FIFTH ANNUAL REPORT ON THE IMPLEMENTATION OF THE SCOTLAND ACT 2016

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

Fifth 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

March 2021

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FOREWORD

This report marks five years since the Scotland Act 2016 received Royal Assent. Despite major disruption in 2020 from Covid-19, progress has continued, albeit at a slower pace, implementing the powers devolved under the Scotland Act 2016 to the Scottish Parliament and Government. It also marks the final Scotland Act 2012 report fulfilling our commitment to report on Part 3 of the 2012 Act, 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, whilst also honouring our commitment to deliver further powers to the Scottish Parliament through the Smith Commission Agreement. The Scotland Act 2016 has been recognised as delivering the recommendations of the Smith Agreement in full.

Since 8 February 2019 the Scottish Parliament can legislate in every area where the Scotland Act 2016 has given it power to do so. This extensive list of powers includes the power to set rates and bands of income tax, 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 the management of the Crown Estate. The powers devolved under the Scotland Act 2012 and 2016 make the Scottish Parliament one of the most powerful devolved legislatures in the world.

Strengthening the Union is a key priority for the UK Government and we continue to work collaboratively with the Scottish Government to support the implementation of their responsibilities. Covid-19 has meant the Scottish Government have been unable to deliver some of the benefits they intended to deliver before Scottish Parliamentary elections. This has impacted on the amount of progress we have seen since the last report. However, progress has still been made, with Scottish Ministers launching Scottish Child Payment and Young Carer Grant and Child Winter Heating Assistance. The Department for Work and Pensions continues to deliver devolved benefits in Scotland on an interim basis through Agency Arrangements while Social Security Scotland builds its capacity to take over delivery responsibility.

There is still much to deliver in order to unlock the full potential of the Scotland Act 2016. The UK Government continues to be committed to working closely with the Scottish Government in realising all of the benefits of the devolution settlement.

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 fifth 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. The report also provides an update on:
    - implementing policing of railways in Scotland;
    - licensing of onshore petroleum;
    - tribunals;
    - consumer advocacy and advice

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, consistent with the principles contained in the Smith Commission Agreement and including a number of elements which will be covered by this report, including:
    a. block grant adjustments for taxation and welfare;
    b. administration and implementation costs;
    c. spillover effects;

[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

d. borrowing; and
e. 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.

CHAPTER 2
IMPLEMENTATION PROGRESS

6. Since February 2019, all sections of the Scotland Act 2016 which increase the powers of the Scottish Parliament are now in force:

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 expenses 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 the Crown Estate Scheme on 1 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 1 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 8 February 2019 all sections of the Scotland Act 2016 are 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.

9. In 2020 the Scottish Government paused elements of their social security programme at the start of the Covid-19 pandemic, recognising the need to prioritise resources to respond. The Scottish Government identified priorities that could be delivered in 2020. They are working with the UK Government on revised plans for delivering Scottish benefits.

Governance

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

11. The Board meets biannually to monitor progress on implementation. 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 the 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

12. 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]

13. In January 2021, the Scottish Government announced its planned income tax rates and bands for 2021-22 in the Scottish Budget. The plans were considered by the Scottish Parliament, and on 25 February 2021 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 2021-22. There are no changes to the five-band structure or rates. The starter and basic rate bands, as well as the higher rate threshold, will increase by inflation. The top rate threshold will remain frozen in cash terms at £150,000.

Over £12,570[4] - £14,667	Starter Rate	19%
Over £14,667 - £25,296	Scottish Basic Rate	20%
Over £25,296 - £43,662	Intermediate Rate	21%
Over £43,662 - £150,000[5]	Higher Rate	41%

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

Over £150,000[6]	Top Rate	46%

Project governance

14. A Scottish Income Tax Board, comprising 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

15. 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 of Income Tax. From January 2019 it was agreed that further development for RAS would be split between Wales and Scotland.

Taxpayer identification

16. 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

17. 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.

