

This document relates to the Social Security (Scotland) Bill (SP Bill 18A) as amended at Stage 2

Social Security (Scotland) Bill

[As amended at Stage 2]

Supplementary Financial Memorandum

Introduction

1. As required under Rule 9.7.8B of the Parliament's Standing Orders, this Supplementary Financial Memorandum is published to accompany the Social Security (Scotland) Bill (introduced in the Scottish Parliament on 20 June 2017) as amended at Stage 2.

2. The Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the original Financial Memorandum published to accompany the Bill as introduced.

3. The purpose of this Supplementary Financial Memorandum is:

- To provide an update to the forecasts of the potential funding transfers over the next five years, from 2018-19 onwards, assuming no changes to eligibility criteria and rates by the UK Government;
- To provide an update to the illustrative estimated costs to existing Scottish Government budgets of currently proposed, new or amended assistance payments; and
- To set out the expected costs associated with the new and amended provisions included in the Bill following Stage 2 amendments. These amendments are considered to materially affect some assumptions in the original Financial Memorandum.

4. There were a number of amendments made to the Bill at Stage 2 which the Scottish Government does not consider to be cost-bearing. These amendments are not considered to materially affect assumptions in the

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original Financial Memorandum and therefore have not been considered in this Supplementary Financial Memorandum.

Updated forecasts of demand-led costs of the existing social security benefits being devolved to Scotland

5. As the original Financial Memorandum set out, the initial baseline addition to the block grant for devolved social security payments will be the UK Government's spending on these areas in Scotland in the year immediately prior to the devolution of powers, with the exception of the Cold Weather Payment¹ which is calculated differently. Spending in Scotland in the year prior to devolution will be forecast by the Office for Budget Responsibility (OBR) in accordance with the Fiscal Framework agreement².

6. The following tables set out updated forecasts for each benefit over the next five years, illustrating the current forecast trajectory of the benefits which will be transferred to Scotland, both in money terms and in caseload terms. The forecasts are calculated as a share of DWP forecasts³ based on Scottish Government estimates of current Scottish caseloads; forecasts for Carers Allowance, Funeral Expense Payments and the Sure Start Maternity Grant use the Scottish Fiscal Commission's expenditure forecasts⁴ published in December 2017. The specific dates of when each benefit will transfer to Scotland will be announced in due course and the funding will transfer over at the appropriate time through the block grant adjustment set out in the Fiscal Framework. These tables provide an example of what might be transferred, assuming that current benefit levels and criteria at the UK level are unchanged. This also provides a forecast of what might be spent in Scotland assuming eligibility, rates and uptake do not vary from the UK.

¹ Reflecting the substantial volatility of the Cold Weather Payment, the initial baseline addition will be an average of the UK Government's spending in Scotland on this benefit from 2008-09 to the year prior to devolution.

² The Fiscal Framework Agreement between the Scottish and UK Governments – February 2016

³ DWP - Benefit expenditure and caseload tables 2017.

⁴ Scotland's Economic and Fiscal Forecasts – Scottish Fiscal Commission – December 2017

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Table 1a – forecast of the potential funding transfers over the next five years, assuming no changes to eligibility criteria and uprating policy by the UK Government

Devolved Benefit	Forecast 2018-19	Forecast 2019-20	Forecast 2020-21	Forecast 2021-22	Forecast 2022-23 ⁵
	£m	£m	£m	£m	£m
Attendance Allowance	512	534	559	580	602
Carers Allowance	265	282	297	309	321
Cold Weather Payments	14	14	14	14	14
Disability Living Allowance	786	560	505	501	504
Discretionary Housing Payments	20	20	14	14	14
Funeral Expenses Payments	5	5	5	5	5
Industrial Injuries Benefits	86	87	86	86	86
Personal Independence Payment	1,192	1,533	1,681	1,773	1,869
Severe Disablement Allowance	10	10	9	9	9
Sure Start Maternity Grant	3	3	3	3	3
Winter Fuel Payments	173	172	170	173	177
Total	3,066	3,220	3,343	3,467	3,604

7. Table 1a above and 1b below show some significant variances on Tables 2a and 2b from the original Financial Memorandum. These variances are primarily as a result of changes to the DWP forecasts published by the OBR in November 2017⁶. The November 2017 report by the OBR draws out a number of significant revisions to forecasting models which in turn revised the cost of disability benefits, specifically personal independence payments, upwards at a UK level. This is then reflected in the share of those figures for Scotland.

