Department of Health & Social Care

INFECTED BLOOD SUPPORT SCHEME: 2017/18 BELOW FORECAST SPEND OPTIONS PAPER

CLEARANCE CHECKLIST

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***Note**: Contact names provided must have seen and approved the submission.*

Finance:
Does this involve any spending or affect existing budgets?
☑ If yes, named official:
Greg Aizlewood
☐ No

Legal:
Does this include legal risk, a court case or decisions that can be challenged in court?
☑ If yes, named official:
Clare Martin
☐ No

Communications:
Could this generate media coverage, or a response from the health sector?
☑ If yes, named official:
David Betros-Matthews
☐ No

Analysis and data fact-checking:
Does this include complex data, statistics or analysis?
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Have you considered fraud risks?
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Strategy Unit:
Does this relate to cross-cutting or longer-term implications for wider DH strategy?
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Does this relate to one of the Secretary of State priorities?
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Does this include options that may require secondary legislation?

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Duties, Tests and Appraisals:
The following tests apply and have been considered.

☐ Secretary of State Statutory Duties, including on health inequalities
☑ Public Sector Equalities Duty
☑ Family test
☐ Other(s) (please specify)
Click here to enter text.

To: PS(MHI)

From: Ginny Belson
Clearance: Ailsa Wight
Date: 23 February 2018
Copy: Georgina Johnson
Private Office Submissions Copy List

ENGLAND INFECTED BLOOD SUPPORT SCHEME: 2017/18 BELOW FORECAST SPEND OPTIONS PAPER

Issue	This submission follows on from mine of 13 February 2018 on the disclosure of information relating to a below forecast spend on the Infected Blood Support Scheme in England (EIBSS). It sets out options for managing the resulting surplus allocation given the predicted Departmental overspend and the sensitivities that exist regarding this policy area.
Timing	Urgent (two working days) If there is a specific date: 26/02/18 For all timing requests, please provide a reason or explanation: A decision is needed by 26 February 2018 should an engagement exercise be needed for stakeholders to comment on any proposal for additional payments to be made within this 2017/18 financial year
Recommendation	PS(MHI) is asked to consider the options set out in this submission and the risks associated with each. It is recommended on balance that we do not spend the £10-15 million surplus budget allocation within the EIBSS.

Discussion

1. Individuals infected with HIV or hepatitis C through treatment with NHS blood or blood products can access dedicated financial support through ex gratia payment schemes introduced in 1988. Responding to the need for a more accessible and equitable system of care and support, the government has carried out substantial reforms of the financial support provided to those affected (detailed background note at **Annex A**).

2. The submission of 13 February 2018 informed Ministers that the total number of scheme beneficiaries registered with Stage 1 hepatitis C and the number applying for higher payments via Special Category Mechanism (SCM) are lower than was estimated, impacting on the forecasted spending on the scheme this financial year.

3. It is anticipated that there will be a below budget surplus of between £10 -15 million for FY17/18 for EIBSS. This is in the context of £28.1 million of the allocation having been spent as of the end of month 10. It should be noted no SCM payments have yet been made as the application process is ongoing. SCM decision letters and additional payments will be made by the end of March 2018. This submission sets out options as to how this surplus budget allocation could be managed.

4. In line with the Department's continuing obligation under the duty of candour, this

budgetary surplus information was disclosed to Leigh Day, the solicitors acting for the claimant in the current Judicial Review (JR), on 14 February 2018. We will also be required to disclose the reason for the budget surplus and the decision to spend or not spend it, in due course.

5. The current ex gratia support scheme, announced in September 2017 following consultation, was deemed to be fair and meet the needs of the beneficiaries for whom it was designed. The commitment of the demand led scheme was to spend 'up to' the amounts identified in the Impact Assessment and the budget allocated accordingly to provide payments to beneficiaries.

6. As part of the Government's consideration of proposed reforms to previous schemes ministers committed to double the baseline budget for the period of the current Spending Review (SR) period. This has meant an additional £25m budget allocation per annum over that period.

