

EXPLANATORY NOTES

Welfare Funds (Scotland) Act 2015 (asp 5)

£6.00

These notes relate to the Welfare Funds (Scotland) Act 2015 (asp 5) which received Royal Assent on 8 April 2015.

WELFARE FUNDS (SCOTLAND) ACT 2015

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Act makes provision for the establishment of welfare funds which will be maintained by local authorities and will be established to reflect the amendment of Schedule 5 to the Scotland Act 1998 made by the Scotland Act 1998 (Modification of Schedule 5) (No. 2) Order 2013: SI 2013/192. The Act is comprised of fifteen sections. It confers duties on local authorities to maintain and administer welfare funds in particular fashions. It confers powers on the Scottish Ministers to make regulations, and publish guidance which will set out how welfare funds should be administered. It requires local authorities to review their decisions on provision of assistance under welfare funds if an applicant for assistance requests a review. It also requires the Scottish Public Services Ombudsman (SPSO) to carry out second tier reviews, on request, in relation to local authority decisions on provision of assistance under welfare funds.

4. The detail of how welfare funds will be administered is not set out in the Act. However, the intention is that the package of the Act, associated regulations and guidance which the Scottish Ministers intend to make, will set out in legislation arrangements that have been in place on an interim basis since April 2013. Those interim arrangements are known as the Scottish Welfare Fund (SWF) and are based on a voluntary agreement between the Scottish Ministers and the Leaders of the Convention of Scottish Local Authorities (COSLA). The intention is that the legislative package will allow for these arrangements to continue, notwithstanding a change in how second tier reviews will be undertaken. A summary of the interim scheme is provided in paragraphs 6 to 10.

Summary of the interim Scottish Welfare Fund

5. The interim SWF aims to—

- provide a safety net in an emergency when there is an immediate threat to health and safety through the provision of a non-repayable grant which is known as a Crisis Grant (CG); and
- enable people to live independently, or to continue to live independently, preventing the need for institutional care, through the provision of a non-repayable grant which is known as a Community Care Grant (CCG). This includes providing assistance to families facing exceptional pressures. For example where there has been a breakdown in family relationships, perhaps involving domestic violence, which is resulting in a move.

6. CGs are awarded to meet expenses that have arisen as a result of an emergency or disaster in order to avoid serious damage or serious risk to the health or safety of the applicant or their family.

7. CCGs are awarded to—

- help people establish themselves in the community following a period of care where circumstances indicate that there is a risk of the person not being able to live independently without this help;
- help people remain in the community rather than going into care where circumstances indicate that there is a risk of the person not being able to live independently without this help;
- help people set up home in the community, as part of a planned resettlement programme, following an unsettled way of life;
- help families facing exceptional pressures, such as the breakdown of a relationship, or repair and replacement of items damaged by behavioural problems within the family; and
- help people to care for a prisoner or young offender who is living with them on release on temporary licence.

8. The interim SWF is aimed at supporting people on low incomes. Some of the main users of the interim SWF are—

- disabled people
- lone parents
- unemployed people
- older people
- care leavers
- homeless people
- ex-offenders
- carers.

9. The interim SWF operates on a discretionary, budget-limited basis, with applications being prioritised according to need. Local authorities are expected to manage expenditure in such a way as to ensure effective budgetary management of funds over the financial year. They are able to supplement funding from the Scottish Ministers, but are not obliged to do so. The intention is for the funds to link to other local services and provide a better service to vulnerable members of the local community. The most common services that applicants are signposted or referred to are advocacy, welfare rights, housing and money or debt management.

10. The interim SWF was designed to take advantage of local delivery, while maintaining a national character. The Scottish Government has sought to standardise the decision making and notification process for the interim SWF by providing comprehensive guidance, a standard application form, a guide for decision makers and model documentation. In addition to this a national training programme and funding for a dedicated Development Officer, based in COSLA, in order to promote consistency and support implementation has been provided by the Scottish Government. However, local authorities have full discretion over local arrangements for delivery i.e. the arrangements for taking and processing applications and the arrangements for paying grants or fulfilling them by other means. This allows local authorities to align the SWF with other relevant services, make effective links with local organisations and to ensure that their delivery meets local needs, for example in terms of geography.

COMMENTARY ON INDIVIDUAL PROVISIONS

Section 1: Welfare funds

11. This section establishes the concept of a "welfare fund". It requires each local authority to maintain a fund. The funds are to be made up of any grants paid into the fund by the Scottish Ministers, and any amounts paid into the fund by the local authority.

Section 2: Use of welfare funds: assistance for short term need and community care

12. This section sets out the circumstances in which a local authority can provide financial or other assistance to or in respect of individuals.

13. It repeats relevant text from the Scotland Act 1998 (Modification of Schedule 5) (No. 2) Order 2013: SI 2013/192 which set out an exception from the social security reservation in the Scotland Act 1998 so as to give the Scottish Parliament competence to legislate for welfare provision. Section 2 sets out the general scope of the funds.

14. Subsection (1) allows local authorities to use their welfare funds to provide occasional financial or other assistance to, or in respect of, individuals for the purposes of meeting, or helping to meet an immediate short term need arising out of an exceptional event, or exceptional circumstances. The short term need must also be one that would mean there would be a risk to the wellbeing of an individual if it were not met.

15. This section also allows local authorities to use their welfare funds to provide occasional financial or other assistance to, or in respect of, individuals to enable qualifying individuals to establish or maintain a settled home.

16. Subsection (2) provides that welfare funds can be used to provide assistance to qualifying individuals who have been or, without the assistance, might otherwise be in prison, hospital, a residential care establishment or other institution such as foster care, or be homeless or otherwise living an unsettled way of life.

17. Subsection (3) provides that a local authority may not use its welfare fund to provide assistance through loans.

18. Subsection (4) provides that a local authority may pay third parties to provide assistance to qualifying individuals by either providing goods or services. For example, a local authority may pay a contractor to provide furniture or carpets to fulfil a grant.

Section 3: Review of decisions

19. Subsection (1) of this section provides that a local authority must, if requested by the applicant, carry out a review of its decision on a welfare fund application.

20. Subsection (2) provides that the right of review under subsection (1) is subject to subsection (3).

21. Subsection (3) gives the Scottish Ministers the power to make regulations setting out the circumstances in which a local authority decision on a welfare fund application does not have to be reviewed; how an application for review of a local authority decision is to be made, and setting time limits within which applications for review of a local authority decision should be made.

22. Subsection (4) specifies that regulations made under this section are subject to the affirmative procedure.

Section 4: Further provision

23. This section provides the Scottish Ministers with the power to make regulations to set out how welfare funds should operate, and what local authorities' functions are in relation to the funds.

24. Subsection (2) sets out a number of particular matters about which the Scottish Ministers may make provision in regulations. Any regulations made under this section will in effect set out the detailed legislative framework for the operation of the welfare funds.

25. Regulations may in particular make provision about how an application to receive assistance is to be made; the procedure which local authorities are to follow in relation to applications; eligibility to receive assistance; other circumstances in which assistance may, or may not be provided; the type of assistance which may be provided; and circumstances in which payments or assistance may or may not be repaid or recovered. They may also make provision requiring local authorities to provide the Scottish Ministers with information for monitoring and reporting purposes; about the procedure which local authorities are to follow in relation to reviews or applications for reviews, including the period within which they are to take particular steps; requiring applicants to the funds to provide information for the purposes of a review by a local authority and about circumstances in which an application to receive assistance or an application for review by a local authority may be made by a person on behalf on an individual.

26. Subsection (3) provides that regulations about the procedure which local authorities are to follow in relation to applications, including the period of time they have to do certain things must provide that a local authority is to make a decision on a welfare fund application for help to meet an immediate or short term need immediately after the local authority has received all information allowing a decision to be made, and in any event , no later than the end of the next working day.

27. Subsection (4) provides that the regulations may make different provision for different purposes. They may also make incidental, supplementary, consequential, transitional, transitory or saving provision.

28. Subsection (5) provides that regulations under this section are subject to the affirmative procedure.

Section 5: Respect for, and dignity of, applicants for assistance

29. This section provides that, while exercising their functions under sections 1 to 3 of the Act and any regulations made under section 4, local authorities must take reasonable steps to ensure that applicants for assistance are treated with respect and that their dignity is preserved.