⁵ In nominal prices.

⁶ Economic and Fiscal Outlook – OBR – November 2017

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Table 1b – DWP estimates of the forecast Scottish caseload in payment for the devolved benefits, assuming no changes to eligibility criteria by UK Government

Devolved Benefit ⁷	Forecast 2018-19 Caseload	Forecast 2019-20 Caseload	Forecast 2020-21 Caseload	Forecast 2021-22 Caseload	Forecast 2022-23 Caseload
	Thousands	Thousands	Thousands	Thousands	Thousands
Attendance Allowance	128	129	131	133	136
Carers Allowance	79	82	85	87	88
Cold Weather Payments	549	548	548	547	547
Disability Living Allowance	169	117	105	103	102
Discretionary Housing Payments	113	113	113	113	113
Funeral Expenses Payments	4	4	3	3	3
Industrial Injuries Benefits	30	30	29	29	28
Personal Independence Payment	216	272	292	303	314
Severe Disablement Allowance	3	3	3	3	3
Sure Start Maternity Grant	5	5	5	5	5
Winter Fuel Payments	1,010	996	985	999	1,017
Total	2,306	2,299	2,299	2,325	2,356

8. Once a benefit is transferred to Scotland, a risk arises from the way the indexation of the block grant adjustment will be calculated: it is UK Government expenditure growth on devolved benefits that Scotland will be indexed against, not overall spend. Assuming that the policy on rates and eligibility remains unchanged from the rest of the UK, then there is a risk that if, over time, uptake is higher in Scotland or demographic differences mean

⁷ This forecast shows Scottish caseload in payment and does not represent the total recipients.

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that expenditure growth per capita on Social Security in Scotland is higher than in the rest of the UK then the funding transferred under the block grant would be insufficient. The gap would require to be funded from the existing Scottish budget envelope. Similarly, any new benefit or change to policy on rates or eligibility which increases the per capita expenditure on benefits in Scotland relative to the rest of the UK per capita expenditure would also require to be funded from the existing Scottish budget.

9. As the Scottish Government will have received a block grant adjustment on devolution of the benefits, where policy on rates and eligibility remains unchanged and growth in benefit expenditure per capita in Scotland is less than in the rest of the UK, then the Scottish budget would gain.

Updated forecasts of the demand-led costs of new Scottish social security forms of assistance

10. The original Financial Memorandum outlined that the Scottish Government had initiated a programme of work to create the operational capability to deliver benefits in Scotland, this work continues. The Scottish Ministers will have powers to alter benefit payment rates, top up existing benefits or create new benefits within the scope of the legislative competence created by the Social Security (Scotland) Bill.

11. Scottish Ministers have already committed to a number of policies they intend to deliver in the future through a Scottish social security system⁸. For example, they have committed to increasing the annual value of Carers Allowance to the same value as Job Seekers Allowance from Summer 2018; replacing the Sure Start Maternity Grant with an enhanced Best Start Grant by Summer 2019, and replacing Funeral Expenses Payments with an enhanced Funeral Expenses Assistance also by Summer 2019. The First Minister also announced in September 2017 that a Young Carers Grant would be delivered by Autumn 2019. As these are policy changes, funding will need to be found from the existing Scottish budget envelope, as it would not be part of any UK budget transfer relating to the new powers.

12. Table 2a and 2b, below, set out the forecast costs to Scottish Government in future years as an illustration of the likely value of these commitments with assumptions made on rates and eligibility, as these factors are not yet confirmed. These illustrative forecasts have been

⁸ From the SNP Manifesto 2016 and the Programme for Government.

