the effect of exacerbating mental and physical health conditions. Independent advocates provide the very individualised support required in such situations, taking the time required to get to know the person and build a trusting relationship with them. Advocacy also aims to empower individuals and support increased confidence and knowledge of rights so that, in the longer term, some individuals will no longer require such support.

### Questions

**Do you think that Independent Advocacy services should be available to help people successfully claim appropriate benefits?**

Yes

No

Please explain why

**What next steps would you recommend that would help the Scottish Government better understand the likely impact of the transfer of the devolved benefits on independent advocacy services?**



## 15. Complaints, reviews and appeals

### **Summary**

- We want to provide high quality services and information to all who interact with Scotland's social security system. We recognise, however, that there will be occasions when people's experience falls short of this vision. It's important, therefore, that an effective complaints handling procedure is put in place.
- In this section, we will seek your views about the best way to handle individuals' comments, concerns and complaints.
- We highlight where best practice already exists, through the work of the Scottish Public Services Ombudsman and the Complaints Standards Authority.
- We ask for your views on whether the principles and model for handling comments, concerns and complaints developed by the Complaints Standards Authority should be adopted for use by our agency as part of our Scottish social security system.

### Introduction

We want as many individuals claiming devolved benefits in Scotland to receive the service they expect, to the standards they expect at the first time of asking. However, we recognise that - as with any system providing services to over a million people – there will be disagreement over some decisions and we will need a further opportunity to ensure that we get things right. The Scottish Government entirely supports the user's right to comment on, or complain about our conduct, processes and to appeal decisions. That is why one of our underlying principles is that, **“we will strive for continuous improvement in all our policies, processes and systems, putting the user experience first”**.

We recognise the value of users comments and complaints, and we want to ensure that the lessons learned in handling complaints are used to improve overall delivery of our services. By handling comments and complaints in the right way, we hope to be able to show improvement, from the point at which the issue is first identified, to be the point at which it is resolved. This is why we will develop a Complaints Handling Procedure (CHP) for our new agency. The CHP will help to address

dissatisfaction by providing clear, fair and reasoned responses in a timely manner. The CHP will be owned by our new social security agency, which will be responsible for keeping it up to date and fit for purpose.

### **Current arrangements**

There is already a great deal of valuable practice in complaints handling, available across the Scottish public sector including a dedicated public body, the Complaints Standards Authority, which has been set up to act as a centre for excellence<sup>51</sup>. This organisation publishes model complaints handling procedures, guidance, best practice and training resources.

In line with this, we believe that there will always be at least two opportunities to resolve complaints promptly through internal action by our officers: '**frontline resolution**' (aiming to resolve complaints at first contact through apology, explanation or action) and '**investigation**' (for complex or serious issues requiring further investigation). This is already the practice in other areas of the Scottish public sector – for example, local authorities have a two-stage process for complaint handling.

In developing our CHP, we propose following the Scottish Public Services Ombudsman's 'Statement of Complaints Handling Principles'. This states an effective procedure should be:

- **User-Focused:** it puts the person who is complaining at the heart of the process
- **Accessible:** it is appropriately and clearly communicated, easily understood and available to all
- **Simple and timely:** it has as few steps as necessary within an agreed and transparent timeframe
- **Thorough, proportionate and consistent:** it should provide quality outcomes in all complaints through robust and proportionate investigation and the use of clear quality standards
- **Objective, impartial and fair:** it should be objective, evidence-based and driven by the facts and established circumstances, not assumptions and this should be clearly demonstrated

We believe that an effective CHP should also:

**Seek early resolution:** it aims to resolve complaints at the earliest opportunity, to the service user's satisfaction wherever possible and appropriate.

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<sup>51</sup> For more information about the work of the CSA, you can go to - [Complaints Standards Authority – Valuing Complaints](#)

**Deliver improvement:** it is driven by the search for improvement, using analysis of outcomes and support service delivery and drive service quality improvements.

Where complaints cannot be resolved internally, we would encourage complainants to take the matter to the Scottish Public Services Ombudsman. This is the final stage for complaints about public bodies in Scotland, is independent and provides its services free of charge.

### Questions

**Do you agree that we should base our CHP on the Scottish Public Services Ombudsman’s ‘Statement of Complaints Handling Principles’?**

Yes

No

Please explain why

### Internal Reviews

Internal reviews of decisions are normal practice across government and the wider public sector. Local authorities, NHS Scotland, the Scottish Government, the Scottish Parliament, HMRC and the Student Awards Agency for Scotland are all examples of bodies that carry out an internal review before allowing an onward appeal. When the right processes, and the necessary checks and balances are in place to ensure that they are carried out appropriately, internal reviews can provide an efficient, affordable way for an organisation to correct mistakes.

DWP carries out internal reviews of decisions. When an individual disagrees with a decision made by DWP, and before that person can appeal the decision at a tribunal, they must ask DWP to carry out an internal review. This process is known as a ‘mandatory reconsideration’<sup>52</sup>. We recognise that there are differences of opinion on how well these existing arrangements work. That is why we are consulting on ways in which we can make an internal review process work for Scotland, rather than on adopting the existing arrangements.

We believe that internal reviews would present an opportunity to improve decision making, by allowing the agency to scrutinise the initial decision. We recognise that there are other ways to allow decisions to be reconsidered - for example, under the arrangements that are still in place for Housing Benefit decisions, the decision maker has the power to reverse a decision at the point at which the applicant requests an appeal. However, we believe that making it absolutely clear that individuals can request an internal review without making an appeal, would be an accessible, efficient and cost-effective route to the resolution of disagreements, and would enable the agency to identify and address issues at an early stage.

<sup>52</sup> You can find out more about the way DWP currently operate mandatory reconsideration here - [Appeal to the Social Security and Child Support Tribunal - GOV.UK](https://www.gov.uk/apply-for-a-tribunal-appeal)

However, internal reviews could also place an additional administrative requirement on service users, by placing the burden of obtaining the reconsideration within strict time limits (for example within one month of the date of the decision) onto the individual who is making the claim. Internal reviews could also contribute to delays in getting a decision right, if there is a lack of monitoring or oversight of the amount of time it takes the agency to review their decision. There is currently no official time limit for the mandatory reconsideration of DWP decisions, although a UK Government Minister has stated that, “if no further information is needed and the case is straightforward, the mandatory reconsideration process... could be completed relatively quickly. We would usually expect this to take around 14 days”<sup>53</sup>.

## Questions

**How should a Scottish internal review process work?**

**What would be a reasonable timescale for the review to be carried out?**

## Appeals

If an individual still disagrees with a decision, after it has been reviewed internally by the organisation that made the decision, then the individual should have the right to appeal. At the moment, if an individual still disagrees with DWP’s position following mandatory reconsideration, they can then appeal to a tribunal. We recognise that there are other examples in the Scottish public sector, of ways in which decisions can be challenged – for example, if an individual disagrees with a decision made by a local authority in relation to the existing Scottish Welfare Fund, then they have the right to an independent review by the Scottish Public Sector Ombudsman – and we think that this is the right approach for a discretionary scheme like the Scottish Welfare Fund.

The Scottish Government proposes to proceed on the basis that it would be appropriate for appeals against decisions made in relation to the devolved benefits to be decided by a tribunal. This is because we believe this will support a safe and secure transition, and will be a fair and proportionate approach because the decision could be about the individual’s long-term entitlement to a benefit, rather than their need for a one-off payment

In Scotland, appeals against decisions by DWP are heard by the Social Security and Child Support Tribunal which is currently part of Her Majesty’s UK Courts and Tribunals Services, which means it is operated by the UK Government. However,

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<sup>53</sup> This is a quote from November 2013, from Esther McVey MP, then Minister for Employment. It can be found, in full, in Hansard here - [House of Commons Hansard Written Answers for 25 Nov 2013 \(pt 0005\)](#)

control over the administration and management of the tribunal is being transferred to the Scottish Government – although the underlying legislation on which appeals to the tribunal are based will mostly remain reserved. This is happening under the same legislation (The Scotland Act 2016) which allows for the devolution of some social security benefits and the establishment of a Scottish social security system.

In thinking about the design of an appeals process for social security in Scotland, therefore, we also have to bear in mind that responsibility for the administration of tribunals is being devolved at the same time. This raises particular issues and challenges for our work to ensure that individuals claiming devolved benefits have a transparent and accessible appeals process with adequate access to independent representation, to support them in the event that they want to challenge a decision.

### **Current arrangements for appeals**

The default position following devolution is that existing appeal mechanisms will be retained, unless alternative processes are put in place. This means that there would be an internal review and then, potentially, an appeal to the Social Security and Child Support Tribunal. However, establishing a Scottish social security agency presents an opportunity to consider and evaluate the design of the appeals process.

The existing Social Security and Child Support Tribunal currently hears appeals in Scotland from a multitude of benefits, all of which are currently reserved. Some are due to be devolved, but others will remain reserved. Once the tribunal has transferred into the Scottish Courts and Tribunals Service, it will continue to hear appeals on reserved benefits. There is a decision to make about whether the tribunal should also hear appeals from the devolved benefits, and how this should be done.

### **Questions**

**Should a tribunal be used as the forum for dispute resolution for the Scottish social security system?**

Yes

No

Please explain why

**If no, are there any alternative methods of dispute resolution that you think would be preferable to a tribunal?**

### **An appeal process based on values**

In earlier sections of this consultation paper, we have talked about the key principles which will guide the decisions we will make about social security in Scotland. We believe that these key principles mean that we should ensure that our appeals process embodies the following values:



- **Right first time** – a strong focus is placed on initial decision making to minimise erroneous decisions
- **Access to independent scrutiny** – when a service user has concerns which are not resolved after an internal review, then they should be able to appeal
- **Learning from experience** – lessons are learned from experience to ensure continuous improvement
- **Transparency** – service users fully understand and are kept informed at each stage of the process
- **Certainty of timescale** – service users can predict with a degree of certainty the likely timescale for resolution
- **Accessibility** – the needs of the service user are central and the administrative burden placed on them is minimised
- **Minimising the burden on the user** - the process of challenging and appealing decisions does not place an excessive administrative burden on applicants

### Questions

**How can we ensure that our values underpin the appeals process for a Scottish Social Security agency?**

**Are there any other values that you feel should be reflected in the design of the appeals process?**

### Timescales

We believe that there should be clear and understandable timescales for appeals to be resolved. A key part of avoiding undue delay in resolving appeals is ensuring that the tribunal (or other body) hearing appeals has sufficient capacity to deal with the volume of appeals. The number of appeals (for all benefits) in Scotland fell significantly between 2012-13 and 2015-16, though this is expected to rise again in 2016-17.

There is an inherent tension between improving access to the appeals process for service users and resolving appeals without delay. The latter requires sufficient capacity to hear appeals, which means accurately predicting the volume of appeals in advance. We are seeking views on the best way to balance these requirements.

### Questions

**What do you consider would be reasonable timescales to hear an appeal in relation a decision on a devolved benefit?**

**In order to ensure a transparent appeals process, what steps could be taken to ensure that those appealing fully understand and are kept informed at each**

**stage of the appeals process?**

**How could the existing appeals process be improved?**



## **16. Residency and cross-border issues**

### **Summary**

- The Scottish Government will need to set out who is entitled to the benefits it will deliver. This includes setting eligibility criteria about residency.
- This means:
  - residency status for those who have come to the UK
  - residency status within Scotland and how we define that someone receives devolved Scottish benefits rather than reserved UK benefits where appropriate
- The Scottish Government expects that a residence test will be based on “habitual residence”, rather than where a person happens to be living on a particular day.
- Cross border issues will occur when Scotland begins delivering devolved benefits. We will need to manage new administrative borders between the different social security systems in the UK - between the social security systems in Scotland and England and Wales and between Scotland and Northern Ireland.

### **Residency and ‘habitual residence’**

When we start to operate our Scottish social security system, it will be important to be able to identify where a person is resident at the time they make their claim. This cannot be something that an individual can choose. It should be assessed based on where a person is residing, and the reasons why they are residing there. The Scottish Government expects that all devolved benefits will include residency status criteria, amongst the eligibility criteria which will determine entitlement to each benefit.

In most circumstances, this will be straightforward, but rules will be needed for people who, for example, live on one side of the Scotland-England border, but work on the other, or who have moved across the border to study or for medical treatment. Consideration will also need to be given to how we ensure that a Scottish social security system treats people from outside the UK fairly and in a way that reflects our principles. We will need to clearly define who qualifies for Scottish benefits and who qualifies for UK Government benefits— while making sure that no-one falls between the gaps or is able to benefit unfairly from both systems.

The Scottish Government expects that a residence test will be based on “habitual residence”, rather than where a person happens to be living on a particular day. Determining this will take into account things like their family situation, the reasons why they have moved across the border, and how long they appear likely to remain where they currently are living. A final definition of a ‘Scottish Claimant’, i.e. a person who qualifies for Scottish benefits will also need to be discussed and agreed with the UK Government.

There are already habitual residency tests which are used in the UK which could be adopted for use in a Scottish social security system. For example, DWP carries out a habitual residence test to determine whether someone can access benefits. Factors which are currently taken into account by DWP, in determining if an individual is habitually resident may include:

- The length and continuity of residence
- The person’s future intentions
- Their employment prospects
- Their reasons for coming to the UK
- Where the person’s ‘centre of interest’ lies

### Questions

**Should Scottish benefits only be payable to individuals who are resident in Scotland?**

Yes

No

Please explain why

**What are your views on the ‘habitual’ residence test currently used in the UK by DWP?**

**Are there other issues that the Scottish Government should take into account when it comes to residency rules?**

### Cross border issues

At present, benefits are paid on the same basis throughout the UK. In certain cases, some benefits can be paid to people who live outside the UK.

With the devolution of some social security responsibilities to the Scottish Parliament, we will need to manage new administrative borders between the different social security regimes within the UK- that is between the social security systems in Scotland and England and Wales and between Scotland and Northern Ireland. There is also a need to consider whether social security benefits for which the Scottish Government is responsible should be paid to persons who are not resident in Scotland.

With devolution of some social security responsibilities to the Scottish Parliament, the principles of free movement, while ensuring no-one either falls through the cracks or is able to make a 'double-claim', will need to work within the UK. Where identical benefits are provided by the administering bodies in Scotland, England and Wales, and Northern Ireland, it will be important to ensure that people who meet qualifying rules receive their benefit from one of these administering bodies, and only one of them. This means ensuring that people receive their benefit from the right body – that is, the administering body operating the scheme for which they properly qualify. Deciding which is the right body is likely to depend on which of the areas is the one with which the person has the strongest link at the time of their claim.

Cross-border issues will be easier to manage in instances where the qualifying criteria operated by each Government are identical. The situation becomes more complex in instances where the rate at which a benefit is paid on one side of the border is higher than on the other, or if a benefit is paid in Scotland that has no equivalent in the rest of the UK. It is not our intention to standardise social security provision in Scotland by simply matching what is provided elsewhere in the UK – and the Scottish Government has already indicated areas in which it wants to set different rates for certain benefits. For example, the Scottish Government has already proposed to increase in the rate at which [Carer's Allowance](#) is paid in Scotland, so that will match the rate of Jobseeker's Allowance and, consequently, will be higher than the rate of Carers Allowance paid in England and Wales. We are also proposing to introduce a [Best Start Grant](#) which will have elements that are not currently paid under the UK Sure Start Maternity Grant scheme.

Having different rates for certain benefits on either side of the border will present challenges – for example, where people move from Scotland to England or Wales (or *vice-versa*) during an application or when they are receiving payments. The Scottish Government is aware of these challenges and intends to work with users and other partners, including DWP, to ensure that its services are fair and that decisions made on whether or not an individual is entitled to a particular benefit or a particular amount of benefit are in line with our principles.

Our social security systems (both Scotland's and those in other UK administrations) will need to coordinate. Coordination will ensure that if, for example, a person who is receiving a benefit in Scotland moves to reside in England and Wales, the transition is smooth. There will also need to be coordination between the benefit system that the UK Government will continue to operate, and the new benefit system in Scotland.

There are also some benefit specific issues to consider. For example, payment of Carer's Allowance is dependent on the cared for person receiving a disability benefit. We will need to develop an approach to deal with the situation where the disabled person and their carer live on different sides of the border.

## Questions

**What factors should Scottish Government consider in seeking to coordinate its social security system with other social security systems in the UK?**

**How can the Scottish Government ensure that no-one either falls through the cracks or is able to make a 'double-claim'?**



## 17. Managing overpayments and debt

### Summary

- Errors which result in overpayments reduce the amount of public money available to be spent on those who need it. Therefore, there must be controls in the system, to spot errors and put them right.
- We are clear that, when talking about overpayments, we are talking about circumstances in which an error has been made which has led to an individual being paid more than the amount of benefit to which they are actually entitled.
- We recognise that overpayments made by the social security system are often made as a result of error, either by public sector officials or by individuals themselves. Overpayments of devolved benefits which are not the result of an error by the individual making the claim should not be recovered.
- If we seek to recover an overpayment, this does not mean that the individual is being sanctioned and it does not mean that we think the individual has attempted to commit fraud.
- Nothing in this section should be taken to mean that the Scottish Government will necessarily seek to replicate current DWP arrangements and processes for dealing with overpayments, only that we wish to gather users' views on the current arrangements so that we can make an assessment as to what might be appropriate for Scotland.

In other parts of this consultation document, we have talked about the first of our guiding principles, that social security is an investment in the people of Scotland. We have said that this investment will eventually be worth around £2.7 billion in payments and support and that it must be protected so that public money can be spent on people who need it.

One of the ways in which we can protect this investment is by recovering overpayments, as DWP currently do. **This is not the same as applying a sanction.**<sup>54</sup>

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<sup>54</sup> The Scottish Government has made its position on sanctions clear. In June 2014, the [2<sup>nd</sup> Report of our Expert Working Group on Welfare](#) said that: "We recommend that the current system of sanctions is abolished and instead replaced with a system that is more proportionate, personal and positive" (para. 27).

In this section, we will discuss the recovery of overpayments. **This does not mean fraud.** (Fraud is discussed in a later section of this document.) Overpayments refer to circumstances in which an error has been made which has led to an individual being paid more than the amount of benefit to which they are actually entitled. This can occur as a result of an error by the individual themselves or someone else, including those operating the benefit system. We accept that, however well the system and processes are designed and, however careful people are, there will always be scope for human or system error.

### Reducing errors

The challenge, at this stage, is to develop an approach to dealing with error which reflects our principles, specifically that, at every step of our engagement with individuals, we will treat people with dignity and respect. We want to balance the rights and responsibilities of the individual with the responsibilities of the agency. This means, for example, being clear that we expect individuals applying for benefits to only provide information that they know to be true.

If an individual provides information which is later shown not to be true, then we will need to decide what further action needs to be taken. Making these kind of decisions is normal practice across government and the wider public sector. For example, local authorities, HMRC, DWP and the Student Awards Agency for Scotland make decisions as to whether or not money has been paid out in error and who is responsible for the error. When we begin to operate our Scottish social security system, we will design our services based on the best practice available, to ensure that our decisions are fair and transparent and that they reflect our principles.

### Current arrangements for overpayments

No matter how careful people are, it is a fact of life that everyone makes mistakes sometimes. In terms of a social security system, this means that amounts of money are sometimes overpaid in error. Currently, when an overpayment has been made, DWP will decide whether it can be recovered or not. This will usually only happen when the overpayment has been made as a result of an error by the individual making the claim – for example, if the individual has not provided all of the right information at the right time. People can appeal if they disagree with this. DWP will then seek to recover the overpayment and will notify the individual of the amount to be recovered and the reasons for the overpayment decision. If the individual has any further queries, they will be directed to contact DWP's [debt management information service](#)<sup>55</sup>.

