FOURTH ANNUAL REPORT ON THE IMPLEMENTATION OF THE SCOTLAND ACT 2016

EIGHTH ANNUAL REPORT ON THE IMPLEMENTATION AND OPERATION OF PART 3 (FINANCIAL PROVISIONS) OF THE SCOTLAND ACT 2012

Fourth Annual Report on the Implementation of the Scotland Act 2016

Presented to Parliament by the Secretary of State for Scotland by Command of Her Majesty

April 2020

Eighth Annual Report on the Implementation and Operation of Part 3 (Financial Provisions) of the Scotland Act 2012

Presented to Parliament pursuant to section 33(1)(b) of the Scotland Act 2012

Presented to the Scottish Parliament pursuant to section 33(1)(c) of the Scotland Act 2012

April 2020

This publication is available at www.gov.uk/official-documents.

Any enquiries regarding this publication should be sent to us at enquiries@scotlandoffice.gsi.gov.uk.

ISBN 978-1-5286-1834-2

CCS0320342228 04/20

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

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FOREWORD

This report marks another year of significant progress in transferring powers devolved under the Scotland Act 2016 to the Scottish Parliament and Scottish Government, and fulfils our commitment to report on Part 3 of the Scotland Act 2012 which deals with the devolution of financial powers.

In the 2014 independence referendum, Scotland voted decisively to remain in the UK and the UK Government has respected that decision by honouring our commitment to deliver further powers for the Scottish Parliament through the Smith Commission Agreement. The Scotland Act 2016 delivers on the Smith Agreement in full.

The extensive list of powers devolved to the Scottish Parliament under the Scotland Act 2016, includes the power to set rates and bands of income tax, to create new benefits in devolved areas and to legislate on a variety of new areas such as equalities in the public sector, onshore oil and gas licensing, and management of the Crown Estate. As of 8 February 2019, the Scottish Parliament can legislate in every area where the Scotland Act 2016 has given it power to do so - reinforcing its standing as one of the most powerful devolved parliaments in the world.

This has been another year of continued progress in which the UK Government has worked collaboratively with the Scottish Government to support the implementation of their new responsibilities. In welfare, Scottish Ministers have launched their Best Start Foods scheme and Funeral Support Payment. The Department for Work and Pensions (DWP) has continued to provide the access to data and payment systems needed for the Scottish Government to launch and administer their Funeral Support Payment. A number of agency agreements have also been put in place to allow for the DWP to continue to deliver devolved benefits in Scotland until Social Security Scotland are able to take over delivery responsibility.

It has been just over four years since the Scotland Act 2016 received Royal Assent, and four years of close collaboration between the UK Government and Scottish Government has been crucial in building on that work to further strengthen the Scottish Parliament, the devolution settlement, and the United Kingdom. Working closely with the Scottish Government on the safe and secure transfer of powers as they are devolved remains a top priority for the UK Government, and I look forward to another year of progress ahead.

THE RT HON Alister Jack MP
SECRETARY OF STATE FOR SCOTLAND

PART 1: SCOTLAND ACT 2016

CHAPTER 1

INTRODUCTION

Scope and Content of this Part

1. This report on the Scotland Act 2016 is the fourth published since the Act received Royal Assent on 23 March 2016.

2. The Scotland Act 2016 devolves a range of further powers to the Scottish Parliament, and sets out a range of financial powers and measures. These include:
    - devolution of Income Tax powers including the power to set rates and bands on earned income;
    - assignment of VAT;
    - devolution of air passenger tax;
    - devolution of aggregate tax;
    - the power to borrow; and
    - the destination of fines, forfeitures and fixed penalties.

3. This report provides an update on these sections, and also outlines updates against the devolution of non-financial powers set out in the Scotland Act 2016. These include the devolution of a range of new welfare powers, including the power to create new benefits in devolved areas and the power to top-up reserved benefits in Scotland. It also includes other spending powers relating to welfare benefits (for example disability, carer's, and payments from the social fund), roads, policing of railways in Scotland, onshore petroleum licensing, tribunals, elections, consumer advocacy and advice, and remaining areas of the Scotland Act 2016.

4. The fiscal framework was published on 25 February 2016[1]. On 15 March 2016 the Scottish and UK Governments published a further annex[2]. The fiscal framework sets out the agreement between the Scottish Government and the UK Government on the Scottish Government's fiscal framework, consistent with the principles contained in the Smith Commission Agreement and including a number of elements which will be covered by this report, including:
    - block grant adjustments for taxation and welfare;
    - administration and implementation costs;
    - spillover effects;
    - borrowing; and
    - scrutiny.

5. The fiscal framework outlines the reporting requirements for the Scotland Act 2016, that both the UK Government and the Scottish Government will prepare and publish an annual update report on functions and duties being devolved under the Scotland Act 2016 that will be provided to both Parliaments. The information contained in this Part is also relevant to the statutory requirements contained in the Scotland Act 2012, outlined in Part 2 of this report. Therefore the reporting requirements for the Scotland Act 2016 are being presented in one document alongside that for the Scotland Act 2012.

[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503481/fiscal_framework_agreement_25_feb_16_2.pdf

[2] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508102/Fiscal_Framework_-_Text_-_Annex_to_the_fiscal_framework_-_15th_March_201....pdf

CHAPTER 2

IMPLEMENTATION PROGRESS

6. The following provisions in the Scotland Act 2016 have been commenced since Royal Assent on 23 March 2016:

Section	Section Title	Date of commencement
Part 1 : Constitutional Arrangements		
1	Permanence of the Scottish Parliament and Scottish Government	23 March 2016
2	The Sewel convention	23 May 2016
3	Elections	18 May 2017
4	Power to make provision about elections	18 May 2017
5	Timing of elections	18 May 2017
6	Electoral registration: the digital service	18 May 2017
7	Expenditure in connection with elections	18 May 2017
8	Review of electoral boundaries by the Local Government Boundary Commission for Scotland	18 May 2017
9	Functions exercisable within devolved competence: elections	18 May 2017
10	Minor and consequential amendments: elections etc.	18 May 2017
11	Super-majority requirement for certain legislation	18 May 2017
12	Scope to modify the Scotland Act 1998	18 May 2017