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produced by the Scottish Government and are an update to the original Financial Memorandum. The Scottish Fiscal Commission expect to publish forecasts to inform the Scottish Parliament’s scrutiny of secondary legislation that is laid in respect of any form of assistance. These forecasts will assist the Scottish Government in making available budget to fund any costs as a result of variations to current UK rates and eligibility.

Table 2a – illustrative estimated costs to existing Scottish Government budgets of currently committed, new or amended benefits payments

New or Adjusted Assistance Payment ⁹	Estimate 2018-19 Cost	Estimate 2019-20 Cost	Estimate 2020-21 Cost	Estimate 2021-22 Cost	Estimate 2022-23 Cost ¹⁰
	£m	£m	£m	£m	£m
Carers Allowance Supplement	35	30	32	33	34
Best Start Grant	16	15	15	15	16
Funeral Expenses Assistance	3	3	3	3	4
Young Carers Grant	0	0.5	0.5	0.5	0.5
Total	54.0	48.5	50.5	51.5	54.5

⁹ These are the additional costs as a result of new or adjusted payments and should be read in conjunction with Table 1a which details the existing costs.

¹⁰ Cost estimates are at nominal prices, this is not indicative of when the benefit will be rolled out.

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Table 2b – illustrative estimated caseloads

New or Adjusted Assistance Payment	Estimate 2018-19 Caseload	Estimate 2019-20 Caseload	Estimate 2020-21 Caseload	Estimate 2021-22 Caseload	Estimate 2022-23 Caseload
	Thousands	Thousands	Thousands	Thousands	Thousands
Carers Allowance Supplement	79	82	85	87	88
Best Start Grant	60	58	58	58	59
Funeral Expenses Assistance	6	6	6	6	5
Young Carers Grant	0	2	2	2	2
Total	145	148	151	153	154

Estimate of significant costs as a result of Stage 2 amendments

13. There are expected costs associated with the new and amended provisions included in the Bill following Stage 2 amendments. Some of these amendments significantly and/or materially affect the assumptions in the original Financial Memorandum. These amendments are considered below.

Terminal illness

14. The Bill has been amended to widen the eligibility criteria for accessing special rules by retaining the definition of “terminal illness” as one based on an individual having a progressive disease, but by extending the minimum predicted life expectancy from six months to two years. The intention is that an individual with a terminal illness who can reasonably be expected to die within two years can access Disability Assistance without the usual tests.

15. The effect of this amendment is highly uncertain. Medical professionals are the only people who can diagnose an individual as terminally ill. A key issue is whether any change would be workable for medical professionals in practice. There are uncertainties about the financial implications of this amendment. In the absence of key information, certain fundamental assumptions have to be made about the distribution of the length of

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prognosis for life-limiting conditions. Assumptions also have to be made about the number of people who would become eligible under the amended terminal illness rules who would not currently qualify under the UK Government's assessment process for individuals who are not terminally ill. The information required to model these two key drivers of potential cost does not exist at a UK or Scotland level. Based on a set of assumptions, this amendment could cost in the region of an additional £300 million per annum under a steady state. This does not include any impact due to changes of the cost of administration. This cost should be treated with a high level of caution and used as an indication of the potential scale of the cost of the amendment.

Recognition of importance of independent advice and advocacy and right to advocacy

16. The Bill was amended to provide that the Scottish Ministers must have regard to the role that independent advice and independent advocacy can play in ensuring that individuals are given what they are eligible to be given under the Scottish Social security system. The steps taken must include steps in relation to providing, or ensuring the provision of, information about independent advice and independent advocacy.

17. The Bill was also amended to provide that the Scottish Ministers must ensure that independent advocacy services are available to the extent necessary for the right of independent advocacy for every individual with a mental disorder to be exercised.