18. In 2019-20 HMRC invoiced the Scottish Government for £1.45m. Of this, £0.56m was implementation costs and £0.89m was operating costs.

[6] Ibid.

19. Final figures for 2020-21 are not yet available. HMRC and the Scottish Government have agreed invoice charges of £0.5m for Q1 – Q3 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 2020-21 is £0.8m.

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 that an implementation date for VAT assignment will be established as part of the upcoming review of the fiscal framework. HMRC's Scottish Tax Devolution Programme Board will directly oversee the transition of these other tax powers.

Steps taken towards implementation since previous report

20. The Scottish Government introduced the Air Departure Tax (Scotland) Bill to the Scottish Parliament on 20 December 2016, in preparation for the switch-over from UK Air Passenger Duty, and the Air Departure Tax (Scotland) Act 2017 received Royal Assent on 25 July 2017. HMRC have worked closely with both the Scottish Government and Revenue Scotland, who will administer the new Scottish tax, to ensure administration is as simple as possible for customers and to avoid issues such as double taxation.

21. In November 2017, the Scottish and UK Governments agreed that the introduction of Air Departure Tax in Scotland would be deferred until issues raised in relation to the exemption for flights departing from the Highlands and Islands have been resolved. The Scottish Government and UK Government are working closely to deliver the powers when possible. As agreed, the UK Government will maintain the application of Air Passenger Duty in Scotland in the interim.

22. In November 2018, the UK and Scottish Governments published a joint summary of the VAT assignment model. It sets out the methodology that will be used to calculate the Scottish share of UK VAT receipts. The model is based on the internationally recognised HMRC VAT Total Theoretical Liability model (VTTL).

23. The Joint Exchequer Committee (JEC) has agreed that the Scottish Fiscal Commission will be responsible for producing the forecasts for VAT assignment. The Office for Budget

Responsibility will continue to produce VAT forecasts for the whole UK, which will be used to inform the block grant adjustments.

24. As part of the fiscal framework agreement, the Scottish and UK Governments agreed to share equally all costs incurred as a result of the implementation and administration of VAT assignment.

25. Accurate implementation of VAT Assignment relies on consumer surveys. Consumer surveys from 2020 will not be representative primarily due to the significant impact that the Covid-19 pandemic has had on VAT revenues. Both Governments remain committed to implementing what was agreed as part of the Smith Commission following the 2014 independence referendum, and the Scotland Act 2016, but they have also agreed that VAT Assignment to Scotland will no longer be implemented in 2021, as had previously been envisaged. Instead both Governments have agreed to continue work to implement VAT Assignment and establish a new implementation date as part of the review of the Scottish Government's Fiscal Framework.

26. The 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:

- *increased the Scottish Government's current borrowing limit from £500m to £1.75bn, and;*
- *increased 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

27. The Scottish Government's borrowing powers and Scotland Reserve came into effect in April 2017. As set out in their draft Budget on 28 January 2021 the Scottish Government plans to borrow £207m for resource expenditure and £300m for capital expenditure in 2020-21[7].

28. The Scottish Fiscal Commission's latest forecast confirmed that a Scotland-specific economic shock has been triggered in 2021-22. They also confirmed this is likely caused by the different timings of published forecasts, rather than a genuine disproportionate shock to the Scottish economy.

29. As a result of this Scotland-specific economic shock, and in line with the agreed fiscal framework, the UK Government will double the Scottish Government's borrowing limit from £300 million to £600 million for 2021-22 and the two subsequent financial years. This extra borrowing can be used for any forecast or observed tax shortfall or increase in welfare spending. In addition, the total annual drawdown limits for the Scotland Reserve (£250m for resource; £100m for capital) will be waived for the same three-year period.