7. This commitment has been stated on a number of occasions *(ref: 21 January 2016 Commons Chamber - Jane Ellison (Parliamentary Under Secretary of State for Public Health); 13 July 2016 Prime Minister's Questions - David Cameron; 14 July 2016 Written Ministerial Statement - Jane Ellison (Parliamentary Under Secretary of State for Public Health); 24 November 2016 Commons Chamber - Nicola Blackwood (Parliamentary Under Secretary of State for Public Health and Innovation); 9 October 2017 Written Ministerial Statement - Jackie Doyle-Price (Parliamentary Under Secretary of State (Mental Health and Inequalities))*. These statements include intentions to double the annual spend and to spend an additional £125m over multiple years. (Details of public statements attached at **Annex B**). In practice, annual spend is a demand-led budget.

8. DHSC undertook extensive modelling to estimate the upper range of likely demand arising from the introduction of the new SCM during FY17-18 within the allocated budget of EIBSS (further details given in **Annex A**). In a previous submission to Ministers dated 11 August 2017, we provided a range of costs to reflect the uncertainty associated with the number of applicants (i.e. demand) and a range of success rates. Since the scheme opened the level of demand has been closer to the lower estimates provided in the 11 August submission. We do not yet know the success rate for this year as applications are still being processed by NHS BSA. The lower than anticipated demand and the annual success rate may have an impact on our profile for the future years of the SR period.

9. The beneficiary community will be paying close attention to the numbers who pass the SCM and therefore the impact on the allocated budget. DHSC will face questions about this from beneficiaries and interested MPs. The beneficiaries are likely to take the view that what matters is whether the money allocated is spent on the scheme.

Decision needed

10. The primary decision is whether we:

a) Do not spend the surplus budget allocation

- If the surplus budget allocation is not used on the scheme this will help the Department achieve financial balance. It will also avoid setting a precedent of expectation of spend in future years. It is worth noting that there was a budgetary surplus of c.£10 million in 2016/17. Although we had anticipated questions on this, the pressure to announce an Inquiry and the general election may have meant it did not attract any attention.

- The support allocated has been criticised by the various beneficiary groups within the scheme. Given historic divergence of beneficiary views it is unlikely that further spend will satisfy all. However, beneficiaries are likely to react adversely should they become aware either directly or indirectly of the surplus; this will require careful handling (see Comms section below).

or

b) Spend some or all of the surplus budget allocation this year to provide additional support to beneficiaries

- There are a variety of ways this could be done; most of these only use some of the surplus budget allocation so do not fully resolve the issue. We cannot commit to spend an exact amount in year as this is a demand led scheme;

- Finance has advised that HMT is likely to view any payment over and above the existing scheme as novel, contentious and repercussive. We, therefore, would require HMT approval to any plans to make additional payments to beneficiaries. In order to get this approval we would need to evidence: Value for Money (VfM); mitigation of risks to challenge from other parties; and that this does not set a precedent; these conditions would be very hard to meet, particularly in the time available.

- The main advantage of spend is that we would be fulfilling what may be seen as commitments to spend as at paragraph 7 and Annex B. However, there is the risk that whatever spend option is decided, some groups will complain that the money has not been fairly distributed. A very rapid stakeholder engagement exercise would need to be undertaken on how the funds should be spent, with any payments being made as a lump sum at the end of March 2018. A rapid engagement exercise could invite challenge as it may not be considered adequate consultation.

11. The main options to consider if the budget surplus was to be spent are:

- *Option 1 – cost £5m*

  Bring forward the planned 2018/19 increased annual payments, excluding the new SCM payments.

  It could be argued this is the option which is most in line with the existing scheme as all infected beneficiaries get additional money in advance of next year's already planned increases.

- *Option 2 – cost £4m*

  Backdate payments for successful SCM applicants to 1 April 2017, from October 2017; each successful SCM applicant would receive an additional payment of over £6000.

