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Stage 1 Report on the Social Security (Scotland) Bill:

Scottish Government Response



MINISTERIAL FOREWORD

The Social Security Committee's report at Stage 1 shows that there is a clear consensus in favour of the Scottish Government's vision for a new, rights based Scottish social security system which lives up to our principles - in particular, the principle that those using the system will be treated with dignity, fairness and respect.

The Committee has undertaken a very thorough examination of the issues and I am grateful to them for bringing such a wide range of different voices together and enabling them to take part. I want to thank everyone who has contributed and given evidence in the Stage 1 process.

Consultation with individuals and organisations has been at the heart of this Government's approach to social security since day one. Before the Bill was published, the Scottish Government carried out an extensive public consultation exercise, supported by events in every one of Scotland's 32 local authority areas.

Since then, we have recruited and brought together more than 2,400 people with lived experience of the current benefit system, to join our Experience Panels and work with us on every aspect of our new service. We have also established a Disability and Carers' Benefits Expert Advisory Group, with Professor Jim McCormack as its able chair. And I have personally attended over 70 individual meetings with more than 50 separate individuals, groups or organisations, ranging from Age Scotland to CoSLA, and from the MS Society to Shelter.

All of this consultation and engagement activity has helped to shape our legislation and our policies. This Bill has been developed and drafted to reflect the views and opinions of stakeholders. For example, I clearly heard and understood that many people find the existing UK Government legislation confusing and hard to follow. That is why this Bill was developed as a legislative framework to enable the 'whole story' of what people need to do to claim what they are entitled to from our Scottish system; to be told in a set of regulations for each benefit. I also wanted to ensure we continued engagement with the Committee and stakeholders as policy developed and so I hope Committee Members feel they have benefitted from and been informed by our series of policy position papers and the illustrative regulations provided during the Stage 1 process.

Our recent survey of Social Security Experience Panel members on how they view the current UK system showed that more than half, 60 per cent, of respondents rated their experience of the current benefits system as 'poor' or 'very poor'. Only 18 per cent rated their experience as 'good' or 'very good'¹. I understand, therefore, that people do not trust the current system to listen to them, they do not trust it to understand their needs and they do not trust it to act on their behalf.

I hope that through the work we have done until now and by showing that that we are listening to all of the evidence provided during Stage 1, have understood the issues

¹ See - <http://www.gov.scot/Resource/0052/00527173.pdf>

that the Committee and others have raised in this report, and are willing to take prompt action in response to peoples' concerns, we can continue to build the trust for Scotland's social security to deliver on our shared ambitions.

We will continue to listen to the views of the Scottish Parliament, our independent expert group, stakeholders and those with direct personal experience of the current system and my door is always open to anyone with an interest in improving this legislation.

This response to the Committee's Stage 1 report sets out our views on the findings so far and I look forward to Stage 2 of the Bill process, when we can make the changes we have said we will make and take the next steps towards a new future for social security in Scotland, with dignity and respect at its heart.

Jeane Freeman MSP
Minister for Social Security

INTRODUCTION

1. The Scottish Government welcomes the Social Security Committee's report on the Social Security Bill and notes that, under "*Scottish Government Approach*", the Committee has recognised that "*stakeholders have been very complimentary about the Scottish Government's overall approach to creating this system*".
2. The Scottish Government wishes to make it very clear that the consultation activities that it has undertaken to date, and which are referenced by the Committee Stage 1 report, by no means mark the end of its engagement with stakeholders. The Scottish Government intends to continue listening, with a view to understanding peoples' issues and to take action, where this is required.
3. The Scottish Government is grateful to Committee for sight of its report and is pleased to make its response available ahead of the Stage 1 debate on the Bill, which is scheduled for 19 December. The Scottish Government hopes that its response, which sets out its position on the various matters raised by Committee, will be helpful in further informing peoples' views on the Bill.
4. The Scottish Government's response is structured to reflect the layout of Committee's report. Detailed responses to recommendations made by the Committee are set out beneath the text of each individual recommendation. Some of the headings and sub-headings from the Committee's report are used, to aid readers in navigating the document. For reasons of brevity, the Scottish Government has not provided a response to some sections of the Committee's report where the Committee has set out or commented on evidence but has chosen not to make a specific recommendation.

ISSUES NOT INCLUDED IN THE BILL

Primary vs Secondary Legislation

The Committee has received considerable evidence suggesting that the balance between what is contained in primary or secondary legislation has not been appropriately struck. It believes that this is an issue that needs to be carefully addressed by the Scottish Government as the Bill proceeds.

5. The Scottish Government recognises the issues raised in relation to the balance between what is contained in primary (the Bill) and secondary (regulations) legislation and notes that stakeholders and Members of Committee have acknowledged that there is no straightforward answer to this issue. As Mark Griffin MSP, a member of the Social Security Committee, stated at the evidence session on 2 November:

“I do not envy the task of the minister and her officials in getting the balance right – it is not an easy job”.²

6. The evidence is clear that most stakeholders accept the need to make legislation simpler, more accessible and easier to understand, and also agree – broadly speaking – that the existing UK legislation is labyrinthine, complex and very difficult for individuals to navigate. This is a failing in the current UK legislation, which this Bill has been designed to address.

7. The Bill, therefore, sets out an over-arching legislative framework for the administration of social security in Scotland and describes the different types of assistance to be provided. The detailed rules relevant for each benefit will then be set out within regulations, which will tell the ‘whole story’ in relation to that benefit. The Scottish Government believes this will make the legislation as simple, accessible and easy to understand as possible.

8. The ambitious nature of the work being taken forward to deliver the devolved benefits by the end of this parliamentary term means that the Scottish Government is taking legislation through Parliament, developing policy for the specific benefits, undertaking detailed service design work and building the necessary infrastructure for the delivery agency, all in parallel. The Scottish Government is considering the issue of balance between what is contained in primary and secondary very carefully. It believes that if there is too much detail in primary legislation before the development, design and testing has been undertaken, it may lead to inefficient, costly, or undeliverable mistakes. In such circumstances, any changes to make it work better would need to be made to primary legislation – a much longer process that could potentially delay or otherwise adversely affect the implementation of the new Scottish system.

9. The Scottish Government has also committed to continuously improve the delivery of social security and aims to do so with, rather than for, the people receiving assistance. Putting the rules entirely in primary legislation would not allow

² See: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11169>

for this, and would impair their responsiveness and flexibility to circumstances, particularly where relatively simple design changes need to be made, and would make for a more unwieldy system than anyone wants.

10. That said, the Scottish Government have paid attention to the evidence gathered by the Committee and the recommendation that it needs to get the balance between primary and secondary legislation right. Therefore, the Scottish Government intends to bring forward amendments to the Bill at Stage 2, including ensuring a super-affirmative procedure and the establishment of an independent scrutiny body (discussed further in paragraphs 17 to 27 below). The Scottish Government hopes this provides assurances to the Committee and stakeholders that there will be the independent and enhanced levels of scrutiny that both they, and the Scottish Government itself, are seeking.

Eligibility criteria included in Bill

The Committee invites the Scottish Government to reflect on the evidence that suggests that the eligibility criteria for the 8 forms of assistance should be included within primary legislation.

11. The Scottish Government has paid careful attention to the evidence around eligibility for the eight types of assistance currently provided for in the Bill. However, it considers that it would be difficult to provide this, on the face of the Bill, at this stage – particularly in relation to assistance for people with disabilities and long-term illnesses, as much of the policy development and service design work is on-going and will not have concluded within the timescales of this Bill.

12. There is a need for in-depth and detailed consultation and engagement with the people in receipt of these benefits. The Scottish Government is committed to fully consult and engage with the wider public in developing the secondary regulations where the detailed eligibility criteria will be set out. This will include the membership of disability organisations, the Disability and Carer's Benefits Expert Advisory Group (DACBEAG) and will also draw upon the collective, lived experience of the members of the Experience Panels. The Scottish Government notes that, when Bill Scott (Inclusion Scotland) appeared before the Committee on 5 October and was asked what entitlement criteria his organisation would like to see for the new disability benefits, he replied:

“We would have had to work with people for quite some time to narrow things down to ensure that the entitlement criteria that we were proposing were in line with disabled people’s wishes. We are not able to do that and to develop amendments in the time that is available for further consideration of the bill.”³

13. The Scottish Government is grateful to Mr Scott, and members of Inclusion Scotland, for their input to the Bill process. The Scottish Government agrees there is a need for long-term engagement, consultation and evidence-gathering before it will be possible to settle on the right eligibility criteria for each future assistance type. In

³ See: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10642&mode=pdf>

the meantime, the Scottish Government will continue to reflect, ahead of Stage 2, on the suggestion, made by some stakeholders, that more may be said in relation to the purpose of each type of assistance, on the face of the Bill.

14. The Scottish Government would also seek to reassure the Committee that, by including additional requirements, such as a super-affirmative procedure and establishing an independent scrutiny body (discussed further between paragraphs 17 to 27 below), the Bill will provide the independent and enhanced levels of scrutiny of the eligibility criteria that Committee members and stakeholders are seeking.

Super-affirmative Procedure

The Committee believes that, in its current form, the bill does not allow for adequate scrutiny as there is no provision for a super-affirmative procedure for, or independent scrutiny of, regulations produced under it. The Committee requests that the Scottish Government comes forward with further detailed proposals on these matters.

