

**Memorandum of Understanding (MoU)
between
Scottish Ministers (SM) and Department for Work and Pensions (DWP)
on joint working arrangements covering the implementation of devolved provisions in the
Scotland Act 2016 relating to Social Security and Employment Support Services in Scotland.**

(SM/DWP Single MoU)

1. Introduction

1.1. The [Smith Commission](#)¹ recommended devolution of some social security and employment matters to the Scottish Parliament. The Scotland Act ² 2016 received Royal Assent on 23 March 2016, giving the Scottish Parliament competence to legislate for matters relating to both social security and employment support services. The Social Security (Scotland) Act 2018, which received Royal Assent on 1 June 2018, was made exercising that competence.

1.2. Scottish Government(SG) and DWP are separate entities, accountable to the Scottish and the UK Parliaments respectively, albeit in accordance with one civil service code. However, both parties recognise the need for co-operation and intergovernmental workings on matters of joint interest, including both the reserved and devolved areas. The new devolution settlement enables SG and DWP to proactively work together and build on an already strong relationship to create a more productive, robust, transparent and visible relationship.

1.3. This MoU is an agreement between DWP and SM. It sets out a framework for co-operation between the parties in respect of ensuring that the social security and the employment support provisions, associated powers and operations of the Scotland Act 2016 are considered and implemented effectively and with full regard to both Scottish and UK systems. It is also a basis on which to build enduring joint operational working and collaboration between both Governments.

1.4. Within SG, social security and employability sit within separate Cabinet Secretary and Ministerial portfolios. In civil service terms, there are different accountable officers for the two areas – mirroring the Ministerial responsibilities – and, below those accountable officers, parallel programmes of work to manage the implementation of the social security and the employment support provisions of the Scotland Act 2016: the Social Security Programme and the Employment Services Programme. As such there is a need to differentiate aspects of this MoU to reflect differences in timeline, approach, scope, activities, governance and lines of accountability between the two programmes.

1.5. Where possible, a common approach is taken to sections that are applicable to both the Employability and Social Security programmes in SG. A number of areas, particularly in relation to information sharing, require to be treated distinctly because of the different lines of accountability within SG. Where this is necessary, a more detailed Annex to this MoU will be put in place which will be specific to one of the SG programmes.

2. Scope

2.1. The scope of the devolved Social Security and Employment Services Programmes and, as such, this MoU is framed by the relevant provisions of the Scotland Act 2016.

2.2. The scope of the Social Security Programme covers Part 3 of the Scotland 2016 Act, section 22 through to, and including, section 30, with the exception of section 27, Welfare Foods. The scope of the Employment Services Programme covers Part 3 of the Scotland 2016 Act, section 31. Sections 32 to 35 of the Act make general provisions applicable to both programmes.

2.3. In addition, the Smith Commission noted that SG and DWP could agree a partnership for DWP to deliver some or all of the social security benefits and schemes on SM's behalf. Social Security

¹ www.smith-commission.scot

² <http://www.legislation.gov.uk/ukpga/2016/11/contents/enacted>

Scotland, a new social security agency, is administering the devolved benefits as they come on stream. Operational delivery arrangements for the devolved benefits, and the extent to which, in the shorter or longer term, DWP may be involved in aspects of their delivery will be discussed and agreed as they go live.

3. Ways of working

3.1. The Smith Commission³ also agreed as stated at paragraph 58 that, “as the single face-to-face channel for citizens to access all benefits delivered by DWP, Jobcentre Plus will remain reserved. However, the UK and Scottish Government will identify ways to further link services through methods such as co-location wherever possible and establish more formal mechanisms to govern the Jobcentre Plus network in Scotland.” The UK and Scottish Governments are committed to ensuring successful partnership working, to ensure an effective interaction between devolved and reserved services.

3.2. Any relationships between SM and DWP that fall outside of scope of the social security and employment support powers being devolved by the Scotland Act 2016 are not covered by this agreement or associated documentation.

3.3. This MoU is not a contract, nor is it legally binding and it does not remove, alter or reduce prevailing legal obligations of each party, for example obligations under the Human Rights Act 1998, or the General Data Protection Regulation (GDPR) which came into effect from 25 May 2018. Nevertheless, both parties expect its provisions to be followed.

