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Convener
Social Justice and Social Security Committee

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18 August 2023

Dear Convener,

Independent Review into the Scottish Commission on Social Security (SCoSS)

I am writing to provide the Social Justice and Social Security Committee with a copy of the Independent Review (the 'Review') into the Scottish Commission on Social Security ('SCoSS') and the Scottish Government's response.

As part of the Scottish Government's commitment to continuous improvement, we asked Glen Shuraig Consulting to undertake a review into SCoSS governance arrangements to date and identify changes required to ensure it remains sustainable and resilient into the future. I am grateful to the external stakeholders and Committee Members for their contribution as part of the research interviews undertaken. These contributions have informed a robust report and comprehensive set of recommendations.

The Social Security (Scotland) Act 2018 set out the legislative basis for SCoSS, an independent body with the purpose of providing scrutiny of the Scottish social security system. The Review highlighted that SCoSS works effectively in scrutinising social security regulations and also reported on opportunities for organisational development.

The Review was asked to comment upon and make recommendations to the Scottish Government on current arrangements, prospective future requirements and changes required in relation to SCoSS's: role and remit, resourcing, operational and sponsorship arrangements, and broader governance.

The Scottish Government accepts the Review recommendations and will take them forward in partnership with SCoSS. You will see from the recent news release that interim appointments to the SCoSS Board have been put in place to support resourcing while we take forward improvements¹.

¹[Public appointment: Co-Chairs and Member appointed to Scottish Commission on Social Security Board - gov.scot \(www.gov.scot\)](https://www.gov.scot/news/public-appointment-co-chairs-and-member-appointed-to-scottish-commission-on-social-security-board/)

The Scottish Government is committed to ensuring that we have a strong independent body in place that can continue to scrutinise Scotland's social security system into the future. I will ensure that the Committee is kept updated on our progress.

Yours sincerely,

SHIRLEY-ANNE SOMERVILLE

Scottish Commission on Social Security Review

Final Report

Introduction

1. Scottish Government (SG) invited tenders for an independent review of the Scottish Commission on Social Security (SCoSS) in July 2022. The contract for the review was awarded to Glen Shuraig Consulting in September 2022.
2. The purpose of the review was: to consider experience to date and identify arrangements required to ensure that SCoSS is established and resourced on a resilient and sustainable basis in order to perform the range of functions required now and, as far as can reasonably be anticipated, to meet the needs of the Scottish social security system into the future.
3. We were asked to consider evidence relating to:
 - a. SCoSS remit, including framework agreement with SG and related protocol;
 - b. constitutional status of SCoSS i.e. current NDPB status and classification;
 - c. operational arrangements, including the adequacy of resources, resilience, and sponsorship arrangements; and
 - d. the current and anticipated future policy and operating context, including the consultation in the forthcoming Social Security Bill on the role and form of independent input to the devolved social security system, the separate Scottish Government review of the Disability and Carers Benefits Expert Advisory Group (DACBEAG), and the independent review of public bodies undertaken for the Scottish Government.
4. The requirements for this report were: to comment upon and make recommendations to the Scottish Government on current arrangements, prospective future requirements, and changes required in relation to:
 - a. SCoSS role and remit, including changes that may be required to legislation (primary or secondary) and related documents, such as, the framework agreement and related protocol;
 - b. SCoSS constitution, including NDPB status and legislated classification within the public body landscape;
 - c. SCoSS operational arrangements, including but not exclusively:
 - i. the role and functions of board members, including the minimum number of board members required for resilience, structure of the board and board capability;
 - ii. resourcing, particularly in relation to secretariat support, including staffing structure and reporting arrangements and how this should be secured and managed in order to ensure independent support and accountability to the Board;
 - iii. governance and operational aspects of legislation, framework agreement, protocol etc.
 - d. sponsorship arrangements within the Scottish Government; and
 - e. the scope, timing and process for future reviews.

5. The methodology for the review involved desk-based research covering a range of SCoSS governance and operational documents, review of arrangements for comparator bodies and interviews with key people including current and former members of the SCoSS Board, the Minister for Social Security and Local Government, representatives of the Social Justice and Social Security (SJSS) Committee of the Scottish Parliament, some current and former members of the SCoSS Secretariat, SCoSS's Audit Adviser, SG officials, Social Security Scotland (SSS) Chief Executive and some SSS Non-Executive Advisors, the Chair of DACBEAG and representatives of the UK Social Security Advisory Committee. A full list of interviewees is included at Annex A.
6. The remainder of this report covers our findings and recommendations as required by the remit under the following headings:
 - a. Role and remit;
 - b. Resourcing;
 - c. Operation;
 - d. Governance;
 - e. Conclusion and future review
7. Findings in this report draw on the views and experience of interviewees, on written evidence and on the reviewers' personal knowledge and experience of public body governance and operation.
8. A [public consultation](#) on aspects of the social security system in Scotland, including the work of SCoSS, closed on 27 October 2022. The responses to this consultation were still being analysed at the time of writing. SG will need to take the results of the consultation into account alongside this review.
9. Glen Shuraig Consulting would like to take this opportunity to thank all interviewees for their honest and insightful reflections and for sharing the various documents which have provided the evidence for this review report.