Part 2: Tax and Fiscal		
13	Power of Scottish Parliament to set rates of income tax	30 November 2016
14	Amendments of Income Tax 2007	23 May 2016
15	Consequential amendments: income tax	23 May 2016
16	Assignment of VAT	23 May 2016
17	Tax on carriage of passengers by air	23 May 2016 Provision will take effect at a time agreed by UK and Scottish Governments.
18	Tax on commercial exploitation of aggregate	23 May 2016 Provision will take effect at a time determined by the Joint Exchequer Committee.
19	Devolved taxes: further provision	23 May 2016
20	Borrowing	1 April 2017
21	Provision of information to the Office for Budget Responsibility	1 April 2017
Part 3: Welfare		
22	Disability, industrial injuries and carer's benefits	Section 22(3) and (1) so far as relating to (3) on 5 September 2016; section 22(1) for remaining purposes and (2) and (4) on 17 May 2017.

23	Benefits for maternity, funeral and heating expenses	Section 23(3) and (1) so far as relating to (3) on 5 September 2016; section 23(1) for remaining purposes, (2), (4) and (5) for the purpose of making regulations on 17 May 2017; and section 23(5) for remaining purposes on 1 April 2020. SI 2018/1138 closed off access to Sure Start Maternity Grant for people in Scotland as the Scottish Government introduced their replacement Best Start Grant from 10 December 2018. SI 2019/1060 closed off access to the Funeral Expenses Payment for people in Scotland as Scottish Government introduced their replacement Funeral Support Payment from 16 September 2019. On 30 October 2019, SI 2019/1438 amended the date in section 23(5), in order that the closure of the Social Fund in relation to heating expense is delayed, from 1 April 2020 to 1 April 2022.
24	Discretionary payments: top-up of reserved benefits	5 September 2016

25	Discretionary housing payments	1 April 2017
26	Discretionary payments and assistance	5 September 2016
27	Welfare foods	8 February 2019
28	Power to create other new benefits	5 September 2016
29	Universal Credit: costs of claimants who rent accommodation	5 September 2016
30	Universal Credit: persons to whom, and time when, paid	5 September 2016
31	Employment Support	5 September 2016
32	Functions exercisable within devolved competence	5 September 2016
33	Social Security Advisory Committee and Industrial Injuries Advisory Council	5 September 2016
34	Information-sharing	5 September 2016
35	Extension of unauthorised disclosure offence	5 September 2016

Part 4: Other Legislative Competence		
36	Crown Estate	36 (1), (5), (6), (9), (10), (11), (12) on 23 March 2016 The remainder on transfer date for Crown Estate Scheme on 01 April 2017.
37	Equal opportunities	23 May 2016
38	Public sector duty regarding socio-economic inequalities	23 May 2016
39	Tribunals	23 May 2016
40	Roads	23 May 2016
41	Roads: Traffic signs etc	23 May 2016
42	Roads: Speed limits	23 May 2016
43	Roads: Parking	23 May 2016
44	Roads: consequential provision etc	23 May 2016
45	Policing of railways and railway property	23 May 2016
46	British Transport Police: cross border public authorities	23 May 2016
47	Onshore Petroleum	9 February 2018
48	Onshore Petroleum: Consequential amendments	9 February 2018
49	Onshore Petroleum: existing licences	29 November 2017
50	Consumer Advocacy and Advice	23 May 2016
51	Functions exercisable within devolved competence: consumer advocacy and advice	23 May 2016
52	Gaming machines on licenced betting premises	23 May 2016
53	Abortion	23 May 2016

Part 5: Other Executive Competence		
54	Gaelic Media Service	23 May 2016
55	Commissioners of Northern Lighthouses	23 May 2016
56	Maritime and Coastguard Agency	23 May 2016
57	Rail: franchising of passenger services	23 May 2016
58	Fuel poverty: support schemes	Section 58 for the purpose of making certain regulations on 1 December 2017. Section 58 (so far as not already in force) on 01 April 2018.
59	Energy company obligations	Section 59 for the purpose of making certain regulations on 1 December 2017. Section 59 (so far as not already in force) on 1 October 2018.
60	Apportionment of targets	Section 60 for the purpose of making certain regulations on 1 December 2017. Section 60 (so far as not already in force) on 1 October 2018.
61	Renewable electricity incentive schemes: consultation	23 May 2016
62	Offshore Renewable Energy Installations	1 April 2017
63	References to Competition and Markets Authority	23 May 2016
Part 6: Miscellaneous		
64	Gas and Electricity Markets Authority	23 May 2016
65	Office of Communications	18 August 2016

66	Bodies that may be required to attend before the Parliament	23 May 2016
67	Destination of fines, forfeitures and fixed penalties	1 April 2017
Part 7: General		
68	Subordinate legislation under functions exercisable within devolved competence	23 March 2016
69	Transfers of property etc to the Scottish Ministers	23 March 2016
70	Transitional provision	23 March 2016
71	Power to make consequential, transitional and saving provision	23 March 2016
72	Commencement	23 March 2016
73	Short Title	23 March 2016

Implementation and commencement across the Scotland Act 2016

7. A number of provisions came into force on Royal Assent and two months after Royal Assent. Since that point, nine commencement regulations have been made to bring further sections of the Act into force. All sections of the Scotland Act 2016 which increase the powers of the Scottish Parliament are now in force.

8. The fiscal framework agreement sets out a number of agreed dates between the Governments on implementation and commencement of the powers in the Scotland Act 2016.

Governance

9. The Scotland Act 2016 Implementation Board was set up after Royal Assent of the Act as the overseer of implementation across the whole Act. The Board is chaired by the Director of the Office of the Secretary of State for Scotland, and attended by UK Government departments with policies covered in the Act.

10. The Board meets regularly to monitor progress on implementation and commencement. It supplements governance structures within UK Government departments that exist to implement the provisions in the Scotland Act 2016 and transfer responsibilities to the Scottish Parliament and the Scottish Government.