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<sup>55</sup> <https://www.gov.uk/benefit-overpayments/how-to-make-a-repayment>



Where the individual's circumstances are deemed suitable for recovery directly from their benefit payments, they are notified about the amount they have to repay and how to repay the overpayment and that a deduction from their benefit can be applied. (The overpayment does not have to be recovered from the individual's benefit payments - other recovery methods, such as payment by Direct Debit are also available.) Recovery from benefits will normally commence after 1 month, unless an appeal is lodged. If the customer is receiving Universal Credit, then recovery can commence immediately.

### Questions

**Could the existing arrangements for recovering social security overpayments be improved in the new Scottish social security system?**

**Yes**

**No**

**If yes, please explain your answer**

### Financial advice

We recognise that people receiving benefits may be at risk of financial hardship and that this risk may be exacerbated during a period when their benefit payments are reduced to recover an overpayment. We understand that even a relatively small reduction in benefit has the potential to negatively impact an individual's financial wellbeing. For this reason, we are considering the role that financial advice might play in supporting individuals who are being asked to repay overpayments from their benefits.

### Questions

**What are your views on the role that financial advice can play in the recovery of overpayments?**



## 18. Fraud

### **Summary**

- We believe that social security is an investment in the people of Scotland and we will take a zero-tolerance approach to fraud in order to protect that investment.
- We want to raise awareness of the individual's responsibilities in relation to social security fraud whilst, at the same time, designing processes which will be accessible and simple to use.
- In order to protect against fraud, we propose that officials working for the Scottish Government or its agency, should investigate fraud in the same way as "Authorised Officers" currently investigate fraud for DWP – and we are seeking views on the powers that should be granted to these officers and the code of practice which should govern their work.
- We are clear that people who have knowingly committed fraud should be punished – and we are seeking views on the appropriate penalties for fraud offences.

The first of the key principles which we set out in our paper, "A New Future for Social Security in Scotland", was that social security is an investment in the people of Scotland. An investment which will eventually be worth roughly £2.7 billion in payments and support. This investment must be protected so that public money can be spent on people who need it. One of the ways in which we will protect this investment is by guarding against attempts to knowingly commit fraud, either by individuals or by organised groups.

In this section, we will talk about the Scottish Government's counter-fraud strategy, which already applies across all of the areas where the Scottish Government makes payments. We will then go on to look at the ways in which DWP, specifically, investigate and protect against fraud. This is because DWP's current approach is an example of how fraud investigations are carried out in relation to social security benefits.

## Scottish Government counter-fraud strategy

The Scottish Government already has a [counter-fraud strategy](#)<sup>56</sup>. We have a zero-tolerance attitude to individuals who knowingly commit fraud and we believe that there is no acceptable level of intentional or organised fraud. Our approach to countering fraud has five objectives. These are:

- **Awareness:** to prevent fraud by raising awareness of fraud and its safeguards
- **Prevention:** to prevent fraud through improving our systems and controls
- **Teamwork:** to prevent fraud by working together across the public sector
- **Investigation:** to handle fraud by being proactive in analysing data to identify areas at risk of fraud
- **Enforcement:** to handle fraud by being tough on fraudsters by punishing them effectively

We propose to either adopt or adapt this existing Scottish Government counter-fraud strategy for use in social security. This means that we will:

- Commit to clear ethical standards
- Communicate our attitude to fraud
- Support all of our staff in their responsibilities in preventing and detecting fraud
- Provide managers with specialist support
- Maintain comprehensive procedures for preventing and detecting fraud
- Put in place robust processes for reporting suspicions of fraud
- Respond to fraud effectively through a comprehensive fraud response plan
- Use data and technology efficiently to combat fraud
- Sharing knowledge of vulnerabilities and lessons learned

## Questions

**Should the existing Scottish Government approach to fraud be adopted for use in our social security system?**

Yes

No

If no, what else should be used instead?

**If yes, should our existing counter-fraud strategy be adapted in any way?**

Yes

No

Please explain your answer

<sup>56</sup> <http://www.gov.scot/Topics/Government/Finance/spfm/fraud/fraudannexa>

**How could the new Scottish social security system ‘design out’ errors and reduce the potential for fraud at the application stage?**

**Investigations**

Under [section 109A – 109C of the Social Security Administration Act 1992](#)<sup>57</sup>, the UK Secretary of State has granted a range of powers to officers working for DWP. These investigators are referred to as “Authorised Officers” because they must have specific authorisation, conferred by the Secretary of State, to use their powers and are given appropriate training.

Authorised Officers are governed by a statutory code of practice on obtaining information<sup>58</sup>, which is published by DWP and laid before the UK Parliament. This code of practice sets out how Authorised Officers should exercise their powers. We propose to publish a Scottish code of practice, which will set out how investigators in Scotland should use the powers granted to them, to protect against fraud.

The powers allow for enquiries to be made by authorised officers in order to:

- a) Establish whether benefit has been paid in accordance with the legislation
- b) Prevent or detect the social security offences

Authorised Officers can also:

- c) Require information to be provided
- d) Enter premises
- e) Require persons keeping electronic records to give authorised officers access to those records

It is currently the practice, as part of an investigation, for individuals to be interviewed under caution. This practice provides important protection for individuals. The individual is not legally bound to provide evidence that could incriminate them - and this would be made clear at the start of the interview. An interview is also an opportunity for the investigator to gather information, to help them fully understand the circumstances of a case.

We propose that the practice of conducting interviews under caution should continue as part of investigations into social security fraud in Scotland. However, we also understand that a formal interview can be stressful and we want to make sure that the practice respects the individual’s rights and that they are treated with dignity and respect.

<sup>57</sup> <http://www.legislation.gov.uk/ukpga/1992/5/section/109/enacted>

<sup>58</sup> An electronic version of the current code of practice can be found here - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/509652/code-of-practice-on-obtaining-information-social-security-fraud-act-2001.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509652/code-of-practice-on-obtaining-information-social-security-fraud-act-2001.pdf)

## Questions

**Should the Scottish social security system adopt DWP's existing code of practice for investigators?**

Yes

No

Please explain your answer

**What are your views on the existing range of powers granted to investigators?**

**What are your views on conducting interviews under caution?**

**What improvements could be made around conducting interviews under caution?**

## Penalties

Fraud is an offence which carries serious penalties, which can have a long-term impact on an individual's personal circumstances. So, it is important to ensure that no-one is penalised unjustly. That is why the standard of proof required to prove that an individual has committed fraud is the criminal standard. This means proving beyond reasonable doubt that a person had knowledge (which means that they knew that what they were doing was fraudulent) and intent (which means that they deliberately intended to mislead someone, by doing something that they knew was fraudulent).

[Sections 112\(1\)\(a\) and 112\(1\)\(b\) of the Social Security Administration Act 1992](#)<sup>59</sup> specifies that - if it is proved that a person had the knowledge and intent to commit fraud – they may be found guilty of certain specific offences. These are:

- Making a statement which the person knows to be false
- Producing information which the person knows to be false in a material particular
- Failing to notify a change in circumstances, when the person is aware that the change affects their benefit entitlement
- Failing to notify a change in a person's circumstances, when the person is aware that the change affects another person's entitlement

Social security payments and support are an investment which must be protected so that public money can be spent on people who need it. One of the ways in which we can protect this investment is by deterring people from committing fraud. We can do this by having systems and controls which will identify attempts to commit fraud and

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<sup>59</sup> <http://www.legislation.gov.uk/ukpga/1992/5/section/112/enacted>

also by setting appropriate penalties, which will make it clear that attempting to commit fraud could have serious consequences. This is in line with the Scottish Government's existing counter-fraud strategy, which is clear that we should be tough on people who have committed fraud.

[Section 112\(2\) of the Social Security Administration Act 1992](#)<sup>60</sup> also provides that the penalty for committing benefit fraud will be a fine of not more than £5,000, imprisonment for a term not exceeding three months, or both. Proceeds of benefit fraud may be made subject to a confiscation order in Scotland under part 3 of the 2002 Proceeds of Crime Act.

### Questions

**Should the Scottish Government retain the same list of offences which people can be found guilty of in terms of social security fraud?**

Yes

No

Please explain your answer

**Should the Scottish Government impose the same level of penalties for social security fraud as are currently imposed?**

Yes

No

Please explain your answer

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<sup>60</sup> <http://www.legislation.gov.uk/ukpga/1992/5/section/112/enacted>



## 19. Safeguarding your information

### Summary

- The Scottish Government believes that every individual has the right to privacy and that personal information should be protected.
- We propose to take a 'Privacy by Design' approach to information handling to promote privacy, security, and compliance with Data Protection Act 1998 (DPA) - from the initial stages of setting up the agency and registering with the Information Commissioner's Office, through to service delivery.
- We want to take advantage of advances in technology, to store and share personal information safely and securely, in order to better support claimant applications by putting the user experience first.
- We will securely source the minimum amount of personal information we need from other public sector organisations where there is a legal basis to do so and the appropriate Data Sharing Agreements are in place, to support and assess applications, instead of collecting and storing large amounts of information in a 'data warehouse'.
- We will be open and transparent in our approach to information sharing.

In this section, we will discuss our approach to ensuring that individuals' privacy is protected and that the personal information, which we will need in order to operate a social security system, is transferred and held securely.

Our approach to protecting individuals' personal information builds on the key principles which we set out in our paper, "A New Future for Social Security in Scotland". In particular, our principles **respect for the dignity of individuals is at the heart of everything we do; we will strive for continuous improvement in all our policies, processes and systems, putting the user experience first; and we will demonstrate that our services are efficient and value for money.**

Our overriding priority will be to ensure a smooth transition from the existing UK benefits to our new Scottish arrangements, so that people continue to receive the support to which they are entitled. This means sharing information, when there is a legal basis to do so, between DWP, the Scottish Government, other public sector organisations in Scotland and our new social security agency. It is important to note that, given the relationship between devolved and reserved benefits, controlled by

the Scottish and UK Government's respectively, we will still be reliant on some of DWP's existing information, at least in the early years. This may place practical limits on the pace at which change can happen.