Role and remit

10. Under section 22 of the Social Security (Scotland) Act 2018 (the 2018 Act), SCoSS has four functions:
 - a. to scrutinise legislative proposals in accordance with section 97;
 - b. to prepare and submit to the Scottish Ministers a report on any matter, relevant to social security, that the Ministers request the Commission to report on;
 - c. to prepare and submit to the Scottish Parliament a report on any matter, relevant to social security, that the Commission is requested to report on by the Parliament after the Parliament has resolved that the request should be made;
 - d. to prepare and submit to the Ministers and the Parliament, from time to time, a report containing—
 - i. an assessment of the extent to which any or all of the expectations set out in the Scottish social security charter are being fulfilled, and
 - ii. recommendations for improvement where the assessment is that those expectations are not being fulfilled.
11. The first three functions are reactive, driven by the legislative programme and requests to SCoSS from Ministers and Parliament, but the fourth function gives SCoSS a wide-ranging, proactive role providing independent oversight of the performance of the devolved social security system in Scotland as a whole. The service delivery landscape is complex: it involves not only Social Security Scotland, local authorities and the UK Department for Work and Pensions but also a range of organisations contracted to deliver specific services such as independent advocacy and vehicles for people with disabilities. The role of SCoSS in providing impartial, authoritative assessment of the performance of this whole system should ensure that any areas where the standards agreed in the Scottish Social Security Charter (the Charter) are not being met are identified and recommendations made on actions to improve. SCoSS can expect to play a significant role in the first review of the Charter in 2024 and all subsequent reviews.
12. Almost all of the work SCoSS has done so far has related to the scrutiny of regulations, as there has been a very significant volume of regulations to be put in place in this initial stage of setting up the devolved social security system. It was very clear from the evidence considered that the scrutiny work carried out by SCoSS, and changes made as a result have materially improved Scottish social security regulations. SCoSS has used the percentage of recommendations accepted as one indicator in its annual reporting. SCoSS's data shows that more than 80 per cent of the recommendations relating to regulations were accepted, but the nature and impact of some of the changes picked up is more significant than a headline figure. Interviewees both within and outwith SCoSS noted that the work of SCoSS has added clear value. Interview and written evidence in this review drew attention to a 'scrutiny gap' due to more social security provisions on both reserved and devolved benefits being included in secondary legislation and fewer in primary legislation. In Scotland, there is a compounding factor as since May 2021 the remit of the relevant Parliamentary Committee has widened to cover all of social justice as well as social security, limiting the amount of time the Committee can spend on social security. These factors make SCoSS's role even more important.

13. There were differing opinions about how far the volume of regulations might fall in future years once the safe and secure transfer of benefits devolved under the Scotland Act 2016 is complete, but it seems clear that some legislative scrutiny will remain a key feature of SCoSS's work. Section 97 of the 2018 Act defines the regulations that are within scope of scrutiny by SCoSS, and these are broadly regulations relating to entitlement and what assistance is to be given for each of the devolved benefits plus regulations relating to the top-up of reserved benefits. We heard that in practice the draft statutory instruments which come to SCoSS often contain a mix of regulations which are subject to SCoSS scrutiny and regulations which are not, and that where it has seemed relevant, SCoSS has commented on administrative regulations. Some interviewees highlighted that administrative regulations can have a significant impact on outcomes for individual claimants. It would seem sensible to regularise the situation by bringing ensuring that the administrative regulations on which SCoSS is likely to feel compelled to comment come within the formal scope for SCoSS scrutiny. Annex B summarises the various regulation-making powers under the 2018 Act along with their current and recommended future status in relation to SCoSS scrutiny.
14. It is clear from interviews that SCoSS is recognised as bringing an independent perspective to all of the work it has carried out – no interviewee questioned SCoSS's independence. Neither Ministers nor Parliament have yet commissioned a formal report from SCoSS, although that is likely to change in future as the attention shifts away from the safe and secure transition of the benefits being devolved to Scottish Ministers' own policy choices which may diverge from those of the UK Government. A few interviewees expressed concern that, whilst SCoSS with its expertise and experience might be in a position to offer policy advice, if SCoSS were asked by Ministers to provide a report with policy recommendations, that might undermine SCoSS's objectivity in the later scrutiny of any resulting regulations.
15. Another potential issue is that it is rare for policy choices to be clear cut. Policy is set by Ministers, drawing on all the evidence available and making judgements about the relative importance of various factors. If SCoSS is put in the position of making the judgements and recommending the 'right choice' to Ministers, there is the potential for this to undermine SCoSS's role as an independent and authoritative voice to Parliament and the public. It could also undermine SCoSS's independent role in monitoring performance under the Charter. Although we heard some appetite for SCoSS to step into the space which may be left should the remit of the Disability and Carers Benefits Expert Advisory Group (DACBEAG) end, it is important to recognise that the DACBEAG is a committee working directly to advise the SG, not an independent body with an advisory role to both Ministers and Parliament. SCoSS could be invited to provide independent, expert advice on issues which might have been commissioned from the DACBEAG, but it should not be asked to take on the role of providing explicit policy recommendations. There is also the potential for a report commissioned by the Parliament to draw SCoSS into a political space, which could undermine its relationship with Ministers. It is therefore essential that SCoSS continues to operate in a way that maintains its independence and retains the confidence of both the Scottish Ministers and the Scottish Parliament, and the wider stakeholder groups across all of its functions.
16. A good way to reinforce SCoSS's position as an independent, impartial advisory body would be to ensure that all of SCoSS's work involves assessment against clear criteria – always including the social security and human rights principles as required under the 2018 Act but potentially including other criteria requested by Ministers or Parliament such as the Charter outcomes and cost (note cost rather than affordability, which would require judgements about the Scottish

Budget as a whole). The SCoSS Board could take this approach for the scrutiny of regulations and for its Charter work, to demonstrate as clearly as possible the basis for its conclusions and recommendations. If reports commissioned by Ministers or Parliament ask SCoSS to review evidence and/or assess policy options against criteria, or to identify possible policy options and assess them against criteria, this would make good use of the experience and expertise of the SCoSS members. Stopping short of asking SCoSS to recommend the best policy or to reach a politically-sensitive judgement would help protect its position as an independent and authoritative voice. It would be helpful if SG and the SJSS Committee of the Scottish Parliament could agree a protocol with SCoSS about the remits of reviews they may commission, but regardless the Chair and Board members of SCoSS should highlight any potential issues of independence when they are asked to produce reports and ensure that any reports they do produce are as objective as possible and do not compromise their dual role of serving Ministers and Parliament.

