

# Final Business and Regulatory Impact Assessment

<b>Title of Proposal</b>  <b>SOCIAL SECURITY (SCOTLAND) BILL</b>
<b>Purpose and intended effect</b>  <p>The principal policy objective is to put in place a legislative framework to allow the delivery and administration of the social security benefits being devolved in Scotland.</p> <p>The Social Security (Scotland) Bill is brought forward as a result of measures following the changes to the devolution settlement enacted in the Scotland Act 2016. These measures give the Scottish Parliament legislative competence over disability, industrial injuries and carer's benefits; benefits for maternity, funeral and heating expenses; and Discretionary Housing Payments. They also provide the ability to top up benefits that remain reserved to UK Parliament, and allow new benefits to be created in any area except old age pensions or where there is a connection to a matter reserved to UK Parliament (such as child support maintenance or reserved aspects of employment support). As a result of the changes in the devolution settlement, eleven existing social security benefits will become a devolved responsibility.</p> <p>The Bill transposes the eleven social security benefits onto a Scottish legislative platform, allowing the Scottish Ministers to shape a distinctly Scottish benefits system, with dignity and respect being core to its approach. These are: Disability Living Allowance, Personal Independence Payment, Attendance Allowance, Severe Disablement Allowance and Industrial Injuries Scheme; Carer's Allowance; Sure Start Maternity Grants; Funeral Payments; Cold Weather Payments and Winter Fuel Payments; and Discretionary Housing Payments. It also gives powers to create new benefits for early years and to provide for top up of reserved benefits. It provides for a supplementary payment to persons receiving Carer's Allowance, pending the transposition of that benefit onto a Scottish legislative platform.</p> <p>The Bill also sets out an overarching legislative framework for the administration of social security in Scotland, making provision for operational functions such as managing overpayments, fraud, error and appeals.</p> <b>Policy Background</b>  <p>The Scottish Government's vision and principles for social security were developed after a substantial programme of engagement which the Scottish Government took forward under the banner of its national, year-long 'Fairer Scotland' conversation.</p> <p>This engagement was captured in a paper, "Creating a Fairer Scotland: Social Security, the Story So Far and Next Steps<sup>1</sup>", which was published in October 2015 and summarised what the Scottish Government learned from its conversations with citizens and organisations from all over the country. The Scottish Government listened carefully</p>

<sup>1</sup> <http://www.gov.scot/Resource/0048/00487055.pdf>

to, and reflected on the information stakeholders provided in order to develop its vision and principles.

A further paper, "A New Future for Social Security in Scotland<sup>2</sup>" was published in March 2016. In this paper, the Scottish Government outlined its vision and the initial set of principles which it has used to underpin the development and implementation of Scotland's new social security powers. Based on the evidence gathered during the Fairer Scotland consultation, the Scottish Government has incorporated the views and ideas from those who are affected by the powers: primarily those who will receive the devolved benefits, and groups who represent their interests.

The vision states that "Social Security is important to all of us and able to support each of us when we need it" and is supported by the principles that:

- Social security is an investment in the people of Scotland;
- Respect for the dignity of individuals is at the heart of everything we do;
- Our processes and services will be evidence based and designed with the people of Scotland;
- 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.

### **Contribution to the Government's Purpose and National Outcomes**

The legislative framework for the administration of social security in Scotland, will be aligned with other public services to make a direct and significant contribution to several of the National Outcomes, most notably:

- We live longer, healthier lives;
- We have tackled the significant inequalities in Scottish society;
- Our people are able to maintain their independence as they get older and are able to access appropriate support when they need it; and
- Our public services are high quality, continually improving, efficient and responsive to local people's needs.

### **Approach to implementation**

Successful transition of the new benefit powers (including the eleven benefits) is the biggest and most complex programme of change which the Scottish Government has undertaken since devolution. It will gain powers over 15% of social security spending with 85% remaining with UK Government, estimated at £2.9 billion in 2017/18. This means that, while the Scottish Government will do everything within its powers to transform the social security system in Scotland that it is responsible for, it cannot redress all of the unfairness that exists within the current UK system.