15. The Scottish Government has been clear for some time that it recognises the case for some form of super-affirmative procedure and has been keen to hear the Committee's views. It is grateful to the Delegated Powers and Law Reform Committee (DPLRC) for its summary of the current position, in particular for making it clear that there is no single or set form of super-affirmative procedure. It is noted that the DPLRC Stage 1 report said:

“There is no singular form of “super-affirmative” procedure. Instead, it is a form of enhanced scrutiny in addition to the affirmative procedure. “Super-affirmative” procedures have been used in the past in connection with delegated powers in bills for which the Parliament considered that a particularly high level of parliamentary scrutiny is appropriate.”⁴

16. The Scottish Government accepts that an enhanced level of parliamentary scrutiny is required and can confirm it will bring forward amendments to the Bill at Stage 2 that will apply a form of super affirmative procedure to regulations made under Part 2 of the Bill.

Independent Scrutiny

The Committee supports the creation of an independent Scottish Social Security Advisory Committee with a role similar to the UK Social Security Advisory Committee (SSAC) and a statutory basis. The Scottish SSAC should have an initial focus on assessing the draft regulations produced under the Bill and Ministers should be obliged to consult it on them. The Committee believes that Scottish Social Security Advisory Committee reports and recommendations should be public and that, if it disagrees with them, the Scottish Government must set out an explanation.

⁴ See: <https://sp-bpr-en-prod-cdneq.azureedge.net/published/DPLR/2017/10/31/Social-Security--Scotland--Bill-at-Stage-1/DPLRS52017R48.pdf>

17. Since the UK Government decided that the current SSAC would not be available to the Scottish Government, the Minister for Social Security has consistently made it clear that she believes that there is a need for expert scrutiny of social security matters in Scotland by a body that is independent of the Scottish Government, and for the Scottish Government to consult that body on its proposals for regulations. Given the potential cut across between a new independent body, existing Scottish Parliamentary Committees and the independent DACBEAG, the Minister for Social Security raised this matter, ahead of publication of the Bill, in meetings with the Convener of the Social Security Committee (on 25 May), and the DPLRC (on 30 May). The Minister subsequently wrote to the Social Security Committee on 22 June⁵, and to Dr Jim McCormick, the Chair of the DACBEAG, to invite views on the best way forward.

18. A DACBEAG working group was subsequently established (made up of members of the expert group and stakeholder reference groups) to provide advice and recommendations on the independent, expert scrutiny of the Scottish social security system. Final conclusions and recommendations were made available on 12 December. The Scottish Government will make a full response directly to the working group in due course but wishes to outline its initial views to the Committee ahead of the Stage 1 debate.

19. The Scottish Government notes that the working group's findings, in relation to the scrutiny of regulations, align, on most of the key points, with the evidence from stakeholders which the Committee has collated in its report:

- There is a need for a body to undertake independent, expert scrutiny;
- It should be set up in statute;
- It should have a role in scrutinising draft regulations;
- There should be a duty on Scottish Ministers to consult with the body; and,
- Its reports should be published.

20. The Scottish Government also notes the working group's recommendations that there should be no exceptions to the regulations that are within scope and no 'urgency' provision that bypasses proper scrutiny. The Scottish Government believes that this should be achievable if the body is able to take a flexible approach to its scrutiny role.

21. The Scottish Government recognises the challenges, which the working group has outlined, in making the necessary appointments for a scrutiny body in time for the delivery of the first wave of devolved benefits. The Scottish Government will consider the working group's suggestion that an interim body could be tasked with the scrutiny of the first wave of benefits, but wishes to be clear that this interim body could not be appointed or given responsibilities under a statutory power in the Bill.

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http://www.parliament.scot/S5_Social_Security/General%20Documents/20170622_Minister_for_Social_Security_to_May_meeting.pdf

22. The Scottish Government also notes that the working group's advice addresses a further and much broader range of issues than those considered in the Committee's report, in that it also takes in matters pertaining to the existing Industrial Injuries Advisory Council, the scrutiny of guidance, the scrutiny of the interaction between the reserved (UK) and devolved (Scottish) social security systems, other matters. The Scottish Government will reflect on the working group's advice on these matters and will respond to the group directly in due course.

23. Finally, the Scottish Government also agrees with the working group's proposal, that the body should have a role to play in protecting people's rights in relation to the charter. The intention would be to ensure access to justice and provide an accessible, immediate way of allowing the system and the underlying policy, to flex and adapt to user feedback and challenge without the costs, delay and anxiety of leaving people no option but to challenge Scottish Ministers in court.

24. The Scottish Government believes that such a function would be an innovative step in the administration of public services in Scotland, strongly reflective of a rights based approach and would provide a new layer of expert, independent assurance that the principles, and the associated charter commitments, are in fact supporting the delivery of a system that lives up to these ideals.

25. While it is right that the details of this should be developed through a process of co-design, the Scottish Government will ensure that the proposals for independent scrutiny brought forward at Stage 2 are capable of supporting such a function.

26. The Scottish Government wishes to place on record its thanks to Dr Jim McCormack, Judith Paterson and all of the members of the DACBEAG working group, who have done a great deal of work in a very short space of time. It intends to make provision for the independent, expert scrutiny of Scottish social security regulations and will bring forward appropriate amendments at a later Stage.

27. In the meantime, the Scottish Government would welcome views from the Social Security Committee and others on all of the proposals put forward by DACBEAG. The Minister for Social Security will also follow up on her original letter to the Committee in the new year.

Uprating of Benefits

The majority of the Committee supports the Scottish Government's commitment to uprate disability assistance. The Committee notes that the majority of those who gave evidence on this issue felt that uprating all forms of assistance should be included in the Bill. The majority of the Committee believes that the Bill should include an annual duty on Ministers to have regard to the impact of inflation on the value of assistance.

28. The Scottish Government welcomes the Committee's recognition of its commitment to maintain spending on disability assistance through annual uprating. The Bill already provides the Scottish Government with the power to vary the rates of social security benefits, including to uprate, and this can be enabled through the individual benefit regulations.

29. The Scottish Government has noted the evidence gathered by the Committee and feel it is also important to recognise the context in which decisions about changes to the value of payments and uprating must be made. The Block Grant Adjustment methodology detailed in the *'Agreement between the Scottish government and the UK Government on the Scottish Governments fiscal framework'* (published on 23 February 2016), 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. Any policy choices which give rise to additional spending will require new budget cover, funded from the existing Scottish budget envelope.

30. That said, as members will be aware the Scottish Government is already going further by increasing the value of payments of some benefits. For example, it has committed to increase the value of Carer's Allowance to the same rate as Jobseeker's Allowance and will do this by providing a Carer's Supplement, which will be paid to those receiving Carer's Allowance in Scotland. The Scottish Government is also increasing the value of maternity assistance, increasing the value of Best Start Grant payments to families who have just had their first child from £500 to £600, restoring £300 birth payments for second and subsequent children, and introducing two new payments, each of £250, at key transition stages in a child's early life.

31. The Scottish Government will reflect on the Committee's proposal that the Bill should include an annual duty on Ministers to have regard to the impact of inflation on the value of assistance ahead of Stage 2.

Use of Private Contractors

The Committee notes, and the majority supports, the Scottish Government's commitment not to involve private contractors in delivering health assessments for disability benefits. However, the majority believes that to include a formal ban on private sector contractors in the bill may lead to unintended consequences and does not therefore support this proposal.

32. A clear and unequivocal commitment was made to Parliament on 27 April 2017, stating that profit-making companies will not be involved in delivering assessments for disability benefits once devolved to Scotland. This position was reiterated to the Chamber in response to an oral Parliamentary Question (S5O-01216) from Pauline McNeill MSP on 7 September 2017. The Scottish Government has also committed to a range of improvements, including reducing the number of face-to-face assessments being carried out and introducing more lifetime awards.

33. The Scottish Government, therefore, welcomes the Committee's support of its position that a formal ban on private sector contractors in the Bill would bring about the significant potential for other difficulties and unintended consequences to occur. That said, the Scottish Government will continue to reflect on this matter, ahead of Stage 2.

Residency and Cross-border Issues

The Committee believes that it is important that a definition of residency is developed - who is eligible for the new Scottish benefits - and that this is included in the Bill or regulations.

34. Consistent with the general commitment to minimising legislative complexity, the Scottish Government will set out residency conditions in the regulations for each individual benefit. This reduces scope for confusion and allows the full eligibility criteria for each benefit to be set out in one place. It also makes sense in that the residency criteria for different types of assistance could sometimes vary. For example, disability benefits may include temporary absence and presence conditions that do not necessarily apply in the case of other devolved benefits (such as Best Start Grant). The Scottish Government, therefore, believes that establishing a single set of criteria in the Bill would be unhelpful.

35. In terms of the criteria itself, in line with its commitment to a safe and secure transition, the Scottish Government intends to broadly mirror the existing UK Government regulations. This would mean that a person entitled to Scottish assistance would be principally defined as someone who is habitually resident in Scotland. The Scottish Government believes that this approach presents distinct advantages:

- Habitual residence is an established legal concept and is consistent with the conditions used throughout the Common Travel Area and in the European Union;
- A substantial departure from this approach would be complex and may create scope for gaps in eligibility or double claiming;
- It will prevent people who happen to be in Scotland on a particular day or for a short period from being entitled to benefits (e.g. if they have a holiday home, are working over the summer or are on a long holiday); and
- Since a person can only be habitually resident in one place at a time, they cannot claim the same benefit from multiple jurisdictions.

36. Officials are also working closely with the Department for Work and Pensions (DWP) to understand in more detail the implications for the devolved system of European Union coordination rules and the potential impact of the UK withdrawal.

The Committee supports the work that the Minister is undertaking to seek agreement with the UK Government on reciprocal arrangements for people who move across the border.

