

WELFARE FUNDS (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Welfare Funds (Scotland) Bill ("the Bill"). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.
2. The contents of the Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by Parliament.

BACKGROUND

3. The Bill will make provision for the establishment of welfare funds which will be maintained by local authorities. The Scotland Act 1998 (Modification of Schedule 5) (No.2) Order 2013 No. 192 provided a new exception to the social security reservation, which is set out as Section F1 in Part 2 of Schedule 5 to the Scotland Act 1998. This new exception widened the legislative competence of the Scottish Parliament so that it can legislate in relation to the provision of local welfare assistance in case of crisis or to help establish or maintain a settled home. The intention is that the package of the Bill, and regulations and guidance under the Bill, 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).

Rationale for subordinate legislation

4. The Bill contains delegated powers which are explained later in this document. In deciding whether legislative provisions should be specified in the Bill or left to subordinate legislation, the Scottish Government has had regard to the need to:
 - Strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances with the benefit of experience, without the need for primary legislation;
 - Allow detailed administrative arrangements to be kept up to date with the basic structures and principles set out in the primary legislation; and

- Consider the likely frequency of amendment.

Delegated powers

Section 4 – Review of decisions

Power conferred on: Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

Provision

5. Section 4(1) and 4(2) allows regulations to be made 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. The regulations may make all decisions made under section 2 of the Bill subject to review or they can set out particular types of decision which would be subject to review. The regulations can set out that decisions of a reviewable type only require to be reviewed in particular circumstances.

Reason for taking this power

6. Section 4 is necessary to allow requirements to be placed on local authorities to carry out reviews of decisions in relation to applications for assistance through welfare funds. It is considered that it is more appropriate to set out in regulations (rather than on the face of the Bill) the details of which decisions need to be reviewed. This will give flexibility for the future so as to restrict or widen the category of reviewable decisions as considered appropriate in light of experience with the operation of the welfare funds and the review arrangements.

Procedure

7. Regulations made under section 4 of the Bill will be subject to negative procedure which is considered to offer an appropriate balance between, on the one hand, expedition and convenience and, on the other, the need for scrutiny in relation to which decisions should be reviewable. It is not considered that the sort of administrative detail which would be covered by the regulations necessitates the use of affirmative procedure.

Section 5 – Welfare funds: further provision

Power conferred on: Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

Provision

8. Section 5(1) provides the Scottish Ministers with the power to make regulations which would make further provision in connection with the Bill. The 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 arrangements which may be made relating to the administration of welfare funds; about how an application for review is to be made; requiring persons to provide information for the purposes of a review by a local authority; and about circumstances in which applications can be made by one person on behalf of another.

9. Under this section, the Scottish Ministers are empowered to make different provision for different purposes and to make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate.

10. Regulations made under this section may not make provision about reviews by the Scottish Public Services Ombudsman in pursuance of section 4.

Reason for taking this power

11. Section 5 is necessary to allow further provision to be made as to how the welfare funds will operate. It is considered that it is more appropriate to provide for the eligibility, administrative, and procedural aspects in relation to the welfare funds in regulations as opposed to the Bill, given the level of detail likely to be required. It is also considered that it would be useful to have the flexibility to change these aspects of the welfare funds if the need arises. For example, there may be a wish over time to make different detailed provision as to the eligibility of individuals to receive financial assistance from out of a fund.

Procedure

12. Regulations made under section 5 of the Bill will be subject to negative procedure which is considered to offer an appropriate balance between, on the one hand, expedition and convenience and, on the other, the need for scrutiny in relation to the operation of the welfare funds. It is not considered that the sort of administrative detail which would be covered by the regulations necessitates the use of affirmative procedure.

Section 7 – Commencement

Power conferred on: Scottish Ministers
Power exercisable by: order
Parliamentary procedure: laid before Parliament only

Provision

20. Section 7 allows for sections 1 to 6 of the Bill to be commenced by order. Any order under section 7 may include incidental, supplementary, consequential, transitional, transitory or saving provision.

Reason for taking this power

21. Since it is not known at present exactly what would be the ideal commencement date for the substantive provisions of the Bill, it is necessary to have the flexibility of setting this by order. The Bill provides for setting on a statutory footing the ongoing arrangements for the provision of financial assistance by local authorities and it is not impossible that this may give rise to the need to include transitional or other supplementary provision in a commencement order.

Procedure

22. In line with standard practice, any commencement order would be laid before the Parliament but would not be subject to any further procedure.

This document relates to the Welfare Funds (Scotland) Bill (SP Bill 51) as introduced in the Scottish Parliament on 10 June 2014

WELFARE FUNDS (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM