

## SPICe Briefing

# Welfare Funds (Scotland) Bill – Prior to Stage 3

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This briefing provides a summary of the parliamentary scrutiny of the Welfare Funds (Scotland) Bill prior to the Stage 3 proceedings which are scheduled to take place on 3 March 2015. The briefing summarises the main recommendations made by the Welfare Reform Committee in its Stage 1 report, the Scottish Government response to these recommendations and action taken at Stage 2.

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## EXECUTIVE SUMMARY

The Welfare Funds (Scotland) Bill is a Government Bill. It proposes to give the interim Scottish Welfare Fund (SWF) scheme a statutory foundation. The SWF provides two types of grant:

- *Crisis Grants* to provide a safety net when someone experiences a disaster or emergency situation, such as a fire or flood and there is an immediate threat to health and safety.
- *Community Care Grants* (CCG) to enable people to live independently or continue to live independently and prevent the need to go into care. A CCG may also be able to help a family facing exceptional pressure.

The Welfare Reform Committee was the lead Committee at Stage 1. Its Stage 1 report was supportive of the general principles of the Bill.

As the Bill provides a framework for the fund, much of the evidence at Stage 1 was concerned with detail about operational improvements, such as awareness raising, accessibility and consistency. The Committee's Stage 1 report made a number of further recommendations relating to operational issues it believes should be taken into account during the development of the regulations and guidance that would be published under the Welfare Funds (Scotland) Act.

The main amendments agreed to at Stage 2 provide for:

- the removal of section 3 of the Bill as introduced. This would have allowed a local authority to make arrangements for another organisation, including a private sector organisation, to administer its welfare fund on its behalf. The Committee heard some concerns about the potential for private sector companies to administer the fund. This amendment will not prevent local authorities making arrangements to administer welfare funds jointly as they can do so under powers in existing legislation.
- the introduction of a right of review of a local authority decision on a welfare fund application.
- further detail of the role of the Scottish Public Services Ombudsman in undertaking independent review of local authority decisions on welfare funds applications.
- a requirement on local authorities, when exercising their functions under the Bill, or regulations made under the Bill, to take reasonable steps to ensure that welfare fund applicants are treated with respect and that their dignity is preserved.

## INTRODUCTION

The Welfare Funds (Scotland) Bill is a Government Bill, introduced in the Scottish Parliament on 10 June 2014 by Nicola Sturgeon MSP. The Bill proposes to give the interim Scottish Welfare Fund (SWF) scheme a statutory foundation. The objectives of the interim SWF are 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 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.

The SWF has been operating as an interim scheme since the Department for Work and Pensions (DWP) abolished the UK discretionary Social Fund in April 2013 and transferred the funding for community care grants and crisis loans to the Scottish Government. These interim arrangements are based on a voluntary agreement between Scottish Ministers and the Convention of Scottish Local Authorities (COSLA). The purpose of the interim scheme was to learn lessons from its operation, before providing a legislative framework.

SPICe Briefing 13-54 [Scottish Welfare Fund](#) provides background information on the Fund.

## SUMMARY OF PROPOSALS

The Bill as introduced contained eight sections which sought to:

- place a duty on local authorities to maintain and administer welfare funds
- define the circumstances in which a local authority can provide financial or other assistance through the welfare fund
- provide powers for Scottish Ministers to make regulations about arrangements that local authorities are required to have in place to carry out reviews of decisions they make in relation to the provision of assistance
- place a requirement on the Scottish Public Sector Ombudsman (SPSO) to carry out reviews in relation to local authority decisions on provision of assistance from welfare funds. Currently, applicants can only ask the local authority to review its decision. The introduction of this second tier review process for appeals is the main change to the way the interim SWF scheme currently operates.
- provide a right for an individual to apply to the SPSO for a further review, beyond that carried out by a local authority. This is a new power for the SPSO and is distinct from the SPSO's current jurisdiction which involves considering whether there has been poor service or maladministration.
- give the SPSO the power, where it 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 or to remit the case to the local authority so that it can re-consider its decision.
- provide powers for Scottish Ministers to make regulations, and publish guidance, setting out how welfare funds should be administered.