4. Format of Document

4.1. This MoU is formed of the following constituent parts:

- The main body text of the joint working arrangements contained within this MoU will be the overarching document with regards to the relationships and responsibilities of DWP and SM in respect of the new devolved powers;
- Annexes applicable to either the Social Security Programme or the Employment Services Programme and which cover any specific transition, implementation or steady-state working together arrangements that may be required. These will provide specific detail about working together that are applicable for some areas but not applicable across the whole DWP relationship at any point in time. It will be clearly stated at the beginning of each Annex which programme the Annex is owned by to avoid any doubt. Appendix A to this MoU will detail all the Annexes in place;
- Annexes form part of the MoU and are to be held in the same regard by all parties and fully adhered to;
- The Communications and Partnership Working Framework will also be annexed in this MoU. This will provide the details of an aligned approach to communications and engagement in relation to the powers devolved - as these may change more frequently, the Framework will detail specific governance arrangements outside of those reflected by the MoU itself; and
- Overarching principles and agreements relating to information sharing will be referenced in the main body of the MoU. However, individual Data Sharing Agreements will sit as Annexes to the MoU which will be appropriate to either the Social Security Programme or the Employment Services Programme - and which will evolve over the lifespan of the transition from reserved to devolved benefit and employment support services, and in the on-going

³ www.smith-commission.scot

operational interaction between reserved and devolved functions and services. The MoU will be reviewed and revised as necessary over the period of implementation i.e. new Annexes may be added. These separate Annexes are essential due to the sensitive nature of much of the information to be shared, to ensure that it is clear where accountability lies within SG.

4.2. Data Sharing Agreements will be in place for specific arrangements for the sharing of data. This may be ad hoc request processes or standardised data feeds. Each Data sharing agreement will set the terms of the information that can be shared and the preferred methods for delivery. The Data Sharing Agreements will also reference any technical specifications for data transfer and may require business and technical/security sign-off.

4.3. For the purposes of this MoU there is a distinction between personal data and information. Information is defined as any piece of documentation, statistical information, financial information, contracts and other information that does not contain personal data. Personal data would be considered as defined in Part 1 Section 3 of the Data Protection Act 2018 and Article 4.1 of the (EU) ref 2016/679 of the General Data Protection Regulations.

4.4. The MoU may refer to operational processes, but will not define the specific processes. These may be referenced within this document, if all parties are content and feel this is appropriate.

4.5. This MoU details the approach and the overarching agreement between DWP and SM in relation to the devolved powers. Anything that is specific to a particular area (i.e. benefit or point in the transition), will be annexed to this document. It is the expectation that the MoU will be revised at appropriate junctures throughout the lifecycle of the Social Security Programme and/or the Employment Services Programme. It will be important during the period of both programmes to define and set out the eventual “business as usual” steady-state relationships between DWP, SM, and the delivery bodies responsible for the employment programmes and social security administration in Scotland. In time, those relationships will be set out in specific Annexes to this MoU.

4.6. The MoU will have designated signatories who will sign on behalf of the respective parties. The Annexes may have different signatories, dependent on the content and ownership of the Annex, who are only agreeing to the terms for the information contained within that Annex. The Annex signatory or their successor is responsible for all information and agreements made in the Annex.

4.7. Annexes can be amended in isolation from the MoU review. Each Annex signatory has full responsibility and ownership of their respective Annex, ensuring procedures are in place to inform MoU signatories of any amendments. Each Annex signatory to ensure safeguards for succession planning are in place. When the entire MoU is reviewed/amended, the MoU signatories or their successor will seek assurance from respective Single Point of Contacts (SPoCs) that individual Annex signatories are aware and have consented (where applicable) to any substantive revisions.

4.8. SG Social Security Programme will be the document controller of this MoU as far as being responsible for the primary upkeep. The MoU is, however, jointly owned by all parties equally. Associated Annexes are owned between either the Social Security Programme / Social Security Scotland and DWP or Employment Services Programme and DWP. Annexes will specify how each arrangement will be managed.

4.9. For the purposes of audit, review and accountability, it is the responsibility of each SPoC and, ultimately, the MoU signatories (or their successors) to ensure that the terms of the MoU are adhered to and the appropriate processes are in place. Where specific Annexes relate to only one of

the programmes within SG, the signatories to that Annex are responsible for ensuring that the terms of that Annex are adhered to and the appropriate processes are in place.