[7] https://www.fiscalcommission.scot/wp-content/uploads/2021/01/Scotlands-Economic-and-Fiscal-Forecasts-January-2021.pdf

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

30. Under the Scotland Act 2016 social security and employment are no longer fully reserved functions to the UK Government. The Department for Work and Pensions (DWP) will close certain benefits in Scotland and the Scottish Government will replace them with new benefits, reflecting the devolved social security and employability areas. Underpinning all of this activity is the commitment to a safe and secure transition for customers using our services.

31. As outlined in last year's report, on 1 April 2020, executive competence for extra-needs disability support was transferred to the Scottish Government. At this time the Cabinet Secretary for Social Security and Older People announced that the timetable for the introduction of the new Scottish disability and carer benefits would need to be reworked given the impact of the Covid-19 pandemic. Until these benefits are introduced, and while Social Security Scotland continues to build its capacity and capability to deliver them, DWP Ministers have agreed that the department will continue delivering the existing benefits on behalf of the Scottish Government under agency agreements as they are delivered in England and Wales. This is in line with the principles agreed at the Joint Ministerial Working Group on Welfare.

32. Following the re-planning of activity, the Scottish Government has announced it now intends to introduce its replacement disability benefits under a revised timeline on a staged basis starting with Child Disability Payment in summer 2021 and Adult Disability Payment from spring 2022 which are the replacements for Disability Living Allowance for Children and Personal Independence Payment respectively. It has also restated its ambition to transfer all existing DWP disability benefit recipients resident in Scotland over to Social Security Scotland by 2025. DWP continues to work closely with the Scottish Government on all of these revised plans along with their plans to replace Winter Fuel Payments and Cold Weather Payments from Winter 2022, since the Social Fund will close to Scottish residents in March 2022 as previously requested by Scottish Ministers. During this period, HMRC has also been working closely with the Scottish Government on their revised plans to understand the data share requirements for the replacement disability benefits, and how they will interact with tax and tax credits going forward. In all of this work, early engagement

is key to ensure the UK Government can assess what support it is feasible to deliver to the Scottish Government in line with its proposed timescales in order to achieve a safe transition for customers.

33. Despite the additional and unexpected strain on its resources due to the Covid-19 pandemic, over the last 12 months the UK Government has given significant support to the Scottish Government and Social Security Scotland, to enable the introduction and delivery of a number of new Scottish benefits where these have interdependencies with DWP. This has included allowing the necessary access, through service level agreements, to DWP systems and data to support the delivery and payment of:

34. **Job Start Payment** - A Scottish Government initiative providing payment to young people aged 16-24 years old (inclusive) who have been out of paid employment for six months or more. The DWP Job Start Payment team worked collaboratively with the Scottish Government to enable it to introduce this payment on 17 August 2020.

35. **Child Winter Heating Assistance** – DWP supported the Scottish Government through relevant data sharing to enable its first payments of the Child Winter Heating Assistance in November 2020. It is payable to families with a severely disabled child below the age of 18 in receipt of the highest rate of the care component of Disability Living Allowance or Child Disability Payment. Changes were made to UK legislation to disregard Child Winter Heating Assistance from reserved income-related benefit calculations.

36. **Scottish Child Payment (for children aged up to 6)** – DWP continues to work closely with the Scottish Government to support and share relevant data and disregard these payments from reserved income-related benefit payments.

37. Alongside this, close working continues to support the feasibility and design of the proposed Scottish replacement benefits, ensuring they work with the DWP systems and benefits they will interact with.

38. The UK Government has worked closely with the Scottish Government in the development of its Child Disability Payment. Including the work to suppress invites to Personal Independence Payment for those customers who would turn 16 years old on or after 1 September 2020 in order that they can transition straight onto the relevant Scottish benefit. The UK Government has also amended UK legislation to ensure that the Scottish Government's Young Carer Grant, Winter Heating Assistance, Short Term Assistance and Disability Assistance are disregarded from income-related benefits in line with the principle of "no detriment" as set out by the Smith Commission. DWP has also agreed that the Scottish Government's Child Disability Payment will give rise to the same additional payments in reserved income-related benefits as Disability Living Allowance for children as well as the Christmas Bonus and is currently undertaking the necessary legislative changes to enable this. The UK Government will be able to make decisions on other

Scottish Government benefits on a case by case basis once there is clarity on their design, structure and legislative basis.