As the Policy Memorandum explains,

“The detail of how welfare funds will be administered is not set out in the Bill. However, the intention is that the package of the Bill, 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”.

## PARLIAMENTARY CONSIDERATION

The Welfare Reform Committee was designated as lead Committee on the Bill. Table 1 outlines the relevant dates for parliamentary consideration of the Bill.

**Table 1: Summary of Parliamentary Consideration of the Welfare Funds (Scotland) Bill**

|  |   |
|--|---|
| <b>Bill Introduced</b>                           | 10 June 2014  |
| <b>Stage 1 – General Principles</b>              |   |
| <b>Welfare Reform Committee</b>                  | 30 September 2014 (evidence)<br>7 October 2014 (evidence)<br>28 October 2014 (evidence)<br>4 November 2014 (evidence) |
| <b>Delegated Powers and Law Reform Committee</b> | 24 June 2014<br>5 August 2014<br>7 October 2014   |
| <b>Finance Committee</b>                         | 25 June 2014<br>1 October 2014 (evidence)<br>29 October 2014  |
| <b>Stage 1 Report Published</b>                  | 8 December 2014   |
| <b>Stage 1 Debate</b>                            | 16 December 2014  |
| <b>Stage 2</b>                                   |   |
| <b>Welfare Reform Committee</b>                  | 27 January 2015   |

## KEY ISSUES AT STAGE 1 AND STAGE 2

At Stage 1, the lead committee is tasked with reporting on the Bill's general principles. The Welfare Committee, in its Stage 1 report, supported the general principles of the Bill.

Stage 2 offers an opportunity for any member of Parliament to propose textual amendments to a bill, although only members of the lead committee can vote on any amendments that are lodged. Margaret Burgess MSP (Minister for Housing and Welfare) ('the Minister') took forward the Scottish Government amendments at Stage 2.

Table 2 outlines the Welfare Reform Committee's recommendations on the Bill at Stage 1, the Scottish Government response and how the issue was addressed at Stage 2. It is designed to provide a summary of the main issues associated with the Bill during its passage through the Scottish Parliament so far. It is not a comprehensive discussion of all the issues raised.

**Table 2: Key Issues at Stage 1 and Stage 2**

| Issue   | Stage 1 Report and Scottish Government Response   | Action at Stage 2   |
|---|---|---|
| <b>Eligibility and Use of Welfare Funds</b>   |   |   |
| <p>Section 2 of the draft Bill sets out the circumstances in which a local authority can provide financial or other assistance to an individual.</p> <p>There was a concern from some witnesses that the wording within the Bill was too tightly drawn and may exclude those with a legitimate need. In particular, the Committee heard strong requests for an amendment to include ‘families under exceptional pressure’ and carers.</p> | <p>The Committee recommended that the Scottish Government reconsider the eligibility criteria in section 2 of the Bill to ensure that all those in legitimate need of the fund are able to access it.</p> <p>The Scottish Government’s response noted the concerns of stakeholders but said that it did not have ‘a free hand’ in being able to provide for everyone who might benefit from welfare funds. It explained that section 2 of the Bill replicates the wording of the amendment of Schedule 5 to the Scotland Act 1998 made by the Scotland Act 1998 (Modification of Schedule 5) (No 2) Order 2013 (the “section 30 Order”) which gives the powers to the Parliament to legislate in this area.</p> <p>Therefore, “...This means that it gives the Funds the broadest possible scope to operate within the reservation. The regulations and guidance which will be published under the Bill will set out the details of the operation of the funds and the Scottish Government committed to do all that they could to ensure that the guidance is framed in such a way as to integrate the work of welfare funds into existing Scottish Government policy”.</p> | <p>Amendment 27, in the name of Ken McIntosh MSP, sought to include “families facing exceptional pressure” among the list of groups classed as qualifying persons for the purpose of a community care grant.</p> <p>The Minister argued that the amendment would take the provisions of the Bill beyond the competence of the Scottish Parliament. She said there is “...no barrier now, nor under the permanent arrangements of the bill’s wording, to prevent families under exceptional pressure from accessing welfare funds. Regulations and guidance will ensure that applications from that group continue to be given priority” (Col 19)</p> <p>The amendment was disagreed to.</p> |