A significant body of secondary legislation that provides detail on each type of assistance and the operation of the social security system will then be required once the Bill enters into law. During Stage 1 of the Bill's passage through the Parliamentary

<sup>2</sup> <http://www.gov.scot/Resource/0049/00497219.pdf>

process, the Scottish Government intends to produce illustrative drafts of some of the regulations to demonstrate exactly how it intends to use these new powers. The Scottish Government wants to ensure that the regulations are considered and agreed in an open and transparent way that allows stakeholders to provide evidence and feed in their views. As with every other aspect of the work to develop the new social security system, the Scottish Government will seek to involve expert organisations and people outside of government, including businesses where appropriate, in the development of the secondary legislation, just as closely as they have been involved through the consultation exercise and in the development of the Bill.

Running alongside the legislation is a large-scale programme of transition and implementation as there is currently no existing Scottish Government infrastructure for social security in Scotland. The Scottish Government's immediate priority is to ensure a safe and secure transition of the current benefits so that those in receipt at the point of transition continue to receive it at the right time and in the right amount.

In March 2016, it was announced that the Scottish Government would set up a new agency, which will sit at the heart of the overall social security system. The Minister for Social Security subsequently announced in the Scottish Parliament on 27 April 2017, that the preferred option for the social security agency is a central executive agency with enhanced phone and on-line support which incorporates face to face pre-claims advice and support services co-located, where possible, in places people already visit. A significant amount of work was undertaken to reach this decision in the form of a two-stage options appraisal, culminating in an Outline Business Case<sup>3</sup>, that selected the preferred option.

This Business and Regulatory Impact Assessment (BRIA) outlines the impact, costs and benefits of the work undertaken to date. That is, the transfer of new powers and development of the Social Security (Scotland) Bill. It is proposed that any future policy changes, secondary legislation, and development of the agency and overall social security system, will be subject to further BRIA as the work progresses.

## **Consultation**

### **Within Government**

The Social Security Directorate within Scottish Government has, and continues to, engage with all Directorates involved in the development and delivery of social security in Scotland. This includes: Directorates for Housing and Social Justice, Digital, Local Government and Communities; Director General Economy, Director General Health & Social Care, Director General Learning and Justice and Director General Finance. A paper outlining the purpose and proposed content of the bill was circulated to Director General's for comment ahead of Cabinet approval on the paper on 28 March 2017.

The Scottish Government social security programme has its own governance arrangements and is aligned to the wider Scottish Government and Devolution arrangements at both official and Ministerial level in order to ensure appropriate decision making, monitoring and control. The social security programme is delivery-

<sup>3</sup> <http://www.gov.scot/Resource/0051/00517239.pdf>

focussed, tasked with establishing the new Scottish social security agency and the safe and secure transition of the devolved benefits. The Programme Board that oversees the delivery of the social security programme includes representation from a range of senior officials across Scottish Government, DWP representation, and non-executive Directors who provide insight and critical-friend challenge.

## **Public Consultation**

The Scottish Government's consultation on Social Security in Scotland<sup>4</sup> ran from 29 July 2016 to 28 October 2016. The consultation set out the vision and key principles for social security in Scotland.

The consultation was in three parts, covering:

- a principled approach;
- the devolved benefits; and
- operational policy.

A total of 521 written responses to the consultation were received, 280 from individuals and 241 from organisations. Respondents represented a wide range of individuals and organisations with knowledge and experience of, or an interest in social security matters. The independent analysis of the responses, by Research Scotland<sup>5</sup>, along with the Scottish Government response<sup>6</sup> were published on 22 February 2017.

Scottish businesses, including the third sector, were given the opportunity to respond to the public consultation on social security in Scotland. Responses were received from 14 private businesses and 5 business organisations all of which requested that their responses remain anonymous.

In addition to the formal consultation, the Scottish Government held over 120 engagements carried out with partners across all 32 local authorities in Scotland between July and October 2016. These events provided stakeholders and those with experience of the current UK system the opportunity to communicate their views and contribute to the development of the proposals contained in the Bill.