37. The Scottish Government welcomes the Committee's support. Work is being undertaken with officials in the DWP to examine detailed cross-border scenarios in order to resolve any difficulties and to ensure that there are no unintentional gaps or anomalies.

38. The shared objective of this work is to ensure that the systems cooperate and that transitions between them are as seamless as possible. For example, a person

moving from one UK jurisdiction to another should not experience gaps in payment or face a difficult process to establish residency. This is in line with the reciprocal arrangements that already exist across the Common Travel Area.

PART 1: PRINCIPLES, CHARTER AND ACCOUNTABILITY

The Existing Principles

The Committee welcomes the innovative inclusion in the Bill of a set of guiding principles, especially that "respect for the dignity of individuals is to be at the heart of the social security system".

39. The Scottish Government is pleased that the Committee supports the Bill's principles.

40. A message that has come through strongly in all of the Scottish Government's engagement to date is that people find the existing UK Government welfare system to be stigmatising, adversarial and inhumane.

41. As the Scottish Government has made clear throughout this process, it is determined to build a new system founded on dignity, respect and human rights. The legislative principles are therefore intended to define and embed that more positive, supportive ethos. They are to be a foundation upon which all aspects of the Scottish system will be built.

42. The principles in the Bill are a product of extensive consultation and engagement. The engagement of disabled people in building the new Scottish social security system was commended by the United Nations Committee on the Rights of the Disabled⁶. And, as has been acknowledged by human rights organisations, the principles are also reflective of key aspects of the right to social security as is set out in human rights instruments such as the International Covenant on Economic, Social and Cultural Rights, the Universal Declaration of Human Rights and the European Social Charter.

The Committee recommends that the Scottish Government clarify the legal status of the principles contained in the Bill and where appropriate amends the Bill to achieve this clarity.

43. The primary function of the principles is to define the nature and ethos of the new Scottish system. The principles will also directly influence the front-line delivery of social security in Scotland through their relationship with the charter, which will translate them into a set of specific, tangible commitments. The operational value of the principles and charter will be further enhanced by the fact that it is the people who use the system who will be the main driving force in identifying what these commitments should be.

44. The principles are also intended to offer plain English statements of what people should expect from the system. This, in itself, makes them incompatible (to a degree) with legal enforceability, as enforceable wording must always be expressed in legally precise language.

⁶ See: <https://news.gov.scot/news/praise-for-scottish-government-actions>

45. The principles should also be viewed as one part of a much wider legal and human rights landscape. Scotland presently has human rights obligations under 19 separate international treaties and protocols, and the Scotland Act 1998 requires that all Scottish Parliament legislation, and all acts of the Scottish Government, must be compatible with the rights set out in the European Convention of Human Rights (ECHR).

46. Separately, the Human Rights Act 1998 (HRA) makes it unlawful for public authorities in Scotland to act incompatibly with the Convention rights. Human rights cases can be heard in the Scottish courts in the event that breaches do occur.

47. And, under the Scottish Ministerial Code all Scottish Ministers have an overarching duty “*to comply with the law, including international law and treaty obligations.*” That includes relevant human rights treaties and covenants such as the European Social Charter and the International Covenant on Social, Economic and Cultural Rights.

48. While it is true that some of the rights set out in these treaties cannot be directly enforced in cases in Scottish courts, they are nonetheless substantive and real. The Scottish Government is strongly committed to giving effect to them and the principles in the Social Security Bill are an excellent example of that. The First Minister’s Expert Advisory Group on human rights, being led by Professor Alan Miller, offers a further illustration of the Scottish Government’s commitment to continue leading the way on human rights.

49. The Scottish Government believes that legal action in the Courts should always be a last resort. The intention is to ensure that people, and the principles of respect and dignity, are at the very heart of how social security is delivered in the first place. Where mistakes are made or disputes arise, those should be resolved promptly and effectively, in a way that is focused on the needs and rights of individuals. A rights based system is one that listens and adapts to feedback, not one that leaves people with no option but to seek legal recourse.

50. The Bill requires Scottish Ministers to report to Parliament on delivery against the commitments to be set out in the charter. Moreover (and as is explained in more detail at paragraphs 17 to 27 above), the Scottish Government will also reflect on the wider range of issues raised in the DACBEAG’s working group’s advice, provided on 12 December, which includes the question of whether it might be possible for the independent scrutiny body to be tasked with considering instances where an individual believes that their rights, as set out in the charter, have not been met. As noted above, the Scottish Government will reflect on the working group’s advice on these matters and will respond to the group directly.

51. In the meantime, the Scottish Government would welcome views from the Social Security Committee and others on all of the proposals put forward by the working group.

New and Amended Principles (Advocacy and Advice)

The Committee supports the addition of a principle to the Bill to state that individuals will have the right to independent advocacy under and with regard to the Scottish social security system.

52. The Scottish Government fully recognises that there are some individuals whose reliance on advocacy services is crucial in helping them negotiate their interaction with any public body, at any time, and it is vital that such individuals have a right to receive the support that they need. The Scottish Government agrees with the Committee, and has therefore committed to bringing forward an amendment to the Bill at Stage 2 in order to address this issue.

The Committee recognises that a similar case was made for the inclusion in the Bill of a right to advice and asks the Scottish Government to reflect on this.

53. The Scottish Government recognises that advice services play a critical role across Scotland's communities in helping citizens to understand their rights and to seek solutions in a range of areas such as money and debt, housing and homelessness, social security and consumer issues. It is committed to working with the sector to ensure it is able to provide timely, high quality advice to those in need. However, it is of the view that there is not a need for a specific right to advice to be included in the Social Security Bill, given the significant level of local authority and Scottish Government investment already being made in advice services alongside the existing statutory duties (for example, in relation to housing and money advice).

54. In addition, the social security agency will also have a role in providing pre-claim advice and support to individuals claiming devolved assistance. As part of the local delivery network, that support will continue throughout the process of claiming assistance from the agency, which will work to build links with the wider advice sector and signpost or refer individuals to services appropriately to ensure that they are supported.

Duty on Scottish Ministers

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

55. The Scottish Government agrees with this recommendation. As well as strengthening the principles, the Scottish Government believes that this proposal would more accurately reflect the work that it will take forward to remove stigma and to improve the take-up of assistance. Moreover, it would also ensure that future Governments are also bound by a duty to continue this work, embedding it more deeply into the nature and operation of the Scottish system.

56. Therefore, as well as the inclusion of support for advocacy, the Scottish Government is committed to bringing an amendment to the Bill at Stage 2 to place a

duty (rather than a role) on Scottish Ministers to ensure people get what they are entitled to from the Scottish social security system.

The Eradication of Poverty

The Committee supports the inclusion of an additional principle in the Bill that 'Social security has a role to play in the eradication of poverty in Scotland'.

57. The Scottish Government remains ambitious about what could be achieved by the new Scottish system and agrees entirely with the sentiment expressed in the Committee's recommendation. However, it must be recognised that only 15% of welfare spend is being devolved. Crucially, the Scottish Government does not have control of the full range of levers over social security, employability and employment powers to most effectively tackle poverty and inequality and provide joined-up support for people in and out of work. In line with the commitment in the Programme for Government, the Scottish Government will publish a discussion paper in 2018 that makes a case for the devolution of further social security powers.

58. The Scottish Government notes that the socio-economic duty on public bodies is also relevant as it will require the agency to consider what can be done to reduce poverty and inequality, whenever a major decision is made.

Other Principles

The Committee is supportive of the sentiments behind proposals to include principles on anti-discrimination, transparency and accountability, and to amend the second principle on human rights to link it to international law. However, it believes that they are already largely covered by the existing principles and that the way to make them effective is to develop them within the charter.

59. The Scottish Government welcomes the Committee's assessment that the scope of the existing principles is sufficiently broad to encompass many of the more specific proposals made during Stage 1, and further agrees that the role of the charter is also relevant here. The charter will translate the principles into specific, tangible commitments, ensuring that they are carried through to operational delivery.

The Charter

The Committee believes that there is an important role for a charter to set out in clear language what claimants can expect from the Scottish social security system and this is a welcome initiative by the Scottish Government.

60. The Scottish Government is pleased to note the Committee's support and is committed to ensuring that the charter sets out what people are entitled to expect from the system in the clearest possible terms. The Scottish Government noted and agreed with stakeholders (such as Rights Advice Scotland) who provided evidence that for the charter to be accessible, it must be short and simple. This is itself a key part of a human rights approach to social security. If people are to place their trust in the new system and to regard assistance as a stigma-free entitlement, then it is

critical that they have a clear understanding of their rights and the specific actions that the system will undertake to ensure they are fulfilled.

61. A key part of this effort is to enlist the support of people with direct experience of social security, not just to identify what should be included in the charter, but also to co-design the language, look and format of the finished product.

62. This strong desire for a clear and accessible charter is likely to be incompatible with some of the arguments that were put forward in favour of making the charter legally enforceable. Such a charter would, by definition, need to be legally precise, contradicting its intended purpose as something separate to legislation that offers a plain English statement of what people are entitled to expect.

63. The Scottish Government believes that, once it is underpinned by parliamentary and independent scrutiny, the charter will ensure that the principles are deeply embedded in operational practice, and that Scottish Ministers are held to account for delivering this.

Redress

The Committee believes that there is a need for a robust mechanism for redress for individuals if they feel their treatment has not been compatible with the Charter. It believes that there is doubt currently over the legal status of the Charter and therefore what this process for redress would be. It recommends that the Scottish Government clarify what this process will be and where appropriate amends the Bill accordingly.

64. The Scottish Government is strongly committed to ensuring that meaningful redress is available, and easily accessible to individuals where it is felt that that some element of the system has failed to live up to the charter and accepts the Committee's view that more clarity is required on how this might be achieved.