5. SPoC Role

5.1. To ensure the effectiveness of this MoU, including the wider communications arrangements, each party will appoint a named SPoC for matters of common interest. Respective SPoCs are named in **Annex B**. The role of this SPoC will extend to:

- Day to day management, review and update of this MoU; during this process the Annexes will be checked with respective owners to ensure they are current.
- Acting as the first (informal) point of escalation and dispute resolution; and
- Ensuring all requests for information, including disclosure of the same, are actioned in accordance with this MoU.

5.2. In cases where the SG lead is not clear, the Social Security Programme SPoC will act as an initial contact.

5.3. Where SPoCs are unavailable, alternative contacts must be used for any escalation that would normally fall to the SPoC. It is the responsibility of each SPoC to provide alternative contact details for any planned absence, where possible. As this is not always appropriate or possible, it would be the responsibility of the officials named in **Annex B** to be the SPoC or to provide a delegate to the other party.

5.4. In parallel with the SPoCs above, there is a further role of maintaining effective communications between the parties to facilitate productive and transparent relations, including by:

- managing the workings of the Joint Senior Officials Working Group (JSOG); and
- informing each other of relevant administrative arrangements in their organisation which may impact on the other party's services/policy development and delivery.

This will primarily be carried out by the officials at **Annex B**.

6. Escalation

6.1. Where a dispute arises about the operation of this MoU, all parties will seek to resolve it informally through the identified SPoCs. SPoCs will initially refer the matter to relevant Deputy Directors and/or Programme Directors in each organisation for resolution. If any dispute cannot be resolved at that level, the final point of escalation will be the Directors in each organisation (namely Mary Pattison for DWP, Stephen Kerr for the Social Security Programme and Dominic Munro for the Employment Services Programme). The relevant Directors are to be copied into all escalation correspondence.

6.2. However, if this does not resolve the issue, each party may escalate the matter to JSOG to agree a solution. Individual agreements that sit as Annexes to this MoU can have their own escalation routes.

6.3. In exceptional circumstances, where a dispute cannot be resolved at official level, by Deputy Directors, the respective Programme Directors then at Director level through normal official escalation routes or by JSOG, it may be escalated to the Joint Ministerial Working Group on Welfare

(JMWGW) or individual Ministers. The appropriate SPoCs will, at all times, keep each other informed of any planned escalation, prior to the escalation happening.

7. Change Management and Governance (Programme Level)

7.1. At a Ministerial level, the implementation of the Scotland Act 2016 provisions is overseen by the JMWGW. The JMWGW is supported by JSOG, comprising senior officials from the Scottish and the UK Governments, and charged with assuring the successful implementation of welfare benefits and employment support provisions of the Scotland Act 2016 - recognising other change activity and operational priorities across the two Governments.

7.2. The remit of the two Groups is governed by agreed Terms of Reference (ToRs). It is the responsibility of the SPoCs to ensure the latest version of these is taken into account at each review/amendment of this MoU.

7.3. To ensure successful implementation of the new provisions, the two Governments have set up appropriate governance arrangements, consisting of:

SM:

- SG's Social Security Programme Board and SG Employment Services Programme Board, both of which include DWP representation, are individually responsible for ensuring the successful implementation of the relevant devolved powers.
- Although JSOG and JMWGW are in place to monitor and ensure successful implementation, the two SG Programme Boards will be the authorising environments through which programme and working level activities are managed and governed within SG.
- SG's Social Security Programme and SG's Employment Services Programme each consist of multiple projects. These projects will be set up and closed as applicable throughout the lifecycle of the two programmes.
- Although the full programme structure for the devolution of these powers within SG is an SG responsibility, there will be some areas where DWP will provide different roles (i.e. advisory, assurance, authorising) at different times rather than a formal governance role. As these are known, they will be detailed in appropriate ToRs and reflected within the MoU and associated Annexes, as applicable.

DWP:

- The DWP Scottish Devolution Programme is responsible for ensuring successful implementation of the DWP elements of the devolved powers. The DWP Scottish Devolution Programme Board is the primary decision-making authority for the programme, providing advice and support to the Senior Responsible Owner (SRO) who is accountable for the delivery of all elements within the scope of the Scottish Devolution Programme. The SROs of the Social Security Programme and the Employment Services Programme will have a standing invitation to the DWP Scottish Devolution Programme Board as observers.
- Although the DWP programme structure for the devolution of these powers within DWP is a DWP responsibility, there will be some areas where the SG SRO will provide different roles (i.e. advisory, assurance, authorising) at different times rather than a formal governance role. As these are known, they will be detailed in appropriate ToRs and reflected within the MoU as applicable.
- Where appropriate Programmes already exist within DWP delivering change activity in devolved areas, the DWP Scottish Devolution Programme will commission required change through individual Programmes. In such areas decision-making authority will be held jointly between the DWP Scottish Devolution Programme Board and the respective change Board.