## **Business**

Discussions have taken place with a range of businesses and representative organisations such as: Engender, Inclusion Scotland, CAS, CPAG, Scottish Human Rights Commission, SCVO, Coalition for Racial Equalities and Rights, the Scottish Disability Equalities Forum, PCS union and the STUC.

Further discussions with stakeholders will continue throughout the passage of the Bill, the development of secondary legislation, and the establishment of the social security system. For example, the Scottish Government is establishing an Agency Operations Reference Group to help guide the shape of the agency's local presence. It will be a working level group aimed at those with experience of local operations and who have

<sup>4</sup> [https://consult.scotland.gov.uk/social-security/social-security-in-scotland/user\\_uploads/consultation-on-social-security-in-scotland---full-version.pdf](https://consult.scotland.gov.uk/social-security/social-security-in-scotland/user_uploads/consultation-on-social-security-in-scotland---full-version.pdf)

<sup>5</sup> <http://www.gov.scot/Resource/0051/00514351.pdf>

<sup>6</sup> <http://www.gov.scot/Resource/0051/00514404.pdf>

practical experience of delivering public services, to help understand the practicalities of local delivery, needs of individual communities and share good practices. The group will include representation from local government, third sector, public sector delivery organisations and PCS Scotland.

## Options

The first option is to do nothing. However, to do so would leave approximately 1.4 million people, who currently receive support from the benefits which will be devolved to Scotland, in a system that has been described as inhumane, complex and difficult to navigate. A system no longer fit for purpose which fails to meet the needs of those it is meant to help. This view was voiced again and again at the stakeholder events held alongside the consultation on social security. The Scottish Government recognises the responsibility it has to take action where it can to help the people of Scotland; to do nothing is therefore not an option.

The second option, which is the one the Scottish Government has chosen, is to transpose the devolved powers in Scots law under the terms of the Scotland Act 2016. The Scottish Government believes this is an opportunity to use the new powers to develop different policies for Scotland which are fairer and help tackle inequalities and poverty. The Scottish Government intends to work in partnership with those who have lived experience of the current system, to create a social security system that treats individuals with dignity and respect, is accessible, supportive and better meets the needs of the people of Scotland.

## Sectors and groups affected

There are approx. 1.4 million people in Scotland in receipt of the benefits that are being devolved. The benefits that will be administered by the agency include those supporting disabled people, older people, children, young people, families and those on low incomes.

The Bill defines the types of social security assistance which the Government will give. It goes on to give a brief description of each type of assistance, and confer powers on the Government to set out the detailed rules for eligibility and entitlement in secondary regulations. The types of assistance set out in the Bill includes:

- **Carer's assistance** (currently known as Carer's Allowance), which will be provided to an individual who cares for another individual with a disability. The Bill also provides for a Carer's Allowance supplement which will be paid twice-yearly to persons who receive Carer's Allowance in Scotland. It provides for calculation of the supplement, which is designed to reflect the difference between the rate at which Carer's Allowance is paid and the rate of Jobseeker's Allowance.
- **Cold-spell heating assistance** (currently known as Cold Weather Payments), which will be provided to an individual to help meet heating costs in periods of cold weather.
- **Winter heating assistance** (currently known as Winter Fuel Payments), which will be provided to an individual to help meet heating costs in winter.
- **Disability assistance** (currently known as Disability Living Allowance, Personal

Independence Payments and Attendance Allowance), which will be provided to a disabled individual on account of the impact of the disability (physical or mental).

- **Early years assistance** (known as Best Start Grant), which will be assistance to an individual who has costs related to having a child in their family. This includes persons who are expecting to have a child.
- **Employment-injury assistance** (currently known as Industrial Injuries Scheme), which will be provided to an individual who has had an injury or contracted a disease through employment.
- **Funeral expense assistance** (currently known as Funeral Payment), which will be assistance to an individual to help meet funeral costs.
- **Discretionary Housing Payments** which will be provided by local authorities to assist individuals with housing costs.

### *Equalities*

A full Equalities Impact Assessment of the provisions in the Bill has concluded that the Bill does not have an adverse impact on any of the protected characteristics, such as, age, sex, race, gender reassignment, pregnancy and maternity, disability, marital or civil partnership status, religion or belief or sexual orientation. The findings of the Equalities Impact Assessment will be published on the Scottish Government website.