Section 6: Guidance

30. This section provides that local authorities must have regard to any guidance issued by the Scottish Ministers in connection with the exercise of functions under sections 1 to 3 of the Act and any regulations made under section 4.

31. Subsection (2) provides as to the guidance that the Scottish Ministers can issue. The guidance must apply in the same way to all local authorities, may be general or specific and can be varied or revoked, subject to consultation requirements contained in subsection (3).

32. Subsection (3) provides that the Scottish Ministers must consult such body representing local authorities as they think fit, the Scottish Public Services Ombudsman (the Ombudsman), and other persons as they consider appropriate before issuing, varying or revoking guidance.

33. Subsection (4) provides that the Scottish Ministers must publish guidance in such manner as they consider appropriate.

Section 7: Application to Ombudsman for further review

34. This section provides for applications to the Ombudsman for a further review of a local authority decision (following initial review by the local authority).

35. Subsection (2) provides that an application for further review may be made by the applicant, or a person authorised by the applicant.

36. Subsection (3) provides that an application may be made orally or in writing.

37. Subsection (4) provides that the Ombudsman must not consider an application for further review if it is made more than one month after the applicant was first informed of the outcome of a local authority review, unless the Ombudsman is satisfied that there are circumstances which make it appropriate to consider an application made out with the one month period.

38. Subsection (5) provides that it is for the Ombudsman to determine whether an application for further review has been duly made.

Section 8: Ombudsman's powers

39. This section gives the Ombudsman the power, where the Ombudsman considers that the decision made by the local authority is not the one that should have been made, to direct the local authority to make an award out of its welfare fund or to remit the case to the local authority so that it can re-consider its decision.

Section 9: Statement of practice

40. This section requires the Ombudsman to prepare a statement of practice setting out the approach the Ombudsman intends to take to carrying out the independent review function that is provided for in section 7. It will be for the Ombudsman to determine the content of the statement of practice, but it could include details of timescales for carrying out reviews, and methods of exchanging information with local authorities and applicants for reviews.

41. Subsections (2) and (3) provide that the Ombudsman must consult local authorities and such other persons as the Ombudsman considers appropriate before preparing the statement of practice, and must be published in a way that the Ombudsman considers appropriate.

42. Subsection (4) provides that the Ombudsman may revise the statement of practice.

43. Subsection (5) provides that subsections (2) to (4) apply to a revised statement of practice. This means the consultation and publication requirements in these subsections also apply to a revised statement. It also provides that the Ombudsman can further revise a revised statement of practice.

Section 10: Procedural matters

44. Subsection (1) provides that the Ombudsman can set out the Ombudsman's own procedure for conducting a review of a local authority decision.

45. Subsection (2) provides the Ombudsman with powers to obtain evidence and make inquiries as the Ombudsman thinks fit. These powers are broadly equivalent to the powers the Ombudsman has to obtain evidence on complaints. It also provides that the Ombudsman may hold oral hearings, or determine a review without an oral hearing. Subsection (4) provides that the Ombudsman may administer oaths at an oral hearing held in relation to the review.

46. Subsection (3) provides that the Ombudsman may require the local authority concerned, the applicant for assistance, or any other person to provide information or documents which the Ombudsman considers relevant to the review.

47. Subsection (5) provides that the Ombudsman may make rules setting out the factors to be taken into account by the Ombudsman in deciding whether to hold an oral hearing, and the procedure to be followed for conducting an oral hearing.

48. Subsection (6) provides that the Ombudsman must consult local authorities and such other persons as the Ombudsman considers appropriate before making the rules provided for under subsection (5).

49. Subsection (7) provides that the Ombudsman must publish the rules under subsection (5) as soon as reasonably practicable.

Section 11: Notice of decision and publication of report

50. Subsection (1) provides that, after carrying out a review of a local authority decision, the Ombudsman must notify the applicant and the local authority concerned of the Ombudsman's decision. It also provides that the Ombudsman may publish a report of the review.

51. Subsection (2) provides that a report of a review must not, apart from identifying the local authority concerned, mention the name of any person, or contain details which, in the Ombudsman's opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report.