17. Given that the social security system is still evolving and SCoSS has not yet had to exercise all of its functions, there does not appear to be a clear case to expand SCoSS's remit at this stage. There may be a case to give SCoSS a wider proactive power to carry out research, but its proactive Charter role is already very broad. At this stage, it seems sensible to allow SCoSS to fully explore where it can have greatest impact within its existing remit and if the remit is becoming a significant constraint, to present evidence of that to any future review.
18. One important area where SCoSS already brings expert advice is on the potential wider impact of policy choices on devolved benefits within the whole UK social security, for instance any knock-on impact on entitlement to reserved benefits. It would be possible to include this aspect explicitly in SCoSS's statutory functions, but having discussed this with interviewees there is not a clear case to do so. SCoSS's current remit already allows exploration of wider consequences, and without an equivalent arrangement for scrutiny at UK level of implications of policy choices on reserved benefits for devolved benefits, any statutory duty could not be complete. If SCoSS does become aware of issues that have implications for reserved benefits, it would be helpful for the Secretariat to pass this information to the UK Social Security Advisory Committee.
19. There was evidence at interview of different interpretations of SCoSS's current role and remit, and some interviewees suggested that there had at times been 'scope creep' in SCoSS's scrutiny, with information being sought from SCoSS which interviewees did not see as directly relevant. This may reflect instances where SCoSS has commented on regulations that are strictly outwith its scrutiny remit but contained in a draft statutory instrument alongside regulations within its scrutiny remit, as mentioned above. It may also reflect some misunderstandings of the full extent of SCoSS's remit and the need to understand how benefits will be delivered in practice. There will always be some element of judgement needed in the extent of information it is appropriate for SCoSS to request. It may smooth the scrutiny process for all concerned if the SCoSS Board occasionally takes time to explain its remit and approach directly to officials from Social Security policy teams and Social Security Scotland, and to explore any concerns on either side about the impact of information requests or lack of available information. It would be helpful to have such a discussion soon after the Chair and new Board members are appointed, and then to repeat this exercise from time to time, especially whenever there is significant turnover of staff.
20. Provision of advice on industrial injuries was not part of the remit of this review, but several interviewees highlighted the gap left by the Scotland Act 2016, under which the Scottish

Ministers cannot commission advice from the UK Social Security Advisory Committee (SSAC) nor from the UK Industrial Injuries Advisory Council (IIAC). SCoSS's remit is not the same as that of SSAC but it largely covers that gap. Interviewees were very keen to explain that the skills and expertise of members of the IIAC were very different to those of SSAC or SCoSS, and that although SCoSS does scrutinise regulations relating to benefits for those with industrial injuries, it could not take on a wider role in relation to advice on the industrial injuries scheme, such as whether prescribed diseases for which benefit can be paid should be added to or amended. As far as we are aware no such role is envisaged for SCoSS, and it appears very clear that it would not be appropriate.

Recommendations on role and remit

Recommendation 1: The regulations which fall within SCoSS's scrutiny remit under section 97 of the 2018 Act should be expanded to include regulations made under sections 11(2), 13(3), 41(4)(a), 43(5), 51, 52, 81(8), 84A and 95.

Recommendation 2: Reports commissioned from SCoSS by the Scottish Ministers under section 22(1)(b) of the 2018 Act and by the Scottish Parliament under section 22(1)(c) of the 2018 Act on any matter relevant to social security should cover impartial assessment of evidence and options against the Social Security and Human Rights principles and other criteria agreed with SCoSS, to maintain SCoSS's objectivity in carrying out all of its functions.

Recommendation 3: SCoSS should continue to demonstrate its independence and objectivity by ensuring that it explains how the comments and recommendations in its reports relate to the statutory Social Security and Human Rights principles.

Recommendation 4: SCoSS should hold a workshop discussion with relevant social security policy and Social Security Scotland staff to discuss its role and remit, the types of information SCoSS expects to require in order to fulfil its remit and any concerns staff have about the impact of information requests. This should be repeated from time to time when there have been significant staff changes.