| Issue  | Stage 1 Report and Scottish Government Response   | Action at Stage 2   |
|--|---|---|
| <p>Section 5 of the Bill would provide 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.</p> <p>The Committee heard evidence that the provision in section 5(f) was concerned with the ability of local authorities to act in cases of fraud. However, it also heard concerns that the drafting may enable the provision of welfare funds through loans, rather than the current grant making arrangements.</p>   | <p>The Committee recommended a tightening of the language in section 5 to clarify that the provision is concerned with the ability of local authorities to act in cases of fraud.</p> <p>The Scottish Government's response outlined their intention that welfare funds should operate as grant schemes and not loan schemes. They committed to bring forward a stage 2 amendment to ensure that local authorities are precluded from using welfare funds to provide loans.</p>   | <p>Scottish Government amendment 1 sought to amend section 2 by providing that assistance from welfare funds cannot be in the form of loans.</p> <p>Amendment 1 was agreed to.</p>  |
| <b>Administration of Welfare Funds</b>   |   |   |
| <p>Section 3 of the Bill would allow a local authority to make arrangements for another organisation to administer its welfare fund on its behalf. This means that local authorities could outsource the provision of their welfare fund to the private or third sector or to another local authority. It would also allow a number of local authorities to come together and either administer or outsource the provision of their welfare funds jointly.</p> <p>The Committee heard support for the provision from local authorities, COSLA and some of third sector organisations. However, third sector organisations were very firmly against the use of private third party providers being involved in the delivery of state benefits for profit.</p> | <p>The Committee recommended that the Scottish Government consider the issue of outsourcing in light of EU procurement laws and thresholds to ensure that private companies are not allowed to undertake the work.</p> <p>The Scottish Government's response indicated that it is not possible under EU public procurement rules to specify in the Bill that a contract for the provision of a service like welfare funds be reserved solely for third sector organisations to tender for. They outlined their intention to bring forward an amendment at stage 2 of the Bill which would remove the section relating to outsourcing.</p> | <p>The Scottish Government introduced and amendment that sought to remove section 3 from the Bill.</p> <p>The Minister explained that the amendment would not prevent local authorities making arrangements to administer welfare fund jointly, as section 56(5) of the Local Government in Scotland Act 1973 provides a general power for two or more local authorities to discharge functions jointly (col 22).</p> <p>The amendment was agreed to.</p> |

| Issue   | Stage 1 Report and Scottish Government Response  | Action at Stage 2  |
|---|--|--|
| <b>Review of Decisions</b>  |  |  |
| <p>Section 4 of the Bill provides for local authority review of decisions in relation to the provision of assistance from the welfare fund.</p> <p>Section 4(1) provides that the Scottish Ministers may, by regulations, require local authorities to review decisions made by them about assistance from the fund.</p> <p>The Delegated Powers and Law Reform Committee commented on these provisions. They suggested it is preferable to require, rather than allow, Scottish Ministers to regulate regarding local authority reviews.</p> | <p>The Committee drew the report of the Delegated Powers and Law Reform Committee's report to the attention of the Scottish Government.</p> <p>The Scottish Government's response outlined its intention to bring forward an amendment at stage 2 to put a right for applicants to welfare funds to require a first tier review on the face of the Bill.</p> | <p>Scottish Government amendment 3 (grouped with amendments 5, 9 and 10) cover local authority reviews of decisions that they have made on welfare fund applications.</p> <p>Amendment 3 sought to create a right of review of a local authority decision. That would replace a previous provision that provided that ministers may make regulations on reviews. The amendment also sought to give Scottish Ministers powers to make regulations about applications for reviews</p> <p>Amendment 10 also sought to allow Scottish Ministers to make regulations that would provide more detail about the procedures around local authority reviews of decisions.</p> <p>Amendment 5 proposed to make the regulations under section 4 subject to the affirmative procedure.</p> <p>These amendments were agreed to.</p> |



| Issue   | Stage 1 Report and Scottish Government Response   | Action at Stage 2  |
|---|---|--|
| <b>Scottish Public Sector Ombudsman Conducting second tier reviews</b>  |   |  |
| <p>Section 4 (3) of the Bill set out a right for an individual to apply for a second tier review of a decision on a Scottish Welfare Fund application to the SPSO.</p> <p>The Bill had few provisions relating to the SPSO's role. The Scottish Government outlined their intention to come back at Stage 2 with amendments following discussions with the SPSO on how the Bill could best set out the SPSO's role in undertaking independent review.</p> | <p>The Committee welcomed the commitment of the SPSO to carry out a full consultation and publish guidance on how it will conduct reviews in which it will set out their obligations, timescales and processes. It also supported the SPSO in its call for an appropriate provision to this effect to be included in the legislation.</p> <p>The Committee also suggested that it would also be helpful to include in regulations or guidance a requirement for local authorities to provide information or representation to the SPSO when required.</p> <p>The Scottish Government's response indicated that it intended to address the role and responsibilities of the SPSO in respect of welfare funds by bringing forward stage 2 amendments to the Bill.</p> | <p>Scottish Government amendment 4, (grouped with amendments 6, 7, 11, 13 and 15 to 22) sought to provide for the role of the SPSO in undertaking independent reviews of local authority decisions on welfare fund applications.</p> <p>The Minister explained that "amendments 4,6,7,11,13 and 16 do not alter the content of the Bill, but they are necessary to reflect structural changes to accommodate the substantive amendments that set out the specifics of the ombudsman's role" (Col 25).</p> <p>Amendment 15 sought to create a right to review, by the SPSO, of a local authority decision on a welfare fund application. It sets out when, how and by whom an application can be made, and the timescales in which an application should be made. It made provision for the SPSO to determine when an application for independent review has been made and to make exceptions to the time bar on applying for independent review.</p> <p>Amendment 17 sought to require the SPSO to prepare a statement of practice setting out the approach which he intends to take in the conduct of reviews of local authority decisions. The amendment also set out consultation requirements.</p> <p>Amendment 18 sought to give the Ombudsman powers to hold oral hearings, and to make rules about when an oral</p> |

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|  |  | <p>hearing would be appropriate and about the procedures to be followed.</p> <p>Amendment 20 sought to make provision for notification of, and reporting on, decisions it has made on reviews.</p> <p>Amendment 22 sought to make consequential amendments to the Scottish Public Services Ombudsman Act 2002. It also contains new provisions in relation to confidentiality to allow the Ombudsman to disclose information gathered in consideration of a review in order to inform the investigation of a complaint and vice versa.</p> <p>Amendment 19 sought to replicate, for reviews of welfare fund decisions, the power that the SPSO has in the Scottish Public Services Ombudsman Act 2002, in relation to obstruction and contempt by people providing information in connection with a complaint investigation.</p> <p>Ken McIntosh MSP asked the Minister to reconsider this amendment. He explained that the Child Poverty Action Group “felt that the powers to take a proceeding to the Court of Session and, where someone does not provide information, to consider it a contempt of court, were extreme for such a minor, rather technical matter”(Col 27).</p> <p>The Minister agreed to reconsider the issue and stated, “I am not saying that I will not bring it back at Stage 3 but, at this point I am willing to ask to withdraw it so that I can discuss it more” (Col 36).</p> |
|--|--|---|