  This SCM group is where most of the below forecast spend originated. This option provides no additional money for those with Stage 1 hepatitis C who did not apply or were not successful via the SCM, so could be seen as further disadvantaging those beneficiaries.

- *Option 3 – cost 1.6m*

  Provide an extra £1500 one-off payment for all Stage 1 hepatitis C beneficiaries not in receipt of SCM

  This Stage 1 hepatitis group have received minimal support in the past. However, this option may be criticised by some beneficiaries as providing additional help to those who need it least as they did not apply or were not successful in getting additional funding via the SCM.

12. Other options in Annex C are a combination of options 1-3.

13. A further possibility would be to make an additional one-off payment to the bereaved. However, NHS BSA could only distribute the funds to those bereaved beneficiaries for whom they had contact details. Although the bereaved do not receive annual payments it could be seen by other beneficiaries as unfair and as for other options rapid wider stakeholder engagement would be needed.

Recommendation

14. It is recommended on balance that we do not spend the £10-15 million surplus budget allocation within the EIBSS.

15. If it was decided to spend some of the surplus allocation a combination of options 1 and 3, costing a further £6.8 million, would be recommended as this would provide additional support for each infected beneficiary group whilst providing some further support to those with Stage 1 hepatitis C not receiving SCM payments.

Finance – cleared by Greg Aizlewood

16. Our understanding is that the intention of public commitments was to hold a Departmental budget, to cover an estimated level of payments that may arise under the payments structure of the scheme and not a commitment to make a specific level of payments regardless of number of applicants.

17. The Department has faced significant financial challenges in FY17/18 making it difficult to meet our responsibilities to deliver a balanced financial position where spending for this fiscal year is within the Estimates voted by Parliament. The DHSC reported position to HMT in December 2017 was one of a balanced position however there are a number of live risks and it is estimated that we need to deliver around £50m of additional savings to achieve this balanced position.

18. In reaching a decision, responsibilities under Managing Public Money to ensure VfM of expenditure need to be considered. This requires a judgement as to whether, on balance, options to spend the budget surplus represent better value than the option to retain the surplus budget allocation.

Legal – cleared by Clare Martin (full advice attached at **Annex D**)

19. In relation to the JR, Counsel's advice is that the scheme having spent less than forecast has weakened our defence and pushed the chances of successfully defending the JR closer to the 50% mark, but not below it (originally the chance was 50-70%).

20. In relation to the options, since not spending the money maintains the existing

position, the legal risk of not spending the money on the EIBSS leaves the chances of successfully defending the JR the same i.e. closer to the 50% mark.

21. Spending the money on the EIBSS brings with it risks of other types of legal challenge, such as for failure to consult (chance of successful defence low-medium 30-50%). Any proposal to spend, therefore, should be consulted on to the extent possible in the available time. However, in relation to the JR, whilst spending would not substantially affect the chances of successfully defending the JR, the chance may move slightly improve beyond 50% (the chances stay in the 50-70% range). However, this depends on how the money is spent, and whether this is consistent with the JR defence in terms of defence around the distinction between Stage 1 hepatitis C beneficiaries and other infected groups.

22. In summary, the simple fact alone that the scheme spending is less than forecast, means that there is somewhat greater legal risk in relation to the JR. Neither option changes this. Because there are other legal risks associated with spending the money, when both the existing JR and potential new challenges are taken into account, overall the legal risks associated with spending the money are considered to be marginally higher.

Legal duties

Public Sector Equality Duty considerations

23. A decision not to spend the money on the infected blood support scheme would maintain the status quo, with no particular impact on any group of beneficiaries sharing a particular protected characteristic.

24. A decision to spend the money would alter the payments for this year only so may be considered to have minimal overall impact on scheme beneficiaries.

25. Further details of the EQIA considerations for any of the spend options will be worked up as required. Details are given in **Annex E**.

Communications – cleared by David Betros-Matthews

26. All of the options present a reputational risk to the department. If you proceed with any additional payment, some groups will feel short-changed, and if the money used to address overspend elsewhere, this could lead to criticism given previous commitments and a perception that money is being 'cut'.