7.4. DWP and SG are committed to the principle of good communications with each other and will alert each other as soon as practicable through the appropriate forums (in confidence where appropriate) to proposals for new policy initiatives or programmes, and changes to existing policies or service delivery where there is a direct or indirect impact on, or interaction with, the other's areas of responsibility. To help achieve this, where appropriate, DWP and SG may agree to be part of each other's governance and oversight mechanisms (e.g. programme boards and joint working groups).

7.5. The structure and key contacts for the three Programme Boards are detailed in **Annex C**.

8. Audit

8.1. DWP and SM remain subject to their existing accountabilities to the UK and Scottish Parliaments, and their associated audit bodies.

8.2. DWP and SM will abide by the principles of audit and accountability as set out in the jointly agreed document *Scottish Devolution: A Framework for Audit and Accountability* intended to be published early 2019.

9. Oversight

9.1. Representative officials from DWP and SM will be available to provide evidence to UK and Scottish Parliamentary Committees, as and when required concerning devolved matters in relation to Social Security, Employability and the implementation of the Scotland Act 2016.

9.2. The Scottish Parliament may invite UK Ministers or officials to attend proceedings to give evidence or to provide documentary evidence. DWP will consider each such invitation on a case-by-case basis. DWP will aim to be as helpful to the Scottish Parliament as possible, subject to considerations of confidentiality and the overriding priority that must be given to matters arising in the UK Parliament. DWP have nominated a central contact point to handle all requests from the Scottish Parliament, and SM have nominated a central contact point who will be kept informed by DWP of any such requests.

9.3. Similarly, the UK Parliament may invite SM or SG officials to attend proceedings to give evidence or provide documentary evidence. SM will consider each such invitation on a case-by-case basis, having regard to the advice set out in the Scottish Ministerial code. SM will aim to be as helpful as possible to the UK Parliament, subject to considerations of confidentiality and the overriding priority that must be given to matters arising in the Scottish Parliament. SM have nominated a central contact point to handle all requests from the UK Parliament and DWP have nominated a central contact point who will be kept informed by SM of any such requests.

9.4. DWP and SM will co-operate to enable each to meet its obligations to the UK Parliament and Scottish Parliament respectively. SM and DWP will aim to treat enquiries and requests for information from the other with the same priority as a request from their own legislative body, for example Parliamentary Questions.

10. Fiscal Framework

10.1. The Fiscal Framework agreement between the Scottish and UK Governments, for the on-going costs to devolution, is the responsibility of HM Treasury within the UK Government. As such,

any consideration regarding funding models and the ongoing costs of devolution will not be covered by this MoU.

11. Change Management and Governance - Development of Policy and Delivery Options

11.1 This MoU, and the relationship between DWP and SM, at the point of MoU signing, concerns both the development of policy and delivery options by SM and also implementation and transition. As we move towards “steady state”, the focus of this MoU and the associated Annexes will be changed to reflect the nature of this changing relationship.

11.2 Both parties will not generally comment on the likely efficacy of either party’s proposals in achieving stated policy aims in relation to social security or in relation to employment support.

11.3 DWP and SM will agree a programme of transition from current arrangements to new arrangements made within the competence devolved by the Scotland Act 2016 that is operationally deliverable and gives appropriate support to social security claimants and/or to people accessing employment services.

11.4 To the extent that SMs’ policy decisions on the Social Security and the Employment Services Programmes impact on DWP, SM and DWP will agree a timetable for implementation that enables both Governments to make the necessary preparations in good time in advance and that are acceptable to both.

11.5 In developing implementation options, DWP and SG officials will engage in meaningful discussion on SM proposals including IT and security standards that will need to be satisfied in relation to joint services or DWP delivery on behalf of Scottish Ministers. SM will remain responsible for ensuring that implementation meets all relevant standards and legal requirements applying to Scotland. In relation to any proposals to be delivered by DWP for SM, both Governments will consider issues including, but not limited to, IT, finance and the wider organisation as outlined in paragraph 7.3.