Resourcing

21. Staff capacity has been the single biggest challenge for SCoSS. Under the 2018 Act, Secretariat staff are provided to SCoSS by Scottish Ministers. SCoSS came into operation in 2019 against a backdrop of staffing pressures across government associated with EU exit and soon afterwards the further staffing pressures and working challenges associated with the COVID-19 pandemic. Until recently, SCoSS had three posts in the Secretariat. Even with all three posts filled, there was not the capacity needed to support all of SCoSS's responsibilities and functions, and at times staff turnover reduced the team to only a single member of staff. Temporary arrangements were put in place to provide additional capacity, but these were not entirely satisfactory and risked blurring the proper separation of SCoSS staff from those undertaking sponsorship or social security policy roles.
22. Prompted by the concerns of the Chair and Board members, action was taken by SG this year to increase the overall staffing of the Secretariat to six people, to cover governance as well as scrutiny, and at the time of writing all of these posts are now filled. This should give SCoSS much more robust support for all of its work. A key thing will be to ensure that all of the staff are well inducted and well supported, to help ensure that staff are as productive and effective as possible and that turnover is kept at a manageable level.
23. As a result of the lack of Secretariat capacity, the Board members have at times picked up much of the work on writing reports on scrutiny of regulations, crowding out the time available for other functions and for key governance activities including Board development. The Board has consisted of only a Chair plus three Board members. The 2018 Act currently provides for a Board of up to five people – the Chair plus up to four members – and an attempt was made in spring 2022 to recruit an additional member but the appointment round was unsuccessful. The Chair and one of the Board members stood down in summer 2022, and we heard repeatedly at interview that they would be much missed, especially the Chair who has worked so hard to help establish SCoSS. SG is now undertaking a further appointment round to appoint a Chair and two Board members. An interim appointment has been made to enable the Board to continue to operate in the meantime.
24. We heard during the review that the pool of people with a deep understanding of the social security system is very small. Getting the right people in place to help replace the expertise on the Board and to increase the overall capacity is the single most important issue now for SCoSS's future. If it is not possible to appoint suitable people to all three posts, SG needs to look urgently at the process and person specification and work with the existing Board to agree the best approach to securing the capacity and capability the SCoSS Board needs.
25. If all of the Board vacancies are filled, that would still leave SCoSS with a board of five people which appears at the lower end of what is necessary to carry out its functions. The increased Secretariat staffing should help remove some of the pressure on individual Board members, as the Secretariat staff can do more of the research and report writing. There are also choices in how SCoSS operates (discussed in paragraphs 31 and 32 below) which may also help it to operate successfully with a very small Board. It will be very important to keep the Board capacity under review between SCoSS and its sponsor team. If the Board capacity turns out to be a significant constraint on SCoSS delivering effectively then it would be open for Ministers to introduce regulations to increase the Board to the Chair plus six members, in line with the arrangements for the Poverty and Inequality Commission.

26. Due to the staffing issues already mentioned, SCoSS has so far underspent against its budget in each year. An increased budget to cover the additional Secretariat staffing and Board membership is in place for financial year 2022-23. As it continues to develop its operations, SCoSS may require additional funding to enable it to co-opt temporary members or commission research as discussed in the following section on Operation. There will need to be regular dialogue between the sponsor team and SCoSS about its planned work programme and the likely budget available to ensure that SCoSS has sufficient budget available to carry out necessary work.

Recommendations on resourcing

Recommendation 5: SCoSS should ensure that there are good induction arrangements for new Secretariat staff and the new Chair and Board members to promote effective working and minimise churn.

Recommendation 6: If it is not possible to appoint a Chair and two members in the current round, SG will need to work with the Board to review the recruitment process and to take appropriate action.

Recommendation 7: SG sponsors should review resource requirements with SCoSS regularly, and if SCoSS funding and/or staffing requirements cannot be met this should be escalated to Director level for review.

Operation

27. We heard repeatedly that the staffing and Board capacity issues discussed in the previous section and time pressures on the scrutiny of regulations have undermined the smooth operation of SCoSS. There is an opportunity now with the increased Secretariat staff to reset the way SCoSS operates so that far more of the research and drafting is carried out by the Secretariat on behalf of the Board. We understand that this is what the Board now intends to do.
28. Section 97 of the 2018 Act sets out the arrangements for scrutiny of regulations, including the regulations which fall within scope of scrutiny by SCoSS and the requirements for the scrutiny report. Subsection 97(5) places a duty on the Scottish Ministers to 'ensure that the Commission has such time to prepare the report as the Commission deems appropriate'. In practice, it has not always turned out to be possible to provide planned draft regulations in a complete form and in good time, and emergency regulations introduced to cover people evacuated from Afghanistan and Ukraine brought additional time pressure challenges. The SCoSS Secretariat and Social Security policy officials have generally liaised effectively to keep the Board informed about the likely timetable and in some cases have been able to share early drafts informally to help smooth the path of scrutiny. This collaboration to manage the flow of work is helpful, but going forward SG officials need to make every effort to meet the statutory requirement to give the SCoSS Board sufficient time to carry out its formal scrutiny and prepare its report on all relevant draft regulations. The time for scrutiny must be built into planning for the legislative timetable.
29. In some cases, for instance in the case of the emergency regulations mentioned above, the timetable will be dictated by coordination across the UK and SCoSS may have to carry out its scrutiny and report once regulations are already in place. This is not ideal, but points picked up at scrutiny may still be helpful and can lead to later amendment of regulations. In some cases, which may relate to emergency regulations or those which form part of the normal legislative programme, SCoSS may find that it has no substantive comments on regulations which relate to a purely technical change, and which raise no issues relating to the social security principles or human rights. In those cases, it appears to be possible under the provisions of the 2018 Act for SCoSS to provide an extremely short report noting that it has no comments or suggestions to make, and taking advantage of this option whenever appropriate will help make the best use of SCoSS's capacity.
30. It is sometimes necessary for SCoSS to seek stakeholder views to inform its reports. This is another aspect which can be challenging when working to tight deadlines on the scrutiny of regulations. To be able to seek input from stakeholders at short notice, SCoSS should ideally have established relationships with relevant representatives and groups, but as Ministers and Parliament will also seek stakeholder views, SCoSS needs to manage its work with stakeholders to minimise any duplication. Where stakeholders have been consulted already to inform draft regulations, SCoSS should only carry out further stakeholder engagement to fill gaps it identifies – additional questions which need to be asked and/or additional stakeholders who need to be consulted. It was clear from interviews with the SCoSS Board that this point is well understood, but it may be helpful for SCoSS to refresh its stakeholder engagement strategy once the new Chair and Board members take up post.
31. As SCoSS starts to carry out work beyond the scrutiny of regulations, it may need more intense involvement of people with relevant skills and experience than can be achieved through

stakeholder input. There are several ways in which SCoSS could access relevant skills and experience for reports on any topic, by:

- a. asking SG to recruit or second staff temporarily into the Secretariat;
- b. using its power under paragraph 5 of Schedule 1 to the 2018 Act to set up committees or subcommittees and involve people who are not members of SCoSS; and/or
- c. commissioning independent research.

