

Final Business and Regulatory Impact Assessment: Creating a Scottish Discretionary Housing Payment scheme

Purpose and Intended Effect

Background

Responsibility for the Discretionary Housing Payment (DHP) scheme was devolved in 2017 and provisions reframing the scheme for a Scottish context were included in the Social Security (Scotland) Act 2018 (the “2018 Act”). These provisions are as yet uncommenced.

At present the DHP scheme in Scotland continues to be regulated by the Discretionary Financial Assistance Regulations 2001 (the “DFA Regs”).

Objective

Scottish Ministers wish to:

1. Commence the DHP sections of the 2018 Act, thereby allowing Ministers to issue Scottish statutory guidance.
2. Revoke the DFA Regs insofar as they apply to Scotland.
3. Issue Scottish statutory DHP guidance setting out how the scheme should be administered in Scotland and removing the need for Scottish local authorities to consult the DWP-issued guidance for England and Wales.

Rationale for Government intervention

The devolution of the DHP scheme was intended to give Scottish Ministers control of the scheme in Scotland. The proposed actions will not greatly alter the purpose of the extant scheme, which is to assist households who require further financial assistance in order to meet housing costs, but will enable ministers to use the scheme in a way that more effectively reduces poverty, safeguards tenancies and prevents homelessness in Scotland.

At present, Scottish local authorities need to have regard to the UK DFA Regs. A move to the 2018 Act will allow some of the flexibilities that the reframing of the scheme for Scotland was intended to create. Of particular note are flexibilities to reduce local authority administrative burden for the mitigations ministers wish to see delivered in full (at this time, bedroom tax and benefit cap), by giving local authorities more discretion over application processing. The 2018 Act also gives flexibilities around the definition of housing costs. Specifically, these flexibilities can be used to give local authorities additional discretion to make larger payments in certain benefit cap cases, thereby more closely meeting ministers’ wishes to mitigate the benefit cap in full.

At present local authorities consult DWP-issued guidance as well as separate policy notes from the Scottish Government. Bringing DHPs under the full control of Scottish Ministers will allow them to issue a Scottish statutory DHP guidance manual, bringing together, in one place, all policy instruction from the Scottish Government.

This guidance can be more specific about how the DHP scheme is used in Scotland and be worded to reduce ambiguity where the scheme's intentions differ from that in the rest of the UK. For example, in Scotland the DHP scheme is used to fully mitigate some UK Government welfare reforms to better support low-income households.

The policy will contribute to three of Scotland's National Outcomes: Children and Young People, Communities and Poverty.

The Children and Young People National Outcome states that children's life chances should be enhanced through early year's provision and by supporting families when they need it. Thousands of families are supported through the DHP scheme, but mitigating the benefit cap is particularly well targeted at children and child poverty; 99% of households affected by the cap are families, and 74% are lone-parent families, one of the priority family types. Mitigating the benefit cap more fully will help contribute to a life free of poverty and hunger, which is part of the National Outcomes vision.

The vision of the Communities National Outcome is that our communities are pleasant places to live where everyone has a warm, appropriate, efficient and affordable home, and that we are careful to ensure no-one lives in poverty. By better supporting the lowest-income families through DHPs, we are ensuring that people can afford their housing costs and maintain their tenancies.

The Poverty National Outcome states that we tackle poverty by sharing wealth more equally, with a commitment to eradicating poverty and hunger in Scotland. DHPs directly help reduce poverty and poverty-related homelessness. Giving Ministers more flexibilities in how they deliver DHPs to the lowest income families will contribute further to this.

Consultation

Within Government

In developing the BRIA, we have consulted with colleagues across a wide range of portfolios, including:

- Child Poverty
- Violence Against Women and Girls
- Homelessness
- Social Security
- Analysts
- Economists

Many of these have made direct contributions to the wording of the guidance document during its development.

Local government

The DHP guidance document has been actively developed in partnership with COSLA. COSLA has convened a group of social-security advisers (drawn from local

authorities) with knowledge of the DHP scheme to provide detailed advice and feedback on the operation of the scheme, and on the impacts of changing the legislative basis of the scheme.

A formal consultation with COSLA has been conducted where 101 comments were received. Our responses to the comments have been discussed with COSLA and the guidance document updated in light of them.

Public Consultation

The 2018 Act only obliges Scottish Ministers to consult with the representative body for local authorities (COSLA), as it is local authorities that will be most affected by the change to the legislative basis of the DHP scheme. During the consultation exercise COSLA also polled other professional organisations, such as the Institute of Revenues Rating and Valuation for input.

Business

The change to the legislative basis for the DHP scheme in Scotland doesn't affect business. The guidance document details how local authorities should operate the scheme, assess claims from individuals, and make payments. Therefore the document is for the use of local authority officers. However, where 3rd sector partners with expertise have been identified, they have been consulted. For example, the Child Poverty Action Group Scotland has provided some information from their social security early warning system on cases where guidance could be made clearer. Private businesses have not been consulted directly as it is not expected that the policy will have an impact on their interests.

Options

Option 1 - Do nothing

Option 2 – Revoke the DFA Regs insofar as they apply to Scotland, commence the DHP sections of the 2018 Act, thereby bringing the DHP scheme fully under Scottish Ministers' control.

Sectors and Groups Affected

- Households in receipt of housing benefit or universal credit housing element
- Lone parents and larger families
- Local authorities
- The Scottish Government

Option 1, positives:

- There is already DHP guidance for England and Wales in place that Scottish LAs can consult.
- LAs won't need to do any retraining or change any processes, and doing nothing would take away any risks involved in bringing in change.
- Households in Scotland would continue to receive the same level of DHP payments.