11.6 SM and DWP will agree a programme of transition from current arrangements to new arrangements under the Scotland Act 2016 that is operationally deliverable and gives appropriate support to claimants.

12. Information Sharing

12.1. This section does not relate to personal data. It relates to information as defined in paragraph 4.3, that is any piece of documentation, statistical information, financial information, contracts and other information that does not contain personal data.

12.2. SM and DWP recognise the need to share information, as deemed appropriate and proportionate for the purposes of implementation of the devolved powers and the successful administration of benefits across the UK. The Scotland Act 2016 introduces a new legal gateway, at section 34, which is available for disclosure of information from DWP to SG and vice-versa for the purpose of a social security function.

12.3. This section outlines information sharing that is generic, cross-cutting or ad hoc in nature. If DWP is able to meet the request to provide information, it may share the information in a different format to the one requested.

12.4. In order to baseline its policy and implementation options proposals, the Social Security Programme needs to understand the current social security policy and delivery environments, as deployed by DWP. Similarly, the Employment Services Programme needs to understand employment support policy and delivery environments and developments, client volumes and costs, as deployed by DWP.

12.5. In both instances, this requires a largely one-way, transfer of background information on current benefits and emerging employment support programmes and delivery arrangements, from DWP to SM, including relevant changes proposed to these by DWP as part of their own policy development, implementation and corporate planning.

12.6. Alongside that immediate need for access to information, the successful implementation of the provisions in the Scotland Act 2016 relating to Social Security and Employment Support Programmes will depend on a shared understanding of policy development and implementation plans by SM and DWP. There may be occasions when SG officials make information requests on reserved benefits and employment programmes and services to ensure best possible outcomes for both administrations and claimants. On an on-going basis, both parties will share relevant information on devolved and, where appropriate, reserved benefits due to issues such as, but not limited to, passporting benefits and uprating.

12.7. In relation to new policy proposals, SG officials may approach DWP for advice in general terms on its emerging policies. Detailed policy, costings and flexibility work would be chargeable; DWP will provide an estimate of the likely cost of such work, and SM may decide to meet that cost or withdraw its request.

12.8. Both DWP and SM may ask for reimbursement of costs linked to current policies, analytical, financial or operational information that is not in a readily available format to share.

12.9. For all information that is shared between SM and DWP

- 12.9.1. All parties will only share information where it is lawful to do so, having due regard to the General Data Protection Regulation (GDPR) which came into effect from 25 May 2018, and as supplemented by the Data Protection Act 2018.
- 12.9.2. DWP will use the legal basis for sharing information in order to support SM in their legitimate functions including transition and discovery phases, as the law allows.
- 12.9.3. Either party shall sign single-signature confidentiality agreements, where it is deemed necessary. The agreements shall include the names of staff from the requesting organisation that require to access information deemed confidential by either party.
- 12.9.4. DWP and SG officials must identify appropriate arrangements for information to be requested in writing and also to appropriately manage these requests.
- 12.9.5. Requests for information are to be made in writing (usually by email). Any verbal requests must be followed up in writing.
- 12.9.6. All email communications within the terms of this MoU, including those within SG, must be from and to appropriate Government email addresses. All parties will put in place data handling strategies. These will be available to be viewed by either party on request.
- 12.9.7. If one party agrees to provide information but cannot do so within 15 working days of the date of the request, it will give the other an estimate of when the information will be provided.

- 12.9.8. If information requested by SM is not available to DWP as standing data, and so would need a specific query of IT systems, or otherwise incur significant cost, DWP will give SM an estimate of the cost of the query. In that case, SM may either agree to pay the cost of the query or withdraw the request.
- 12.9.9. Information relating to commercial arrangements may be subject to confidentiality restrictions. If information requested by SM or DWP would require a supplier to be paid to give an estimate, SM or DWP may either agree to pay the cost of obtaining the estimate or withdraw the request.