While all three options have the potential to be helpful, options b and c may be easier to achieve in practice and can be arranged by the Board and Secretariat directly.

32. Setting up fixed-term committees to carry out work on specific topics would need to be approached with some care. At least one member of the SCoSS Board should be a member of each committee, and in practice it is likely to work best if a SCoSS Board member chairs each committee. People can be appointed to serve on committees without going through a full public appointment process, but good practice requires that appropriate steps are taken to ensure that appointments are fair and open. Good governance requires that anyone appointed should have a formal appointment letter setting out the expectations of their appointment, including the term and the requirements to abide by the Code of Conduct. Some form of induction will be important to help a committee understand what exactly is expected of it, and each committee should have a formal Terms of Reference setting out what it is asked to do, the term of its existence, anything that it is explicitly asked not to do and its relationship to the SCoSS Board. Committees will also need to be supported by the Secretariat, so planning to ensure that there is sufficient capacity available will be required. None of this is insurmountable, and the experience of the UK Social Security Advisory Committee suggests that an approach involving occasional, dedicated committees could be really helpful. There is also the potential for a committee-based approach to help with succession planning for the SCoSS Board, as people who build up some experience on a committee may be better prepared for and more interested in a Board role in future.
33. The planning cycle is going to be key for SCoSS as it develops all of its functions in the years ahead. SCoSS's work programme will be driven not only by the demands of scrutiny of regulations and its own proactive work on performance under the Charter but also by requests from Ministers and Parliament. Planning the timetable and the resources required will not be straightforward. SCoSS needs to be in charge of its own work programme as far as possible, which suggests a regular engagement with SG and the SJSS Committee to identify what interest they are likely to have in commissioning reports from SCoSS over the next planning period and also to help both understand the work that is already underway or due to start. Ideally, SCoSS should have a work programme looking 18 to 24 months ahead, recognising that this will need to adapt to changing demands and external factors. SCoSS should provide updates twice per year, once around the start of and once mid-way through each financial year, to SG and the SJSS Committee, at the same time asking about any additional requests either body is likely to want to make. This would put SCoSS properly in the lead on negotiating relative priorities, timing and resourcing for any new requests to ensure that the work programme remains manageable.
34. As part of its planning cycle, SCoSS should also have regular discussions with its sponsor team about the resources required to deliver the forward work programme. As noted above, the budget has not, up to now, been a constraint on SCoSS's operations but SCoSS will need to have

sufficient funding in place to cover fees for committee members, commissioning of research or temporary staff if any of these options is required.

Recommendations on operation

Recommendation 8: SCoSS should establish a planning cycle with an 18-month to 2-year programme of work, and seek input from both SG and the SJSS Committee about likely requests so that SCoSS can review priorities and update the work programme at least twice per year. When the work programme has to change, for instance due to changes to the legislative programme or changing priorities, SCoSS should ensure that both SG and the Parliament are updated on the proposed revised work programme.

Recommendation 9: If SCoSS chooses to set up a committee to lead on any report or topic, the Committee should have clear Terms of Reference which set out the relationship with the SCoSS Board, and any co-opted members should have formal appointment letters setting out the expectations of them in their role and that they must abide by the Code of Conduct.

Recommendation 10: SCoSS should consider reviewing their stakeholder engagement strategy once the new Chair and Board members take up post.

Governance

35. SCoSS's current status is ambiguous. We understand that its intended status was that of an advisory Non-Departmental Public Body (NDPB), and that is how it is currently classified in the National Public Bodies Directory. The provisions establishing SCoSS in the 2018 Act, however, have some features that would usually only apply to an executive NDPB: SCoSS is established by section 21 as a body corporate, and under paragraph 12 of Schedule 1 is required to prepare accounts and to be subject to external audit. The accounting and audit requirements place a heavy burden on a very small body with expenditure in 2020-21 of only £172.4k. We believe that SCoSS is the only advisory NDPB in Scotland which is currently required to produce its own accounts. There was a clear consensus from interviews that the effort involved in the production of SCoSS accounts is disproportionate and does not contribute to meaningful scrutiny. It would be appropriate to replace the current accounting and audit requirement with a requirement to produce an annual report of its activities. The SCoSS Board would be expected to produce such a report in any case, but including this as a statutory requirement would help demonstrate SCoSS's continued transparency and openness to scrutiny.
36. We did consider whether there was a case to change SCoSS's status from that of an advisory NDPB. There are few options which would support SCoSS's independence and dual role providing advice to both Ministers and Parliament. In practice, the only other viable option would be for SCoSS to be established as a Non-Ministerial Office (NMO), that is a body corporate within the Scottish Administration but separate from the Scottish Ministers, but this status would have a number of practical implications, not least that SCoSS would have to employ its own staff and contract or enter into shared service agreements for all of its corporate services in addition remaining subject to accounting and audit requirements. The one advantage of NMO status would be a clearer independence from SG, but it would come at a significant cost. Provided that appropriate governance arrangements are in place in SG to protect the independence of SCoSS, there are more advantages in SCoSS operating as an advisory NDPB.
37. One way to reinforce the continued independence of SCoSS would be for it to retain its status as a body corporate. Although this is unusual for an advisory NDPB, there is one other advisory NDPB – Boundaries Scotland – which has been a body corporate for many years. As a body corporate, SCoSS can enter into contracts in its own name rather than in the name of the Scottish Ministers, for instance if it decides to commission independent research. This seems a helpful, practical and symbolic independence for SCoSS to retain.
38. The SCoSS Board has recognised the importance of Board development time but so far this has been largely squeezed out by the pressure of work and the resourcing issues. It will be important to start to set time aside for Board development in the coming years, and particularly to ensure that there is a good induction process for the new Chair and Board members. The 'On Board' guidance and training available for NDPB Board members is highly-regarded and will be helpful, particularly if anyone joining the SCoSS Board has no previous public body Board experience. It is, however, important to recognise that an advisory NDPB Board role based on provision of expert advice will always be slightly different from an executive NDPB Board role based on oversight of an operational body. It may be helpful for SCoSS to look for opportunities to network and share experience with other advisory bodies, particularly advisory NDPBs.
39. SG has taken steps to ensure proper staffing of the SCoSS sponsor team as well as the Secretariat. This is very welcome, as is the intention to keep these two teams properly

separate. There is a challenge around the proper separation of the senior roles in SG which relate to SCoSS. Until recently, the Deputy Director Social Security Policy has had four functions in relation to SCoSS:

- i. Accountable Officer
- ii. Line Manager of the Secretariat
- iii. Line Manager of the Sponsor Team
- iv. Reporting Officer for the Chair

40. This combination of roles in one person does not provide the appropriate governance checks and balances and, although it does not appear to have done so in practice, could have the potential to undermine SCoSS's independence. SG has recognised this and is taking steps to create a proper separation. One option would have been to move roles iii and iv to a different Deputy Director, but the proposed approach is to designate the new Head of the Secretariat as the Accountable Officer. It is important that the Head of the Secretariat should be given a proper letter of designation from the Principal Accountable Officer reflecting this change.
41. The Head of Secretariat will for all day-to-day operational matters report to the Chair, and we understand that the possibility of the SCoSS Chair acting as line manager is also being considered. If the line management were to pass to the SCoSS Chair, a member of the Senior Civil Service should be available to the Head of Secretariat for mentoring and career development conversations, and the Chair should be given guidance and training in the performance appraisal system for SG civil servants, to ensure that the Head of Secretariat is treated equitably compared to their peers. There would also need to be appropriate counter-signing arrangements in place, most likely by asking the person acting as Reporting Officer for the Chair to counter-sign the Head of Secretariat's annual report. The arrangements for annual appraisal and reporting should be discussed with the SG trade unions and the SCoSS Board. Final decisions on the reporting arrangements need to balance provision of proper oversight and support for the Head of Secretariat and their team with any risk of a perceived undermining of SCoSS's independence. There are examples of other bodies operating successfully with either model.
42. In line with the remit of this review, we have considered how sponsorship arrangements align with the recommendations of the ['Progress review of Scottish Government relationships with public bodies'](#). The separation of senior roles mentioned above is one aspect of this to ensure that lines of accountability are clear. The Public Bodies Unit in SG has revised the model framework documents following publication of the progress review report, so to ensure its governance is in line with latest best practice, SCoSS should agree a new Framework Document with Scottish Ministers based on the revised model for Advisory NDPBs. The Audit Adviser would be well-placed to help with this, and also with a review of the Standing Orders and Code of Conduct to ensure that the full suite of core governance documents for SCoSS is up-to-date and consistent. In addition, in line with the recommendations of the progress review report, SCoSS should hold a workshop with Board members, the Accountable Officer, Secretariat, Senior Sponsor and Sponsor Team to ensure that they all have a shared understanding of the various roles, responsibilities and accountabilities as set out in the new Framework document.

Recommendations on governance

Recommendation 11: Primary legislation should be changed at the first opportunity to remove the requirement on SCoSS to prepare accounts and to submit these for external audit (currently paragraph 12 to Schedule 1 of the 2018 Act). This should be replaced by a requirement to prepare

an annual report on SCoSS's work for submission to the Scottish Ministers and the Scottish Parliament and also for publication.

Recommendation 12: SCoSS should build time for Board development into its planning cycle, including induction and team building with the new appointees, and consider including joint sessions with members of other advisory NDPBs.

Recommendation 13: As part of good governance housekeeping, SCoSS should agree a new Framework Document with Scottish Ministers based on the revised template recently finalised by the Public Bodies Unit and review Standing Orders and the Code of Conduct to ensure that all core governance documents are up-to-date and consistent.

Recommendation 14: The new Framework Document should reflect a separation of responsibilities within SG, so that sponsorship and reporting on the Chair fall are managed separately from the Accountable Officer role and leadership of the Secretariat.

Recommendation 15: The SCoSS Board members, Accountable Officer, Secretariat, Senior Sponsor and Sponsor Team should hold a full workshop discussion to ensure that they have a shared understanding of the various roles, responsibilities and accountabilities set out in the new Framework document.

Conclusion and future review

43. In spite of the challenges with Secretariat and Board capacity, SCoSS has delivered all that has been asked of it. This is entirely due to the expertise and dedication of all of those who have been involved, and they should take a great deal of pride in the work SCoSS has done to date. The work that SCoSS has done has been widely recognised as making a significant improvement to the social security system in Scotland. The changes recently introduced, especially the additional staff for the Secretariat and the clear separation of the sponsor team, should help set SCoSS up for further success as it carries out work under all of its functions in the years ahead.
44. As mentioned in the introduction, a public consultation was running in parallel to this review, and the views expressed in that consultation will have to be taken into account alongside the recommendations in this report in decisions about SCoSS's future role, remit, status, operation and governance. Whatever happens, SCoSS and the social security system in Scotland will continue to evolve. SCoSS will need some time to explore the full potential of its functions and enhanced Secretariat, and then it would be appropriate to carry out a further, in-depth review. We recommend that a further review should be carried out in five years, in 2027-28, unless any one of the SCoSS Board, the SJSS Committee or the SG requests an earlier review.
45. Getting views from external stakeholders will be important as part of any future review. No interviews with external stakeholders were carried out in this review as the public consultation was running in parallel with it, but it will be important to ensure that an external perspective is captured as part of any future review. This should involve views from benefit recipients or their representatives, and it may be helpful also to capture views from a wider range of bodies involved in operating the social security system.
46. A future review should, as a minimum, address the role and remit, resourcing, operation and governance of SCoSS in light of further experience. It will be particularly important to consider whether there is any ongoing scrutiny gap and the implications of any such gap on SCoSS's remit.