65. However, the Scottish Government does not believe that a legally enforceable charter is the best means of achieving this for three reasons. First, such a charter would by definition require to be legally precise; contradicting its intended purpose as an accessible, plain English statement of what people are entitled to expect.

66. As is set out in more detail in paragraphs 43 to 48, human rights issues are already justiciable and the Scottish Government, in addition to being subject to the legal and political obligations noted in these paragraphs above, is strongly committed to being an exemplar in the recognition and fulfilment of rights.

67. Third, it is questionable how much more redress a legally enforceable charter would deliver in practice for an individual. Legal challenges of this kind are complex and expensive, making it an unrealistic option for most people. Even in circumstances where a legal challenge was successful, it is unclear what a satisfactory judicial remedy might look like. The recent research from the University

of Ulster⁷ seems to back this view; concluding that the Courts ultimately “*represent an inefficient means of protecting dignity and respect on a systematic scale*” and that “*it is through the legislature that most rights will continue to be realised.*”

68. It is clear that redress comes in different forms, and the appropriate method depends upon the circumstances and nature of the challenge in question. For this reason, it is intended that the Scottish social security system will provide people with multiple methods of seeking redress. First, it will provide the ability to challenge decisions on eligibility for and, where appropriate, the level of benefit payable through a clear and legally robust appeals process. Second, the agency will have equally clear and robust complaints procedures providing the ability to challenge matters such as service delivery standards and day to day interactions with staff.

69. These complaints and appeals procedures will themselves require development in a manner that is consistent with the principles and charter and will be aimed at providing satisfactory redress on the ground as quickly as possible. This will, in turn, be bolstered by onward escalation to the Scottish Public Services Ombudsman (SPSO) and an independent scrutiny function that can examine whether patterns or rates of complaint are suggestive of the need to address a systemic problem (and that can, subsequently, advise Ministers accordingly).

70. The Scottish Government also accepts that its ambitions for the principles and charter may also imply the need for another, more fundamental form of redress. This may arise where a person wishes to challenge some fundamental aspect of the system (e.g. the fairness of the appeals process or the nature of medical assessments) that they believe has fallen short of the standards articulated by the principles and charter. The agency’s complaints procedures, however robust and consistent with the charter, may be unable to deal with matters of this nature and may also go beyond the current remit of the SPSO.

71. As part of the development of proposals for independent scrutiny (see paragraphs 23 to 25), the Scottish Government is therefore carefully examining the DACBEAG working group’s advice, that the independent scrutiny body should have a role to play in protecting people’s rights in relation to the charter. The intention is to provide a more accessible, immediate way of allowing the system (and the underlying policy) to flex and adapt to user feedback, and allow the ability to seek change without the costs, delay and anxiety of leaving people no option but to challenge Scottish Ministers in court.

72. The Scottish Government believes that such a function would be an innovative step in the administration of public services in Scotland, one that is strongly reflective of a rights based approach and would provide a new layer of expert, independent assurance that the principles, and the associated charter commitments, are in fact supporting the delivery of a system that lives up to these ideals.

⁷ See:

www.equalityhumanrights.com/sites/default/files/social_security_systems_based_on_dignity_and_respect.pdf

73. While it is right that the details of this should be developed through a process of co-design, the Scottish Government will ensure that the proposals for independent scrutiny brought forward at Stage 2 are capable of supporting such a function. This will also take into account of the views of the Disability and Carer's Benefits Expert Advisory Group.

Accessibility

The Committee supports the view that the charter should be accessible and widely available.

74. The Scottish Government welcomes the Committee's assessment. In line with what is stated at paragraph 60 above, providing people with a clear, transparent and accessible understanding of their rights is key to the delivery of a system that lives up to dignity, respect and a rights based approach.

75. With that objective in mind, the Scottish Government will work with those with direct experience of the system to identify the most effective ways of maximising the accessibility of the charter. This could, for example, include sending out a copy to all benefit recipients; displaying a version in agency buildings and other key public spaces; a programme of targeted communications activity and ensuring it is available in a wide range of formats and languages.

The Annual Report

The Committee is supportive of the creation of an annual reporting procedure to Parliament on the social security system and believes it will contribute to the accountability of the new system.

76. The Scottish Government welcomes the Committee's support. It believes that the scale, complexity and importance of these new powers demands a strong role for Parliament in scrutinising and holding Scottish Ministers to account for the successful delivery of a system that lives up to its legislative principles.

77. The Scottish Government hopes that its further commitments to introduce robust mechanisms for independent scrutiny will reinforce its commitment to transparency and accountability.

PART 2: GIVING OF ASSISTANCE BY SCOTTISH MINISTERS

The Committee recognises that this is a framework bill. As the bill stands, the detail for each form of assistance, including eligibility criteria, will be brought forward in regulations. Much of the evidence received related to substantive questions on the types of assistance. With the exception of short-term assistance, the Committee does not feel able, at this stage, to make recommendations on the substance of the specific forms of assistance. The evidence received is summarised in an annex to this report and we invite the Scottish Government to reflect on it. There are a number of issues considered in the annex that the Committee anticipates will be returned to at stage 2, for example the definition of terminal illness.

78. The Scottish Government notes the Committee's summary of the evidence received, will reflect on it and continue to discuss matters pertaining to the detail for each form of assistance (including the eligibility criteria). In the meantime, a brief commentary on the Committee's summary of the evidence on each type of assistance is provided at Annex A. The Scottish Government hopes this is helpful in setting out its position ahead of Stage 2.

Types of Assistance (Illustrative and Draft Regulations)

The Committee recommends that the Scottish Government confirms whether, and if so when, illustrative regulations will be available for each of the forms of assistance. The Scottish Government is also asked to confirm when it plans to consult on draft regulations for each of the forms of assistance.

79. As the Cabinet Secretary for Communities, Social Security and Equalities outlined to Parliament on 30 May⁸, the first wave of benefits to be delivered will be the Carers Allowance Supplement (CAS), the new Best Start Grant (BSG) and Funeral Expenses Assistance (FEA).

80. Provision for CAS is made, in full, in the Bill and further substantive regulations (other than the usual commencement order) are not required. BSG will start delivery by summer 2019 and an illustrative version of the BSG regulations, together with an accompanying policy narrative, were provided to the Social Security Committee and a range of stakeholders on 29 September⁹. Further, public consultation on the draft regulations is planned for next year. FEA will also be delivered by summer 2019 and an illustrative draft of those regulations was provided to Committee and stakeholders on 30 November. Further, public consultation on the draft regulations is also planned for next year.

81. The Scottish Government believes that the process it has set out and is following, in relation to BSG and FEA, should provide a clear indication of its

⁸ See: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10978>

⁹ See: http://www.parliament.scot/S5_Social_Security/Inquiries/BSG_III_Regs.pdf

intentions in relation to future draft regulations (in particular, its commitment to extensive engagement in developing regulations and consultation).

82. The future publication of illustrative draft regulations will be in line with the delivery timetable, which is still to be determined for the next wave of benefits. The Scottish Government would want these to be developed in accordance with the proposed super-affirmative procedure (discussed at paragraphs 15 to 16 above) and with the involvement of an independent, expert scrutiny body.

Form of Assistance

The Committee welcomes the Minister's reassurance that an individual will always have the choice of whether or not to receive assistance in a form other than cash and that cash will be the default. We welcome the Minister's commitment to bring forward amendments at stage 2 to make that clear in this bill.

83. The Scottish Government's intention has always been for the individual to have a choice and it can confirm, as the Minister for Social Security indicated to the Committee on 2 November¹⁰, that an amendment to the Bill will be lodged at Stage 2.

New Benefits

The Committee notes the Scottish Government's position. The Committee asks the Scottish Government to confirm that the social security principles and charter will apply to any provision in primary legislation to create a new benefit as they do to the forms of assistance set out in this bill.

84. The Scottish Government notes that a general power to create new benefits would give both this and any future Scottish Government an extremely wide power to create, by regulations, any new benefit that could be conceived of within the span of devolved competence.

85. To put this in the context of Committee's overall scrutiny of this Bill, on the one hand, there are concerns about the balance of primary and secondary legislation, whereas on the other, there are questions as to why the Scottish Government has not included a power to make secondary legislation to create new benefits. If more detail is asked for on the face of the Bill, then the Scottish Government believes that advocating the inclusion of a regulation making power as extensive as this is an opposing proposition.

86. The Scottish Government believes that the Scottish Parliament in general, and the DPLRC in particular, would have issues with the breadth of such a power and the scope that it would potentially provide for the Government of the day to commit to spending very significant sums via secondary legislation.

¹⁰ See: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11169>

87. The Scottish Government can confirm that the Bill, as currently drafted, allows for the social security principles and charter to be applied to new types of social security assistance created under Part 2 of the Bill. This is because section 2 connects the charter (which must reflect the principles) to the exercise of the Government's functions in the "*Scottish social security system*". Section 7 defines the "*Scottish social security system*" to mean the system for giving assistance under Part 2 or Part 3. Therefore, the principles and charter will apply to giving any new type of assistance under those Parts as they apply to the giving of the types of assistance presently set out in those Parts.

Short-term Assistance

The Committee welcomes the clarification from the Minister that short-term assistance will ensure that the level of financial assistance will be retained until any process of appeal has been concluded. The Committee seeks clarification from the Scottish Government on whether short-term assistance will be repayable.

88. The Scottish Government welcomes the Committee's acknowledgment of the policy intention that short-term assistance will maintain payments at the original level until the re-determination and/or appeal process has been exhausted. The Scottish Government will reflect carefully on the evidence submitted to the Committee and will consider whether this section of the Bill could be clarified further ahead of Stage 2.