12.10. Confidentiality Agreements

- 12.10.1. Both parties shall ensure staff are aware of their obligations and responsibilities under the Civil Service Codes when handling in particular confidential commercially sensitive information.
- 12.10.2. The identification of a requirement for confidentiality agreements is the responsibility of the party that will provide the information. Either party must ensure that information that is provided under confidentiality agreements referred to in 12.9.3 is only accessible by named authorised persons. Any access outside of this will be treated as if it were a breach of the confidentiality agreement(s).
- 12.10.3. Notification of the confidentiality agreement to be signed must go to the designated SPoCs detailing the reason that the agreement is required, and the request for information to which the confidentiality agreement is applicable. Either party may be requested to provide, at any time, audit information about access to documentation and storage for documents provided under the overarching confidentiality agreement as is reasonable. This should be provided within 5 working days of the request.
- 12.10.4. The process for the provision and the audit of all information that has been provided under a confidentiality agreement is to be agreed by both parties. Should a member of SG staff who previously had access no longer require access, arrangements must be made to remove their access to paper and electronic information and a record must be retained. The receiving party must ensure that information that is provided under any confidentiality agreement is only accessible by authorised persons. Any access outside of this will be treated as if it were a breach of the Confidentiality Agreement.

12.11. Information Handling

- 12.11.1. For all information received, which is not already in the public domain, the receiving party has a responsibility to keep audit records of the location of and access provided to all information.
- 12.11.2. Information will be stored and managed appropriately, in accordance with all applicable data protection legislation, principles, articles and recitals.
- 12.11.3. It is the responsibility of the receiving organisation to manage the appropriate access to all information provided under this MoU and to ensure that it is used in line with the terms of this MoU.

12.12. **Audit**

- 12.12.1. Either party may be requested to provide, at any time, audit information about access to documentation and storage for documentation as deemed reasonable. This should be provided within 5 working days of the request.
- 12.12.2. Both parties must have in place appropriate information handling strategies that detail the methods in which information handling is achieved. Appropriate sections of the strategies must be shared at the request of either party.

12.13. **Publication and Announcement**

- 12.13.1. Any information that has been provided under this MoU that is not in the public domain, and unless otherwise stipulated by the information owner, must not be published or announced without prior written consent from the other party. Acquisition of written consent would be co-ordinated by the relevant SPoCs.
- 12.13.2. Similarly, where either party is in doubt as to whether something can be released, the relevant SPoC must be contacted in sufficient time to provide guidance.
- 12.13.3. Each party should use all reasonable endeavours to provide as much notice as possible to the other party of any publication of any research pertaining to the benefits being devolved. Publication of statistics will fall under the statutory 28 day pre-publication rule. Any requests for specific statistics to be shared 24 hours before publication should be done in accordance with the official statistics guidance.

12.14. **Information that may be provided to SM**

- 12.14.1. Requests for information made by either the Social Security Programme or the Employment Services Programme will be dealt with by DWP on a case by case basis.
- 12.14.2. Information that can be provided includes any operational and administrative detail that is available for the administration of the devolved benefits and employment support powers.
- 12.14.3. Details of centralised and overarching functions may also be requested by SM and may be shared as appropriate.
- 12.14.4. Where commercial contracts are in place that impact the administration of any of the devolved benefits or centralised functions, requests for information that include commercially sensitive information will be managed on a case by case basis. It is understood that it will sometimes be necessary to provide information that is not available within the public domain to SM for the purposes of understanding the current position and risk. DWP and SG officials will work together to identify the best solution to get access to this information. The confidentiality agreement clauses above will apply unless agreed otherwise. DWP may, on occasion, request confidentiality agreements to be signed when deemed appropriate.

12.15. **Information that may not be provided to SM**

- 12.15.1. In the absence of a legal basis for doing so, DWP will not provide to SM individual benefit claimant information or service user information, or information from which details of the social security or the employment support affairs of individuals or businesses (or other legal persons) may be inferred.

12.15.2. DWP will not provide information to SM that gives insight into decision making by the present or previous UK governments where political viewpoints are included. However, the evidence base for decisions may be shared, as appropriate.

12.16. ***Information that may be provided to DWP***

12.16.1. Requests will be dealt by SG officials on a case by case basis. Examples include, but are not limited to, programme and governance documentation, joint working, aligned communications, relevant analysis, emerging policy thinking where there is potential impact on existing or future DWP policy, services or operations and agreed policy decisions.

12.16.2. Where commercial contracts are in place that impact the administration of any of the devolved benefits or centralised functions, requests for information that include commercially sensitive information will be managed on a case by case basis. It is understood that it will sometimes be necessary to provide information that is not available within the public domain to DWP for the purposes of understanding the current position and risk. SG officials and DWP will work together to identify the best solution to get access to this information. SM may, on occasion, request confidentiality agreements to be signed when deemed appropriate.