Option 1, negatives:

- Doing nothing would go against LA calls for Scotland-specific DHP guidance.
- The DWP would retain control of the guidance and could change it in a manner contrary to ministers' wishes, possibly causing administrative difficulties.
- LAs would not benefit from the administrative flexibilities available under the 2018 Act.
- In benefit cap cases, under the existing DFA Regs, LAs would not be able to provide as much support as they otherwise would be able to.

Option 2, positives:

- Give Scottish Ministers the power to issue Scottish DHP guidance as necessary, and remove the need to consult DWP-issued guidance.
- This would allow the Scottish Government to set the tone and the purposes of the DHP scheme in Scotland.
- Give local authorities further discretion and flexibilities to reduce administration costs of the scheme.
- Allow local authorities to more fully mitigate the benefit cap in some cases.

Option 2, negatives:

- Local authorities may have to provide training to officers and change text on websites, letters and other communications materials.
- The saving provisions intended to allow a smooth transition between the two legal bases for the scheme may not cover all cases, possibly causing some applicants to have to resubmit their application.
- There is the possibility of unanticipated emergent risks that come with change.
- There is reputational risk if the changes do not have the desired effect.

Regulatory and EU Alignment Impacts

None.

Intra-UK Trade

This measure is very unlikely to impact on intra-UK trade

International Trade

This measure is very unlikely to impact on international trade and investment.

EU Alignment

This measure is very unlikely to impact on the Scottish government's policy to maintain alignment with the EU.

Scottish Firms Impact Test

No impact is anticipated on small firms or international trade and investment.

Competition Assessment

This measure is very unlikely to directly or indirectly limit the number or range of suppliers.

This measure is very unlikely to limit the ability of suppliers to compete.

This measure is very unlikely to limit suppliers' incentives to compete vigorously.

This measure is very unlikely to limit the choices and information available to consumers.

Consumer Assessment

The policy is intended to allow Scottish Ministers to better meet their aims of reducing poverty, sustaining tenancies, and preventing homelessness. This is mainly done through mitigating UK Government welfare reforms.

Does the policy affect the quality, availability or price of any goods or services in a market? No

Does the policy affect the essential services market, such as energy or water? No

Does the policy involve storage or increased use of consumer data? No

Does the policy increase opportunities for unscrupulous suppliers to target consumers? No

Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these? No

Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues? No

Test Run of Business Forms

No new business forms are expected to be introduced as a result of the proposal.

Digital Impact Test

This instrument will not have an impact on advances in digital technology or its future delivery.

Legal Aid Impact Test

This instrument will not have an impact on the legal aid fund.

Enforcement, Sanctions and Monitoring

Local authorities already deliver DHPs and will continue to do so. The majority of the way the DHP scheme currently operates will remain the same. Some of the benefit of moving to a Scottish DHP scheme will be the administrative efficiencies LAs will gain. It will be at discretion of LAs how they use those efficiencies.

The DHP scheme remains legally discretionary, so there will be no sanctions for non-compliance. However, tackling poverty and child poverty in particular are shared aims in the Verity House Agreement. Therefore, it is expected LAs will wish to contribute to these shared aims through the DHP scheme by distributing DHP funding to households as best they can, helping relieve greatest amount of poverty as possible.

Statisticians collect monthly and bi-annual spending data from LAs which allow us to see how much of their allocation LAs are spending. This in turn allows an assessment of how effectively the burden of various UK Government welfare reforms are being mitigated through the scheme. The details provided by LAs also tell us how many applications have been made for DHPs and how many awards have been granted.

We are in discussions with LAs to see if there are any ways in which we can get more precise data from them which would tell us more about the individuals being helped by DHPs.

This is something the Scottish Government will continue to monitor. Regular DHP practitioner group meetings have been implemented where LAs can report any issues they are finding with funding, the processing of applications or administration of the scheme.

Implementation and Delivery Plan

SSIs laying date: 22nd February 2024

Commencement regulations come in to force: 1st April 2024

Revocation Regulations come in to force: 1st April 2024

Scottish statutory guidance will be published in the week before the revocation regulations come in to force.

Post-implementation Review

There is no set date at the moment but we commit to review within 10 years.

Summary and Recommendation

Option 2 is recommended as this will bring the DHP scheme under Scottish Ministers' control and will improve the process for both LAs and recipients.

Summary costs and benefits table

	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	The DHP scheme would continue as-is, and would continue to have the same high level of success.	This would be cost neutral as it is maintaining the status quo, but would miss opportunities. Local authorities would not have additional flexibilities around applications and their processing, possibly keeping costs higher than they need to be. Households affected by the benefit cap would not be able to receive the larger payments possible under the Scottish scheme and poverty would not be reduced by as much. Scottish local authorities would continue to use the DWP-issued guidance.
2	The benefit of option 2 is reduced levels of poverty (including child poverty), reduced homelessness and trauma, improved security of tenure, better health, better life outcomes and better educational attainment. This option would also allow local authorities to take advantage of flexibilities in the processing of applications, potentially reducing their administrative burden.	At present, for the UK Government welfare changes that Scottish Ministers wish to see mitigated in full, the Scottish Fiscal Commission develop annual cost forecasts. This money is made available to local authorities each year. If the coverage of the scheme is improved then underspend at the end of the year is likely to be lower. However, this will mean that either more eligible individuals will have received support payments, or larger payments have been made.

Declaration and Publication

Sign-off for Final BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Shirley-Anne Somerville

Date: 20th February 2024

Minister's name: Ms Shirley-Anne Somerville

Minister's title: Cabinet Secretary for Social Justice

**Scottish Government Contact point: Andrew Weild, Homelessness Unit,
Directorate for Local Government and Housing**