89. In due course, as it will do for the other types of assistance, the Scottish Government will consult on drafts of its regulations in order to ensure that the policy intent is delivered by the legislation.

Applications and Determining Entitlement

The Committee notes the evidence calling for the Bill to include a timescale for making a determination and asks the Scottish Government to respond. The Committee is of the view that where a request is made by the agency for further information and it is not received, a determination should be made on the available evidence.

90. The Scottish Government acknowledges the evidence put forward by stakeholders and agrees that clear timescales should be set. The Scottish Government intends to set out the timescales for making determinations within the regulations for each of the specific benefits. Timescales are likely to be different for each benefit due to the differing evidential requirements and the processes by which the social security agency can obtain this information or evidence. It is therefore not possible to specify timescales to make a determination until the detailed design work has been completed for each of the devolved benefits – for example Best Start Grant, Winter fuel assistance, and Disability assistance are all very different benefits requiring different levels of detail, in terms of the information that will need to be provided, and different sources for that information.

91. Where there is a requirement to collate evidence from a third party, who may not have any statutory requirement (i.e. Health Boards or GPs) to respond within a given timeframe, it would significantly impact the agency's ability to come to a determination within a defined timescale. A further factor out-with the agency's control is where eligibility for a benefit is linked to a Department for Work and Pensions qualifying benefit which the Scottish Government has no control or influence over. There may also be instances whereby citizens advise they require a longer time by which to obtain requested evidence, and in these instances, the agency would expect to allow citizens this additional time without the processing restrictions of defined timescales.

92. The Scottish Government welcomes the Committee's recognition that, in circumstances where the agency has exhausted attempts to get the evidence or information needed to make a determination, decision makers have a route by which to make a determination based on all available evidence.

Re-determinations and Appeals

The Committee agrees that regulations should set a time limit within which the agency is required to complete the re-determination process.

93. The Scottish Government welcomes the Committee's agreement to setting time limits for the re-determination process in regulations. This will be taken forward as part of the service design process, working in collaboration with the Experience Panels, stakeholders and individuals.

The Committee acknowledges concerns about the two-stage appeal process and asks the Scottish Government what further assurances it can provide that this will not create barriers for those wishing to challenge a decision. Whilst acknowledging the concerns, the Committee accepts that the agency should have an opportunity to correct any mistake, before a case proceeds to an appeal. The Committee notes that re-determination means an application will be looked at afresh. A majority of the Committee agrees with the Minister that it should then be for an individual to decide whether to continue with a challenge to the First-tier Tribunal.

94. The Scottish Government is pleased that Committee accepts that its new, Scottish social security agency should have the opportunity to correct errors before a case proceeds to appeal. The Scottish Government's policy intention is not to discourage or put in place barriers for appeals, but to focus on getting the initial decision right first time, thereby removing the need for an appeal.

95. The Scottish Government is building an evidence base of peoples' experiences of the current social security system. This will allow the Scottish Government to design a re-determinations and appeals process which is informed by individuals' experiences, including their previous experience of the current, Department for Work and Pensions process.

96. The Scottish Government believes that this approach will help it to realise its vision for a rights-based, user-centred system. The fixed timescales which will be

introduced along with the Scottish Government's proposal to maintain the level of the individual's benefit payments, by making Short-term assistance payable during appeals, are examples of policies which are intended specifically to remove perceived barriers to people who may want to challenge decisions. If, in the course of this work, the evidence suggests that there are other barriers in the proposed process, then the process will be amended to remove them.

97. The Scottish Government welcomes that the majority of the Committee agrees it should be for an individual to decide whether to continue with a challenge to the First-tier Tribunal. The fact that people have a right to choose whether they wish to continue to proceed with an appeal is a fundamental aspect of the rights-based approach that the Scottish Government is building. The Scottish Government will continue to reflect on the issues raised by stakeholders, in relation to re-determinations and appeals, ahead of Stage 2.

Recovery of assistance given in error

The Committee welcomes the stated intention that overpayments resulting from official error will not normally be pursued, except in exceptional circumstances. The Committee draws the Scottish Government's attention to the evidence received on this point and asks it to consider whether the bill adequately reflects this policy.

98. The Scottish Government welcomes the Committee's acknowledgment of the policy intention that official error will not normally be recovered, unless there are exceptional circumstances (such as a large or obvious overpayment).

99. The Scottish Government will reflect carefully on the evidence submitted to the Committee, and will consider whether this section of the Bill could be clarified further ahead of Stage 2.

Offences and Investigations

The Committee supports calls for the bill to be clarified to ensure that genuine errors or misunderstandings will not result in someone being criminalised. It is the Committee's view that the bill does not reflect the Scottish Government's stated policy intention.

100. The Scottish Government welcomes the Committee's acknowledgment of the policy intention that genuine errors or misunderstanding will not result in someone being criminalised. When an inadvertent error is made during an application for assistance, or there are mitigating factors in not notifying a change in circumstances, the Scottish Government is clear that such matters will not be treated as criminal offences. The Scottish Government believes that the Bill provisions have been drafted with this principle in mind and will allow a clear distinction to be drawn between fraud which (if proved) is a criminal offence, and an unintentional error by the individual, which they could not have reasonably expected to affect their entitlement.

101. An offence will only be committed if an individual has intentionally misrepresented, or failed to notify a change in circumstances which the social security agency has told them they have a duty to notify. The agency will be clear with people upfront about the reasons they have been awarded assistance, what types of information and changes of circumstances they should report, and how they should report them.

102. The Scottish Government recognises the particularly sensitive issues around social security offences and takes this responsibility very seriously. It will continue to reflect carefully on the evidence submitted to the Committee, and will consider whether this section of the Bill could be clarified further ahead of Stage 2.

PART 3: SUPPLEMENTING ASSISTANCE UNDER OTHER ENACTMENTS

Carers Allowance Supplement

The Committee welcomes the Scottish Government's commitment to increase carer's allowance.

103. The Scottish Government is pleased to have the Committee's support for its commitment to increase Carer's Allowance. Carers make an immense contribution to Scottish society and it is clearly unfair that the support they receive in the form of Carer's Allowance, which is currently reserved to the UK Government, is the lowest of all working age benefits.

PART 4: DISCRETIONARY HOUSING PAYMENTS (DHPs)

The Committee invites the Scottish Government to reflect on the evidence received about discretionary housing payments.

104. The Scottish Government acknowledges that concerns have been raised in regards to the Bill, as drafted, not containing a duty which compels a Local Authority (LA) to operate a Discretionary Housing Payments (DHP) scheme, but notes that continued operation of DHP schemes by LAs has been successfully achieved on the basis of agreement and consent.

105. Therefore the Scottish Government will reflect carefully on the evidence submitted to the Committee, as well as the feedback received directly from stakeholders about DHPs and will consider whether this section of the Bill could be clarified further ahead of Stage 2.

106. The Scottish Government has considered the comments from the DPLRC, and is not minded to make changes to the process for statutory guidance. In this, it notes that neither the Scottish Government's guidance for the operation of the Scottish Welfare Fund nor the existing guidance for DHPs published by the DWP are subject to parliamentary procedure and the it remains of the view that it is better to have them in guidance.

107. It is the Scottish Government's view that a requirement for consultation with bodies representing LAs is proportionate. Such a requirement does not preclude more substantial consultation, however, where major changes are proposed. The Scottish Government will also consider what role, if any, the independent scrutiny body could have in relation to the guidance.

108. The Scottish Government acknowledges that matters to be discussed in guidance may be regulated for in relation to other parts of the Bill, but notes that DHPs are a discretionary scheme. The benefits and forms of assistance considered elsewhere in the Bill are entitlement based, and so a different level of parliamentary and legislative handling is appropriate.

FINANCIAL MEMORANDUM

Budgetary Risks

The Scottish Government is requested to provide further detail on arrangements it is putting in place to manage the new budgetary risks in its response to this report.

109. The Scottish budget has historically included expenditure that is demand-led. Whilst this has not been of quite the same scale as the demand-led budgets for social security, the Scottish Government has established budget management processes and procedures that manage the impacts of demand-led budgets. The Scottish Government is putting in place additional processes to manage and mitigate the risks around forecast variation for social security spending.

110. Forecasts from the Office for Budget Responsibility will be used to calculate the Block Grant Adjustments. These Block Grant Adjustments are recalculated in-year based on actual UK demand. The Scottish Government will produce forecasts of benefits to support policy development and evaluation, and financial management. The Scottish Fiscal Commission will be responsible for the production of independent forecasts to inform the Scottish Government's Draft Budget and the Budget Bill.

111. As part of the Fiscal Framework, the UK and Scottish Government agreed resource borrowing powers to enable the Scottish Government to manage the additional risks and volatility associated with the devolution of social security. From 1 April 2017, the Scottish Government has the power to resource borrow up to £600 million each year within a statutory overall limit of £1.75 billion. The powers are constrained, however, and there are specific purposes and limits for any resource borrowing. These purposes are for in-year cash management with an annual limit of £500 million, for forecast errors with an annual limit of £300 million, and for any observed or forecast shortfall where there is or is forecast to be a Scotland-specific economic shock with an annual limit of £600 million.

112. Detailed arrangements for reporting and repaying resource borrowing are currently being finalised with the UK Government. These powers and arrangements are distinct from the capital borrowing powers, which have separate arrangements as set out in the Fiscal Framework. The borrowing powers for forecast error cover both forecast error arising for devolved and assigned taxes as well as social security. Therefore, if in-year demand for benefits is higher than forecast, this borrowing power could be used to fund any gap and the necessary budget cover obtained.