Glen Shuraig Consulting Ltd
January 2023

Annex A List of Interviewees

Scottish Government

Mr Ben Macpherson, MSP	Minister for Social Security and Local Government
Stephen Kerr	Director, Social Security
Ian Davidson	Deputy Director, Social Security Policy
Anne-Marie Martin	Deputy Director – Social Security Programme Management and Delivery
Stephen Martin	SG Head of Parliamentary Unit, Social Security Directorate
Lorraine Cairns	Head of Business Development, Social Security Policy
Kelly Donaghoe	Social Security Policy
Nathan Gale	Social Security Policy
Merlin Kemp	Social Security Policy

SCoSS Board and support staff

Dr Sally Witcher	Former Chair
Judith Paterson	SCoSS Board Member
Mark Simpson	SCoSS Board Member
Marilyn Howard	SCoSS Board Member
Sharon McIntyre	Former SCoSS Board Member
Graeme Hill	SCoSS Audit Adviser
Andrew Strong	SCoSS Head of Policy and Scrutiny
Terry Shevlin	Former SCoSS Secretary
Fiona Lodge	Former SCoSS Secretary

Social Justice and Social Security Committee, Scottish Parliament

Elena Whitman, MSP	Convenor
Jeremy Balfour, MSP	Committee member

Social Security Scotland

David Wallace	CEO Social Security Scotland
Naghat Ahmed	Social Security Scotland Advisory Board member
Chris Creegan	Social Security Scotland Advisory Board member
Russell Frith	Social Security Scotland Advisory Board member

Other advisory bodies

Dr Jim McCormick	Chair of Disability and Carers Benefits Expert Advisory Group (DACBEAG)
Liz Sayce OBE	UK Social Security Advisory Committee Vice-Chair
Denise Whitehead	UK Social Security Advisory Committee Secretary

Annex B Regulations under the 2018 Act and SCoSS scrutiny

Reference in Act	Subject	SCoSS scope for scrutiny
Section 11(2)	<p>Advocacy service standards</p> <p><i>(2) The advocacy service standards are to be set by the Scottish Ministers in regulations and may, in particular, include provision in relation to—</i></p> <ul style="list-style-type: none"> <i>(a) the training and experience individuals providing advocacy services must have,</i> <i>(b) service quality,</i> <i>(c) quality assurance processes,</i> <i>(d) record keeping.</i> 	<p>Currently outside scope for SCoSS scrutiny under section 97 of the 2018 Act. Can have material impact on claimants so recommend inclusion in section 97 scope for SCoSS scrutiny.</p>
Section 13(3)	<p>Assessors (of physical condition or mental health) to be suitably qualified</p> <p><i>(3) The Scottish Ministers may by regulations specify who is to be regarded as a suitably qualified person within the meaning of subsection (1) by reference to a person's—</i></p> <ul style="list-style-type: none"> <i>(a) training,</i> <i>(b) experience, or</i> <i>(c) holding a particular position.</i> 	<p>Currently outside scope for SCoSS scrutiny under section 97 of the 2018 Act. Can have material impact on claimants so recommend inclusion in section 97 scope for SCoSS scrutiny.</p>
Section 22(1)(e)	Conferring further functions on SCoSS	<p>Not currently scrutinised and not appropriate for SCoSS scrutiny. The 2018 Act already provides in section 96(5) that SCoSS must be consulted on any proposed additional function.</p>
Chapter 2 of Part 2 – sections 28 to 36 inclusive	Types of assistance to be given	All currently scrutinised by SCoSS

Reference in Act	Subject	SCoSS scope for scrutiny
Section 41(4)(a)	<p>Right to request re-determination (of an individual's entitlement) Request only valid if in such form as the Scottish Ministers require and</p> <p><i>(a) the request is made before the end of the period prescribed by the Scottish Ministers in regulations,</i></p> <p>with a one-year fallback deadline if someone had good reason to be late.</p>	<p>Currently outside scope for SCoSS scrutiny under section 97 of the 2018 Act. Can have material impact on claimants so recommend inclusion in section 97 scope for SCoSS scrutiny.</p>
Section 43(5)	<p>Duty to re-determine (an individual's entitlement)</p> <p><i>(5) The period allowed for re-determination is to be prescribed by the Scottish Ministers in regulations.</i></p> <p>If re-determination not carried out within the time limit then under s45 the individual has the right to appeal to the First-tier Tribunal.</p>	<p>Currently outside scope for SCoSS scrutiny under section 97 of the 2018 Act. Can have material impact on claimants so recommend inclusion in section 97 scope for SCoSS scrutiny.</p>
Section 51	<p>Determination on basis of ongoing entitlement</p> <p><i>(1) The Scottish Ministers may by regulations—</i></p> <p><i>(a) provide that a determination of an individual's entitlement to a specified type of assistance is to be made on the basis that the individual has ongoing entitlement to that type of assistance, and</i></p> <p><i>(b) provide for exceptions to any provision made by virtue of paragraph (a).</i></p>	<p>Currently outside scope for SCoSS scrutiny under section 97 of the 2018 Act. Can have material impact on claimants so recommend inclusion in section 97 scope for SCoSS scrutiny.</p>