CHAPTER 3

INCOME TAX

Since 6 April 2017, the Scottish Parliament has had the power to set the income tax rates and bands applicable to Scottish taxpayers on their non-savings and non-dividend income. The rates and bands will be set each year in its Scottish Rate Resolution. The Scottish block grant will be adjusted to reflect the change in funding stream in the manner set out in the fiscal framework agreement between the UK and Scottish Governments on February 2016.

Steps taken towards implementation since previous report

11. The Scottish Parliament's income tax-raising powers were enhanced by the Scotland Act 2016. Since 2017-18, the Scottish Parliament has had the power to set both the rates and band thresholds (excluding the personal allowance) that apply to all non-savings and non-dividend income tax paid by Scottish taxpayers. Following decisions made for the 2017-18 and 2018-19 tax years, Scotland has different income tax rates, bands and thresholds to the rest of the UK.[3]

12. In February 2020 the Scottish Government announced its planned income tax rates and bands for 2020-21 in the Scottish Budget 2020-21. The plans were considered by the Scottish Parliament, and on 4 March 2020 the Scottish Parliament passed a Scottish Rate Resolution to set the rates and bands that will apply to Scottish non-savings, non-dividend taxable income for 2020-21. There are no changes to the five-band structure or rates. The Basic Rate and Intermediate Rate thresholds will be increased by inflation, and the Higher Rate and Top Rate thresholds frozen.

[3] Information on the rates and bands that apply in Scotland is available on GOV.UK

• Over £12,500[4] - £14,585	• Starter Rate	• 19%
• Over £14,585 - £25,158	• Scottish Basic Rate	• 20%
• Over £25,158 - £43,430	• Intermediate Rate	• 21%
• Over £43,430 - £150,000[5]	• Higher Rate	• 41%
• Over £150,000[6]	• Top Rate	• 46%

Project governance

13. A Scottish Income Tax Board, compromising members from HMRC, HM Treasury and the Scottish Government, meets quarterly to ensure HMRC meets the operational obligations set out in its Service Level Agreement with the Scottish Government.

Relief at source

14. From April 2018 pension providers have been required to apply the basic rate of tax relief for Wales, Scotland or the rest of the UK as appropriate for relief-at-source (RAS) pension contributions. It is HMRC's responsibility to notify pension providers of the correct rate to apply. To do this HMRC has to advise the schemes of the main place of residency for each individual member within a scheme. This development has been phased and initially processes and functionality were developed with the Scottish Government, before the introduction of Welsh Rates

[4] assumes individuals are in receipt of the Standard UK Personal Allowance
[5] those earning more than £100,000 will see their Personal Allowance reduced by £1 for every £2 earned over £100,000
[6] Ibid.

of Income Tax. From January 2019 it was agreed that further development for RAS would be split between Wales and Scotland. Costs of implementing the changes to accommodate RAS pension schemes are included in the overall estimate in paragraph 16.

Taxpayer identification

15. The Scottish taxpaying population is not static: people move to and from Scotland and people become or cease to be taxpayers for a variety of reasons. HMRC is taking a number of steps to ensure the ongoing accuracy of the Scottish taxpayer population, including:
    - performing scans of HMRC address data to correct missing or partial postcodes;
    - carrying out regular updates of the postcode information held by HMRC, including adding new Scottish postcodes to its list of Scottish postcodes;
    - continuing to corroborate HMRC customer records with a range of third-party data sources; and
    - issuing communications to remind taxpayers to notify HMRC of any change of address.

Costs

16. HMRC estimates the overall cost of implementing Scottish income tax powers, from the Scotland Act 2012 and Scotland Act 2016, to be £24.3m. This excludes any extra costs that may arise, and will be recharged to the Scottish Government, from work required to accommodate any future changes to rates and thresholds.

17. In 2018-19 HMRC invoiced the Scottish Government for £2.8m. Of this, £2.04m was implementation costs and £0.8m was operating costs.

18. Final figures for 2019-20 are not yet available. HMRC and the Scottish Government have agreed invoice charges of £1.0m for Q1 – Q3 2019-20 for costs associated with implementing and running the further Scottish income tax powers. At the time of writing, HMRC's latest forecast for the total costs for 2019-20 is

£1.6m. Of this, £0.6m is forecast to be implementation costs and £1.04m is forecast to be operating costs.

CHAPTER 4

OTHER TAX POWERS & FISCAL PROVISIONS

The Scotland Act 2016 provides for Air Passenger Duty and the Aggregates Levy to be devolved. The UK and Scottish Governments agreed in November 2017 to delay Air Passenger Duty devolution, and the introduction of the Scottish Government's replacement Air Departure Tax. A timetable has not yet been agreed by the Joint Exchequer Committee for the devolution of the Aggregates Levy.

The Act also makes provision for the assignment of VAT receipts. The Scottish Government will be assigned the first 10 percentage points of the revenue attributable to Scotland from the standard rate of VAT and the first 2.5 percentage points of the revenue attributable to Scotland from the 5 per cent reduced rate. VAT rates will continue to be set at a UK-wide level. The UK and Scottish Governments have agreed to extend the transitional period for VAT assignment by 12 months to test the assignment methodology. HMRC's Scottish Tax Devolution Programme Board will directly oversee the transition of these other tax powers.

Steps taken towards implementation since previous report

19. In October 2019, UK and Scottish Governments agreed to extend the transitional period for Scottish VAT assignment. Following the Scottish Government's request, the Chief Secretary agreed to extend the transitional period by 12 months, so VAT assignment is now due to be implemented in April 2021. As part of the preparations, the SFC and OBR will continue to publish a forecast of Scottish and rUK VAT assignment and following implementation of VAT assignments these forecasts will be used to assign revenues to the Scottish Government (alongside a corresponding block grant adjustment).

20. As part of the fiscal framework agreement, the Scottish and UK Governments' agreed to equally share all costs incurred for the implementation and administration of VAT assignment. In 2018-19 total costs incurred by HMRC and

the Scottish Government were £0.4m, and in 2019-20, up to Q3, totalled £0.5m. These costs were split equally between HMRC and Scottish Government.

21. The Joint Exchequer Committee (JEC) will agree on a suitable point for the commencement for devolution of the Aggregates Levy.