It is clear that our Scottish approach needs to build a new foundation of trust and our approach to protecting individual's personal information will be key to this. In the long term, our ambition is to have a Scottish social security system that is fully aligned with other devolved services, to provide an holistic approach that best supports the outcomes for individuals and wider Scottish society. We believe that our approach to information assurance will help to build a solid foundation upon which we can achieve this ambition.

Our systems will evolve and respond to the way that Scotland and its people change over time. We will listen to users' feedback, to ensure that our systems remain fit for purpose and we will take a transparent approach to monitoring and review which is fully compliant with the Data Protection Act, and the Information Commissioners Office code of practice on data sharing.

### **Identity Management and Privacy Principles**

DWP publish a Personal Information Charter that outlines the standards that welfare claimants can expect when asked for their personal information. It includes what DWP can ask claimants to do to help keep their information up to date, how claimants can make a subject access request under the Data Protection Act, (i.e. ask for a copy of the information held about the individual by DWP) and how DWP may share information with certain other organisations.

The Scottish Government has published "Identity Management and Privacy Principles" for Scottish Public Services. These were developed to support public service organisations to comply with data protection and human rights legislation and enable them to build on these requirements to deliver services that are secure, efficient and value for money. There are six principles for handling personal information. These are:

- **Proving identity or entitlement:** to minimise information sharing and identification of individuals while ensuring authentication is effective and reliable
- **Governance and accountability:** to ensure that privacy and security policies and procedures are proportionate and transparent and that persons responsible at each stage within a process can be held to account
- **Risk management:** to undertake and publish Privacy Impact Assessments and audit existing initiatives



- **Data and data sharing:** to minimise the collection and holding of personal information and avoiding the creation of and risks associated with a centralised database
- **Data use for research and statistics:** to recognise that appropriate protection of privacy (for example anonymising information), efficient use of information, and scientifically sound and ethically robust research and statistics are all in the public interest, and that information should be held securely with projects being open and accountable to the public
- **Education and engagement:** to inform and consult with the public on identity management and privacy issues, and provide easy access to those wishing to view the information held on them and make any necessary changes

We propose to either adopt or adapt these existing Scottish Government Identity Management and Privacy Principles for use in social security delivery. This means that we will:

- Ask for the minimum amount of information necessary to assess a claim
- Ensure (that information used to assess a claim is up-to-date and accurate
- Present a [Privacy Impact Assessment](#) to the Scottish Parliament and publish this to ensure transparency in our approach to information assurance
- Avoid creating a single, centralised database of personal information, instead using information held across the public sector to support applications and ensuring personal and transactional information is held separately
- Establish strict access policies to limit the number of people assessing personal information
- Apply identity management and security principles to any third party contracts and ensure there is a written data controller/ data processor contact
- Support subject access requests and have supportive policies in place should information need to be repaired or redressed
- Staff training and awareness – to foster a culture that values and protects information

Responses to this consultation will help to inform the Privacy Impact Assessment, as will planned consultations with users.

### Questions

**Should the existing Scottish Government approach to Identity Management and Privacy Principles be adopted for use in our social security system?**

Yes

No

Please explain your answer

**If yes, should our existing Identity Management and Privacy Principles be**

**adapted in any way?**

Yes

No

Please explain how

**Who do you consider should be consulted in regard to the Privacy Impact Assessment and what form would this take?**

**What are your views on privacy issues that may affect the new agency?**

**Do you perceive any risks to the individual?**

What solutions might be considered to mitigate against these?

**Better information sharing**

Scotland has a wealth of publicly-held personal information that is already collected and held by a number of public sector organisations as part of their statutory functions. For example:

- the National Records of Scotland records births, deaths and marriages
- National Services Scotland (part of NHS Scotland) collects information on hospital admissions, maternity and births, and prescribing and medicines information
- Scottish local authorities hold information on housing benefit and social work services

The Scottish Government believes that this publically-held personal information could support a decentralised network for delivering social security across Scotland. This would not only remove the need to store information in one single data 'warehouse', reducing risks to individuals' privacy if the 'warehouse' was compromised, it would also support a more integrated and efficient approach to service delivery, demonstrating value for money by using information which has already been collected, when there is a legal basis to do so. This would build additional security check-points into the process, to help minimise the potential risks to individuals' privacy that are associated with large data 'warehouses'. It would mean that there would be multiple people responsible and accountable for the different information they hold across a number of organisations rather than one person in one organisation with overall control.

No system is risk-free, including paper-based systems. The main risk to a decentralised approach lies in the transfer of information between organisations and the new agency. However, there are a number of ways in which we could reduce this risk. For example, we would only share the minimum amount of information needed to assess an application; outgoing information, sent from one organisation to another, could be digitally signed and encrypted; incoming information could be authenticated and logged; strict rules could be put in place to control who could

access information, preventing unrestricted access by any single person; and personal and transactional information could be stored separately.

### Questions

**Would you support strictly controlled sharing of information between public sector bodies and the agency, where legislation allowed, to make the application process easier for claimants?** For example, this information could be used to prepopulate application forms or to support applications, reducing the burden on applicants.

Yes

No

Please explain your answer

**Would you support strictly controlled sharing of information between a Scottish social security agency and other public sector organisations (for example local authorities) to support service improvements and deliver value for money?**

Yes

No

Please explain your answer

### Digital First

Advances in information communications technology (ICT), including the internet and the use of mobile devices such as tablets and smartphones mean that systems which would once have been paper-based may now be accessed securely online. This technology could provide the best available and most cost-effective way for a new Scottish social security agency to ensure that individuals' personal information is protected. The digitalisation of public services and use of distributed publicly-held information sources offers great potential to save costs, time and effort for users and service providers alike.

The systems required to process social security transactions in Scotland could be operated in a convenient, online environment, in order to make the application process easier for claimants and reduce government infrastructure costs. For example, claimants could make applications safely and securely online, from the comfort of their own home.

Using the right technology and systems could also enable forms to be pre-populated with the claimants' information, reducing the amount of form-filling required. The process would be quick, convenient and based on the most up-to-date information. It would allow for digital authentication and could reduce the need to provide paper copies of evidence in support of applications.

This reduction in bureaucracy would mean that application turnaround times could be reduced, communications could be sent electronically to avoid delays and claimants could receive their benefits sooner. A digital approach could also benefit people with restricted mobility, people who suffer from depression or anxiety disorders and people living in remote locations.

There is no doubt that alternatives to online applications and communications must be made for those who are unable to use or access a computer or mobile device. However, the benefits of a 'digital first' approach cannot be underestimated for many claimants, those supporting claimants and efficiency savings for the agency.

### **Questions**

**What are your views on having the option to complete social security application forms online? Can you foresee any disadvantages?**

**What are your views on the new agency providing a secure email account or other electronic access to check and correct information for the purposes of assessing applications (noting that any such provision would need to be audited and regulated so that the security and accuracy of the information would not be compromised)?**



## 20. Uprating

### **Summary**

- We discuss the annual process by which the value of some of the benefits which people currently receive is increased. This process is referred to as 'uprating'.
- We make it clear that we will maintain spending on disability benefits, uprating them in line with inflation.
- We ask if there should be a general, Scottish uprating policy for devolved benefits and payments which could simplify the system overall and make it easier to understand.

Six devolved benefits – Attendance Allowance (AA), Carer's Allowance (CA), Disability Living Allowance (DLA), Personal Independence Payment (PIP), Severe Disablement Allowance (SDA), and Industrial Injuries Disablement Benefit (IIDB) - are currently uprated. This means that the values of these six benefits are all directly linked by legislation to the rate of inflation.

### **Current arrangements**

Uprating does not apply to all of the devolved benefits. It does not apply to Sure Start Maternity Grants, Funeral Payments and the amounts of Cold Weather Payments and Winter Fuel Allowance, as these are only uprated at irregular intervals. The amounts provided to local authorities for Discretionary Housing Payments are non-statutory, so uprating is not relevant to them. The UK Government has decided that benefits which are not linked to inflation should be frozen for four years from April 2016.

At present, the UK Government uprates benefits by measuring the rate of inflation using the Consumer Price Index, which tracks the changing cost of a fixed 'basket' of goods and services over time. In practice, this means that the amount paid out for each of these benefits is increased in April based on the Consumer Price Index in the previous September, if there has been an increase in prices. However, if the Consumer Price Index falls, the uprating mechanism does not operate to increase the value of benefits. This happened in April 2016 – the Consumer Price Index fell by 0.1% over the 12 months to September 2015, no indexed-linked increase was applied in April for the year 2016-17.

The amounts paid out in AA, CA, SDA and IIDB can only be altered either through the uprating link with the rate of inflation, which operates through legislation. The amounts paid out for DLA and PIP can be altered either through the uprating link with the rate of inflation or by legislation.

For these six benefits, the Secretary of State for Work and Pensions must uprate the amounts whenever inflation is positive. He is not required to uprate by only the value of inflation, and can set any higher percentage increase he likes provided there has been some increase in prices. He is obliged to uprate annually where there has been inflation, unless he considers that the increase would be “inconsiderable” (he is also allowed to round figures up and down “as he thinks appropriate”).

The block grant adjustment methodology detailed in the “[Agreement between the Scottish government and the UK Government on the Scottish Government’s fiscal framework](#)” published on 23 February 2016<sup>61</sup>, continues to link adjustments to the Scottish block grant in respect of welfare to spending on equivalent policy areas in England and Wales. This means the Scottish Government is funded to provide the same level of benefits as in England and Wales. At the moment the UK Government uses the Consumer Price Index to link benefit payments to the general cost of living. If Scotland was to use a more generous measure then the extra funding would need to be found from within existing Scottish resources, limiting the amount which could be spent on other policies.

The Scottish Government has committed to maintain spending on disability benefits, uprating them in line with inflation, and ensuring they are not means-tested when they are devolved. As long as inflation increases, the current legal arrangements will allow the Scottish Government to set amounts for the indexed linked benefits, provided the amounts it sets are higher than the amounts currently paid out. The Scottish Government could also set the amounts for DLA, PIP and the non-indexed payments through regulations.