18. The cost of ensuring advocacy services are available is not necessarily new as there is existing provision of access to independent advice and independent advocacy services within the public sector in Scotland. Calculating the cost of independent advice and independent advocacy is challenging, as there is a lack of data. The Scottish Independent Advocacy Alliance (SIAA) provided estimates during Stage 2 of a potential cost. SIAA provided a unit cost of £8.75 and estimate total cost of £1.68 million per annum based on a Personal Independence Payment (PIP) caseload of 147,743. The PIP caseload represents less than a third of the number of people receiving some form of disability assistance in Scotland. The SIAA estimate is based on a single advocacy worker dealing with ten clients every single day of the year, which the Scottish Government not believe is sustainable.

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19. The Scottish Government estimate a unit cost of £210, this is based on the Welfare Advocacy Pilot Project carried out between March 2015 and August 2016 by the Scottish Government. This pilot saw 1,001 cases in eighteen months which equates to 667 cases in one year, across four locations. These numbers fall far short of the expectation in the SIAA estimate that a single advocacy worker will handle 4,000 cases a year. The SIAA estimate that a single full time equivalent advocacy support worker costs £35,000 per annum; the Scottish Government has used this rate along with our observed volumes to calculate the unit cost of £210.

20. Using the same PIP caseload as the SIAA, the Scottish Government then estimated that the total annual cost could be in the region of an additional £31 million per annum. When applied to a caseload across the full spectrum of disability assistance, rather than just PIP, this could be in the region of an additional £122 million per annum. This compares to current funding for independent advocacy, which SIAA have said¹¹, based on 2015/16 figures, amounts to £11 million in NHS Board and Local Authority funding in relation to those bodies' statutory obligations, along with an additional £584,000 of Scottish Government funding and £610,000 of non-statutory funding from charitable trusts and other bodies. Estimates of on-going costs are, therefore, highly uncertain at this stage and further detailed work is needed to accurately estimate the cost of this amendment, on the basis of the evidence currently available the cost is likely to be significantly in excess of the SIAA's estimate.

Short term assistance

21. The Bill has been amended to ensure that short-term assistance (STA) is paid at an equivalent rate to the benefit being paid before appeal and to make it available in the period when an individual is appealing a decision not to allow an appeal because the original appeal request was out of time. The cost of this amendment which would see more individuals eligible for STA is estimated to be in the region of £13 million per annum when all benefits are fully devolved. This has been estimated by using currently available information from the UK Government to make assumptions about the average lengths of awards and frequency of reviews, the number of

¹¹See

https://www.siaa.org.uk/wp-content/uploads/2017/09/SIAA_Advocacy_Map_2015-16-1.pdf

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individuals changing awards at the review stage, and average times for appeals and appeal success rates.

Scottish Commission on Social Security (SCoSS)

22. The Bill was amended to create the Scottish Commission on Social Security (SCoSS), an independent scrutiny body. Actual costs will be determined by arrangements for the SCoSS that have yet to be decided upon, including staffing size and non-staff support arrangements. At present then it is only possible to base cost estimates on those of comparable public bodies that have recently been created as a consequence of other legislation, as the cost of premises, IT systems and other expenses are likely to be similar.

23. Based on the costs of the Poverty and Inequality Commission the Scottish Government expect that the costs of the SCoSS are likely to fall between £0.4 million and £0.8 million per annum, the Scottish Government would also expect up to £0.3 million of one off implementation costs. These costs include estimates of both staff costs and non-staff support costs. These costs can be confirmed as decisions are made on how the body will be staffed, the size of the staffing complement and necessary support arrangements.

Other significant Stage 2 amendments

Uprating for inflation

24. The Bill has been amended to provide that the Scottish Ministers must consider the effects of inflation. It also now provides a duty on the Scottish Ministers to uprate carer's, disability and employment injury assistance where these rates are materially below the inflation-adjusted level.

25. The original Financial Memorandum took into account the Scottish Ministers commitment to uprate disability and employment injury assistance. The Carer's Allowance and Carer's Allowance Supplement estimates in the original Financial Memorandum also take account of the impact of uprating by the Consumer Prices Index (CPI) from 2019-20 onwards. Benefits other than working age benefits are currently uprated annually by CPI by the UK Government, so the Scottish Government would expect to receive Block Grant Adjustments to reflect the UK Government's increased expenditure on this benefit.