27. National broadcast and print media have had an ongoing interest in this case. While any decision will not be made public by the department, stakeholder groups and interested MPs can be expected to notice any change in funding/payment levels and make public statements.

28. We know that as well as the solicitors involved with the JR, others are aware of the below forecast spend, although they will not have details, and we already have top level lines in place should that information leak before a decision has been made.

29. Media and Campaigns will develop handling plans based on your decision, explaining the rationale. Any lines would be issued on a reactive basis, accompanied by background briefing explaining the lack of applications and plans for SCM for the future.

Conclusion

30. PS(MHI) is asked to:

- consider the primary decision, to spend or not to spend the surplus allocated budget; and should she be minded to do the latter
- provide a steer on her preferred approach from the spend options set out in the submission in the light of the pros and cons associated with each.
- It is recommended on balance that we do not spend the £10-15 million surplus budget allocation within the EIBSS, and robust lines will be developed to defend this position when it becomes public knowledge.

Ginny Belson, Infected Blood Policy
EPHPP GRO-C

Annex A

Background on Infected Blood Payment Scheme

1. Individuals infected with HIV or hepatitis C through treatment with NHS blood or blood products can access dedicated financial support through ex gratia payment schemes that were introduced in 1988. Responding to the need for a more accessible and equitable system of care and support, the government has carried out substantial reforms of the financial support provided to those affected.

2. In January 2016 the government launched a consultation on the proposed reforms to the infected blood payment schemes, seeking to streamline and improve fairness. A government response was published in July 2016 and a range of measures have been introduced as set out in that response, such as the introduction of an annual payment for those with HCV at Stage 1, uplifts in annual payments for all infected beneficiaries, the introduction of a new £10,000 one off payment to bereaved partners and spouses and the new payment scheme has been successfully moved to a single scheme administrator.

3. The new ex-gratia England Infected Blood Support Scheme (EIBSS) was launched on 1st November 2017 and replaced the five schemes that had administered the infected blood payments in the past. The proposed reform of the scheme was consulted on and a commitment was made to increase the level of funding available to support all beneficiaries. In addition, a discretionary support scheme designed to provide additional assistance as required continues to be available to all beneficiaries. A further element of the new scheme is the Special Category Mechanism (SCM) which was also launched on 1st November 2017.

4. The SCM is an assessment process for beneficiaries of the EIBSS who have Stage 1 hepatitis C. This mechanism was introduced to recognise the negative impact Stage 1 hepatitis C can have on a beneficiary's ability to carry out routine every day activities.

5. In respect to spend to date, 1900 people with Stage 1 hepatitis C (including 181 co-infected beneficiaries) have registered with EIBSS run by the NHS Business Services Authority (NHS BSA). Our original modelling, from which the forecasted spend was estimated, was based on the 2400 Stage 1 hepatitis C beneficiaries that were registered with the former schemes. Efforts have been made by the former schemes to contact the 500 Stage 1 hepatitis C beneficiaries that have not registered with NHS BSA to date.

6. As of 13 February 2018, of the 1900 Stage 1 hepatitis C beneficiaries only 708 had applied or expressed intent to apply for higher payments via the SCM. Since then, NHS BSA has continued to receive a trickle of further applications and the total number now stands at 744; these additional applications will not significantly impact on the predicted spend. The lower number of Stage 1 hepatitis C beneficiaries registered with the NHS BSA, combined with the lower than modelled number of applications for the SCM means that even if all of those who intend to apply for the SCM were to be successful there will be a large below forecast spend (estimated at between £10 -15 million) this year.

Annex B

EIBSS spend: Public Statements

21 January 2016 Commons Chamber - Jane Ellison (Parliamentary Under Secretary of State for Public Health):

Scheme reform is a priority for me and the Government, and for that reason I can announce that the Department of Health has identified £100 million from its budget for the proposals in the consultation. This is in addition to the current spend and the £25 million announced in March 2015, and it will more than double our annual spend on the scheme over the next five years. This is significantly more than any previous Government have been able to provide for those affected by this tragedy.