Section 27: Welfare Foods

Steps taken towards implementation since previous report

39. The UK Government has continued to administer the Nursery Milk Scheme (NMS) in Scotland on behalf of Scottish Ministers under an agency agreement. The Scottish Government laid The Milk and Healthy Snack Scheme (Scotland) Regulations 2021 before the Scottish Parliament on 19 February 2021. Subject to Scottish Parliamentary procedures, the regulations came into force on 21 March 2021.

40. The Department of Health and Social Care (DHSC) will continue to administer the NMS in Scotland until the Scottish Government launches its own devolved scheme on 1 August 2021. DHSC and the Scottish Government are working closely on the arrangements for registered Scottish childcare settings to move from the UK scheme to the new Scottish one.

CHAPTER 7

OTHER SECTIONS OF THE SCOTLAND ACT 2016

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:

- *The Crown Estate in Scotland*
- *Tribunals*
- *Policing of railways and the British Transport Police*
- *Onshore oil and gas licensing*
- *Consumer advocacy and advice*

Section 36: The Crown Estate in Scotland

Steps taken towards implementation since previous report

41. Section 36 (1), (5), (6) and (9) to (12) commenced on 23 March 2016, the day the Act passed. The responsibility for managing Crown Estate assets in Scotland was subsequently transferred to Scottish Ministers on 1 April 2017, via a transfer scheme[8] agreed between the two Governments.

42. Scottish and UK Government officials have been working to agree an MoU in relation to the transfer.

Section 39: Tribunals

Steps taken towards implementation since previous report

43. Section 39 of 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.

44. 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.

45. The COVID-19 pandemic has impacted on the development of this work since March 2020 and as such the dates for transfer are still to be determined. The UK Government and

[8] https://www.legislation.gov.uk/ukdsi/2017/9780111155103/contents

Scottish Government 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 since previous report

46. 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.

47. The Scottish Railways Policing Committee, a sub-committee of the British Transport Police Authority (BTPA), was established and met for the first time in October 2019. It has three members from the BTPA and two co-opted members from the Scottish Police Authority (SPA). It was created to provide assurance to the BTPA, SPA and Scottish Ministers on the delivery of railway policing in Scotland through:
    - Recommending to the BTPA the Scottish Railways Policing Plan, ensuring that there has been effective consultation with stakeholders;
    - Providing oversight of developmental plans and policies, scrutinising policing performance against agreed plans and statutory requirements;
    - Ensuring agreed improvements recommended by external inspections and reviews are implemented; and
    - Providing assurance to the BTPA, SPA and Scottish Ministers on the delivery of railway policing in Scotland.

48. The committee met four times during 2020 at which it received regular updates on the BPT's performance, briefings on rail specialisms such as safeguarding and on how investment in railway policing in Scotland provides value for money. It also oversaw development of both the Scotland railways policing plan for 2020/21, and a regular evaluation report on the Committee's activities.

Sections 47-49: Onshore petroleum

Steps taken towards implementation since previous report

49. Sections 47-49 of the Scotland Act 2016 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.

50. A Memorandum of Understanding which sets out the agreed arrangements between the Oil & Gas Authority, the Secretary of State for Business and Scottish Ministers and concerns the arrangements for the handling of reserved matters. It was drafted, agreed and signed by the Director of Energy Development and Resilience at the Department for Business, Energy and Industrial Strategy, the Director of Corporate and CFO at the Oil & Gas Authority and the Director of Energy and Climate Change at the Scottish Government on 8 November 2018.