A general, Scottish uprating policy for devolved benefits and payments which is linked to the rate of inflation could simplify the system overall and make it easier to understand. However, it could be that other policy requirements are more important – for example, the ability to respond to changes which impact on people claiming devolved benefits flexibly and quickly. Also, automatic uprating might not be the best way to address issues such as families living in poverty because it may be that the gap between families in poverty and better off families will only be closed by targeted increases, rather than uprating across the board.

## Questions

**What are your views on the best way to ensure that devolved benefits keep pace with the cost of living?**

<sup>61</sup> <http://www.gov.scot/Resource/0049/00494765.pdf>

**Are there any devolved benefits in particular where uprating based on a measure of inflation would not be effective?**  
If so, please explain which benefits and why.

# **Consultation on Social Security in Scotland**

## **Annex A: Partial Equality Impact Assessment (EQIA)**



## Partial Equality Impact Assessment

### Introduction

This is a partial equality impact assessment (EqIA) for the social security bill consultation. It is 'partial' in the sense that it reflects our thinking to date. We now need your help and advice to produce a full and final EqIA to accompany the social security bill.

After providing background information for context, the EqIA provides detail on the Scottish Government's engagement so far to understand the equality implications of the new social security powers. It then sets out general barriers people might face, many of which have equality implications before discussing the equality implications of the new social security agency, followed by the individual benefits, including where we are proposing changes to existing UK benefits. There is also brief discussion of appeals and tribunals.

To improve the EqIA, we have developed a set of prompts to help you with your feedback. We will develop a full EqIA, based on your feedback and advice, once the consultation is complete.

We recognise that this partial EqIA only makes limited or no references to ethnicity, religion, sexual orientation, and transgender. We therefore particularly welcome your feedback on these issues and will seek active engagement with representative groups and others over the consultation period.

**How can the Scottish Government improve its partial EqIA so as to produce a full EqIA to support the bill?** These prompts could be helpful in framing your answer:

- What does the Scottish Government need to do, as it develops a Scottish social security system, to ensure that equality implications are fully taken into account?
- What does the Scottish Government need to do, as it develops a Scottish social security system, to ensure that any implications for those on low incomes are fully taken into account?
- Are there equality considerations for individual benefits that you would like to draw to our attention?
- Are there considerations about individual benefits for those on low incomes that you would like to draw to our attention?
- What are your views on how we can best gather equality information for the new Scottish benefits?
- What does the Scottish Government need to do to ensure that its social security legislation (including secondary legislation and guidance) aligns its

vision and principles with equality for all those who need assistance through social security support?

- What does the Scottish Government need to do to ensure that a Scottish social security system provides the right level of support for those who need it, and what are the possible equality impacts of this?

## **Background**

The public sector equality duty requires the Scottish Government to assess the impact of applying a proposed new or revised policy or practice. It is a legislative requirement. The duty helps us consider how policy can respond to the ways in which people are different from one another, in relation to particular 'protected characteristics': age, disability, gender reassignment, gender including pregnancy and maternity, race, religion and belief, and sexual orientation. This consideration helps ensure that, where possible, policy is shaped appropriately to advance equality on these grounds and meet people's varying needs as effectively as possible.

The public sector equality duty requires the Scottish Government to consider, as appropriate, the need to:

- Eliminate discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010
- Advance equality of opportunity between people who share a protected characteristic and those who do not
- Foster good relations between people who share a relevant protected characteristic.

An EqIA is key to these considerations. It aims to consider how a policy (a policy can cover: activities, functions, strategies, programmes, and services or processes) may impact either positively or negatively on the protected characteristics.

Meeting the requirements of the public sector equality duty is important across government policy, but it is arguably particularly important in relation to social security, with many of the benefits being devolved to Scotland being crucial to disabled people. The new powers also raise questions about women's financial independence, about support for children and young people, and about helping those on low incomes more generally.

Because of this last point, this EqIA also looks at impacts on poverty from the new benefits. This reflects the Scottish Government's commitment to introduce a socio-economic duty that enables consideration of socio-economic disadvantage in strategic decision-making.

## Engagement to date

We have already begun to seek views on the equality implications of introducing existing and new benefits through a Scottish social security agency. A range of engagement activities have been underway, including:

- **Fairer Scotland** conversations - Our new social security powers were one of the major areas for discussion in the Fairer Scotland consultation work. In June 2015, Scottish Government hosted an event attended by over 50 stakeholders. Through our engagement process since then, we have consulted widely with a range of stakeholders
- We have put in place a range of opportunities to allow people and stakeholders to have their say, **including digital surveys and workshops** with key sectors including local government, third sector, anti-poverty groups, older people organisations and ethnic minority groups. Officials have also attended and set out our position at a number of events organised by stakeholders
- We commissioned Poverty Alliance and Engender to take forward work on our behalf to ensure that we capture the voice of those who have experience of benefits. We also set out a range of questions on new powers that around 40 organisations have replied to, which will help to inform our thinking on plans for new powers. The themes that emerged have informed the vision and principles outlined by the Scottish Government
- We have also worked with Scottish Government policy colleagues working in areas where there are potential synergies with the areas to be devolved. This includes areas such as self-directed support, health and social care, carers, fuel poverty and maternal health. This has helped us to map out the connections between the areas that are already devolved and identify the scope for aligning these with new powers. There are also some clear links with other powers to be devolved in the Scotland Bill, most notably those over the employment programmes

The formal consultation (to which this EqIA is an annex) is a next stage in this broader consultation process. It asks a range of questions about the new powers, including about this particular document, which will be central to further development of equality considerations.

However, we have further plans to consult and engage as we move towards delivery.

- There is relatively little or no discussion of some of the protected characteristics in this partial EqIA: religion and belief, race, sexual orientation, and gender re-assignment. We will hold engagement meetings with relevant

representative organisations so we can include a wider discussion within the full EqIA

- Including disabled people and Disabled People's Organisations (known as DPOs) such as Inclusion Scotland, Independent Living in Scotland and others in the structure and governance of the social security agency and associated delivery bodies
- Including organisations such as Woman's Aid to explore potential negative unintended consequences for women disadvantaged in terms of any system which pays benefits to the 'household' or experiencing domestic abuse
- Establishment of an independent body, providing reviews and promoting continuous improvement in partnership with disabled people and the organisations that support them
- The establishment of a stakeholder reference group, and the use of panels and disabled people focus groups to help co-produce policies and processes will ensure that we foster good relations with equality groups - we are particularly committed to taking forward a range of mechanisms to ensure people in receipt of benefits have their voice heard
- A Disability Benefits Assessment Commission is also planned. This should help ensure that opportunities to advance equality through the disability benefits are identified and maximised as far as possible
- We will also take forward work with minority groups, women groups and disability groups through existing forums we've established

In due course, we will publish a full EqIA for the social security bill on the Scottish Government website. This will take account of your feedback on this partial EqIA and on the consultation more broadly. The final EqIA will consider how we can improve our understanding of potential impacts, both positive and negative; enhance actions to reduce poverty and inequality; avoid discrimination; take action to progress towards equality; and realise human rights.

### **General barriers**

In establishing a Scottish social security system, which has a positive impact on equality, we want to address the various barriers that people can face when they share particular protected characteristics. These are barriers which can prevent people from accessing social security services and receiving the right kind of support. The main barriers people can face are:

**Attitudinal barriers** often have their roots in unquestioned assumptions and inaccurate stereotypes. Prejudice can prevent people from accessing social security services or receiving appropriate support. A range of barriers affect, for example, how disabled people are treated within the system, and how gender issues are considered to ensure equality.

**Communication barriers** affect people requiring communication support such as British Sign Language and people with visual impairment. They can affect people with dyslexia or learning disabilities and people who are finding the situation stressful or confusing. They can also be caused by the use of complex language and jargon.

**Organisational barriers** can arise because of the ways in which services are organised, the timing of events or appointments, or the inflexibility of officials' working patterns. This may be particularly relevant for people with caring responsibilities and disabled people.

**Physical barriers** are created by physically inaccessible buildings, raised kerbs or uneven pathways. These barriers impact particularly on disabled people and older people, and on people with prams and buggies.

**Transport barriers** are created by inaccessible or unavailable public transport and lack of parking spaces. Concern about personal safety while using public transport can be a significant barrier for some people.

**Financial barriers** affect people who have restricted access to earned income and those who have extra costs. We know that disabled people and minority ethnic groups are more likely to live in poverty. There may also be issues, particularly because of UK welfare reform, which disproportionately affected women.

**Environmental barriers** can result from unfamiliar or crowded places, poor signage, or poor lighting. For some people, the environment can also affect their sense of personal safety and this may be a particular concern for both women and men, disabled people, lesbian, gay, bisexual, transgender and intersex (LGBTI) people, and minority ethnic groups.

**As we develop the new social security system for Scotland, we want to hear your views about how we best address these and other barriers going forward.**

### **Summary of key equality considerations**

This partial EqlA is organised by benefit. We decided to take this approach because each of the benefits being devolved is different, with its own equality concerns.

When published, the full EqlA will also include an overview by protected characteristic. **You are very welcome to send us suggestions for issues we should consider in terms of such an overview.**

In addition to the discussion of each benefit, we also consider the introduction of the new social security agency appeals and tribunals issues, here. **If there are other issues/topics you would like us to consider in the full EqIA, please let us know.**

A summary of the main benefits to be devolved to Scotland is provided on the next page. These reflect the benefits as they are at present and do not refer to any planned changes to be made by the Scottish Government. Changes that have already been proposed are, however, discussed in the main section of this EqIA.

We already know that the information recorded by DWP for benefits to be devolved is not sufficient to make an informed assessment of equality impacts. In developing the data specification for new Scottish benefits, we will seek to gather more information so that we understand impacts better in the future. Gathering more information will need to be carefully balanced with the length of form and ensuring the dignity and respect of the applicant.

Please note that Severe Disablement Allowance is not discussed in this EqIA. That is because this benefit is closed to new entrants and no changes will be made to it, except that it will be administered by the new Scottish social security agency.