| Issue  | Stage 1 Report and Scottish Government Response   | Action at Stage 2  |
|--|---|--|
| <b>Dignity and Respect</b>   |   |  |
| <p>One of the key themes the Committee heard in evidence was the danger of stigmatisation for welfare fund users. Third sector representatives emphasised the importance of maintaining Scottish Welfare Fund users' dignity and respect.</p>                                  | <p>The Committee's report set out its belief that the Scottish Welfare Fund could be enhanced by outlining the importance of the principles of dignity and respect for Scottish Welfare Fund users as a key part of the regulations and guidance.</p> <p>The Scottish Government's response indicated that it would consider the recommendations in the Committee report when producing draft regulations and guidance. It intends to consult on the draft regulations and guidance in summer 2015.</p> | <p>Amendment 24, in the name of Margaret McDougall MSP, sought to provide that local authorities would have to take all reasonable steps to ensure that respect for, and the dignity of, the applicant are taken into account and that the needs and choices of the household are considered.</p> <p>The amendment was disagreed to.</p> <p>Amendment 30, in the name of Kevin Stewart MSP, sought to require local authorities, when exercising its functions under section 1 to 4, or any regulations under section 5, to take reasonable steps to ensure that applicants are treated with respect and their dignity is preserved.</p> <p>The amendment was agreed to.</p> |
| <b>Review Clause</b>   |   |  |
| <p>A small number of organisations called for a review clause. This would enable further consideration of the operation of the fund, in light of the outcome of the Smith Commission process and any Scottish Government response to the continuing welfare reform agenda.</p> | <p>The Committee reported that it was aware of the increasing administrative workload which is being placed on local authority staff. They therefore recommended on-going monitoring, rather than a review clause.</p> <p>The Committee suggested that the Scottish Government may wish to work with COSLA to consider how its benchmarking evidence may be useful in this process</p>  | <p>Amendment 31, in the name of Margaret McDougall MSP, sought to make provision for Scottish Ministers to report about the delivery of welfare funds.</p> <p>The Minister believed that "sufficient opportunities for review exist through the Parliament, the Scottish Government's statistical publications and the invaluable input that we all have from the third sector..." (Col 40).</p> <p>The amendment was disagreed to.</p>  |

| Issue   | Stage 1 Report and Scottish Government Response   | Action at Stage 2  |
|---|---|--|
| <b>Non-financial awards</b>   |   |  |
| <p>Local authorities can provide assistance through the welfare fund with cash, goods or vouchers. The Committee heard arguments on both sides regarding whether it was better for an applicant to receive an award in the form of cash or whether it was better to receive vouchers or goods in kind (for example, a sofa or a washing machine as part of a community care grant).</p> | <p>The Committee noted that local authorities have discretion on how the funds are paid out. However, it welcomed the Scottish Government's assurance that it would be looking again at the issue of stigmatisation and choice.</p> | <p>Amendment 25 (grouped with amendment 26 and 28), in the name of Ken Macintosh MSP, sought to enable the Scottish Government to produce regulations detailing the circumstances in which a local authority could make a non-financial award. This could be used to ensure that local authorities take applicants circumstances and preferences into account.</p> <p>The Minister argued that the Bill was not the correct place to address the issues raised in the amendments. She indicated that when the Scottish Government consult on the regulations and the statutory guidance that will support the Bill they will explore ways of ensuring that the principles of amendment 25 are taken on board in respect of crisis grant payments.</p> <p>The amendment was disagreed to.</p> |

## **ISSUES FOR REGULATIONS AND GUIDANCE**

As the Bill provides a framework for the welfare fund, much of the evidence at Stage 1 concerned the detail about operational improvements. The Committee's Stage 1 report made a number of further recommendations relating to issues it believed should be taken into account during the development of the regulations and guidance that would be published under the Welfare Funds (Scotland) Act.

The Scottish Government's response indicated that it is already working in a number of these areas, such as awareness raising, accessibility and consistency to address the concerns raised in respect of the current interim scheme, and will fully consider the recommendations in the Committee report when producing draft regulations and guidance. Subject to the passage of the Welfare Funds (Scotland) Bill, the Scottish Government intends to carry out a consultation on the draft regulations and guidance in summer 2015.

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