13 July 2016 Prime Minister's Questions - David Cameron:

I thank my hon. Friend for what she says about the cancer drugs fund, which has helped many people and families in our country. She is absolutely right to raise the issue of contaminated blood, and I can today announce that we will spend the extra £125 million that we have identified. A much fairer and more comprehensive scheme will guarantee that all those infected will, for the first time, receive a regular annual payment. That will include all those with hepatitis Stage 1, who will now receive £3,500 per year, rising to £4,500 per year by the end of the Parliament. For those with hepatitis C at Stage 2 or HIV, or who are co-infected with both, annual payments will increase over the lifetime of the Parliament, and we will enhance the support for those who have been bereaved and those who will be in future, significantly boosting the money for the discretionary payments. Last year I apologised to the victims on behalf of the British Government for something that should never have happened. Today I am proud to provide them with the support that they deserve.

14 July 2016 Written Ministerial Statement - Jane Ellison (Parliamentary Under Secretary of State for Public Health:

The Government recognise the suffering experienced by people as a result of this tragedy and the Prime Minister apologised on behalf of the Government in March 2015. Since 1988, successive Governments have set up five schemes to provide financial and other support to those affected. This Government committed further funding of up to £100 million (in January 2016) on top of the additional £25 million pledged by the Prime Minister in March 2015 and the existing baseline budget. This additional money will more than double the Department of Health's annual spend on the scheme over the spending review period. This is significantly more than any previous Government have provided for those affected by this tragedy.

24 November 2016 Commons Chamber - Nicola Blackwood (Parliamentary Under Secretary of State for Public Health and Innovation)

That is exactly why the Government are introducing the reforms we have been debating today to existing support schemes, alongside a commitment within this spending review period of up to £125 million until 2020-21 for those affected, which will more than double the annual spend over the next five years.

9 October 2017 Written Ministerial Statement - Jackie Doyle-Price (Parliamentary Under Secretary of State (Mental Health and Inequalities)

In 2016 the Government decided to improve the way we support people who have suffered as a result of the infected blood tragedy of the 1970s and 1980s. At this time the Government committed an additional £125 million of support to those affected, more than doubling the Department of Health's annual spending on the scheme over the spending review period to April 2021.

26 January 2017 Impact Assessment - published alongside the Government Responses to the consultations carried out;

A budget within which the reforms had to be delivered was announced by the Department of Health in November 2015. In addition to the money that was forecast to be spent under the old schemes, the Government announced that up to an additional £125 million would be available over the Spending Review period of 2016/17 to 2020/21. This additional expenditure was to be allocated evenly across the five year Spending Review period so that an additional £25 million would be available annually.

Annex C

Spend options and approximate costs

Option	Additional spend	Remainder surplus allocation based on a below forecast budget spend of £10m - 15m)	Pros and Cons
OPTION 1 Backdate annual payments uplift (currently set to be introduced for 18/19) to April 2017 for all infected beneficiaries – this would be paid as a lump sum at the end of March 2018. Hep C Stage 1 Hep C Stage 1 + SCM (includes co-infected) Hep C Stage 2 Hep C Stage 1 + HIV (co-infected) Hep C Stage 2 + HIV (co-infected) HIV	**£5.2m** £1.4m £1.0m £1.5m £0.7m £0.4m £0.2m	**£4.8m - £9.8m**	*This, it could be argued, is the option which is most in line with the existing scheme as all infected beneficiaries get additional money in anticipation of next year's increases.*
OPTION 2 Backdate SCM payments to 1 April 2017 (based on 708 successful applicants)	**£4.3m**	**£5.7m – 10.7m**	*This is the group where most of the below forecast spend originated.* *This option provides no additional money for Stage 1 hepatitis C beneficiaries who did not apply or were not successful via the SCM so could be seen as further disadvantaging this group.*