The Scottish Government is also working closely with the Equality and Human Right Commission (EHRC) to explore whether there is sufficiently detailed data to allow the Scottish Government to conduct a Cumulative Impact Assessment (CIA) on its policy choices on social security. Rather than narrowly evaluating the effect of individual policy decisions in isolation, CIA techniques support Governments to accurately measure the overall impact of a set of changes to government policies on the population, analysed according to one or more characteristics (e.g. income, gender, ethnicity and disability). In other words, so long as the necessary data exists, the CIA can help the Scottish Government to understand whether the new system is supporting people in the way that it wants it to, as well as to identify, and where possible take action to avoid, any unintended impacts on specific groups.

### *Human rights*

The UN Convention on the Rights of Persons with Disabilities (UNCPRD) is the framework used by the Scottish Government to bring together action and change across Departments to support disabled people. In December 2016, the Scottish Government published “A Fairer Scotland for Disabled People<sup>7</sup>”, a delivery plan to 2021 setting out how UNCPRD will be implemented. Several of the ambitions that underpin the delivery plan – including ensuring places are accessible for all; protecting rights; decent incomes and fairer working lives; support services that promote independent living – will provide a valuable framework as the Scottish Government gives effect to new devolved social security powers.

The interface with obligations under UNCPRD remains of topical significance. The UN's examination of UK compliance was published in November 2016, citing “grave or systematic violations” of disabled people’s rights as a result of UK Government welfare reforms, including criteria for Personal Independence Payments which is currently being

<sup>7</sup> <http://www.gov.scot/Resource/0051/00510948.pdf>

introduced and is among the benefits being devolved. The Scottish Government will continue to work with representative groups, as well as people in receipt of the benefits, to ensure that we design a system that supports and empowers disabled people and meets our obligations.

Delivering a rights based approach to social security is at the heart of the Scottish Government's ambitions for the new system. To help it to achieve this, the Scottish Government has engaged the support of both EHRC and the Scottish Human Rights Commission (SHRC) to act as a sounding board and critical friend, ensuring that a clear and rigorous understanding of human rights is being applied in both policy and service development.

#### *Island communities*

The Bill is expected to have no disproportionate effect on island communities. The Scottish Government is keen to ensure that as much information as possible will be online, as well as allowing for the electronic submission of applications. However, the Scottish Government is aware that some remote and island communities may not have access to digital services nor is it everyone's preferred choice of communication. Some island councils have also highlighted the challenges that face those who have to travel a great distance to attend assessments. These and other similar considerations have led the Scottish Government, where possible, to ensure there will be a range of options by which an individual may engage with the social security system in Scotland. The Scottish Government will publish a statement on how it will island proof the Bill and delivery of the social security system in Scotland.

#### *Local Government*

The Bill has no disproportionate effect on local government in Scotland as there are no plans to make significant changes to Discretionary Housing Payments, which are administered by local authorities. There are no additional responsibilities or duties for local authorities as a result of the Bill which would result in additional costs to local government. However, the Scottish Government has announced that the preferred option for the social security agency incorporates face to face pre-claims advice and support services co-located, where possible, in places people already visit. This may include Local Government premises. Under this scenario, the Scottish Government expects Local Government would recharge the agency for this sharing of its premises and would therefore incur no additional costs. The Scottish Government will continue to engage with the advice services sector and local authorities as the programme to implement the social security system in Scotland progresses.

### **FINANCIAL IMPLICATIONS AND BENEFITS OF NEW POWERS**

The transfer of the social security powers will require the implementation of new infrastructure and systems to support their delivery, and this represents the largest and most complex programme of change the Scottish Government has undertaken since devolution. To ensure a safe and secure transition, the Scottish Government does not intend to take on delivery of all of the benefits to be devolved at the same time. A phased approach de-risks the implementation of a complex system.

