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The Scottish Parliament

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Thank you for your letter of 8 November. I'm pleased to provide an update on the work which my officials have been progressing, since I last appeared before Committee on 30 June, including the feasibility study in relation to our commitment to increase Carer's Allowance. I have also included some information (in the attached Annex), in relation to the 'split competence' approach to the transfer of the powers provided for in two of the remaining uncommenced welfare sections of the 2016 Scotland Act.

In relation to your second query, I would like to take this opportunity to reaffirm that there is nothing in the approach agreed by the Joint Ministerial Working Group on Welfare (JMWGW) which will delay the Scottish Government's overall programme of work to implement a devolved, Scottish social security system, as currently planned. The Scottish Government's stated aim has always been to have a Scottish social security agency making devolved benefit payments before the end of this Parliamentary term – and this has not changed.

I would not normally labour a point so much, but you will be aware of the way in which this matter has been reported in the media recently. So, I feel obliged to repeat the points I made to the Committee during my appearance on 30 June (and which the Minister for Social Security re-iterated, when she appeared before Committee on 29 September) – that the implementation process for our devolved, Scottish social security system will require the Scottish Parliament to hold legislative competence for a while before we have the responsibility for delivery, as we will need time to have the mechanisms, the delivery process and our agency up and running.

I trust this makes it clear that the approach agreed by the JMWGW is the same approach we discussed in June and, therefore, that Scottish Government's plans have not changed, nor have they been delayed. In fact, the approach agreed by the JMWGW brings a Scottish social security agency closer to becoming a reality.

On the milestones which have been achieved since 30 June, I believe the main ones are as follows:



- Carried out an extensive and meaningful three month consultation process on social security in Scotland, directly engaging with people and organisations across all 32 local authorities in Scotland. The consultation closed at the end of October and we received over 500 responses, from individuals and organisations, which we are now analysing to help inform our approach.
- Continued engagement with the UK Government, including the Joint Ministerial Working Group on Welfare and the Joint Exchequer Committee (JEC). At the JEC meeting on 3 November 2016, Ministers agreed the application of the Block Grant Adjustment and the amount of administration and implementation funding to be transferred for 2017-18; and discussed the levels of programme funding for new powers being transferred from April 2017.
- On 25 October 2016, we published the Memorandum of Understanding (MoU) between Scottish Government and the Department for Work and Pensions (DWP) on joint working arrangements covering the implementation of devolved provisions in the Scotland Act 2016 relating to Social Security and Employment Support Services in Scotland. It sets out a framework for co-operation between the parties in respect of ensuring that the social security and the employment support provisions, associated powers and operations of the Scotland Act 2016 are considered and implemented effectively and with full regard to both Scottish and UK systems. It is also a basis on which to build enduring joint operational working and collaboration between both Governments. The MoU can be found here - <https://beta.gov.scot/publications/social-security-and-employment-support-services-mou/>.
- Commissioned DWP to carry out Carers Allowance increase feasibility study.
- Published online, on 22 November, via our CitizenSpace platform, all of the responses to the consultation which we have permission to publish (some respondents have exercised their right to have their responses kept private but I'm pleased to say that the vast majority of responses will be published). Then, early next year we will publish a full, independent analysis report, outlining the findings from the consultation.

Ministers have made a commitment to increase Carer's Allowance in Scotland to the same rate as the lowest income replacement benefits. Work is underway on the appraisal of possible delivery models for social security in Scotland. In parallel with this, a feasibility exercise is underway with DWP to explore early implementation of the increase, which would potentially rely on existing DWP systems and processes. This exercise is expected to be completed early in the New Year and I will revert to you with further information when this work has concluded.

In concluding, I would like to make clear that our engagement will not end with the report on the consultation. We will carry on the conversation and will continue to listen to those who have direct experience of receiving benefits as we design, build and improve the new system, to make sure it works for them. As you are aware, we are setting up 'Experience Panels' to help us achieve this. These will involve at least 2,000 people, with recent experience of applying for or receiving benefits, who can share with us their insights and experience, and support our work on a longer-term basis. We are already accepting expressions of interest from people who are keen to be involved, and will launch our main recruitment in the New Year.

I trust the information, in this letter and its attachment, is helpful to you and your Members. I look forward to continuing to work collaboratively with Committee, as we progress this work and seek to rise to what is, I'm sure you will agree, the single greatest delivery challenge faced by any Scottish Government since devolution.

A handwritten signature in black ink, appearing to read 'Angela Constance', with a large, stylized flourish below the name.

ANGELA CONSTANCE

Scotland Act 2016: Commencement of Part 3 provisions relating to welfare benefits

1. This note is provided for information. It describes the approach to commencement of the welfare provisions in Part 3 of the 2016 Scotland Act (the 2016 SA), agreed by the Joint Ministerial Working Group on Welfare (JMWGW).

Background

2. On 16 June, the JMWGW agreed to progress work to commence a number of powers in the 2016 SA¹. Commencement regulations were laid by the UK Government on 14 July², in relation to 11 of the 14 welfare sections in Part 3 of the 2016 SA including provisions in respect of creating new benefits, topping up reserved benefits, Discretionary Housing Benefit, Universal Credit flexibilities and employment support. These sections came into force from 5 September this year³.