113. The creation of a Scotland Reserve, from 2017-18 onwards, enables the Scottish Government to smooth all types of spending, including any on devolved benefits. The Scotland Reserve is capped, in aggregate, at £700 million for revenue and capital. Annual drawdowns from the reserve will be limited to £250 million for resource.

114. In addition to the above, the Scottish Government is currently considering its response to the Final Report of the Budget Process Review Group¹¹, which is expected to lead to new arrangements for the Scottish Budget. This will assist in managing the risk created by the incorporation of significant demand-led expenditure within the Scottish Budget.

Scottish Social Security Charter

The Scottish Government is requested to provide further detail on the potential costs associated with the Charter in its response to this report.

115. The Scottish Government does not believe the introduction of the charter or independent scrutiny body will lead to any material increase in costs. The cost estimates in the Financial Memorandum accounted for the potential costs of the charter and independent scrutiny body. Its preparation – including consultation and engagement with stakeholders, the DACBEAG and members of the Experience Panels – will be overseen by Scottish Government officials and will not require any additional resources beyond existing staffing budgets. Similarly, the proposed mechanisms for reviewing the charter will be delivered from existing Scottish Government resources, together with a potential role for an independent scrutiny body.

116. In terms of enforcement, as has been explained in detail throughout this report (see paragraphs 43 to 48 and 64 to 73), human rights are already justiciable: the Scottish has formal legal obligations and is subject to nineteen separate rights treaties and protocols that it is strongly committed to upholding. As has also been explained, the priority is therefore to build a system that treats people fairly in the first place and that is structurally and culturally designed, where things do go wrong, to provide satisfactory resolution of issues immediately on the ground.

117. The Scottish Government believes that combining this with robust arrangements for independent scrutiny will secure a system that is responsive, supportive and accessible. It believes that the strength of this approach is such that the need to seek redress through judicial enforcement should be minimal.

ICT Implementation Costs and Administration Cost Estimates

The Scottish Government is requested to provide a further breakdown of the £190 million figure and further detail on the system specification for Wave 1 benefits in its response to this report.

118. A further breakdown of the initial high-level estimate for IT implementation of £190 million included within the Financial Memorandum was included in the letter from Andy McClintock (Social Security Chief Digital Officer) to the Public Audit and Post Legislative Scrutiny Committee on 7 December¹². The table included in that

¹¹ See: [http://www.parliament.scot/S5_Finance/Reports/BPRG - Final_Report_30.06.17.pdf](http://www.parliament.scot/S5_Finance/Reports/BPRG_-_Final_Report_30.06.17.pdf)

¹² See:

http://www.parliament.scot/S5_Social_Security/Inquiries/20171207_Letter_to_PAPLS_From_AMcC.pdf

letter is reproduced below and shows the component breakdown of the high-level estimate detailed in the financial memorandum to the Bill (the estimate includes optimism bias and VAT).

119. As noted at paragraph 54 of the Financial Memorandum, it should be emphasised that this is an initial estimate which could change materially, and firm estimates of cost will only become clear as the key decisions are taken and detailed plans developed.

Component	Estimate Cost (£million)
Case Management Solution	33.3
Telephony Solution	0.4
Document Handling Solution	3.6
Corporate Accounting Solution	0.9
Payment Handling and Reconciliation Solution	42.1
Knowledge Management Solution	0.4
Identity Management Solution	7.2
Reporting and Statistical Modelling Solution	0.3
Data Feeds and Exchanges	4.5
Online Presence	0.3
Digital Access Solution	10.1
Scottish Government IT Onboarding	15.0
Scottish Government IT Infrastructure	17.1
Development Environment	0.8
Test Environment	18.0
Protective Security	36.0
Data Hosting	0.4
Total	190.4

120. During October 2017, a two-year contract to build the first phase of Scotland's new social security IT system was awarded to IBM United Kingdom Limited. The £8.3 million contract will support the implementation of two new Scottish Government benefits: Best Start Grant (Early Years Assistance in the Bill) and Funeral Expense Assistance. These will be delivered by Scotland's new social security agency by summer 2019. The contract includes provision for up to two further benefits to be included within the scope once the timeline for delivery is clear.

121. The scope of this contract is to assist in the delivery of the Low Income Benefits. The supplier will collaborate to design and deliver the required solutions through to production and provide on-going application maintenance and support. This requirement covers the provision of Discovery, Alpha and Beta implementations for Low Income benefits being devolved to Scotland. For the benefits to be delivered, the following will be required:

- Best Start Grant – Alpha, Beta;
- Funeral Expense Assistance – Discovery, Alpha, Beta – building on capabilities delivered for Best Start Grant;
- One assistance with a similar service design pattern – Discovery, Alpha, Beta – again building on capabilities already delivered;
- Option for one further assistance with a similar service design pattern – Discovery, Alpha, Beta – again building on capabilities already delivered.

122. Services required under this Contract will be managed using Statements of Work (SOW) agreed between the Parties. The purpose of each SOW is to agree the time, cost and quality (e.g. the deliverable(s) to be achieved by the end of the SOW). A SOW may cover a specific project phase for specific benefits (e.g. Alpha for Best Start Grant), a distinct capability of an overall service (e.g. Case Management) or a mixture of project phases or capabilities across specific benefits (e.g. Alpha for Best Start Grant and Discovery for Funeral Expense Assistance).

Wider Impact

The Scottish Government is requested to outline its view of the anticipated wider impact of spend on social security benefits in its response to this report.

123. Once fully operational, the Scottish Government estimates the social security agency will employ at least 1,900 people across central and local functions. At least 1,500 jobs will be split between the Dundee headquarters and the second central administrative site in Glasgow. The agency's local presence will also ensure that at least 400 jobs are spread across Scotland. The agency expects to contribute around £125 million in GDP and support around 800 other jobs outside the agency in the wider economy.

124. In addition to the positive impact the creation of the agency will have on the economy, the Scottish Government will continually assess the impact of social security benefits on public finances. The Scottish Fiscal Commission has key responsibility for producing forecasts for devolved benefits and the Scottish Government will work with them, as appropriate, to help develop forecasts that are of a high quality. All significant resource commitments, and investment decisions, are subject to the development of robust business cases that fully consider value for money (in line with the Scottish Public Finance Manual). Business cases assess cost, risk, critical success factors and outcomes (which the Scottish Government also refers to as 'measurable improvements'). Measurable improvements identified for the programme so far can be found in published business cases and those which are currently in development.

125. Scottish Ministers believe that the investment they are making in the new social security system will improve the outcomes for people living and working in Scotland now and in the future. The outcomes expected to be realised have been organised across several themes:

- Dignity and respect;
- Equality and poverty;
- Efficiency and alignment;
- Implementability and risk;
- Economy and environment (wider impact on communities).

126. The Scottish Government also has dedicated analytical support working across the Programme (operational and social researchers, statisticians and economists) who will support the measurement and evaluation of impact. These analysts are able to draw on established cross-government guidance and support through their professional groups.

Parliamentary scrutiny of the costs associated with the Bill

The Scottish Government is requested to outline when and how Parliament will have the opportunity to scrutinise the costs associated with the Bill in its response to this report.

127. Any relevant budget associated with implementing and then administering the newly devolved social security powers, together with any relevant budget for benefits, will be scrutinised by Parliament annually through the normal Scottish Government budget process.

128. In 2017-18, a budget was established in the Finance and Constitution portfolio that social security (and other areas of further devolution) could draw upon for administration and implementation costs. Budget transfers to the social security programme from the Finance and Constitution portfolio are transparent and open to Parliamentary scrutiny through the in-year revisions to the Scottish Budget, which are scrutinised by the Finance Committee and approved by Parliament. Budget made available in-year to a Scottish social security agency will be subject to Parliamentary scrutiny following the same process.

129. Budgets for benefits will form part of the standard Parliamentary scrutiny approach to budgeting. When a benefit is devolved, a Block Grant Adjustment will be received and this will need to be reflected in the Scottish Budget. The timing of this addition to the budget will depend on when the benefit is devolved.

130. For example, if a benefit were devolved mid-year, the Scottish Government would expect a Block Grant Adjustment and associated budget to be reflected through the in-year budget revision process, which will, in turn, be scrutinised by the Finance Committee and approved by Parliament. Should a benefit be devolved on 1 April in any year, then the Scottish Government would expect that the Block Grant Adjustment and associated budget would be included in the draft budget for Parliament's approval.

131. The timing of inclusion of a budget for benefits will also be dependent on appropriate primary or secondary legislation being passed by Parliament. Once appropriate primary or secondary legislation is in place, budget would then be reflected either in the draft budget process or through the in-year revisions as appropriate, with either approach subject to Parliamentary scrutiny.

132. The Scottish Government expects that the Scottish Fiscal Commission will prepare forecasts of benefit expenditure when primary or secondary legislation (as appropriate) is approved by Parliament to inform the budget being scrutinised for benefit expenditure.

133. Provisional outturn against budget forecasts will be laid before Parliament annually, as is the current process. This provides Parliament an opportunity to scrutinise expenditure against the budgets they previously approved. The Annual Accounts of the Scottish Government and, in time, the social security agency will be laid before Parliament annually to allow further scrutiny of amounts spent on social security. This would cover implementation expenditure, administration expenditure and benefit expenditure.

Social Security Committee consideration of ICT Implementation

The Scottish Government is requested to report to the Committee on ICT implementation on a 6 monthly basis.