## Costs

The costs and savings associated with the Bill will be thoroughly developed as part of the Financial Memorandum. Expenditure on the benefits to be devolved to Scotland is forecast in 2017-18 as approximately £2.9 billion, and represents 15.3% of total expenditure on benefits in Scotland. The table below provides an estimate of Department for Work and Pensions (DWP) expenditure in Scotland on the benefits to be devolved, based on current forecasts for 2017-18. The funding related to any devolved benefit which will transfer to Scotland, will be DWP spending in Scotland on that benefit for the year prior to the year of devolution, so it cannot be assumed that the exact amounts in the table will transfer. Recent changes to Winter Fuel Payments announced by the UK Government will likely significantly decrease the funding transferred for Winter Fuel Payments when they are devolved; it is possible that further changes to benefits by the UK Government prior to devolution to Scotland could occur and have a resultant impact on the funding to be transferred.

Devolved benefit	Estimate 2017-18	Estimate 2017-18	Brief description & range of amounts (average)
	£m	Scottish Caseload	
Attendance Allowance	489	126,711	To help with personal care for individuals aged 65 or over with a physical or mental disability. Higher rate £63.10, lower rate £55.65 per week.
Carers Allowance	256	76,304	To help an individual look after someone with substantial caring needs. The individual must be over 16 and spend at least 35 hours per week caring. £62.70 per week.
Cold Weather Payments	14	510,339	A payment for individuals on certain benefits when the temperature is either zero degrees Celsius or below for 7 consecutive days. £25 is paid for each 7 day period of very cold weather between 1 Nov and 31 Mar.
Disability Living Allowance	907	197,341	Help with the extra costs of looking after a child with disabilities who has additional care needs. Those with parental responsibility for a disabled child under 16. Weekly rate varies from £21.80 - £139.75.
Discretionary Housing Payments	19	80,000	Additional help for those in receipt of Housing Benefit and have difficulty meeting their rent payments. Paid at discretion of the LA.
Funeral Expenses Payments	3	4,300	For individuals on low income and needing help paying for a funeral they are arranging. Covers specific costs and is usually paid directly to the funeral director.
Industrial Injuries Benefits	86	30,849	For individuals who are ill or disabled as a result of an accident or disease caused by work or while on an approved employment



			training scheme or course. Up to £169.70 per week.
Personal Independence Payment	904	168,497	Helps with some the extra costs caused by long term ill-health or disability for individuals aged 16-64. Weekly rates; standard £55.65; enhanced £83.10.
Severe Disablement Allowance	15	2,686	For working age individuals who are unable to work due to illness or disability. SDA is closed to new entrants. Weekly rates; single person £62.45; Couple £124.90
Sure Start Maternity Grant	2	5,800	Helps towards the costs of having a first child for individuals who are in receipt of certain benefits. A one off payment of £500.
Winter Fuel Payments	177	1,034,995	A tax-free payment to help pay for heating bills if you were born on or before 5 July 1952. £100-£300 per annum depending on age of applicants.
<b>Total</b>	<b>2,871</b>	<b>2,237,823</b>	

The funding transfer from the UK Government, which will be carried out under the terms of the Fiscal Framework<sup>8</sup> agreement, will be phased according to when the Scottish Government intends to begin delivery of any specific benefit being devolved. Guarding against financial risks and managing and mitigating these will be essential in order to assure the safe delivery of this programme of work.

Devolved social security will have several effects on the Scottish Government's finances:

- demand led costs - the cost of the benefits paid to individuals within the new Scottish social security system, being existing benefits, top ups to existing benefits and new benefits that may be created by the Scottish Government in future; the impact of demand led spending on the Scottish Government's budgeting and financial management arrangements;
- the effect of the Block Grant Adjustments and reconciliation process on the Scottish Budget and cash management;
- forecasting of demand led expenditure and the role and costs of the Scottish Fiscal Commission (SFC);
- the cost to the Scottish Government of setting up and running the benefits system and agency; and
- assessment of the costs borne by Local Government, the UK Government and other bodies, individuals and businesses.

## Benefits

The Outline Business Case (OBC) for the agency used standard HMT Green Book techniques to calculate the overall socio-economic impact of the spend on the devolved benefits. This found that the economic value of the £2.8 billion was £3.3 billion i.e. there

<sup>8</sup> [The agreement between the Scottish Government and the United Kingdom Government on the Scottish governments fiscal framework; February 2016](#)

were gross benefits of £500 million per annum.