Reference in Act	Subject	SCoSS scope for scrutiny
Section 52	<p>Determination without application</p> <p><i>(1) The Scottish Ministers may by regulations provide that, in such circumstances as the regulations specify, the Scottish Ministers are to make a determination of an individual's entitlement to a particular type of assistance without receiving an application.</i></p> <p><i>(2) The Scottish Ministers may by regulations make provision about the information that is to be used, and the assumptions that are to be made, in making a determination when required to do so by regulations under subsection (1).</i></p>	<p>Currently outside scope for SCoSS scrutiny under section 97 of the 2018 Act. Can have material impact on claimants so recommend inclusion in section 97 scope for SCoSS scrutiny.</p>
Section 68	<p>First Tier Tribunal's jurisdiction</p> <p><i>The Scottish Ministers may by regulations transfer to the First-tier Tribunal for Scotland some or all of the competence and jurisdiction that a sheriff has in relation to the recovery of money owed under section 63.</i></p>	<p>Not currently scrutinised and not appropriate for SCoSS scrutiny.</p>
Section 79	Power to provide for top up	Currently scrutinised by SCoSS
Section 81(8) and Section 82	<p>Carer's allowance temporary provision – regulations to modify section 81 so as to modify a qualifying individual and regulations to repeal section 81 and revoke any regulations made under it.</p>	<p>Currently outside scope for SCoSS scrutiny under section 97 of the 2018 Act. Although section 81 is a temporary provision, if there is any expectation of further regulations being made under section 81 then, since these can have a material impact on claimants, we recommend inclusion in section 97 scope for SCoSS scrutiny.</p>

Reference in Act	Subject	SCoSS scope for scrutiny
Section 84A	<p>Power to make provision about investigation</p> <p><i>(1) The Scottish Ministers may by regulations make provision about the investigation of offences under this Act.</i></p> <p><i>(2) Regulations under subsection (1) may, in particular—</i></p> <p>47. <i>(a) confer powers to—</i></p> <p style="padding-left: 40px;"><i>(i) enter and search premises (other than dwelling-houses), and</i></p> <p style="padding-left: 40px;"><i>(ii) seize anything relevant to the investigation which is found on the premises,</i></p> <p><i>(b) create offences relating to—</i></p> <p style="padding-left: 40px;"><i>(i) a failure to provide information requested for the purposes of an investigation,</i></p> <p style="padding-left: 40px;"><i>(ii) obstruction of the conduct of an investigation,</i></p>	<p>Currently outside scope for SCoSS scrutiny under section 97 of the 2018 Act. Can have material impact on claimants so recommend inclusion in section 97 scope for SCoSS scrutiny.</p>

Reference in Act	Subject	SCoSS scope for scrutiny
Section 85(2) and Section 85(5)	<p>Information-sharing</p> <p>(1) <i>The Scottish Ministers may require a person mentioned in subsection (2) to supply information held by the person to the Ministers for the purpose of a social security function.</i></p> <p>(2) <i>The persons are—</i></p> <p>(a) <i>a local authority</i></p> <p>48. ...</p> <p>(g) <i>a person specified in regulations made by the Scottish Ministers.</i></p> <p>...</p> <p>(5) <i>Information held by the Scottish Ministers for the purpose of a social security function may be supplied by the Ministers to a person mentioned in subsection (2) for use for the purposes of such function of the person as is specified in regulations made by the Ministers.</i></p>	Not currently scrutinised and not appropriate for SCoSS scrutiny.

Reference in Act	Subject	SCoSS scope for scrutiny
Section 86	<p>Agency arrangements for housing assistance</p> <p>(1) <i>The Scottish Ministers may by regulations provide for the functions conferred on them by virtue of Part 2 to be exercised on their behalf by local authorities, but only in relation to—</i></p> <ul style="list-style-type: none"> (a) <i>housing assistance, and</i> (b) <i>short-term assistance that an individual is eligible to be given on account of the individual’s entitlement to housing assistance being under review within the meaning of paragraph 1(1)(c) of schedule 10.</i> <p>(2) <i>Regulations under this section may in particular—</i></p> <ul style="list-style-type: none"> (a) <i>specify the functions that local authorities are to exercise on the Scottish Ministers’ behalf,</i> (b) <i>make provision identifying the persons in relation to whom a local authority is to exercise those functions, and</i> (c) <i>provide for any enactment (including this Act) to apply subject to such modifications as the Ministers consider appropriate in consequence of functions falling to be exercised by a local authority on the Ministers’ behalf.</i> <p>(3) <i>Regulations under this section do not affect the Scottish Ministers’ responsibility for the exercise of their functions.</i></p>	Not currently scrutinised and not appropriate for SCoSS scrutiny.

Reference in Act	Subject	SCoSS scope for scrutiny
Section 93	<p>Power to modify section 88 (local authorities' power to make payments)</p> <p>(1) <i>The Scottish Ministers may by regulations make whatever amendment to section 88 they think appropriate in consequence of—</i></p> <ul style="list-style-type: none"> (a) <i>an enactment mentioned in that section being amended, repealed or revoked, or</i> (b) <i>the creation of a reserved benefit payable in respect of a liability to make rent payments.</i> 	Not currently scrutinised and not appropriate for SCoSS scrutiny.
Section 95	<p>Ancillary provision</p> <p><i>The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, or in connection with, or for giving full effect to this Act or any provision made under it.</i></p>	Currently outside scope for SCoSS scrutiny under section 97 of the 2018 Act but this regulation making power has been used to make regulations which have a material impact on claimants. Recommend inclusion in section 97 scope for SCoSS scrutiny, recognising that there may be some regulations under section 95 on which SCoSS will have no comments.
Paragraph 4(2)(c) and paragraph 13(2) of Schedule 1	SCoSS right of access to information and number of members of SCoSS	Not currently scrutinised and not appropriate for SCoSS scrutiny.