OPTION 3 Extra £1,500 for all Hep C Stage 1 (not in receipt of SCM)	**£1.6m**	**£8.4m – £13.4m**	*This is a group who that have received minimal support in the past.* *However, this option may be criticised by some beneficiaries as providing additional help to those who need it least as this group did not apply or were not successful in getting additional funding via the SCM.*
OPTION 1 + 2 Backdate annual payments uplift Backdate SCM payments to 1 April 2017	**£10.1m**	**-£0.9 - £5.9m**	
OPTION 1 + 3 Backdate annual payments uplift Extra £1,500 for all Hep C Stage 1 (not in receipt of SCM)	**£6.8m**	**£3.2m – £8.2m**	
OPTION 2 + 3	**£5.9m**	**£4.1 - £9.1**	

Backdate SCM payments to 1 April 2017 Extra £1,500 for all Hep C Stage 1 (not in receipt of SCM)			
OPTION 1 + 2 + 3 Backdate annual payments uplift Backdate SCM payments to 1 April 2017 £1,500 for all Hep C Stage 1 (not in receipt of SCM)	**£11.7m**	**-£1.7m – £3.3m**	

Annex D

Legal advice in full – cleared by Clare Martin

1. The legal risk associated with the decision to not spend or to spend the surplus budget on the EIBSS is considered here from the perspective of the existing judicial review and also from the perspective of potential new challenges. While both options do carry significant legal risk overall, the legal risks associated with spending the money – when the risks associated with both the existing judicial review and potential new challenges are both taken into account - are considered to be slightly higher. This is because the risk of potential new challenges if the money is spent is considered to be higher.

    i. <u>The judicial review of the reformed schemes – listed for hearing on 1 and 2 May 2018</u>

2. The level of annual payments for different classes of beneficiaries in the EIBSS is subject to challenge by way of judicial review in the Admin Court. The Claimant is a beneficiary with Stage 1 Hepatitis C. The EIBSS is challenged on equality and human rights grounds for not granting Stage 1 Hepatitis C beneficiaries an automatic right to payments equal to those provided to beneficiaries with HIV.

3. Counsel's most recent advice was that there is a medium to high chance (50-70%) that the Department will successfully defend the judicial review claim. If the Claim is successfully defended in the Admin Court, the Claimant may appeal to the Court of Appeal and, if unsuccessful there, to the Supreme Court. We would require updated prospects advice from counsel if there was an appeal.

4. Our defence in the judicial review is predicated on demonstrating that there are material differences between the circumstances of beneficiaries with Stage 1 Hepatitis C and beneficiaries with HIV. However, the Court has the power to decide that differences that perpetuate unfairness are not material. This means that anything that erodes the logic for the differences between the levels of payments received by beneficiaries with Stage 1 hepatitis C and those with HIV potentially weakens our defence. As our case also emphasises that the payment structure represented a fair balance given the limited budget, the fact spending is likely to be significantly less than forecast will to some extent weaken our defence in the judicial review. It could also prompt an application by the claimant to amend his case, adding a new rationality challenge based on inaccuracy of forecasting.

5. The impact of losing the judicial review is regarded to be high. An adverse decision by the Court could potentially require the Department to reconsider the July 2016 scheme reform and October 2016 SCM decisions and substitute it with a new equality law / human rights compatible decision effective from the 2016/2017 scheme year and/or to equalise payments between beneficiaries with Stage 1 hepatitis C and beneficiaries with HIV. An adverse judgment in the judicial review could also negatively impact on the Department's prospects of successfully defending the parallel private law claim that seeks that payments

between these groups are equalised between beneficiaries with hepatitis C and HIV from 2007/2008.

6. Counsel's advice is that the scheme spending less than forecast has materially weakened our defence and pushed the chances of a successfully defending the judicial review closer to the 50% mark, but not below it.

ii. The legal risk of not spending the money on EIBSS

7. In terms of the existing judicial review, the legal risk associated with not spending the money is the same as that associated with the fact significantly less was spent than forecast. Therefore counsel's advice on prospects at paragraph [3] applies. This is because it is possible that if the Claimant may look to make new arguments relating to the fact less was spent on the schemes than anticipated, including rationality-type arguments.