134. The Scottish Government welcomes the Social Security Committee's interest in its programme of ICT implementation for the new social security agency and will ensure that the Committee receives updates on a bi-annual basis. It would also welcome a suggested reporting schedule from the Committee, in due course.

CONCLUSION

The Committee supports the general principles of the bill.

135. The Scottish Government is very grateful to the Conveners and Members of the Social Security Committee, the DPLRC and the Finance and Constitution Committee for their thoughtful and helpful consideration of the Social Security (Scotland) Bill at Stage 1. It also offers its thanks to the numerous stakeholders who provided both oral and written evidence. This has not only formed the basis of the Committee's Stage 1 report, but is also vital component in the on-going co-design of the new social security system in Scotland.

136. The Scottish Government is pleased that the Committee supports the general principles of the Bill and the consultative approach that it is taking to develop the Scottish social security system. The Scottish Government hopes that its response to the Committee's report is helpful and that it provides Committee Members – as well as the wider public – with the confidence that it continues to produce a legislative framework for social security that enables and supports a system that is consistent with the principles of dignity, fairness and respect.

Scottish Government

Social Security Directorate

15 December 2017

All enquiries in relation to this document should be sent to Adam Briggs (Legislation Manager, Legislation and Operational Policy Unit, Social Security Policy Division) by email at adam.briggs@gov.scot or by letter to Area 2F South, Victoria Quay, The Shore, Edinburgh, EH6 6QQ.

Annex A - Overview of evidence received on types of assistance

The Committee recognises that this is a framework bill. As the bill stands, the detail for each form of assistance, including eligibility criteria, will be brought forward in regulations. Much of the evidence received related to substantive questions on the types of assistance. With the exception of short-term assistance, the Committee does not feel able, at this stage, to make recommendations on the substance of the specific forms of assistance. The evidence received is summarised in an annex to this report and we invite the Scottish Government to reflect on it. There are a number of issues considered in the annex that the Committee anticipates will be returned to at stage 2, for example the definition of terminal illness.

137. The Scottish Government notes the Committee's summary of the evidence received and will reflect on it and continue to discuss matters pertaining to the detail for each form of assistance, including the eligibility criteria. In the meantime, a brief commentary on the Committee's summary of the evidence on each type of assistance is appended below. Note that the black and italicised text in this Annex is not universally quoted from the Committee's report (unlike in the main document above), but also summarises key points or issues raised by said report. The Scottish Government hopes this is helpful in setting out its position ahead of Stage 2.

Carer's assistance

Carer's Allowance rules are a barrier to education and work – and as 75% of recipients are women, this will impact women's participation in the labour market (raised by Engender).

138. The Scottish Government is committed to the principle of social security as a human right. It is working with a range of stakeholders (including its Carer Benefits Advisory Group, Young Carer Grant Working Group and Experience Panels) to understand the equality impacts – including the intersectional impacts – of carers' benefits. The Scottish Government will ensure that these are taken into account in the consideration, development and implementation of future options. All benefit changes will be assessed and there will be an examination of their combined impact on equality across all groups. In doing so, the Scottish Government will seek to learn from stakeholder feedback on the impact assessments conducted in relation to the Bill.

Young carers are looking for something other than financial support.

139. The Young Carer Grant is one part of a new package of support for young carers, which was announced by the First Minister on 20 September. Recipients of the Young Carer Grant will also be eligible for free bus travel from 2020/2021. A young carer element to the Young Scot National Entitlement Card will be co-produced with young carers and rolled out from April 2019, offering entitlements and rewards (such as leisure activities) for young carers aged 11-18.

140. This package of support has been developed within the wider landscape of the Carers (Scotland) Act 2016 which comes into effect in April 2018. Support under the Act will be available to carers of all ages and includes the right to a young carer statement and access to advice and information on respite and income maximization.

There are inconsistencies in the definition of young carer between the Carers Act and Young Carer Grant and other areas of support for young carers (raised by Carers Trust).

141. The Young Carer Grant will be for young carers with significant caring responsibilities aged 16 to 17 years old and those age 18 who are still at school. This aligns with the upper age range definition of a young carer in the Carers (Scotland) Act 2016. It was chosen because this is recognised as a significant transitional time in a young person's life.

142. Young people of this age range are leaving school and making plans for employment, training and education, and those with caring responsibilities often have to deal with additional demands and emotions that limit their future opportunities. In line with the Scottish Government's wider carer policy, it is intended that the grant helps carers look after their own health and wellbeing, improve their quality of life and have a life alongside caring.

Overall Carer's Allowance is not an adequate benefit (raised by Carers Trust).

143. The Scottish Government recognises that some people feel that the Carer's Allowance Supplement does not go far enough. The agreement reached with the UK Government provides funding for the benefits being devolved at their current levels. The Carer's Allowance Supplement will bring payments to the level of Job Seeker's Allowance and represents an additional investment from the Scottish budget. Any additional increases beyond this would need to be found from elsewhere in the Scottish budget.

Comments on Carer's Allowance eligibility and rates.

144. The Scotland Act 2016 provides flexibility to change the definition of a carer for the purposes of paying a benefit. To ensure a safe and secure transition for recipients, other than the additional payment to carers of more than one disabled child, changes to the current eligibility criteria will be kept as they are at the point benefits are transferred.

145. The independent DACBEAG, set up by the Scottish Government, will consider and make recommendations on longer term changes to disability and carer benefits. This will include consideration of changes to the level of award and to eligibility criteria, such as qualifying benefits, earnings threshold, situations involving multiple caring roles and the number of hours spent caring. This will take into account input from carers, carer organisations and wider stakeholders as well as the work of the Carer Benefit Advisory Group. Any changes to Carer's Allowance would need to take into account affordability, impacts on wider support and services for carers, and

interactions with benefits which remain reserved to the Department of Work and Pensions.

Carer's Allowance should be available at Pension age/the 'overlapping benefits' rule should be removed.

146. The Scottish Government's ambition is to develop a Scottish carer's benefit through the new Scottish social security system, which is not a payment for care, but which 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. Carer's Allowance and the State Pension both provide a benefit where the traditional source of income, for example employment, is no longer available.

147. Having an underlying entitlement to Carer's Allowance, as a result of the overlapping benefits rule, can increase entitlements to other means tested benefits (including Pension Credit). Throughout October, the Scottish Government ran a nationwide campaign aimed specifically at the over-65s, encouraging them to contact Citizens Advice Scotland, find out what support they may be entitled to and to get help with applying.

148. The independent DACBEAG will consider and provide recommendations and advice on longer term changes to carer benefits, taking into account the evidence that has been gathered to date (including through the social security consultation and work of the Carer Benefit Advisory Group).

Cold-spell heating assistance

It is not clear when specific proposals for Cold-spell heating assistance will be brought forward.

149. As with the other types of assistance, the Scottish Government's primary focus in relation to Cold-spell heating assistance is the safe and secure transfer of the existing benefit, and this must always remain the number one priority. That is why the Scottish Government believes that a phased approach is the right way to bring over the benefits. Timings, for the delivery of a new, Scottish Cold-spell heating assistance will depend on the implementation and testing of the new social security system's operations. Once implemented, the Scottish Government will protect the current Cold Weather Payment eligibility and ensure that those people currently in receipt of this important support do not lose out.

Winter heating assistance

The Scottish Government has not provided sufficient certainty, in relation to the eligibility criteria for Winter heating assistance.

150. The Scottish Government has always prioritised tackling fuel poverty and it has a clear aspiration to eradicate poor energy performance as a cause of it. That is why it has been clear that it will protect the Winter Fuel Payment, and extend the eligibility to families with severely disabled children. It believes this should provide the

necessary assurance around eligibility for this important support. Furthermore, as the Scottish Government has made clear elsewhere in its response, along with the other assistance types, eligibility criteria for Winter heating assistance will be set out in regulations which will be developed in consultation, and made subject to independent scrutiny and the super-affirmative procedure.

151. As with Cold-spell heating assistance, timings for the delivery of Winter heating assistance will depend on the implementation and testing of the new social security system's operations. The Scottish Government is in the process of delivering its 2016 Programme for Government commitment to make half a billion pounds available over the next 4 years to tackle fuel poverty and improve energy efficiency. This means that, between 2009 and the end of 2021, over £1 billion pounds will have been allocated in total.

152. As the Committee's report acknowledges, the Scottish Government recently launched a consultation on a new fuel poverty strategy for Scotland, which closes on 1 February 2018. The consultation seeks people's views on matters such as setting new targets, putting in place a revised definition of fuel poverty and a proposed statutory target to effectively eradicate fuel poverty by 2040.

Disability assistance

The definition of disability should be widened or amended in order to ensure that people with certain conditions are eligible.

153. The language presently used in the Bill reflects that of the Scotland Act 2016. As the Scottish Association for Mental Health have highlighted, the 2016 Act's language is consistent with that of the Equality Act 2010. The Scottish Government wishes to point out that it is also consistent with the terms of international treaties including the UN Convention on the Rights of Persons with Disabilities, which defines persons with disabilities as:

"...those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."

154. The DACBEAG are currently considering an appropriate approach for future disability benefits including fast tracking of benefits for people with a terminal illness. However, widening eligibility may not be straightforward as the current definition interacts with other devolved services. The Scottish Government believes differing definitions in different pieces of legislation both within Scotland and within the UK would cause uncertainty and confusion.

155. The Scottish Government will continue to work closely with stakeholders, with a view to developing further understanding about how the current process can be improved.

The current assessment process should be changed, with fewer face-to-face assessments, particularly for certain conditions.

156. The Scottish Government intends to make the assessment process fairer, focusing on standards and quality rather than case volumes. The first step in achieving this is its commitment that profit making companies will not be involved in carrying out assessments for disability benefits.