CHAPTER 5

BORROWING POWERS

The Scotland Act 2016 provides the Scottish Government with additional borrowing powers, building on those delivered in the Scotland Act 2012. In addition to the circumstances set out in the Scotland Act 2012, the provisions in the Scotland Act 2016 enable Scottish Ministers to borrow for the following two purposes:

- *to meet current expenditure because of an excess of welfare payments over forecast welfare payments, and;*
- *to meet current expenditure because of a Scotland-specific negative economic shock;*

The Scotland Act 2016 provisions also:

- *increase the Scottish Government's current borrowing limit from £500m to £1.75bn, and;*
- *increase the Scottish Government's capital borrowing limit from £2.2bn to 3bn.*

The Scottish Government's fiscal framework sets out more detail in relation to these borrowing powers.

Steps taken towards implementation since previous report

22. The Scottish Government's borrowing powers and Scotland Reserve came into effect in April 2017. The Scottish Government chose to borrow £405m for capital expenditure in 2019-20 from the National Loans Fund, the first £200m of which will be repaid over 20 years and the remaining £205m will be repaid over 25 years.

CHAPTER 6

WELFARE POWERS

Part 3 of the Scotland Act 2016 devolves significant powers relating to welfare benefits and employment support. The provisions in these sections of the Act give the Scottish Parliament greater powers to ensure that welfare provision in Scotland is tailored to local circumstances, while maintaining the benefits of the single jobs market and the UK's ability to pool risks.

Steps taken towards implementation since previous report

23. Following the Social Security (Scotland) Act 2018 receiving Royal Assent on 1 June 2018, the Scottish Government has been setting up its executive delivery agency, Social Security Scotland, to deliver devolved welfare benefits to people living in Scotland.

24. Over the last 12 months the UK Government has given significant support to the Scottish Government to enable the delivery of the first Scottish benefits, which includes:
    - Carer's Allowance – DWP has continued to pay Carer's Allowance in Scotland, on behalf of the Scottish Government, under an Agency Agreement. Carer's Allowance is paid under the same rules and administration as for people in England and Wales.
    - Carer's Allowance Supplement - providing data and support in order to enable the Scottish Government to make an additional payment to people in receipt of Carer's Allowance who are living in Scotland. Payments of the Carer's Allowance Supplement are made on a six-monthly basis.
    - Best Start Grant (the Scottish replacement for the UK Government's Sure Start Maternity Grant) – providing access to DWP data and payment systems to enable Scottish Government to deliver this benefit. Best Start Grant comprises three different payments, the last of which went live in June 2019.

- Funeral Support Payment (formerly Funeral Expense Assistance and the Scottish replacement for UK Government's Funeral Expenses Payment) – providing access to DWP data and payment systems to enable the Scottish Government to deliver this benefit. This was introduced in September 2019.

25. Executive competence for the disability and industrial injuries benefits transferred as planned on 1st April 2020. This presents a significant delivery challenge in terms of scale and complexity for the Scottish Government, who intend to introduce its replacement disability benefits on a staged basis starting with Child Disability Payment in 2020. The Scottish Government requested that DWP continue to deliver these benefits on their behalf from 1 April 2020, under Agency Agreements, until Social Security Scotland is able to take over delivery responsibility. These will operate in line with the principles agreed by the Joint Ministerial Working Group on Welfare which means that DWP will deliver these benefits to people in Scotland under the same rules and administration as apply to people living in England and Wales. Considerable work went in to getting Agency Agreements in place for the disability and industrial injuries benefits to ensure continuity of service to thousands of customers.

26. Alongside the introduction of the Scottish Government Best Start Grants and Funeral Support Payments, UK Social Fund legislation was changed to remove eligibility for people living in Scotland to the equivalent DWP payments; Sure Start Maternity Grants and Funeral Expense Payments. In line with their delivery plans UK Social Fund legislation was also changed so that access to the Social Fund Winter Fuel Payments and Cold Weather Payments was extended beyond March 2020 and legislation currently allows for this to remain open to those living in Scotland until March 2022.

27. DWP continued to support the Scottish Government in planning for delivery of their own benefits, including entering into service level agreements allowing access to DWP systems and data and also preparing changes to systems to support the transfer of both delivery and funding responsibility.

28. In addition to the significant support that DWP has provided to help the Scottish Government's planning and development, it has also responded to additional requests for support and access to systems and data to meet ministerial commitments relating to new benefits. The UK Government also changed legislation to enable them to commence their Scottish Commission on Social Security, without triggering a transfer of executive competence, so that Scottish legislation could go through appropriate scrutiny before introduction in their Parliament.

29. Many people who will be in receipt of a Scottish Government benefit will continue to be customers of DWP. We have developed plans and processes to ensure that shared customers are fully supported, both through the transitional process and in the longer term.

Section 27: Welfare Foods

Steps taken towards implementation

30. The UK Government makes provision for welfare foods through the Healthy Start Scheme and the Nursery Milk Scheme.

31. Commencement regulations (the ninth commencement regulations) were made in December 2018 and section 27 of the Scotland Act 2016 came into force on 8 February 2019. In parallel, the Department of Health and Social Care (DHSC) and the Scottish Government also agreed an agency agreement for DHSC to continue to administer both schemes in Scotland, on behalf of Scottish Ministers, until such a time as the Scottish Government introduces its own schemes.

32. The Scottish Government laid the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 before the Scottish Parliament on 31 May 2019. These Regulations, with the exception of certain provisions relating to the revocation of other instruments, came into force on 12 August 2019, launching the Scottish

Government's own devolved healthy food scheme, known as Best Start Foods.[7] From this date, the UK Healthy Start Scheme closed to new applications from Scottish residents, who must instead apply to the Scottish scheme and meet its eligibility requirements.

33. DHSC and the Scottish Government worked closely together, agreeing a revised agency agreement to ensure the safe, smooth and supported transition of existing Healthy Start beneficiaries who reside in Scotland to the new Scottish Best Start Foods scheme, between 12 August 2019 and 31 March 2020. On 31 March 2020, the Scottish Government's Best Start Foods regulations revoked relevant provisions of the Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005; relating to entitlement, use and the issuing of Healthy Start vouchers and vitamins in so far as they apply to Scotland and all Scottish residents ceased to be eligible for the Healthy Start scheme.