8. The risk of a new judicial review challenge (or a new ground within the existing judicial review) centred on the decision not to spend the money – for example based on irrationality, unfairness or legitimate expectation - being brought is around 50% and the chance of it being successful is low (less than 30%) but not negligible. The impact of losing a potential new challenge is likely to be lower than losing the existing judicial review, as it would likely only require the decision to spend or not spend the money to be reconsidered, and is anticipated to be medium.

iii. The legal risk of spending the money on EIBSS

9. The legal risk associated with spending the money will vary depending on how the money is to be spent. If a decision to spend the money was made further advice from counsel would be required on the specific risks associated with the proposed approach.

10. From the perspective of the existing judicial review, Counsel has advised that if the money is spent on the EIBSS, in a manner which is consistent with our defence, our prospects of successfully defending the claim may slightly increase our chances of success (as compared with not spending the money) - pushing us slightly further above 50%. However, as set out in paragraph [11] (below) the risk of a new successful challenge if the money is spent is considered to be marginally higher and therefore the *overall* legal risk is considered to be slightly higher.

11. The risk of a new successful challenge to a decision to spend the money is considered medium-low (30-50%) to low (under 30%), depending on the approach taken. Strong policy reasons for the decision taken, clear public communication and stakeholder engagement and consultation are likely to reduce the risk, but it will remain higher than if the money is not spent. Potential new challenges include:

a. By an individual in a class of beneficiaries who it is claimed do not benefit sufficiently from the one off spending of the money on various potential grounds, including irrationality.

b. A failure to adequately consult. If no consultation is carried out the risk of successful challenge on this ground is medium-high (50-70%). This risk can be mitigated, but not removed, by making clear the decision to spend the money is a one off and carrying out the most thorough consultation possible in the time available.

c. Legitimate expectation of further increased payments in future years. Provided it is made clear that this is a one off and that beneficiaries should make no assumptions about future years, the risks of a successful legal challenge on this ground are low.

Annex E

Public Sector Equality Duty Considerations

1. In reaching a decision on the options in relation to the forecast spend on the EIBSS you are required to comply with the Public Sector Equality Duty, thus, you must have due regard to the need to:

    - Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
    - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
    - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

2. We prepared Equality Act Analyses to accompany the consultation response in September 2017, and the further consultation on the details of the SCM. We considered how the scheme proposals would impact on beneficiaries sharing the protected characteristics of disability, age and gender. Regarding the other protected characteristics of gender reassignment, race, religion or belief, sexual orientation, pregnancy and maternity, and marriage and civil partnership, these were not considered in detail as we hold no information about beneficiaries in relation to these characteristics, and do not consider that the scheme would impact negatively specific to any of these groups.

3. In particular, the EQIA considered the issue of whether those with a disability as a result of infection are treated differently from others in a similar situation. The SCM was developed to give hepatitis C Stage 1 beneficiaries who consider they are disabled because their hepatitis C infection (or its treatment) is having a substantial and long-term adverse impact on their ability to carry out regular daily activities the opportunity to apply for the same annual payment as those with HIV or Stage 2 hepatitis C disease.

4. Overall our view is that the scheme as designed would not lead to any unlawful discrimination, harassment or victimisation of any particular group by gender, race, religion, ethnicity, sexuality, sexual orientation or disability. With annual payments now available for all infected beneficiaries and increased discretionary support, we consider the scheme advances equality of opportunity and should support good relations between different groups of beneficiaries.

5. A decision not to spend the money on the infected blood support scheme would maintain the status quo, with no particular impact on any group of beneficiaries sharing a particular protected characteristic.

6. A decision to spend the money would alter the payments for this year only so may be considered to have minimal overall impact on scheme beneficiaries.

7. Further details of the EQIA considerations for any of the spend options will be worked up as required.