## Benefit to be devolved to Scotland

Group	Benefit	Primary Purpose
For carers, disabled people & those who are ill	Attendance allowance	To help with personal care for individuals aged 65 or over with a physical or mental disability.
	Carer's Allowance	To help an individual look after someone with substantial caring needs. To be eligible the individual must be 16 or over and spend at least 35 hours a week caring for them.
	Disability Living Allowance	Help if your disability or health condition means one or both of the following are true: <ul style="list-style-type: none"> <li>You need help looking after yourself</li> <li>You have walking difficulties</li> </ul> DLA is closed to new working age claimants and being replaced by PIP.
	Personal Independence Payment	Helps with some of the extra costs caused by long-term ill-health or disability for individuals aged 16 to 64. Replacement for DLA for working age individuals.
	Industrial Injuries Disablement Benefit	For individuals who are ill or disabled as a result of an accident or disease caused by work or while you were on an approved employment training scheme or course.
	Severe Disablement Allowance	For working age individuals who are unable to work due to illness or disability. SDA is closed to new entrants
	Cold Weather Payment	A payment for individuals on certain benefits when the temperature is either recorded as, or forecast to be, an average of zero degrees Celsius or below over 7 consecutive days.
	Funeral Payment	For individuals on low income and needing help to pay for a funeral they are arranging.
	Sure Start Maternity Grant	A one off payment of £500 to help towards the costs of having your first child for individuals who are in receipt of certain benefits.
	Winter Fuel Payment	A tax-free payment to help pay for heating bills if you were born on or before 5 July 1952 (Current SPA for women).
Other	Discretionary Housing Payments	Additional help for those in receipt of Housing Benefit and having difficulty meeting their rent payments. Paid at the discretion of the LA.

## A. A NEW SOCIAL SECURITY AGENCY

A new Scottish social security agency was announced as being under development in March 2016. The configuration of the agency is currently under consideration. A key element of the new system will be to establish a new agency to administer social security payments. Although the decision to establish an agency should not in itself have a direct impact on equality, how the agency is set up – including how engaged representative groups are in the process - and the operation of the agency have the potential for considerable equality impact.

We have therefore taken advice from Scottish Government's own Public Bodies Unit and have become members of the New Public Bodies Network. This engagement will ensure that we are kept apprised of any and all requirements and benefit from experience and best practice. We are also engaging with equality leads within government to gain their insight and build links with other organisations out with the Scottish Government. And, as stated at the outset of this EqlA, we are already engaging with equality representative groups and will continue to do so as the agency is established.

The agency will, of course, be required to meet all public equality requirements but we will go further. Ministers are already reflecting that this agency must be an exemplar of equality for the Scottish public sector, both in terms of the support provided to all people across the protected characteristics and in terms of employment opportunities offered. This is in line, again, with published commitments of the Government in "A New Future for Social Security in Scotland"<sup>62</sup>.

A Scottish agency being established will not necessarily lead to more benefit payments being made to individuals and cannot, by itself, resolve long-standing equality concerns. However, our commitment to establish a Disability Benefits Assessment Commission is evidence of an ambition to advance equality. The Commission will make recommendations and develop guidance on how often assessments should take place, what conditions should be given an automatic and/or a lifetime award, and what eligibility criteria should be. The agency will operate in accordance with the vision and principles already established for social security in Scotland. This will help provide better support for those in receipt of benefits, treating them with dignity and respect and enabling more accessible systems, which in turn could have positive impacts on benefit uptake – for both devolved and reserved benefits.

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<sup>62</sup> <http://www.gov.scot/Resource/0049/00496621.pdf>



There will be employment opportunities created in the establishing and running of the Agency, and the delivery of social security in Scotland will add to the public sector landscape in Scotland.

## B. THE MAIN DISABILITY BENEFITS - DLA, PIP, AND AA

Benefits that support disabled people with the additional costs of their impairment or health condition are being devolved to Scotland. The main benefits are Disability Living Allowance, (DLA), Personal Independence Payment (PIP) and Attendance Allowance (AA). These benefits serve to recognise that impairments and long-term health conditions require additional costs - cash benefits help address some of this inequality and are also intended to support health, wellbeing and social inclusion.

In November 2015, 309,540 individuals were in receipt of DLA, while 128,800 individuals received AA in Scotland. DWP has published more recent statistics for PIP: in January 2016, 73,219 individuals were in receipt of PIP. Women are more likely to be in receipt of AA (65% - 35%) and PIP (55% - 45%), but DLA levels are broadly similar (51% - 49%). (see Table).

Recipients of DLA, PIP and AA in Scotland by age and sex

	DLA	PIP*	AA
Age			
Female	51%	55%	65%
Male	49%	45%	35%
Sex			
0-15	11%	--	--
16-34	11%	20%	--
35-49	15%	29%	--
50-64	29%	46%	--
65-74	22%	5%	17%
75-84	10%		47%
85+	1%		36%
Total	100%	100%	100%

\* An age breakdown is not available for PIP recipients aged 65 and over

DLA, PIP and AA are benefits paid weekly to disabled people to help meet the additional costs of living with a disability, impairment or long-term health condition. DLA is for people under 16, PIP is for people aged 16-64, and AA is for people who become disabled at 65 or over. Some people aged 16-64 are still getting DLA, but this is gradually being replaced by PIP. Depending on when they became disabled, people aged 65 and over could receive DLA, PIP or AA.

Much of the move of working age DLA recipients to PIP has yet to happen and in November 2015 only 11% of DLA claimants were aged under 16, 56% were aged 16-64 and 33% were aged 65 or over. Almost all PIP claimants were aged between 16 and 64. Almost half of AA claimants (47%) were aged 75-84 and over a third (36%) were aged 85 or over. (see Table)

To be eligible for DLA or PIP, applicants must have personal care needs and/or difficulty with walking because of physical or mental health issues. AA is paid on the basis of personal care needs only.

DLA and PIP have two components with levels within them for care and mobility needs. AA has one component paid at two levels. The table overleaf shows the components and rates.

These benefits are received by over 500,000 people in Scotland with an annual expenditure of over £2.1 billion.

Children (aged under 16) in receipt of DLA are more likely to be boys (70%) than girls (30%).

For working age adults the situation is more complex. Between the ages of 16 and 39 men are more likely than women to receive DLA and from 40 up women are more likely than men. Overall around 52% of working age DLA recipients are women. For PIP the picture is a little different – women make up a larger proportion than men for all ages from 25 up. Overall around 45% of working age PIP recipients are men.

The majority of pensioners receiving these benefits are women – related to the higher female life expectancy.

The current structure of the benefits means that people over 65 who become eligible for support can only qualify for care and living support and not mobility. The lack of mobility component for people who start to claim a disability benefit over the age of 65 is a negative impact and one which we are considering as part of the consultation and wider policy development process.

<b>Benefit</b>	<b>Weekly Award</b>
<b>DLA</b>	
<b>Care Component</b>	
Highest	£82.30
Middle	£55.10
Lowest	£21.80
<b>Mobility Component</b>	

Higher	£57.45
Lower	£21.80
<b>PIP</b>	
<b>Daily living component</b>	
Enhanced	£82.30
Standard	£55.10
<b>Mobility Component</b>	
Enhanced	£57.45
Standard	£21.80
<b>Attendance Allowance</b>	
Higher Rate	£82.30
Lower Rate	£55.10

Rates correct as at June 2016, Source DWP

Scottish Ministers are committed to maintaining the level of the disability benefits for individuals and raising them by at least the rate of inflation, using the Consumer Price Index as a starting point, once the powers are transferred. We have also committed to ensure that no child currently claiming DLA will have to be reassessed for PIP until they turn 18.

In the short term, a secure and smooth transition to devolved disability benefits payments, ensuring that transfer arrangements are well communicated and every recipient continues to receive their benefits, will be our absolute priority. But we are still committed to making improvements as soon as practicable, for example – a consistent theme from engaging with people over the past year has been that there should be a transparent and easy-to-access process of application, assessment/consideration<sup>63</sup>, decision-making and award for people claiming the benefits. We want to make sure that the process from start to finish is clear and accessible, and that people understand how and when their claim will be dealt with.

We also have bold aspirations for the longer term. For example, we want to ensure that disability benefits work as effectively as possible with other devolved services such as health and social care and housing, and to explore the potential for a ‘whole-of-life’ disability benefit that is responsive to people’s needs at different stages of their lives. A single benefit across the age range could remove arbitrary age-related requirements for people to re-apply for a different benefit – for example, it might not be necessary for everyone to apply for a new benefit when they reach a specific age. A whole-of-life approach would allow a more person-centred approach to

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<sup>63</sup> Where we use the phrase assessment, we mean some form of appraisal of eligibility, wherever possible this will not be conducted on a face-to-face basis.

reassessments and potentially offer a secure and more flexible benefit for disabled people.

At this stage of our policy development we are not aware of any impacts on gender reassignment, pregnancy and maternity, race, religion or belief, sex or sexual orientation from introducing these benefits into Scotland. Our proposals to smooth age-related transitions should have a positive impact in relation to age and disability; however it is too early to assess the overall impacts of the policy decisions we may make in the future.

Engaging with people affected by the benefits and the organisations that support them has been and will continue to be a critical part of policy development creating options for how the system can be improved. Key organisations are Inclusion Scotland, Glasgow Disability Alliance, Lothian Centre for Inclusive Living, the Health and Social Care Alliance and Age Scotland.

These benefits are not income replacements and are not means tested but they provide a vital level of support for additional costs for such as additional heating, transport, therapies, clothing, diet and promoting independent living and social inclusion. It is a stable weekly cash benefit that can contribute to family and household costs. We know that there are significant proportions of disabled people living in poverty and while these benefits are not designed to tackle poverty, they will provide an important contribution to some of the additional living costs that disabled people may incur. The weekly cash benefits range from £21 to £139.75 dependent on the award, and are associated with financial premiums attached to Housing Benefit, Employment and Support Allowance, Tax Credits and also services like the Blue Badge Scheme and local concessions.