34. Under the revised agency agreement, DHSC will continue to administer the Nursery Milk Scheme in Scotland on behalf of Scottish Ministers, until such time as the Scottish Government introduces its own provision.

[7] https://www.mygov.scot/benefits/best-start/

CHAPTER 7

STEPS TOWARDS IMPLEMENTATION SINCE LAST REPORT – OTHER SECTIONS IN THE ACT

There are a number of other provisions in the Scotland Act 2016 that have effects on the Scottish Government's spending powers, the arrangements for which are covered by the fiscal framework. These include the following provisions:

- *Scottish Parliamentary and local government elections*
- *The Crown Estate in Scotland*
- *Tribunals*
- *Policing of railways*
- *Onshore oil and gas licensing*
- *Consumer advocacy and advice*
- *Fines, forfeitures and fixed penalties*

Section 36: The Crown Estate in Scotland
Steps taken towards implementation:

35. Scottish and UK Government officials continue to work to agree a Memorandum of Understanding in relation to the transfer between the two Governments.

Section 39: Tribunals
Steps taken towards implementation:

36. The Scotland Act 2016 provides a statutory mechanism to enable the UK Government to devolve responsibility for the management and operation of functions currently undertaken by reserved tribunals to Scotland.

37. The UK Government and the Scottish Government are working closely together to prepare an Order in Council which sets out the basis on which the Scottish

Parliament may pass legislation to give effect to the transfer of Scottish functions of the first phase of the reserved tribunals to a Scottish Tribunal.

38. The dates for transfer are still to be determined. UKG and SG will continue to work together to agree realistic transfer dates as progress is further made.

Sections 45-46: Policing of Railways & the British Transport Police
Steps taken towards implementation:

39. Section 45 of the Scotland Act 2016 amends the Scotland Act 1998 to give the Scottish Parliament legislative competence over the policing of railways in Scotland. Section 46 designates the British Transport Police Authority (BTPA) and senior officers of the British Transport Police (BTP) force as cross-border public authorities. These sections of the Act were commenced two months after Royal Assent on 23 May 2016.

40. The Railway Policing (Scotland) Act 2017, an Act of the Scottish Parliament to make provision about the arrangements for the Police Service of Scotland to police railways and railway property, received Royal Assent on 1 August 2017. The Act was to be commenced to coincide with the planned integration of the British Transport Police in Scotland into Police Scotland on 1 April 2019. However, with practical issues relating to the transfer proving more difficult than anticipated, and following further consideration of other options, the Scottish Government took the decision not to proceed with full integration but to instead adopt a different approach to delivering devolution which would provide both a new line of accountability to the Scottish Parliament in relation to the BTP's activities in Scotland, and an enhanced role for the Parliament in relation to the BTP's strategy and plans for policing the railway in Scotland.

41. The approach now adopted has seen the creation of a new committee, established under the Railways and Transport Safety Act 2003, as a sub-committee of the BTPA, to oversee railway policing in Scotland. Officials of the Scottish Police Authority and BTPA worked closely together to give practical effect to the proposal,

preparing draft Terms of Reference and a Memorandum of Understanding which were signed off by the Scottish Cabinet Secretary for Justice in Summer 2019.

42. The Scottish Railways Policing Committee had its first meeting in October 2019. It will have a significant bedding-in period, and be subject to review, including by Her Majesty's Inspectorate of Constabulary in Scotland in due course, to ensure it is sufficiently robust in practice and delivers the oversight and accountability for railway policing in Scotland which the Scottish Government is seeking. Following such a review, the Scottish Government will reflect on its findings and consider the need for any practical or legislative changes to future-proof the devolution of railways policing in Scotland.

Sections 47-49: Onshore petroleum

Steps taken towards implementation:

43. Sections 47-49 of the Act include provisions relating to onshore oil and gas extraction that provide Scottish Ministers with the powers to administer the existing onshore oil and gas licensing regime in Scotland, and to create a bespoke licensing regime.

44. A Memorandum of Understanding which sets out the agreed arrangements between the Oil & Gas Authority, the Secretary of State for Business, Energy and Industrial Strategy (BEIS) and Scottish Ministers in regard to the handling of matters that are reserved to the UK Government was drafted, agreed and signed on 8 November 2018 and is operating effectively.

Section 50: Consumer Advocacy and Advice

Steps taken towards implementation:

45. Section 50 of the Act transfers responsibility for consumer advocacy and advice in relation to general consumer matters, electricity, gas and postal services to the Scottish Parliament.

46. Section 50 of the Act came into force two months after Royal Assent on 23 May 2016.

47. The Scottish Government introduced the Consumer Scotland Bill on 5 June 2019 to establish "Consumer Scotland" and provide for its functions as a consumer advice and advocacy body. This follows the devolution of consumer advocacy and advice powers under the Scotland Act 2016 and the Scottish National Party's manifesto commitment to set up a body to undertake this role. Consumer Scotland is expected to become operational from April 2021 and BEIS is continuing to work with Scottish Government officials to clarify how the new body will operate and use its powers within the wider UK consumer landscape.

Section 58 – 60: Fuel Poverty and ECO schemes

Steps taken towards implementation:

48. Section 58 of the Act transfers certain powers to Scottish Ministers in relation to support schemes applying to gas and electricity suppliers for the purpose of reducing fuel poverty in Scotland. Sections 59-60 transfers certain powers to Scottish Ministers in relation to obligations (currently the Energy Company Obligation, (ECO)) imposed by the Secretary of State for BEIS on licensed gas and electricity suppliers to promote reductions in carbon emissions or home-heating costs in Scotland.

49. Commencement regulations (the seventh commencement regulations) were made on 28 November 2017 and Sections 58-60 came into force at difference dates for different purposes and will come fully into force at the expiry of the respective current legislation for the fuel poverty support scheme (the Warm Home Discount) and for ECO.