Section 50: Consumer Advocacy and Advice

Steps taken towards implementation since previous report

51. The Consumer Scotland Act which establishes a new consumer advice and advocacy body – Consumer Scotland – was enacted on 9 June 2020. Consumer Scotland is expected to become operational from April 2022. BEIS has agreed with the Scottish Government on how the mechanism to provide levy funding for it to fulfil its role in relation to energy and post advice will operate. UK and Scottish Government officials continue to work together on how the new body will function and use its powers within the wider UK consumer landscape.

Section 58 – 60: Fuel Poverty and ECO schemes

Steps taken towards implementation since previous report

52. 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. This is called the Warm Home Discount. Sections 59-60 transfer certain powers to Scottish Ministers in relation to the Energy Company Obligation (ECO), these are obligations 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.

53. The seventh Commencement regulations were made on 28 November 2017 and Sections 58-60 came into force at different dates for the two schemes.

54. Both the Warm Home Discount and ECO will be reformed through new regulations from April 2022, which will be the next opportunity for Scottish Ministers to use their powers to implement schemes in Scotland. We will aim for UK Government Ministers to agree a Concordat ahead of Scottish Ministers using their powers for either policy to help ensure the best possible alignment of the schemes across Great Britain.

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

55. Alongside the UK Budget in March 2021, the UK Government produced updated block grant adjustments for the Scottish Government, to reflect their devolved powers in relation to tax, welfare and other revenues.

56. In line with the Fiscal Framework arrangements, the Scottish Government set its 2021-22 Budget in January 2021 using the block grant adjustments agreed in November 2020. These were largely based on the OBR's November forecasts produced alongside the Spending Review.

57. The UK Government has agreed that the Scottish Government can choose whether to use the block grant adjustments from November 2020, or to use the updated set from March 2021.

58. The Scottish Government have now confirmed they have chosen to use the block grant adjustments from November 2020. This is in line with the agreed fiscal framework and will ultimately be reconciled to outturn.

59. The UK Government published an updated Block Grant Transparency document in July 2020. This shows an annual breakdown of the changes to the devolved administrations' block grant funding each year, including block grant adjustments and the changes to the Scottish Government's block grant up to and including Main Estimates 2020. The next edition is due to be published later in 2021.

<u>Revenue raising powers</u>

60. As agreed in the fiscal framework, the adjustments consist of a baseline deduction (based on revenues collected in Scotland in the year prior to devolution); and then a subsequent indexation for future years, based on changes in corresponding UK Government revenues. The adjustments applied to the Scottish Government's block grant will reflect the results of the Indexed Per Capita Model for a transitional period. The upcoming review of the fiscal framework will determine what method for calculating block grant adjustments will be used beyond this transitional period.

61. In line with paragraph 100 of the fiscal framework, the block grant adjustment for Proceeds of Crime has not been updated following Autumn Statement 2016.

62. In September 2018, the UK and Scottish Governments agreed via the JEC (Officials), that the indexation for calculating the Scottish Government's Income tax block grant adjustment will be revised to reflect the devolution of the Welsh Rates of Income Tax in 2019-20. The Welsh Government agreed to maintain the same income tax rates during the first year of devolution in 2019-20 to determine the baseline position in Wales, which means the indexation method for the Scottish Government's block grant adjustment in 2020-21 can be altered.

63. The block grant adjustments for Air Passenger Duty and Aggregates Levy will be dependent on the devolution dates agreed for each tax, and are currently not calculated or applied to the Scottish block grant.

Welfare Powers

64. in September 2018, Carer's Allowance was the first welfare power to be devolved to the Scottish Government. In April 2020, a much broader set of welfare powers were devolved to the Scottish Government - including Attendance Allowance. Industrial Injuries Disablement Benefit, Severe Disablement Allowance, Disability Living Allowance and Personal Independence Payments.

65. The block grant adjustments for these 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 adjustments for welfare are also applied using the Indexed Per Capita Model.

Other areas of spend

66. 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.

Administration and implementation costs

67. As agreed in the fiscal framework, the UK Government will make a one-off non-baselined transfer of £200m to the Scottish Government to cover their implementation costs, and a baseline transfer of £66m to cover their ongoing administration costs as they take on new powers.