Standard techniques were used to project this expenditure over a standard 30 year appraisal period and to calculate the Present Value of gross benefit of socio-economic impact of benefit (PVB). Three different assumptions were made about future growth in benefit expenditure – it would grow at the same projected rate as the population, it would be constant and it would grow at the same projected rate as the share of the population over 65.

The OBC for the agency examined six possible options for delivery and then three hybrid options that combined the best aspects of the original options. The chosen hybrid was the cheapest option and the OBC estimated the steady state annual running costs of the agency (i.e. the administration cost of the delivery of social security) to be around £150m per annum under the preferred option. This estimate will change as the specific design of the agency and its processes are progressed.

Using this estimate along with the estimates of the benefits above allows the production of a present value of admin costs which then allows the calculation of an overall Net Present Value (NPV) and a Benefit Cost Ratio (BCR) as set out in the table below:

Benefit growth scenario	(PVB) (from above)	Present value of admin costs (PVC)	Net Present Value (NPV)	Benefit Cost Ratio (BCR)
Projected population growth (0.3%/annum)	8,300	2,490	5,820	3.3
Constant	8,010	2,400	5,610	3.3
Growth in over 65 population share (3%/annum)	11,170	3,530	8,240	3.2

The benefit cost ratio is around 3.3 under all scenarios. This means that £1 of expenditure on social security and its administration generates £3.30 of benefits.

Early estimates are the Scottish social security agency will employ at least 1,500 jobs once fully operational - by the end of this Parliament. All of these jobs will be new to the agency. Until agency job roles can be specified and compared with DWP equivalents, the Scottish Government cannot yet say if a bulk transfer of DWP staff into the agency would be applicable. The Scottish Government intends to work with DWP to understand the impact, if any, on staff and it is committed to communicating anything that may affect staff working for DWP at an early stage.

### **Scottish Firms Impact Test**

Scottish businesses, including the third sector, were given the opportunity to respond to the public consultation on social security in Scotland. Responses were received from 14 private businesses and 5 business organisations all of which requested that their responses remain anonymous.

Stakeholder events were also run in tandem to obtain as wide a view as possible on the forthcoming Scottish social security system. Views were received from many different types of interested party as possible, such as Engender, Inclusion Scotland, Scottish Youth Parliament, Coalition of Carers, SAMH, Scottish Pensioners Forum, CEMVO, the Multicultural Family Centre, Cyrenians, Scottish Refugee Council, Deaf Action, CAS, CPAG, Scottish Rural, Parliament and the Poverty Alliance, Equalities and Human Rights Commission, Scottish Human Rights Commission, SCVO, the Humanist Society, Quaker Social Action, LGBT Youth Scotland, Woman's Aid, Coalition for Racial Equalities and Rights, and the Scottish Disability Equalities Forum.

It is expected that the introduction of a Scottish social security system could cause additional requests for information and support from existing advice services. This potential pressure will be dependent on the timing and extent of change to the social security system in Scotland. The Scottish Government will continue to engage with the advice services sector as the programme to implement the Social Security system in Scotland progresses.

### Competition Assessment

The Scottish Government does not believe that the Bill itself will have an adverse impact on the competitiveness of Scottish companies or the third sector within the Scotland UK, or elsewhere in Europe or the rest of the world.

There may be some impact on businesses and third sector organisations operating in Scotland in relation to the way the new Scottish social security agency delivers the devolved benefits compared to the status quo. These impacts could be both positive and negative and it is not possible to identify them at this stage. For example, businesses that are currently involved in the delivery system under DWP governance may be affected if the arrangements are different when the governance is passed to the agency. Also, the demands placed on third sector organisations providing advice and support for people receiving and enquiring about social security payments may change, which could require a change to their operations.

Any procurement required to support the administration of the benefits will be subject to the Public Contracts Scotland (2015) Regulations<sup>9</sup> and the Procurement Reform (Scotland) Act 2014<sup>10</sup> which together provide a national legislative framework for sustainable public procurement which supports Scotland's economic growth through improved procurement practice. The Regulations and the Act provide the statutory foundations for the Scottish Model of Procurement.