157. The Scottish Government will reduce the number of face to face assessments and reassessments, which are currently being carried out unnecessarily. It is exploring the potential to make better use of existing information within the health and social care sector and other public bodies. This will mean that the agency may use existing information to aid decision making and, where possible, to reduce the need for face to face assessments before making awards. This will help the agency to make better decisions, getting them right first time. Any systems developed will have robust safeguards to protect information about an individual's condition or diagnosis.

158. The Scottish Government has heard from individuals and stakeholders that there is too much focus on physical disability within the current system. It will ensure that the Scottish assessment process will work effectively across all conditions and that whoever undertakes assessments on behalf of the new, Scottish social security agency will provide a flexible service, including offering home visits if required.

159. The new Scottish social security agency will be built on a culture of dignity and respect and this will flow through to the culture and attitude of assessment staff. To ensure this, assessors will be appropriately and consistently trained to carry out their role effectively.

160. The Scottish Government has already engaged with stakeholders on duration of awards. The DACBEAG have been commissioned to consider and make recommendations to Scottish Ministers as to how the Scottish Government can improve assessments and award duration in Scotland. The Experience Panels will also be involved in co-designing processes as part of the development of the new, Scottish social security system.

The definition of terminal illness should not take account of life expectancy.

161. The Scottish Government is committed, as a minimum, to replicating the current system for people who have a terminal illness, which means including a process for fast-tracking certain applications. This commitment was confirmed by the Cabinet Secretary for Health and Sport in Parliament on 22 February 2017¹³.

162. The Scottish Government is working closely with MND Scotland and other stakeholders with a view to developing further understanding about how the current process can be improved. It is open to further constructive dialogue on this issue during the Bill process. Widening eligibility may not be straightforward, however, as the current definition interacts with other devolved services and could cause uncertainty. The Minister for Social Security is due to meet with Marie Curie in the New Year to discuss improvements.

¹³ See: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10796>

163. The DACBEAG are currently considering an appropriate approach for future disability benefits including fast tracking of benefits for people with a terminal illness.

The current system discriminates against people over the age of 65, who acquire a disability and become eligible for financial support.

164. The Scottish Government is progressing the safe and secure transfer of Attendance Allowance. Attendance Allowance will continue to be non-means tested and will help to ensure that people over the age of 65 are able to live as independently as possible.

165. The Scottish Government has heard from stakeholders and individuals that they would like a mobility component to be introduced, and it is currently exploring options to address this issue. Proposals will be tested with the Scottish Government's experience panels. The end to end process for Attendance Allowance, including the process for applications and assessments, will also be tested.

166. The Scottish Government has bolder aspirations for the medium to longer term. It intends to ensure that disability assistance interacts as effectively as possible with other devolved services, such as health and social care and housing. It will also continue to explore the potential for a disability assistance that is responsive to people's needs at different stages of their lives. The Bill provides the flexibility to substantially reshape and improve the way in which disability assistance is delivered in future.

Early-years assistance

As the Scottish Government's policy on the Best Start Grant (BSG) has been developed, it should now be included in the Bill.

167. The Bill provides the framework for provision of Early Years Assistance but, in keeping with the structure for the legislation overall, the detail of the BSG benefit, including the assistance that will be given and the value of the payments, is set out in regulations.

168. An illustrative version of the BSG regulations, together with an accompanying policy narrative, were provided to the Social Security Committee on 29 September¹⁴. The regulations set out all of the rules in the same place, aiding understanding. This approach allows a degree of flexibility so that, for example, the detail of the benefit could respond to changes in other provision during early years if necessary.

169. The Scottish Government believes that its proposed approach of having the whole story in relation to the different assistance types told in regulations should help the Parliament's ability to scrutinise future Scottish Government policy.

¹⁴ See: http://www.parliament.scot/S5_Social_Security/Inquiries/BSG_III_Regs.pdf

The eligibility criteria for Early-years assistance, set out in schedule 5 could impact on a woman's financial autonomy.

170. The Scottish Government is considering what proportionate action it can take in the development of Early Years Assistance to recognise the financial issues affecting women. As part of routine monitoring and reporting, the Scottish Government will be putting in place a system to collect data on applications that will allow us to monitor the effectiveness of social security policy, including equality impacts.

There may be potential for a similar approach, to that of NHS Greater Glasgow and Clyde, in making automatic payments of some benefits.

171. The Scottish Government is designing the BSG to make it as accessible as possible. This will include a single application form for both BSG cash payments and the successor to Healthy Start Vouchers, so that applicants do not need to provide their information more than once. Capturing this information early in a child's life will allow the Agency to prompt applications for the second and third BSG payment. While a link between maternity and social security IT systems is not presently planned, where possible, information will be gathered electronically where this reduces the burden on the applicant.

Schedule 5 of the Bill (Early-years assistance regulations) does not make provision for what assistance is to be given.

172. There is no provision for the assistance to be given for Early-years assistance because there is no requirement for it. The frequency and value of the payments will be set out in regulations, alongside eligibility. In other schedules in the Bill, there is a need to allow for specific provision in relation to the assistance to be given (for example, to clarify that Funeral Expense Assistance regulations may specify items of expense that will, or will not, be covered by assistance).

Employment-injury assistance

New arrangements must ensure that no household is worse off.

173. The Scottish Government's first and guiding priority is to ensure a smooth transition of Employment-Injury Assistance, ensuring that people continue to receive them on time and in the right amount.

174. The Scottish Government currently has no plans to introduce a lump-sum payment for Employment-injury assistance. However, there is an opportunity to consider reshaping how the Industrial Injuries Benefits are delivered in Scotland in future and engagement with stakeholders has taken place on a number of issues (including lump-sum payments).

175. The Scottish Government understands the concerns raised by stakeholders (in particular, the treatment of lump-sum payments as capital, the complexities of the fiscal framework, the need to safeguard against fraud while giving recipients a choice in order to embed dignity, fairness and respect). The Scottish Government has, and

will continue to, engage with stakeholders on issues associated with the transfer of Employment Injury Assistance and the future delivery of this benefit.

176. The Scottish Government is clear that people should not lose out financially as a result of any future changes made to the Industrial Injuries Benefits delivered in Scotland.

Employment-Injury Assistance should support people whose mental health has been impacted by their employment.

177. Industrial Injuries Benefits are paid if an individual is disabled as a result of an accident at work or a disease caused by an individual's job. Personal injury, under the Industrial Injuries Scheme, includes both damage or impairment to the body or mind. However, mental health conditions are not currently included in the statutory list of prescribed diseases.

178. The Scottish Government is aware that some stakeholders have called for provision to ensure Employment-Injury Assistance adequately supports people whose mental health has been significantly and directly impacted by their employment. Establishing causation to an occupation in such cases is complex and it is a matter that has been considered by the current Industrial Injuries Advisory Council. As yet, they have not found sufficient evidence to support a recommendation to include mental health conditions in the list of prescribed diseases.

179. That said, the Scottish Government is aware that a few European countries do have provision within their schemes for mental health conditions to be considered, and this is something that will be looked at when making future decisions about eligibility for these benefits.

The Scotland Act 2016 prevents the Scottish Ministers from being given advice by the existing Industrial Injuries Advisory Council (IIAC).

180. The UK Government has decided that following devolution of the Industrial Injuries scheme, the IIAC will not provide advice to Scottish Ministers. It is clear from the Scottish Government's recent consultation that there is support for similar expertise to be established in Scotland to ensure that the scheme is delivered effectively. The Scottish Government has sought views from the IIAC on their role, membership and functions.

181. In its advice, provided on 12 December, the DACBEAG's working group also addressed issues presented by the withdrawal of the existing IIAC from devolved matters and the need for similar, replacement expertise to be available. As stated in the main document above, the Scottish Government will reflect on the working group's advice on these matters and will respond to the group directly, in due course.

Funeral expense assistance

People are experiencing difficulties with the time taken to process eligibility and make payments.

182. The Scottish Government has already committed to processing completed Funeral Expense Assistance (FEA) applications within 10 working days, which will mean that people receive their payment considerably more quickly than at present. This will reduce the need for borrowing in the short term and the stress this can cause.

183. The Scottish Government wants to ensure that the process to determine eligibility and provide support for FEA is handled as sensitively as possible. It also wants to reach more people with the benefit, improve the application process and make eligibility clearer to people in advance of application.

184. The Scottish Government has provided FEA illustrative regulations to the Committee to help set out how it expects to use its powers in this area. The Scottish Government looks forward to hearing the Committee's views on these. The FEA illustrative regulations reflect the product of analytical evidence, and discussions to date with stakeholders. The Scottish Government has also shared these illustrative regulations with stakeholders and is seeking feedback from them in order to inform further policy development and service design.

185. A key change that the Scottish Government expects to make will be to change the way in which responsibility for funeral expenses is determined. Further details are set out in the FEA illustrative regulations. This change will widen eligibility for FEA to an estimated additional 2,000 people who would receive no support under the present system (a 56% increase). This means more people on low incomes will receive support and will take the total number of payments to approximately 5,600 per annum, once a steady state is reached. The Scottish Government expects to invest an additional £3 million per annum in addition to funding to transfer from the UK Government to support this widened eligibility.

186. The Scottish Government will also develop clear communications to help people understand FEA in advance of application and whether they are likely to be eligible to receive support.

187. In addition to launching FEA by summer 2019, the Scottish Government will also continue its wider work to tackle funeral poverty as set out in the Funeral Costs Plan¹⁵.

¹⁵ See: <http://www.gov.scot/Publications/2017/08/6243/0>



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