Section 12: Interpretation

52. This section provides that in this Act "the Ombudsman" means the Scottish Public Services Ombudsman.

Section 13: Consequential amendments

53. This section makes a number of consequential amendments to the Scottish Public Services Ombudsman Act 2002 ("the 2002 Act").

54. Subsection (2) amends section 14 of the 2002 Act. It restricts application of that section, which provides the Ombudsman with powers in relation to unlawful obstruction of the Ombudsman's functions, to the functions of the Ombudsman under sections 2 to 13 of the 2002 Act.

55. Subsection (3) inserts a new section in the 2002 Act. This new section 16H provides that the Ombudsman has further powers in relation to review of decisions by local authorities under the Act.

56. Subsection (4) amends section 18(1) of the 2002 Act which provides for certain statements to be absolutely privileged for the purposes of the law of defamation. It provides that any statement made by the Ombudsman in a report under the Act, any statement made by the Ombudsman in communicating with any person for the purposes of a welfare fund review, and any statement made by any person in communicating with the Ombudsman for the purposes of such a review are absolutely privileged for the purposes of the law of defamation.

57. Subsection (5) amends section 19 of the 2002 Act which concerns confidentiality of information. It inserts a number of new subsections in respect of a welfare fund review carried out by the Ombudsman. It provides that information obtained by the Ombudsman or any of the Ombudsman's advisors in connection with a welfare fund review must not be disclosed except for purposes listed in section 19. It also provides that it is not competent to call upon the Ombudsman or the Ombudsman's advisors to give evidence in any proceedings, other than those listed in section 19 of the 2002 Act, in respect of information they have gained in connection with a welfare fund review.

58. Subsection (6) amends section 20 of the 2002 Act so that the disclosure requirements of the 2002 Act also apply to information obtained by, or supplied to, the Ombudsman or any of the Ombudsman's advisers under the Act.

59. Subsection (7) amends section 23 of the 2002 Act by adding certain new definitions.

Section 14: Commencement

60. This section provides for commencement of the Act. Sections 14 and 15 will come into force on the day after Royal Assent.

61. Subsection (2) provides that the other provisions of the Act will come into force on such day as the Scottish Ministers may by order appoint.

62. Subsection (3) provides that a commencement order may include transitional, transitory or saving provision.

Section 15: Short title

63. This section gives the short title of the Act.

PARLIAMENTARY HISTORY

64. The following table sets out, for each stage of the proceedings in the Scottish Parliament on the Bill for the Act, the dates on which the proceedings at that stage took place, and the references to the official report of those proceedings. It also shows the dates on which Committee Reports and other papers to the Act were published, and references to those reports and papers.

Proceedings and reports	**Reference**
Bill as introduced – 10 June 2014	Session 4, SP Bill 51
Spice Briefing	Sb, 14-55
Stage 1	
(a) Welfare Reform Committee	
30 September 2014 (evidence)	Column 3
7 October 2014 (evidence)	Column 1
28 October 2014 (evidence)	Column 2
4 November 2014 (evidence)	Column 2
7th Report, Session 4 (2014) Stage 1 report on the Welfare Funds (Scotland) Bill	Report
(b) Delegated Powers and Law Reform Committee	
24 June 2014	Column 1557
5 August 2014	Minute of Meeting
7 October 2014	Minute of Meeting
24 February 2015	Column 8
(c) Finance Committee	
25 June 2014	Minute of Meeting
1 October 2014 (evidence)	Column 38
(d) Consideration by the Parliament	
Stage 1 Debate – 16 December 2014	Columns 10-61, 65

Proceedings and reports	**Reference**
Stage 2	
(a) Welfare Reform Committee	
27 January 2015	Column 2
Spice Briefing	Sb, 15-11
Bill as amended at Stage 2	Session 4, SP Bill 51 (as amended)
Stage 3	
Consideration by the Parliament	
Stage 3 debate – 3 March 2015	Columns 14-77
Bill as passed	Session 4 SP Bill 51 (as passed)
Royal Assent – 8 April 2015	Welfare Funds (Scotland) Act 2015 asp 5

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