These benefits have a positive impact on disabled people and families with a disabled child by adding to their weekly income. Ministers are committed to maintaining the level of the benefits.

We are also consulting on how we might enable recipients of the benefits to reduce their outgoings in areas where disabled people may have additional costs. Specific areas we are considering are transport, where we plan to continue to support the current Motability scheme, and the potential to offer reduced energy tariffs for recipients of disability and carer benefits.

## **C. INDUSTRIAL INJURIES DISABLEMENT BENEFIT**

Industrial Injuries Disablement Benefit (IIDB) provides financial support to people who have become ill or disabled through the course of work. IIDB is paid weekly to workers who are injured or who contract certain “prescribed diseases” through work,

such as asbestosis. The amount payable varies according to the degree of disablement, but must be above a certain threshold. IIDB can be claimed alongside other disability benefits.

In the third quarter of 2015, 26,780 individuals were in receipt of IIDB. The majority of recipients were men. In Scotland, 81% of new claimants were men, 19% were women. In terms of age breakdown, around 58% of people receiving the benefit across Great Britain are 65+.

IIDB can be claimed on top of DLA, PIP and AA, contribution based benefits and the State Pension. Income is not taken into account for eligibility, but IIDB is counted as income against means tested benefit such as Income Support, Housing Benefit and Working Tax Credits. So, the benefit will provide additional income for many recipients. For some people on low income who are reliant on income replacement benefits, financial support gained by IIDB will not translate into increased income. Income related benefits are reserved to the UK Government.

Our IIDB Advisory Group includes the Child Poverty Action Group and Clydeside Action on Asbestos which represents the interests of people made ill and disabled by contact with asbestos. The Disability Benefits Reference Group, which includes numerous organisations representing disabled people including Inclusion Scotland, has provided feedback on the IIDB questions within the consultation. We have spoken to recipients of IIDB in developing our approach and will expand this through the Social Security User Panels.

We intend to gather data on all the protected characteristics, and other groups who may find it challenging to access the benefit - for example, people in prison or people with no fixed address. Where evidence suggests particularly groups are unfairly underrepresented, we will consider whether action is appropriate to redress the balance.

#### **D. CARER'S ALLOWANCE**

Carer's Allowance provides financial support and recognition for those who have had to give up or limit their employment or study because of caring responsibilities. It is currently £62.10 per week and can be paid every 13 weeks, every 4 weeks or weekly. There are certain eligibility criteria - a recipient has to be 16 or over, spend at least 35 hours a week caring for a person who qualifies for specified disability benefits<sup>64</sup>, not be in full-time education or earn more than £110 per week (after deductions). It can be paid alongside other benefits although certain rules apply.

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<sup>64</sup> Personal Independence Payment - daily living component; Disability Living Allowance - the middle or highest care rate; Attendance Allowance; Constant Attendance Allowance at or above the normal

Evidence shows that 49% of carers left work to care with a further 23% reducing their hours and 17% accepting a less highly qualified job or turning down promotion.

In November 2015, 67,050 people were in receipt of Carer's Allowance to help them look after someone with substantial caring needs. Of those, 68% were women and 32% men. Over half of claimants were aged 40 to 59. 250 claimants were young people under 18. Any changes to Carer's Allowance will likely, therefore, affect women and older working age people most.

The Scottish Government has already committed to increase Carer's Allowance to the rate of Jobseeker's Allowance – currently £73.10 p/week - and to consider the introduction of a Young Carer's Allowance for those with significant caring responsibilities. This should help those on low incomes. A survey by Carers UK (2016) found that 48% of carers are struggling to make ends meet, and of those, 41% are cutting back on essentials like food and heating and 10% are falling into arrears with housing and utility bills. The increase in the benefit should also impact positively on women, who are the majority of carers, and potentially young people, depending on the outcome of the policy development. It may also foster improved relationships between young carers and the people they care for, who tend to be older.

There is also a commitment to increase Carer's Allowance for people who care for more than one disabled child to recognise higher costs. Again, because the majority of carers are women, this should advance equality for women, but also improve equality of opportunity for those disabled children affected.

The above assessment considers claimants. However, there are around 745,000 unpaid adult carers in Scotland providing care to one or more people – 17% of the adult population – and an estimated 44,000 young carers in Scotland aged 4 to 17. Overall 9% of carers are white Scottish / British / Irish population, compared to 5% of other ethnicities.

In order to improve uptake of Carer's Allowance, we intend to gather evidence against the protected equality characteristics, where possible, and on particular groups who may find it challenging to access the benefit. We have also established a Carer Benefit Advisory Group. The group includes MECOPP (Supporting Black and Ethnic Minority Carers) and Carers Scotland representing young carers. Our Expert Members Panel, which supplements the Advisory Group, includes the Child Poverty Action Group and NUS Scotland. Discussions on Fairer Scotland included Carers Scotland facilitating, on our behalf, a carer benefit specific session with the

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maximum rate with an Industrial Injuries Disablement Benefit; Constant Attendance Allowance at the basic (full day) rate with a War Disablement Pension; Armed Forces Independence Payment

women's organisation Engender. As part of the consultation on the Social Security Bill we will focus on specific groups, including young carers.

## **E. WINTER FUEL PAYMENT**

Winter Fuel Payment (WFP) is a benefit that is paid to people who are over the current female state pension age (regardless of gender) to cover the costs of heating their home over the winter months. In 2014/15, 1,076,870 people in Scotland received a WFP.

The rate for WFPs is currently set at a maximum of £200 a year for recipients who are younger than 80 and at £300 for those who are 80 or older. Recipients who live with their partner usually receive half of that amount each, ie £100 if younger than 80 and £150 if 80 or older. People aged 80 or over receive £200 if their partner is younger than 80, thus their household entitlement still amounts to £300. People in care homes receive the reduced allowance of either £100 or £150 depending on their age.

The eligibility criteria for WFPs, as they currently stand, mean that clearly, they are of particular benefit to older people. Within this group, as they comprise a higher proportion (55%:45%) of the population, women receive a higher proportion of the benefit of WFPs, compared to men.

However, the 2016 SNP manifesto contained the following commitment on WFPs:

“We'll extend eligibility for Winter Fuel Payment to families with children in receipt of the highest care component of the Disability Living Allowance. We'll also make payment early for those who are off grid, so they can take advantage of lower prices”.

Implementing the first of the two manifesto commitments noted above would be of particular benefit to families with children in receipt of the highest care component of DLA<sup>65</sup>. As it is a condition of eligibility for the higher rate of DLA that the child must be in need of help or supervision through both the day and night, or be terminally ill, it is likely that in such households, the main carer and child would be in the home more of the time, and/or require the home to be heated to a higher temperature. This leads to higher fuel bills, and higher risk of fuel poverty.

In March 2011, the Scottish Government published a report, [Experiences of Muslims Living in Scotland](#)<sup>66</sup>, which noted: “research has suggested that South Asian families

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<sup>65</sup> In November 2015, 13,920 children qualified for the highest care component of DLA was 13,920. Of these, 9,820 (71%) were boys and 4,050 (29%) were girls.

<sup>66</sup> <http://www.gov.scot/resource/doc/344206/0114485.pdf>

with disabled children experience discrimination and disadvantage in accessing the health and care services needed (Bywaters et al 2003). A report from the Disability Rights Commission, citing statistics assembled by the General Registrar's Office for Scotland, noted that the proportion of children aged 10-15 years with limiting long-term illnesses, was higher among Pakistani, Bangladeshi and other South Asian households, and within Afro-Caribbean communities, compared to white households. This suggests that extending eligibility of WFPs has the potential to be of particular benefit to certain minority ethnic communities.

Implementing the commitment to make earlier payments to eligible households who are off-grid, could be of particular benefit to low income households in rural areas, where the cost of fuels such as heating oil, coal etc is a significant contributory factor in the higher levels of fuel poverty found in these areas.

As with other universal benefits, under current eligibility criteria, people on lower incomes gain more from WFPs in relation to their income, than do higher income households.

## **F. COLD WEATHER PAYMENTS**

Cold Weather Payments (CWPs) are paid to households in receipt of certain benefits, when the temperature is either recorded as or forecast to be an average of 0°C or below over seven consecutive days. In 2014-15 136,000 payments were made to 119,000 recipients. Just under half (47%) of the recipients were older people in receipt of Pension Credit. The Scottish Government has no current proposals for change in respect of CWPs.

As CWPs are restricted to households on certain benefits, they are of particular benefit to lower income households. There has been some criticism that the "trigger" for the payments to be made, slightly favours households in the east of Scotland, compared to the west, due to weather patterns (with winters in the west of Scotland being in general slightly more wet and windy, while the east is colder but drier).

Given the higher prevalence of lower income and deprivation in the west, it may be that Ministers will wish to review the formula set out above.

## **G. BEST START GRANT**

The Best Start Grant (BSG) is a new benefit that provides support at key transitions throughout early years, replacing the Sure Start Maternity Grant, which is a less generous maternity grant.



Availability of the Sure Start Maternity Grant is not limited to the mother, as family members of the mother can apply for and receive the grant. While we have no data from DWP about the makeup of the claimant group, we expect that in the majority of cases the claimant is the mother.

Throughout the policy development process, we have consulted a wide range of stakeholders including those with specific equality and poverty perspectives such as Engender, One Parent Families Scotland, Inclusion Scotland and the Child Poverty Action Group.

The benefit supports a particularly high proportion of pregnant woman and new mothers. We do not consider that replacing the Sure Start Maternity Grant with the BSG will have any negative impact on people who share protected characteristics. Indeed, by re-introducing a payment to second and subsequent children, the allowance will provide increased support for larger families who are more likely to be in poverty and to have minority ethnic origins.

Young children more generally are also likely to benefit, as the allowance may be used to buy basic, essential items through the early years. Disadvantage begins before birth and continues in a child's earliest years, and can have lifelong negative effects on their health and wellbeing. By providing increased financial support to low income families, the BSG will mitigate the effects of child poverty, helping to improve outcomes for children including reducing health inequalities and closing the attainment gap.