12.17. ***Information that may not be provided to DWP***

12.17.1. In the absence of a legal basis for doing so, SM will not provide to DWP individual benefit claimant or service user information, or information from which details of the social security or the employment support affairs of individuals or businesses (or other legal persons) may be inferred.

12.17.2. SM will not provide information to DWP that gives insight into decision making by the present or previous SG administrations where political viewpoints are included. However, the evidence base for decisions may be shared, as appropriate.

12.18. ***Use of information provided to (and by) SG:***

12.18.1. In order to enable the Scottish Fiscal Commission (SFC) to deliver its duties in preparing independent forecasts on devolved social security expenditure in Scotland, SG officials may share information with SFC that SG officials have received from DWP. This sharing is exempt from the conditions stipulated in clause 12.18.4 and does not need to be approved by the DWP SPoC. SFC are permitted to publish this information to the extent that it directly supports its forecasts. This MoU should not be a primary route for SFC data, so no requests for additional DWP data should be made via SG following revised sign-off of this MoU.

12.18.2. SM, SG officials and DWP are subject to the Official Secrets Act 1989, the Data Protection Act 1998, the Data Protection Act 2018, General Data Protection Regulations (GDPR 2016/679), the Scotland Act 1998 and the Scotland Act 2016, Welfare Reform Act 2012, Computer Misuse Act 1998, Regulation of Investigatory Powers Act 2000, Regulation of Investigatory Powers (Scotland) Act 2000, Access to Health Records Act 1990, Equality Act 2010 and Human Rights Act 1998 with regard to information each party receives from each other. SM and SG officials are also subject to the Social Security (Scotland) Act 2018. Information supplied by DWP to SG that is to be held in confidence under the terms of this MOU will be

exempt from disclosure under the Freedom of Information (Scotland) Act 2002, by virtue of section 3(2)(a)(ii) of that Act. Information supplied by SG to DWP will not be subject to a similar exemption from the Freedom of Information Act 2000.

- 12.18.3. In case of either party looking to release information into the public domain which has been provided under this MoU, then, unless the relevant Freedom of Information legislation requires disclosure, the party holding the information cannot do so without the prior consent by the party that provided the information. In these situations, the relevant SPoCs will coordinate the appropriate response on a case by case basis.
- 12.18.4. SM will treat all information passed to it by DWP that is not already in the public domain as “Official – Sensitive” and will restrict access to the same to those with a genuine business need within SG. Unless required to release such information under the Freedom of Information (Scotland) Act 2002, SM and SG officials will not forward the information to third parties or put it into the public domain (directly or indirectly) without the prior agreement of the relevant DWP SPoC.
- 12.18.5. Similarly, DWP will treat any such information provided to it by SM, within the context of requests made under this MoU, as “Official – Sensitive” and will restrict access to the same to those with a genuine business need within DWP. Unless required to release such information under the Freedom of Information Act 2000, DWP will not forward the information to third parties or put it into the public domain (directly or indirectly) without the prior agreement of the relevant SG SPoC.
- 12.18.6. Unless specifically agreed otherwise (for example Universal Credit Choices Management Information), SM recognise that information DWP shares under this MoU remains DWP’s information. Once SM has used that information as part of its evidence to formulate policy, analysis or plans, the said policy, analysis and plans are the property of SM. As such SM may also share and publish these policies, analysis and plans externally at their sole discretion. However, if, as part of that publication or sharing, SM wish to directly quote any information that DWP has provided to SM, past or present, authorisation will be sought in advance.
- 12.18.7. Unless specifically agreed otherwise, DWP recognise that information SM share under this MOU remains SMs’ information. Once DWP has used that information as part of its evidence to formulate policy, analysis or plans, the said policy, analysis and plans are the property of DWP. As such DWP may share and publish these policies, analysis and plans externally at their sole discretion. However, if, as part of that publication or sharing, DWP wish to directly quote any information that SM has provided to DWP, authorisation will be sought in advance.
- 12.18.8. Where information is to be published or shared externally as part of any aligned communications activity, DWP and SM will agree the content of this information in advance of its publication through the Communications group.

12.19. ***Security and Assurance***

12.19.1. In managing the information provided, all parties will:

- Use the information only for the purposes described in this MoU;
- Continue to hold the information only as long as there is a business need to keep it;
- Ensure that only civil servants, special advisors, Ministers, partners and suppliers who have a genuine business need to see the information will have access to it and use it appropriately; and
- Report any information losses.