CHAPTER 8

EFFECT OF NEW POWERS ON THE SCOTTISH BLOCK GRANT

The UK and Scottish Governments agreed a fiscal framework for the Scottish Government in February 2016 to underpin the funding arrangements for their new tax and welfare powers.

This sets out how the Scottish Government's block grant should be adjusted to reflect these powers – with the necessary deductions for new revenue raising powers, and additions for new spending powers. The framework sets out the agreed approach for block grant baseline adjustments and on-going indexation mechanisms for all taxes, court revenues, and welfare payments being devolved or assigned in Scotland.

These arrangements are being implemented alongside the Scotland Act 2016 powers. The UK Government committed to publishing an annual breakdown of all the changes to the devolved administrations' block grant funding at the Autumn Budget 2017.

Steps taken towards implementation since previous report

50. The UK Government updated the Scottish Government's block grant adjustments following Budget 2020, to reflect the devolution of tax and welfare powers.

51. The Scottish Government set its 2020-21 Budget in February 2020 using provisional block grant adjustments agreed with the UK Government in December 2019, which were largely based on the OBR's Spring 2019 forecasts. This is in line with the arrangements agreed in the fiscal framework in the absence of updated UK Government forecasts three months prior to the end of the financial year.

52. The Scottish Government can decide whether to use the updated block grant adjustments from Budget 2020 or continue using provisional calculations. In either scenario, this will ultimately be reconciled to outturn.

53. The resulting funding will be set out in HM Treasury's Block Grant Transparency publication, the most recent of which was published in December 2018. The next edition is due to be published later in Spring 2020.

Revenue raising powers

54. As agreed in the fiscal framework, the adjustments consist of a baseline tax deduction (based on Scottish outturn in the year prior to devolution); and indexation for future years, based on changes in corresponding UK Government revenues. The block grant adjustment is applied using the Indexed Per Capita Model.

55. The Scottish Government dispute the applied block grant adjustment for Proceeds of Crime. This has been fixed since Autumn Statement 2016 and applied in line with paragraph 100 of the fiscal framework.

56. In April 2020, the methodology for the Scottish Government's Income Tax block grant adjustment was updated to reflect the introduction of the Welsh Rates of Income Tax. As agreed via JEC(Official), 2019-20 was used to determine the baseline position in Wales in order to remove these revenues from the calculation of the Scottish Government's block grant adjustment.

57. Block grant adjustments for Air Passenger Duty and Aggregates Levy will be applied once these powers are commenced.

58. In October 2019, HM Treasury agreed to extend the VAT assignment transitional period by 12 months, with assignment now commencing in April 2021. As part of the preparations, the OBR published a forecast of Scottish VAT in March 2020 and in Autumn 2020 an updated forecast will be used to assign these revenues to the Scottish Government (alongside a corresponding block grant adjustment) for 2020-21.

Welfare powers

59. Welfare block grant adjustments are applied to the Scottish Government's funding from the date executive competency is transferred from the UK Government.

60. As agreed in the fiscal framework, adjustments for Annual Managed Expenditure (AME) benefits consist of a baseline welfare addition (based on Scottish outturn in the year prior to devolution); and indexation for future years, based on changes in corresponding UK Government expenditure. The block grant adjustment is applied using the Indexed Per Capita Model. Welfare transfers to date include:
    - September 2018: Carer's Allowance
    - April 2020: Attendance Allowance. Industrial Injuries Disablement Benefit, Sever Disablement Allowance, Disability Living Allowance and Personal Independence Payments

61. Baseline funding for Departmental Expenditure Limits (DEL) benefits is transferred via a Machinery of Government change directly to the Scottish Government from DWP. The Barnett formula will be applied to changes in DWP DEL for subsequent years. Welfare transfers include:
    - December 2018: Sure Start Maternity
    - January 2020: Funeral Expense Payments and Intensive Personalised Employment Support

62. Access to the Social Fund Winter Fuel Payments and Cold Weather Payments was extended beyond March 2020 and legislation currently allows for this to remain open to those living in Scotland until March 2022. The funding adjustment will be applied once dates for the introduction of Cold Weather Payments and Winter Fuel Payments are agreed.

Other areas of spend

63. For all other areas of spend being devolved in the Scotland Act 2016, the usual machinery of government approach will be applied to calculate the baseline additions to the Scottish Government's block grant. The Barnett formula will subsequently be applied in the normal way. Baseline transfers for tribunals devolution are yet to be agreed, and will be dependent on the respective dates for transfer of executive competence.

Administration and implementation costs

64. The UK Government previously transferred £200m to the Scottish Government for implementation costs. For ongoing administration funding, the UK Government agreed to transfer £52m in 2019-20, and the agreed £66m from 2020-21 onwards, which will be indexed using the normal application of the Barnett formula.

CHAPTER 9

OTHER ACTIVITIES TOWARDS IMPLEMENTATION OF THE FISCAL FRAMEWORK

Steps taken towards implementation since previous report:

Income Tax Reconciliation

65. In July 2019, the first Income Tax outturn data was published since the devolution to the Scottish Government in 2017-18. Alongside the publication of Scottish Government income tax outturn, the corresponding UK Government data was used to calculate an outturn block grant adjustment. As a result, the UK Government will apply a –£204m adjustment to the Scottish Government's funding in 2020-21 (a £941m reduction in income tax revenues and a £737m increase in the block grant).

Spillover effects

66. UK and Scottish Government officials previously agreed a process for direct effects and are working together to agree further detail on a process for both Governments to account for behavioural spillover effects, which will also be finalised via JEC.

67. The Scottish Government have raised a spillover claim relating to the Income tax Personal Allowance (PA). The Chief Secretary to the Treasury wrote to the Cabinet Secretary for the Economy, Finance, and Fair Work in July 2019, setting out the UK Government's view. In March 2020, the UK and Scottish Government officials shared updated analysis and continue to discuss this matter.

Scottish Fiscal Commission

68. The Scottish Fiscal Commission (SFC) produced its third Scottish economic forecast for the Scottish Government's budget in February 2020, alongside forecasts for Scottish Government tax receipts and welfare spending.