• Will the measure directly or indirectly limit the number or range of suppliers?	No
• Will the measure limit the ability of suppliers to compete?	No
• Will the measure limit suppliers' incentives to	No

<sup>9</sup> [http://www.legislation.gov.uk/ssi/2015/446/pdfs/ssi\\_20150446\\_en.pdf](http://www.legislation.gov.uk/ssi/2015/446/pdfs/ssi_20150446_en.pdf)

<sup>10</sup> <http://www.legislation.gov.uk/asp/2014/12/contents>

compete vigorously?	
<ul style="list-style-type: none"> <li>Will the measure limit the choices and information available to consumers?</li> </ul>	No

**Test run of business forms**

No new business forms will be brought in with the implementation of the proposed legislation.

**Legal Aid Impact Test**

The right to appeal to a First-tier Tribunal will be provided for in the Bill.

Legal Assistance is available to individuals and is subject to some kind of financial eligibility test based on the “disposable income” and “disposable capital” of the applicant. It is a demand led budget and will continue to be available to individuals to appeal an entitlement decision to the First-tier Tribunal, to the Upper Tribunal, Court of Appeal or Supreme Court. The Scottish Government does not expect any new impact on the legal aid budget, and expects legal assistance through the statutory scheme of Advice and Assistance, and Advice by Way of Representation will continue.

**Enforcement, sanctions and monitoring**

Parliament will scrutinise the contents of the Bill and the secondary regulations that will be brought forward once the Bill receives Royal Assent.

The Bill proposes a duty on the Scottish Ministers to publish an annual report on the performance of the Scottish social security system.

Audit Scotland will monitor and report on the delivery of the social security system, including the new social security agency. In its March 2017 report “Managing new financial powers – an update”<sup>11</sup>, Audit Scotland stated that “...establishing an agency and implementing the new social security system is an exceptionally wide-ranging and complex task”. Audit Scotland will continue to report on the Scottish Government’s progress in delivering the social security powers as the programme develops.

**Implementation and delivery plan**

The Bill is expected to complete its passage by end of May 2018.

A significant body of secondary legislation will also be required once the Bill enters into law, which will be brought forward over a period commencing immediately after the Bill receives Royal Assent and lasting for the rest of this Parliamentary term. During Stage 1 of the Bill’s passage through the Parliamentary process, the Scottish Government intends to produce illustrative regulations to demonstrate exactly how it intends to use

<sup>11</sup> “Managing New Financial Powers: An Update”; Audit Scotland, March 2017

these new powers. The Scottish Government intends to do this, in the spirit of co-production and to ensure that its secondary legislation receives thorough and effective scrutiny.

### Post-implementation review

The Bill proposes a duty on Scottish Ministers to prepare and publish a charter, and to report on it regularly. The Scottish Government intends that this publicly accessible charter will set out the necessary next level of detail, in relation to its overarching social security principles; communicating in clear terms what people are entitled to expect from the Scottish system and framing the positive, supportive ethos of the new social security agency. The requirements, which the Scottish Government proposes should be placed on the Scottish Ministers - to translate the principles into a charter, and to review and revise the charter periodically - are duties with clear, meaningful outcomes that will drive improvement and enhance public accountability.

Taking this approach will enable the principles to be embedded in a way that is open to monitoring, reporting and scrutiny and available in a format that can be easily understood. It will create an additional device for both the Parliament and the public to scrutinise and hold Ministers to account for the delivery of a fairer, more inclusive and rights-based system.

The Scottish Government intends that any future policy changes, secondary legislation, and development of the agency and overall social security system, will be subject to further BRIA as the work progresses.

### Summary and recommendation

The second option, to transpose the devolved powers in Scots law under the terms of the Scotland Act 2016 and establish the necessary infrastructure is recommended.

### Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
Preferred agency option	£2,800 of benefit expenditure plus £500m of socio-economic impact = £3,300m	£2800 of benefit expenditure plus £150m of admin costs = £2,950m

**Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:****Date:** 20 June 2017**Minister's name:** Jeane Freeman**Minister's title:** Minister for Social Security**Scottish Government Contact point:** Chris Boyland