12.19.2. If any party to the agreement forwards or shares (verbally or in writing) information shared under this MoU to/with third parties or puts it into the public domain without the agreement of the other party's SPoC, whether deliberately or inadvertently, the other party to the agreement may suspend the operation of this MoU or specific Annexes thereto if it deems this appropriate.

12.20. **Resolving Issues**

12.20.1. Any complaints, problems or issues specific to the information provided under this MoU, or apparent breaches of its terms, will be discussed by SG and DWP SPoCs, who will agree a course of action in line with the agreed escalation process as previously outlined at Section 4 and 5 of this MoU.

13. Communications and Partnership Working Framework

13.1. It is the responsibility of each party to effectively manage communications in relation to the devolved powers. However, DWP and SM will strive to work together as much as possible so that on occasions when consistency of message is key, an aligned and coordinated approach is taken forward to protect customer service as well as both governments' reputation for accuracy and competency.

13.2. DWP and SG have entered into a Joint Framework on Communications and Partnership Working, which forms an associated Annex to this MoU as detailed in **Annex A**.

14. Document Review and Approval

14.1. This MoU will be formally reviewed, by the three named SPoCs, annually, or earlier if parties agree there is a need. The review schedule will, as far as possible, be aligned with the key joint milestones, such as the milestone dates for the transfer of individual powers to SM. Individual Annexes may require separate review to different timescales; where this is the case, that will be set out clearly in the relevant Annex.

14.2. Annexes will be reviewed in the same review period as the MoU but can also, by agreement and when appropriate, be reviewed outside of the MoU review period. During the formal review process Annexes will be checked with their respective owners to ensure they are still current.

14.3. Both DWP and SM will seek feedback from their wider departments on the functioning of the MoU and Annexes, as well as the effectiveness of the joint working arrangements in general, and this will be fed back into the revision process. Outcome of each review will be a set of recommendations for amendments to the MoU and Annexes where necessary.

14.4. All proposed amendments, whether within or outwith the scheduled review process, will be submitted to the signatories of the MoU (or their successors) for consideration and sign off. Prior to signing off on individual amendments, either signatory may request for the proposed amendments to be discussed by JSOG.

15. Signatories

DWP

Date: 22 January 2019

[REDACTED]

Name: Mary Pattison

Position: DWP Devolution Director and SRO for DWP Scottish Devolution Programme

(SG) Social Security Programme

[REDACTED]

Date: 20 December 2018

Name: Stephen Kerr

Position: Social Security Director

(SG) Employability Programme

[REDACTED]

Date: 20 December 2018

Name: Dominic Munro

Position: Director for Fair Work, Employability and Skills

RECORD OF ASSOCIATED ANNEXES

Annexes between the Social Security Programme and DWP			
Annex Reference	Annex Title	SG Asset/Reference Number(s)	DWP Asset/Reference Number(s)
SSP - B	MoU SPOCs, Alternative MoU SPOCs and JSOG SPOCs	N/A	
SSP - C	Programme Board Key Contacts	N/A	
SSP - D	[REDACTED]	[REDACTED]	
SSP - E	Working Level Agreement between the Department for Work and Pensions and the Scottish Government in respect of Universal Credit Scottish Flexibilities.	[REDACTED]	
SSP – F	Agency Agreement between the Secretary of State for Work and Pensions and The Scottish Ministers in respect of Carer’s Allowance for People Resident in Scotland.	[REDACTED]	
SSP – G	Service Level Agreement between Department for Work and Pensions and Scottish Ministers in respect of Carer’s Allowance Supplement	[REDACTED]	

Annexes between the Employment Services Programme and DWP			
Annex Reference	Annex Title	SG Asset/Reference Number(s)	DWP Asset/Reference Number(s)
ESP - A	[REDACTED]	[REDACTED]	

MoU SPOCs

SG Social Security Programme	SG Employment Services Programme	DWP
[REDACTED]	[REDACTED]	[REDACTED]

Alternative MoU SPOCs

SG Social Security Programme	SG Employment Services Programme	DWP
[REDACTED]	[REDACTED]	[REDACTED]

JSOG SPOC

SG Social Security Programme	SG Employment Services Programme	DWP
[REDACTED]	[REDACTED]	[REDACTED]

Programme Board SPOCs

	Social Security Programme Board	Employment Services Programme Board	DWP Scottish Devolution Programme Board
	[REDACTED]	[REDACTED]	[REDACTED]