Commencement of the remaining sections

3. Information on the commencement of two of the remaining three sections, namely section 22 (Disability, industrial injuries and carer's benefits) and section 23 (Benefits for maternity, funeral and heating expenses), referred to as Tranche 2, is provided in this note. (The remaining uncommenced section is 27, Welfare Foods and is the responsibility of the Department for Health and the Scotland Office.)

4. The powers in sections 22 and 23 may be summarised as being:

- provisions which transfer responsibility for existing, and on-going, benefits relating to disability, industrial injuries and caring responsibilities, including DLA, PIP and carer's allowance, also severe disablement benefit and industrial injuries disablement benefit; and
- provisions which transfer responsibility for benefits relating to maternity and funeral expenses and the costs of heating in cold weather, including the Sure Start Maternity Grant, funeral payments, cold weather payments and the winter fuel allowance.

5. On 11 October, the JMWGW agreed that the next commencement regulations should make provision for a split of competence between the UK Government and the Scottish Parliament, for a defined fixed period. The JMWGW has proposed that this period should end by April 2020. During this period, the Scottish Parliament would have legislative competence to put in place the legal framework for how benefits were to be delivered after the fixed period, but the UK Government would retain executive competence for delivery of existing benefits during that period.

6. It should be noted that:

¹ See - <https://www.gov.uk/government/news/joint-ministerial-working-group-on-welfare-have-met-to-discuss-scotland-act-2016>

² See - <https://www.gov.uk/government/news/new-welfare-powers-coming-to-the-scottish-parliament>

³ See - <https://www.gov.uk/government/news/new-welfare-powers-transferred-to-the-scottish-parliament>

- Legislative competence means the ability to make primary legislation in Parliament. On devolving legislative competence to the Scottish Parliament, the UK Government would not, under the Sewel convention, be able to change or bring in new primary legislation in the relevant areas for Scotland without a Legislative Consent Motion.
- Executive competence means the power to make regulations and payments and underpins delivery responsibilities. For so long as executive competence remains reserved, the UK Government has the ability to administer the existing benefits and to adjust the detail of their delivery.

7. The Scottish Government's view is that (subject to the necessary regulations being laid by the UK Government), the approach agreed by the JMWGW should provide sufficient time that, before the end of the defined period of split competence, the Scottish Parliament will have been able to fully consider the necessary legislation and agree the devolved provision to be put in place to ensure the appropriate transfer of executive competence to the Scottish Government.

8. Furthermore, the Scottish Government's view is also that this approach should provide assurance that the complex transfer of executive competence in relation to sections 22 and 23 of the 2016 SA, can be managed in a way that minimises the impact on the 1.4 million people (approx.) in Scotland who are receiving support under the powers transferred in these sections. The Scottish Government's absolute priority is the safe and secure transition of benefits, ensuring that no payments are missed and that no-one who currently relies on this vital support falls through a gap during the transfer of responsibilities. It has always approached discussions with the UK Government on this basis.

9. It should be noted that, until such time as the Scottish Parliament agrees its own, devolved primary legislation, the Scottish Ministers will not have executive powers in relation to sections 22 and 23 of the 2016 SA. This is an appropriate approach to devolution, legislative competence is devolved by the UK Parliament to the Scottish Parliament and the Scottish Parliament can then make legislation (including placing duties on, and delegating powers to, the Scottish Ministers or other, appropriate persons or bodies). This approach allows space for the Scottish Government to propose, and the Scottish Parliament to consider, how the existing powers could be modified, or replaced with different powers and arrangements.

10. The approach agreed by the JMWGW will enable the Scottish Parliament to give due consideration and scrutiny to the Social Security Bill, which the Scottish Government is committed to introducing before the end of this Parliamentary year. This will enable the Scottish Parliament, as soon as is practicable, to begin its consideration of the Scottish Government's proposals for delivery of the devolving benefits. The Scottish Parliament's consideration will, of course, be one of the primary fail-safes, in ensuring that no-one loses out during the devolution of responsibilities.

11. The Scottish Government has made public commitments as to how it proposes to invite the Scottish Parliament to use the competence that will devolve to it - for example, to pay Carer's Allowance at an increased level equivalent to that of Job Seeker's Allowance, to reform the assessment process in relation to disability benefits and to replace the Sure Start Maternity Grant with a new Best Start Grant making more extensive provision for early years. The Scottish Government has also recently concluded a wide-ranging consultation exercise – but, in the end, it is for Parliament to decide how to legislate, and such decisions require Parliament to be given both the opportunity and the time to properly scrutinise the necessary legislation.

12. Finally, it should be noted that, assuming the approach agreed by the JMWGW proceeds as planned, there is nothing in this approach which requires any delay to the Scottish Government's overall programme of work, to implement a devolved, Scottish social security system, as currently planned. The Scottish Government's stated aim has always been to have a Scottish social security agency making devolved benefit payments before the end of this Parliamentary term. This has not changed – in fact, the approach agreed by the JMWGW brings this closer to becoming a reality.