POLICY NOTE

THE SCOTTISH PUBLIC SERVICES OMBUDSMAN ACT 2002 AMENDMENT ORDER 2015

SSI 2015/xxx

The above Order in Council is to be made in exercise of the powers conferred by section 3(2)(c) of the Scottish Public Services Ombudsman Act 2002 and is subject to affirmative procedure. The instrument is to be laid before the Scottish Parliament and approved by resolution in advance of being made at the Privy Council meeting on 15th July 2015.

Policy Objectives

The purpose of the instrument is to add ILF Scotland, known as the Independent Living Fund Scotland, to the jurisdiction of the Scottish Public Services Ombudsman (SPSO). The Order does this by adding ILF Scotland to schedule 2 to the Scottish Public Services Ombudsman Act 2002, which contains the list of persons and organisations liable to investigation by SPSO. This will allow complaints about ILF Scotland to be dealt with by the Ombudsman and will help to ensure an effective and robust complaints handling procedure. The overall policy intention is that once internal ILF Scotland complaints handling processes have been exhausted, a complainant should have the right to an external tier of redress, via the Ombudsman. The ability to complain to an independent Ombudsman is an important right for those who receive services from public organisations and this will ensure ILF Scotland is operating in line with most other Scottish public authorities.

Background

The UK Fund

The UK Independent Living Fund (UK ILF) is closing on 30 June 2015. It closed to new applicants in 2010. In England, decision making and funding of Independent Living Fund (ILF) is being delegated to local authorities. In Scotland, the then Deputy First Minister announced in April 2014 that the Scottish Government would establish a new national Scottish ILF. All existing Scottish users will transfer to ILF Scotland on 1 July 2015 as planned.

The UK ILF was first established in 1988 to support disabled people to live independent lives, at home, at work and in the community. The ILF provides discretionary cash payments to disabled people to enable them to purchase care/support from an agency or pay wages of a privately employed personal assistant. Payments offer people flexibility they may not otherwise have, to live in their own home, take up employment or education or to socialise like other citizens.

The Scottish Fund

A Scottish Government consultation exercise about the future of the ILF, undertaken in 2013, showed an overwhelming preference by disabled people in favour of the continuation of a national ILF scheme for Scotland.

ILF Scotland has been set up in order to administer Independent Living Fund payments in Scotland. It is constituted as a new company limited by guarantee, wholly owned and operated by Scottish Ministers, to 'promote and advance health within Scotland'. ILF Scotland will safe-guard the rights of 2,900 of Scotland's most severely disabled people to live independent lives. There is also a commitment to open the fund to new users, with funding of £5 million being made available to do this.

The Scottish Government has a continued commitment to independent living and is co-producing ILF Scotland with disabled people, organisations representing them and with its statutory sector partners. The new Scottish scheme will 'go live' on 1 July 2015.

ILF Scotland will contribute towards the Scottish Government's commitment to independent living and the ability of individuals to contribute to society and play a part in their local community.

Complaints Handling Policy

As part of work to ensure a smooth transition for service users, there has been a process of review and transfer of all of the existing UK ILF policies and procedures, ensuring that they are fully compliant with the Scottish policy and legislative framework. One area in which further action needs to be taken relates to the complaints handling process.

The overall policy intention for complaints handling is that once the internal ILF Scotland complaints handling process has been exhausted, a complainant should have the right to an external tier of redress, which would consider whether ILF Scotland has acted correctly. Under the existing UK system, a complainant currently has the right to external redress through DWP's Independent Case Examiner (ICE) or the Parliamentary and Health Services Ombudsman (PHSO); however these arrangements will fall from 1 July. There is therefore a need to ensure that there is an appropriate body to carry out this function within Scotland, following transfer to ILF Scotland.

In order to ensure an effective and robust complaints handling procedure, which includes an external mechanism of redress, ILF Scotland is being brought within the jurisdiction of SPSO.

The alternative solution to this approach would be the creation of a brand new external handling process, equivalent to either ICE or PHSO, to oversee complaints against ILF Scotland. However, given anticipated case volumes this approach would be both time consuming and involve disproportionate resource.

As part of discussions with SPSO, in order to ensure best practice in complaints handling, ILF Scotland will be working with them to ensure that their complaints process is brought in line with the Scottish Standard Complaints Handling Model.

Timing

ILF Scotland will commence delivery of funding to applicants from 1 July 2015, however it is expected that the Order would come into force shortly after Privy Council consideration, expected to be in mid-July. Due to the timescales involved, we therefore expect there to be a

short period of a number of days during which ILF Scotland is operational but nonetheless not liable to investigation by the Ombudsman.

During this interim period, if there are complaints arising where there may be a need for external redress, these will be dealt with by the current sole Director of ILF Scotland, who is the Deputy Director of Care, Support & Rights, within Scottish Government. This role is consistent with the other interim responsibilities of the sole Director, who is carrying out this role until the point when the new ILF Scotland Chair and Board of Directors are appointed.

Consultation

To comply with the requirements of Section 3(5) of the 2002 Act, every person to whom the Order relates must be consulted in advance of it being made. These bodies are SPSO and ILF Scotland, and both have been consulted over the proposed changes. Both the Ombudsman and the current Director of ILF Scotland have indicated their agreement to the approach.

The proposals have additionally been discussed with the Scottish Parliament Corporate Body (SPCB). As SPSO is funded directly by the Parliament, the SPCB has oversight of the SPSO. The Presiding Officer has advised that she is content with the proposed approach.

Impact Assessments

An equality impact assessment has not been completed as the policy to allow an external tier of redress through an external Ombudsman is consistent with the current ILF UK complaints policy, which has already previously impact assessed, with no identified negative impact.

Financial Effects

Under arrangements agreed with SPSO, ILF Scotland would need to meet the cost of cases referred to by them. Estimates based on past UK wide histories are that the volume of ILF Scotland referrals to SPSO is not expected to exceed around 3 cases per annum, averaging at a cost of around £1000 per case referred. These costs would be met from ILF Scotland's administration budget.

The Minister for Sport, Health Improvement and Mental Health confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as the Order does not impose additional cost or reduce existing costs on businesses or the third sector. The Order will result in redistribution or 'transfer' of costs between ILF Scotland and SPSO, however this is limited to the reimbursement arrangements described above and these costs will be met from the administration budget provided by Scottish Government to ILF Scotland.

Scottish Government
Directorate of Population Health
20 May 2015