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Take-up and income maximisation strategy

26. The Bill has been amended to place a duty on the Scottish Ministers to publish an income maximisation strategy designed to encourage individuals to apply for the social security assistance that they are entitled to. The cost of preparing a strategy is not material, but the impact the strategy could have on future costs may be significant depending on the success of the strategy in reducing any existing differential between total eligibility and uptake. As noted in the original Financial Memorandum variations on uptake that result in increased expenditure on devolved benefit per head of population which are not replicated in the rest of the United Kingdom will come at a cost to existing Scottish budgets. Significant further work will be required in this area to model the potential effects on the Scottish budget before a strategy is published in order to factor in potential financial risk.

Private sector involvement in assessments

27. The Bill has been amended to ensure that no person may be required to undergo an assessment that is not carried out by a person employed by a public sector body. This meets the Scottish Government's existing policy intention to remove the private sector from the provision of disability benefit assessments. As this amendment only places the existing policy commitment on the face of the Bill, the Scottish Government are not aware of any additional associated costs.

Housing assistance

28. The Scottish Ministers have stated their intent to legislate to provide additional support for housing costs in two discrete areas, both relating to UK Government Welfare reforms. The first is in relation to abolishing the "bedroom tax" at source (i.e. through Universal Credit) and the second is in providing housing assistance to certain 18-21 year olds in receipt of Universal Credit for whom an entitlement to housing support through Universal Credit is no longer available.

29. In relation to the "bedroom tax" although that can mostly be effected by regulations, using the Universal Credit flexibility provided by section 29 of the Scotland Act 2016, there is a very small group of persons for whom that approach will not fully work because the extra Universal Credit that they would receive would mean that their Universal Credit payment would exceed the UK Government's benefit cap. This amendment will allow Ministers to

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introduce regulations to create a specific additional payment for this group, that pays them the amount they lose as a result of the benefit cap.

30. In relation to housing support for 18 to 21 year olds who are [being denied] housing assistance by recent changes to the qualifying rules for housing support through Universal Credit, this amendment will allow Ministers to introduce regulations to create a specific benefit for this group in order to ensure that they can get housing assistance when they need it.

31. This amendment will not increase the cost of Discretionary Housing Payments as these already mitigate the “bedroom tax” in full and housing assistance for 18 to 21 year olds is provided currently through the Scottish Welfare Fund. The Scottish Government estimate implementation costs of between £1 million and £2 million will be payable to DWP to facilitate the system changes necessary to mitigate at source.

Recovery of assistance

32. The Bill has been amended to reflect the policy intention that official errors made by the agency should not normally be recovered. Recovery should only happen in exceptional circumstances, such as a large and obvious overpayment. However, in order to accomplish this, the scope of the provision has been widened to encompass all types of error that can be made – both individual and official error. Then, an exclusion is to be applied to define when a person has no liability at all.

33. The overall effect of the amendments will be to define the circumstances in which a person does not have any liability to repay for an overpayment. When an error is created by the agency, or otherwise is not the individual’s fault and it is not reasonable for the individual who received the extra money to have noticed, they will not be liable to repay it. This amendment reflects the existing policy intention which was in place at the Bill’s introduction.

Inability to means-test winter heating assistance, disability assistance and employment-injury assistance

34. The Bill has been amended to reflect on the face of the Bill the Scottish Government’s existing policy on means-testing of benefits.

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35. Disability, employment injury and winter heating assistance are not currently means-tested by DWP, and the Scottish Government has already indicated that this policy would continue once the benefits are devolved. So long as this policy is retained by the UK Government, this amendment then has no additional cost to the Scottish Government. However this is an example of the risk outlined in the original Financial Memorandum that where in future UK Government and Scottish Government policy diverge, this could result in additional costs for the Scottish Government.

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