We are exploring opportunities to use the contact with pregnant women and new mothers through BSG to signpost to other relevant support. For example, there is evidence that pregnant women are more likely to face discrimination from employers, according to [research carried out by the Equality and Human Rights Commission](https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/pregnancy-and-maternity-discrimination-research-findings).<sup>67</sup> There is also an opportunity to consider the way in which the grant is provided - for example, provision of adapted items instead of cash might benefit some disabled people. Accessible application systems and better integration with relevant services such as the family nurse partnership should improve take up for younger parents.

## **H. FUNERAL PAYMENTS**

Funeral Payments are designed to help those on qualifying low income benefits pay for a funeral and reduce the need to borrow money through high cost loans, credit cards, or through informal routes. Reaching more people with the payment should result in reduced unsustainable debt and reduced stress for families, allowing for a

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<sup>67</sup> <https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/pregnancy-and-maternity-discrimination-research-findings>

natural grieving process. We are also progressing a range of other activity intended to help people plan ahead for funeral costs and address rising funeral costs.

There is limited data from the DWP about who receives Funeral Payments at present. Published information shows that in 2015, 37.9% of awards were made due to receipt of Pension Credit, suggesting that, perhaps not surprisingly, older people are frequent users. Within this group, it is likely that more women will receive this benefit, as they make up higher proportion (55%:45%) of the older population compared to men.

We know that some faith groups provide for their own funerals and are less likely to use the benefit. The speed of processing may be an element in this. The way that burial costs are calculated may also disadvantage faith groups that have a limited choice of burial grounds.

We are committed to reaching more people with the Funeral Payment and to speeding up and simplifying the process to make it more predictable. Designing the new process will give us an opportunity to ensure that it is properly promoted by relevant services and to reflect the needs of equality groups. We have therefore engaged with a range of stakeholders and have established a Reference Group to advise on the development of the Funeral Payment. Membership includes representatives from: Citizens Advice Scotland, CPAG, bereavement organisations, money advice organisations, financial services providers, local authorities, the NHS, Scottish Older People's Alliance and faith groups.

## **I. UNIVERSAL CREDIT FLEXIBILITIES**

This consultation contains questions on two further flexibilities re Universal Credit (UC) in Scotland: managed payment of rent to private sector landlords and split payments.

### **Managed Payment of rent in the private sector.**

This policy aims to give UC claimants, who are tenants in the private rented sector, the option of having the rent element of their UC paid direct to their landlord. This option will be available to all claimants and will mean tenants in the private sector will have the same option as tenants in the social sector.

When UC is fully rolled out in Scotland, it is estimated there will be up to 700,000 claimants, though not all those will be householders.

Our initial assessment has identified no negative impacts for equality from managed payments of this kind. We are not aware of opportunities to deliver managed payments in any other way that would further progress equality.

Both UC flexibilities will help those on low incomes. Although they do not increase the amount of income coming into a household, they will help people to manage the household budget and avoid rent arrears, protecting tenants from eviction.

### **Split Payments for UC**

UC is designed to be paid in one monthly payment per household. This payment includes all the elements that make up UC, including for dependent children. A couple claiming will need to nominate who is to receive the payment and what bank account it is to be paid into. This means that the main carer, often the mother, may not receive any of the UC directly.

This is a change from the current system where the main carer often received the child tax credits. It could be seen as a retrograde step for women, because in some cases it will essentially remove women's independent income. Single payments could also have negative impacts on children and other people who receive care from one member of the family, e.g. a disabled relative, if the main carer does not receive their own independent income.

Some stakeholders argue that all UC payments should be split between members of a household by default.

The consultation document itself asks if UC should be split between members of a household in all cases or if claimants should have a choice. Either of these policies could have a positive impact for women, although there may be issues for some women in households where they do not feel able to press for a choice – for example, because of the threat or experience of domestic abuse.

### **J. UNIVERSAL CREDIT HOUSING ELEMENT**

This consultation asks for views on the Scottish Government's powers over the calculation of the housing element of UC. In Scotland, of the 23,300 households on UC, 8,800 (38%) have a housing [element](#).<sup>68</sup>

We expect that using the UC powers to abolish the bedroom tax will have a positive impact for people on low incomes and we would want to ensure that any further

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<sup>68</sup> <https://www.gov.uk/government/publications/universal-credit-data-on-alternative-payment-arrangements>

changes by the Scottish Government to the housing element of UC did not have any negative impacts for equality.

## **K. DISCRETIONARY HOUSING PAYMENTS**

Discretionary Housing Payments (DHPs) provide support to people on Housing Benefit or the housing element of Universal Credit who need help to meet their housing costs. DHPs are often used to help people affected by aspects of welfare reform including the bedroom tax, which disproportionately affects disabled people, and the benefit cap, which mostly impacts families.

As we propose that DHPs continue to operate in the same way once they are devolved, we do not expect this to have an impact on the protected characteristics for equality.

The Scottish Government will have full control over the allocation of DHP funding, providing the opportunity to distribute funds according to need and in line with its priorities. The SG will continue to use DHPs to fully mitigate the bedroom tax for affected households in Scotland.

DHPs help those on low incomes by providing them with support to help meet their housing costs, such as funding to cover a shortfall in rent or to help with a deposit. They can be used to help those whose income has been further reduced by the impacts of welfare reforms. Support is awarded at the discretion of the local authority and can be short-term or long-term depending on the circumstances of the individual.

We expect that following the devolution of DHPs, they will continue to have a positive impact in helping people on low incomes who are experiencing difficulty meeting their housing costs.

## **L. JOB GRANT**

The job grant is a new benefit, aimed at young people aged 16-24. The grant will help young people who have been unemployed for over six months but who are now starting work. The grant is a one off payment of £100, or £250 if the person has children, plus a three-month bus pass. We estimate that it will help between 6,500-8,500 young people per year.

Because this is a new benefit, we do not have a clear sense of how it might impact on protected characteristics. However, its focus on 16-24s reflects the idea that it is important to support young people as they start out on, or resume, their working

lives, particularly because the early effects of spells of unemployment can be damaging for younger workers over the longer term.

We expect that a greater number of men than women would receive job grant awards and the breakdown to be in the region of 70% to 30%. This is because a greater proportion of those who are unemployed and those who claim Jobseeker's Allowance are men and this is also true for the 16-24 age group. However, the larger payment for a person with children is likely to be helpful for younger women in particular, as women tend to be primary carers for children. This might be expected to be particularly helpful for lone parents.

The job grant does not provide help to older workers, some of whom may find it difficult to get back into work after a period of unemployment. However, it is our view that younger workers are particularly disadvantaged by long spells of unemployment, not least because they may not already have suitable clothes for work; and that focusing on this group is not unreasonable when resources are limited.

Disabled people under 25 may feel they need still more assistance to meet their needs than that being offered, and bus travel may be of limited help to some disabled people. We recognise the above concerns, but DLA/PIP and Motability should provide support for disabled people for the additional costs of living with disability and, for some, for transport to work. However, we will keep the scheme under review, once implemented, and will be able to make changes to it to accommodate other needs, as these emerge.

This new benefit will be of particular help to those on low incomes. When young people start work after 6 months unemployment, the initial weeks can be difficult as they wait for first wages and have to find travelling expenses: this is obviously particularly the case for those on low incomes and/or with no or few savings. This policy is designed to help young people over that period.

## **M. APPEALS AND TRIBUNALS**

Equality considerations for the administration of devolved social security also includes the appeals system, and so is not restricted to the Scottish social security agency itself.

The appeals system for devolved benefits must be accessible to all, and must take account of all the protected characteristics when being developed and monitored. It will need to reflect and accommodate the needs of people receiving devolved benefits, who will include some of the most disadvantaged and vulnerable people in our society. It must also be able to protect rights across the protected characteristics, ensuring that particular groups are not being discriminated against in the initial decision making process.

## NEXT STEPS

We recognise that there are currently some gaps in our evidence and understanding about potential impacts of some of the legislative proposals for some equality groups. Within the Bill consultation respondent information form, and below, we have asked a number of specific questions about this partial EqlA and would welcome your views and comments. These views and comments will be used to help us develop the final EqlA.

### Questions

**How can the Scottish Government improve its partial EqlA so as to produce a full EqlA to support the Bill?** These prompts could be helpful in framing your answer:

- Are there any issues regarding the protected characteristics for equality that we need to consider in relation to our new social security powers or the new Agency?
- What does the Scottish Government need to do, as it develops a Scottish social security system, to ensure that equality implications are fully taken into account?
- What does the Scottish Government need to do, as it develops a Scottish social security system, to ensure that any implications for those on low incomes are fully taken into account?
- Are there equality considerations for individual benefits that you would like to draw to our attention?
- Are there considerations about individual benefits for those on low incomes that you would like to draw to our attention?
- What are your views on how we can best gather equality information for the new Scottish benefits?
- What does the Scottish Government need to do to ensure that its social security legislation (including secondary legislation and guidance) aligns its vision and principles with equality for all those who need assistance through social security support?
- What does the Scottish Government need to do to ensure that a Scottish social security system provides the right level of support for those who need it, and what are the possible equality impacts of this?

# **Consultation on Social Security in Scotland**

## **Annex B: Respondent Information Form**

## ANNEX B

### CONSULTATION ON SOCIAL SECURITY IN SCOTLAND

### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be returned with your response.

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response.

Please indicate your publishing preference:

- Publish response with name  
 Publish response only (anonymous)  
 Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes  
 No



## **THIS IS THE END OF THE CONSULTATION DOCUMENT**

**Please send your response to the consultation questionnaire with the completed Respondent Information Form, available separately on the Scottish Government website to:**

[Socialsecurityconsultation@gov.scot](mailto:Socialsecurityconsultation@gov.scot)

or

Social Security Consultation  
5<sup>th</sup> Floor  
5 Atlantic Quay  
150 Broomielaw  
Glasgow  
G2 8LU.

**THANK YOU FOR TAKING THE TIME TO RESPOND**

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**[www.gov.scot](http://www.gov.scot)**

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