68. The UK Government has now transferred the full £200m for implementation funding. For ongoing administration funding, alongside agreeing the timetable for the transfer of powers, the UK Government has transferred £37m in 2018-19, £59m in 2019-20, and the full £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

<u>Spillover effects</u>

69. The fiscal framework sets out agreement on the treatment of financial spillover effects from either Governments' policy decisions, for both direct and behavioural effects.

70. The fiscal framework states that all direct effects should be accounted for. The UK and Scottish Governments have agreed via JEC the following principles in relation to direct effects for tax and welfare:
    - A direct effect is defined as an automatic change in one Government's expenditure or revenue as a result of a change in another Government's policy.
    - Direct effects exclude any effects that do not occur as a result of the mechanics of a policy decision and any associated behavioural changes.
    - Any automatic change is considered a direct effect and will need to be accounted for. For welfare, an automatic change to the number of eligible claimants as a result of a policy decision would be considered a direct effect.
    - In some cases, there may also be behavioural changes that occur alongside automatic changes (for instance, more people might be incentivised to claim a benefit following a policy change). In such cases, UK and Scottish Government analysts should seek to separate the direct effect from any behavioural assumptions, as far as possible, when calculating the effect. Any consideration of behavioural effects will be subject to the criteria set out in the fiscal framework and spillovers process for behavioural effects, which remains to be agreed.

71. The UK and Scottish Governments have also agreed via JEC a process to account for direct spillover effects for tax and welfare. This will allow either Government to raise any direct effects on their receipts or expenditure from the other Government's tax and welfare policy decisions; and provides a joint forum for these to be calculated and agreed between both Governments, before subsequent transfers can be agreed via JEC.

72. Both Governments have agreed that the above process for direct tax and welfare spillover effects will be without prejudice to how issues may need to be accounted for in other policy areas under the 'no detriment' principle.

73. UK and Scottish Government officials continue to work together to agree further detail on a process for both Governments to account for behavioral spillover effects.

Review of the fiscal framework

74. The fiscal framework document sets out the arrangements and timing for a review of the Scottish Government's fiscal framework. This will take place after a full parliament's worth of experience. A jointly-commissioned independent report on the block grant adjustments will report to both Governments by the end of 2021. This will inform a subsequent review of the fiscal framework.

PART 2: SCOTLAND ACT 2012

1. This report on the Scotland Act 2012 is the ninth published since the Act received Royal Assent on 1 May 2012.

2. 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.

3. 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. This is the UK Government's final annual report on the implementation of Part 3 as, for all current intents and purposes, no further provisions of Part 3 will be coming into force.

4. Part 3 of the Scotland Act 2012 has been brought into force to the extent that it is required. It is only consequential amendments in Schedule 2 relating to the Scottish rate of income tax that are not in force.

5. Powers were originally included in Schedule 2 paragraph (1) (2) (a) to (d) to amend section 110 of the Scotland Act 1998. Section 110 contains two order making powers that would enable the Secretary of State for Social Security to treat individuals as if they were Scottish taxpayers (for the purposes of the Scottish variable rate), for social security purposes.

6. These powers were to ensure that, in the event that a customer's tax status was not known at the point of a claim to a Social Security benefit or an application for a child maintenance calculation, DWP could deem both status and rate to prevent a delay. The Schedule 2 Paragraph 2(1) amendments were included as a precaution to allow for the section 110 power to be used for the new Scottish Rate, if needed.

7. These consequential amendments have not been required as tax resolutions passed by the Scottish Parliament to date, and notification of those resolutions, has meant that the UK Government has not had to bring these powers into force. The rest of Schedule 2 relates to parts of the Scotland Act 1998 that have been omitted or would be repealed on commencement.

8. If there are any further changes to the implementation of Part 3 of the Scotland Act 2012 the Secretary of State for Scotland will update Parliament accordingly.

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