PART 2: SCOTLAND ACT 2012

CHAPTER 1

INTRODUCTION

Scope and Content of this Report

69. This report covers Part 3 of the Scotland Act 2012. It is the eighth published since the Act received Royal Assent on 1 May 2012.

70. Part 3 of the Scotland Act 2012 deals exclusively with the devolution of financial powers. These include:
    - the creation of a new Scottish rate of Income Tax;
    - the disapplication of UK Stamp Duty Land Tax in Scotland and provision for the introduction of a new Scottish tax on land transactions;
    - the disapplication of UK Landfill Tax in Scotland and provision for the introduction of a new Scottish tax on disposals to landfill;
    - provision for borrowing by Scottish Ministers; and
    - the power to create new devolved taxes.

71. The financial provisions implemented over a number of years, in line with the timetable set out in the Command Paper which accompanied the publication of the Scotland Bill in November 2010, to ensure that appropriate transitional arrangements are put in place. In order that both the UK and Scottish Parliaments are fully informed through this process, section 33 of the Scotland Act 2012 places separate requirements on the Secretary of State for Scotland and Scottish Ministers to report annually on the implementation of this part of the Act.

72. Both Parliaments are therefore sighted on the views of both administrations: the Secretary of State for Scotland is required to report to the UK Parliament and provide a copy to Scottish Ministers who are required to lay it before the Scottish Parliament; and Scottish Ministers are required to report to the Scottish Parliament and provide a copy to the Secretary of State, who is required to lay it before both UK Houses of Parliament. In accordance with section 33(4) of the Scotland Act

2012, both Governments are required to report until April 2020, or the first anniversary of the day on which the last provisions of Part 3 come into force, if that is after April 2020.

73. Section 33(5) of the Scotland Act 2012 requires the annual report to contain:
    - *a statement of the steps which have been taken, whether by the maker of the report or by others, since the making of the previous report (or, in the case of the first report, since the passing of this Act) towards the commencement of the provisions of this Part;*
    - *a statement of the steps which the maker of the report proposes should be taken, whether by the maker of the report or by others, towards the commencement of the provisions of this Part;*
    - *an assessment of the operation of the provisions of this Part which have been commenced;*
    - *an assessment of the operation of any other powers to devolve taxes to the Scottish Parliament or to change the powers of the Scottish Ministers to borrow money, and of any other changes affecting the provisions inserted or amended by this Part;*
    - *the effect of this Part on the amount of any payments made by the Secretary of State under section 64(2) of the 1998 Act (payments into the Scottish Consolidated Fund); and*
    - *any other matters concerning the sources of revenue for the Scottish Administration (within the meaning of section 126(6) of the 1998 Act) which the maker of the report considers should be brought to the attention of the Parliament of the United Kingdom or the Scottish Parliament.*

74. Annex A provides a detailed list of the paragraphs in the report which address each of these requirements. However, the report is not limited to these requirements, and can also contain any other matters that each Government believes to be relevant or useful to both Parliaments.

CHAPTER 2

SCOTTISH RATE OF INCOME TAX

For the 2016-17 tax year, the main UK rates of Income Tax were reduced by 10 pence in the pound for those identified as Scottish taxpayers. The Scottish Parliament set, in its annual budget, the Scottish Rate of Income Tax to be added to the reduced UK rates. The Scottish block grant was adjusted to reflect this change in funding steams. Scottish Rate of Income Tax was superseded, for 2017-18 and subsequent tax years, by the further Scottish income tax powers devolved by the Scotland Act 2016.

Steps taken towards implementation since previous report

75. As the Scottish rate of income tax was superseded, for the 2017-18 and subsequent tax years, by the further Scottish income tax powers devolved by the Scotland Act 2016, costs and all other income tax updates are covered in Part I, Chapter 3 of this report.

CHAPTER 3

BORROWING POWERS OF SCOTTISH MINISTERS

The provisions in the Scotland Act 2012 have enabled Scottish Ministers to borrow for three purposes from April 2015:

- *to deal with deviations between forecast and actual revenues, in addition to operating a cash reserve, Scottish Ministers can borrow up to £200m each year within a statutory limit of £500m. Loans will be for a maximum of 4 years;*
- *to deal with temporary in-year shortfalls between receipts and expenditure, Scottish Ministers can borrow to provide the Scottish Consolidated Fund with an appropriate cash working balance. Note that a similar facility existed under the Scotland Act 1998; and*
- *for capital investment, Scottish Ministers can borrow up to an additional 10% of the Scottish Government's capital DEL budget each year within a statutory limit of £2.2bn. Loans will be usually for a maximum of ten years but with the option of a longer period in line with the expected life of the asset.*

Steps taken towards implementation since previous report

76. The borrowing powers legislated in Scotland Act 2012 have been in operation since April 2015. As set out in Part 1, Chapter 5, the Scotland Act 2016 provided additional borrowing powers which came into effect in April 2017.

77. The closing balance on the Scotland Reserve at the end of each financial year was [8].

£m (1dp)	Resource	Capital	Financial Transactions - Capital	Total
2015-16	74.2	0.0	0.0	74.2
2016-17	184.4	35.3	51.8	271.5
2017-18	440.1	86.4	11.4	538.0
2018-19	190.1	64.4	11.4	266.0
2019-20	132.2	5.3	38.7	176.1

[8] The amount held in the reserve in 2019-20 as at Supplementary Estimates for 2019.

CHAPTER 4

POWERS TO DEVOLVE FURTHER EXISTING TAXES AND CREATE NEW DEVOLVED TAXES

With the agreement of both Governments, further existing taxes can now be devolved and the Scottish Parliament is able to introduce new Scotland-specific taxes. These powers support the on-going evolution of devolved responsibilities, and provide the Scottish Parliament with a new means of achieving policy outcomes, as well as potentially raising additional revenues.

Steps taken towards implementation since previous report

78. This power came into force under section 25 on the same date as the Scotland Act 2012, 1 May 2012. Neither the Scottish Government nor the UK Government has put forward proposals to create new devolved taxes under this power this financial year.

CHAPTER 5

EFFECT OF NEW POWERS ON THE SCOTTISH BLOCK GRANT

Since devolution in 1999, the Scottish Parliament has had almost complete flexibility over how it spends its income, the bulk of which has been provided in a block grant determined by the Barnett formula. As set out in the Command Paper published alongside the Scotland Bill in 2011, a fundamental principle of tax devolution is that an element of the block grant is exchanged for the ability to levy taxes. In 2016 the UK and Scottish Governments, through the Joint Exchequer Committee, agreed updated block grant funding arrangements (though to 2021-22) as part of the Scottish Government's new fiscal framework.

Steps taken towards implementation since previous report

79. The UK Government set the block grant adjustments at Budget 2020, to reflect the devolution of Landfill Tax and Stamp Duty Land Tax. The resulting funding will be set out in HM Treasury's Block Grant Transparency publication, the most recent of which was published in December 2018.

CHAPTER 6

OTHER REPORTING REQUIREMENTS

80. Section 33 of the Scotland Act 2012 requires annual reports on Part 3 of the Act to include:

- an assessment of the operation of the provisions of Part 3 which have been commenced;
- an assessment of the operation of any other powers to devolve taxes to the Scottish Parliament or to change the powers of the Scottish Ministers to borrow money, and of any other changes affecting the provisions inserted or amended by this Part; and
- any other matters concerning the sources of revenue for the Scottish Administration (within the meaning of section 126(6) of the 1998 Act) which the maker of the report considers should be brought to the attention of the Parliament of the United Kingdom or the Scottish Parliament.

81. This report is the eighth following the passage of the Act in May 2012. It should be noted that, in accordance with section 44(2)(b) of the Act, all provisions of Part 3 came into force two months after the passing of the Act itself, with the exception of section 25(7) (and Schedule 2) - Scottish rate of Income Tax: consequential amendments - and section 32 - borrowing by Scottish Ministers. Section 32 came into force on 12 December 2014.

82. Since 1 April 2015, Stamp Duty Land Tax and Landfill Tax have been replaced in Scotland by Land and Buildings Transaction Tax and the Scottish Landfill Tax respectively, which are both administered by Revenue Scotland. HMRC and Revenue Scotland continued to collaborate and explore opportunities for sharing data between the tax authorities to aid compliance activity across the UK.

83. The Scottish Budget sets the rates for Land and Buildings Transaction Tax and Scottish Landfill Tax.

84. The Scotland Act 2016, which enacts the cross-party Smith Commission Agreement, devolves responsibility to the Scottish Parliament for the setting of income tax rates and thresholds for earned income. This includes the ability to introduce new bands. The Act also devolves Air Passenger Duty and Aggregates Levy, and provides that a proportion of the VAT that is attributable to Scotland may be assigned to the Scottish Government's budget. The Act provides that the first ten percentage points of the standard rate of VAT and the first 2.5 percentage points of the reduced rate of VAT will be assigned to the Scottish Government's budget. Information outlining progress made to implement the Scotland Act 2016 over the last year is in Part 1 of this report.

CONCLUSION

85. Section 33 of the Scotland Act 2012 stipulates that the Annual Report on the implementation and operation of Part 3 of that Act should be laid on or before the anniversary of the date on which Royal Assent was received, which is 1 May. This year’s report was laid before Parliament in April 2020.

86. The past year has seen significant progress on the Scotland Act 2016, with all sections of the Act which increase the powers of the Scottish Parliament now in force.

87. In accordance with section 33(4) of the Scotland Act 2012, both Governments are required to report until April 2020, or the first anniversary of the day on which the last provisions of Part 3 come into force, if that is after April 2020.

88. The next Annual Report will be published before 1 May 2021.

Annex A – Reporting requirements in the Scotland Act 2012 and where they are addressed in this report

1. *A statement of the steps which have been taken, whether by the maker of the report or by others, since the making of the previous report (or, in the case of the first report, since the passing of this Act) towards the commencement of the provisions of this Part,*

    Part 2, Chapter 2: Paragraph 75

    Part 2, Chapter 3: Paragraphs 76-77

    Part 2, Chapter 4: Paragraph 78

    Part 2, Chapter 5: Paragraphs 79

2. *A statement of the steps which the maker of the report proposes should be taken, whether by the maker of the report or by others, towards the commencement of the provisions of this Part,*

    Part 2, Chapter 2: Paragraph 75

3. *An assessment of the operation of the provisions of this Part which have been commenced,*

    Part 2, Chapter 6

4. *An assessment of the operation of any other powers to devolve taxes to the Scottish Parliament or to change the powers of the Scottish Ministers to borrow money, and of any other changes affecting the provisions inserted or amended by this Part,*

    Part 1, and Part 2, Chapter 6

5. *The effect of this Part on the amount of any payments made by the Secretary of State under section 64(2) of the 1998 Act (payments into the Scottish Consolidated Fund),*

   Part 1, Chapter 8 and Part 2, Chapter 5

6. *Any other matters concerning the sources of revenue for the Scottish Administration (within the meaning of section 126(6) of the 1998 Act) which the maker of the report considers should be brought to the attention of the Parliament of the United Kingdom or the Scottish Parliament.*

   Part 1, and Part 2, Chapter 6

Annex B – Reporting requirements in the Fiscal Framework and where they are addressed in this report

1. *Action taken towards commencement of the provisions*

    Part 1, Chapter 2

    Part 1, Chapter 3

    Part 1, Chapter 4

    Part 1, Chapter 5

    Part 1, Chapter 6

    Part 1, Chapter 7

2. *An assessment of the operation of provisions which have been commenced*

    Part 1, Chapter 2

    Part 1, Chapter 3

    Part 1, Chapter 4

    Part 1, Chapter 5

    Part 1, Chapter 6

    Part 1, Chapter 7

3. *An assessment of the operation of any other powers to devolve taxes or to change the powers of Scottish Ministers to borrow and any other changes affecting the finance provisions inserted or amended by the Act*

    Part 1, Chapter 3

    Part 1, Chapter 4

    Part 1, Chapter 5

4. *The effect on payments into Scottish Consolidated Fund*

   Part 1, Chapter 8

5. Any other matters concerning sources of revenue for the Scottish Administration which should be brought to the attention of both Parliaments

   Part 1

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978-1-5286-1834-2