

Welfare Funds (Scotland) Bill

[AS AMENDED AT STAGE 2]

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Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Welfare Funds (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the maintenance of welfare funds and to provide for them to be used to help certain individuals; and for connected purposes.

Welfare funds

1 Welfare funds

- 5 Each local authority is to maintain a fund (called a “welfare fund”) comprising—
- (a) any grants paid into the fund by the Scottish Ministers, and
 - (b) any amounts paid into the fund by the local authority.

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

- 10 (1) A local authority may use its welfare fund only in order to provide occasional financial or other assistance to or in respect of individuals for the purposes of—
- (a) meeting, or helping to meet, an immediate short term need—
 - (i) arising out of an exceptional event or exceptional circumstances, and
 - (ii) that requires to be met to avoid a risk to the wellbeing of an individual, or
 - (b) enabling qualifying individuals to establish or maintain a settled home.
- 15 (2) “Qualifying individuals” means individuals who have been or, without the assistance, might otherwise be—
- (a) in prison, hospital, a residential care establishment or other institution, or
 - (b) homeless or otherwise living an unsettled way of life.
- 20 (2A) The assistance which a local authority may use its welfare fund to provide does not include making loans.
- (3) A local authority may exercise its power under subsection (1) by making a payment to a third party with a view to the third party providing, or arranging the provision of, goods or services to or in respect of an individual.

*Review by local authority***4 Review of decisions**

(2A) Where an applicant for assistance in pursuance of section 2 from a local authority applies to it to do so, the local authority must review its decision on the application.

5 (2B) Subsection (2A) is subject to subsection (2C).

(2C) The Scottish Ministers may by regulations—

(a) provide as to circumstances in which a decision made in pursuance of section 2 is not to be reviewed under subsection (2A),

(b) provide as to how an application for review under subsection (2A) is to be made,

10 (c) provide as to time limits for the making of applications for review under subsection (2A).

(5) Regulations made under this section are subject to the affirmative procedure.

*Supplementary***5 Further Provision**

15 (1) The Scottish Ministers may, by regulations, make further provision in connection with sections 1 to 4.

(2) Regulations made under this section may, in particular, make provision—

(a) about how an application to receive assistance in pursuance of section 2 is to be made,

20 (b) about the procedure which local authorities are to follow in relation to such applications, including the period within which they are to take any particular steps,

(c) about the eligibility of individuals to receive assistance in pursuance of section 2,

25 (d) about other circumstances in which assistance may, or may not, be provided in pursuance of section 2,

(e) about the type of assistance which may be so provided,

(f) about circumstances in which amounts may require to be repaid or recovered in respect of assistance which has been so provided,

30 (g) requiring a local authority to provide the Scottish Ministers with such information in connection with the exercise of its functions under sections 1 to 4 as may be specified in the regulations,

(ga) about the procedure which local authorities are to follow in relation to reviews in pursuance of section 4, or applications for such reviews, including the period within which they are to take any particular steps,

35 (j) requiring persons to provide information for the purposes of a review by a local authority in pursuance of section 4,

(k) 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 of an individual.

40 (3) Regulations made under this section may make—

- (a) different provision for different purposes,
 - (b) incidental, supplementary, consequential, transitional, transitory or saving provision.
- (5) Regulations made under this section are subject to the affirmative procedure.

5 **5A Respect for, and dignity of, applicants for assistance**

In exercising its functions under sections 1 to 4, or any regulations under section 5, a local authority must take reasonable steps to ensure—

- (a) that applicants for assistance in pursuance of section 2 are treated with respect, and
- 10 (b) that their dignity is preserved.

6 Guidance

- (1) A local authority must have regard to any guidance issued by the Scottish Ministers in connection with the exercise of its functions under—
- (a) sections 1 to 4,
 - 15 (b) any regulations made under section 5.
- (2) Guidance issued under this section—
- (a) must be addressed to, and apply in the same way to, all local authorities,
 - (b) may be general or specific,
 - (c) may be varied or revoked.
- 20 (3) Before issuing, varying or revoking guidance, the Scottish Ministers must consult—
- (a) such body representing local authorities as they think fit,
 - aa) the Ombudsman, and
 - (b) such other persons as they consider appropriate.
- 25 (4) The Scottish Ministers must publish guidance issued under this section in such manner as they consider appropriate.

Further review by Scottish Public Services Ombudsman

6A Application to Ombudsman for further review

- (1) Subsection (2) applies where an applicant for assistance in pursuance of section 2 is dissatisfied with the outcome of a review by a local authority in pursuance of section 4.
- 30 (2) An application for a further review may be made to the Ombudsman—
- (a) by the applicant, or
 - (b) by a person authorised for the purpose by the applicant.
- (3) An application under subsection (2) may be made orally or in writing.

- (4) The Ombudsman must not consider an application under subsection (2) made more than one month after the day on which the applicant first had notice of the outcome of the review by the local authority in pursuance of section 4, unless the Ombudsman is satisfied that there are circumstances which make it appropriate to consider an application made outwith that period.
- (5) It is for the Ombudsman to determine whether an application under subsection (2) has been duly made.

6B Ombudsman's powers

If, on a review in pursuance of an application under section 6A(2), the Ombudsman considers that a different decision should have been made by the local authority, the Ombudsman may quash the decision and—

- (a) direct the local authority to reconsider the application to which the decision relates, or
- (b) direct the local authority to use its welfare fund to provide—
- (i) the assistance concerned, or
- (ii) any other assistance (being assistance which may be provided by the local authority under section 2).

6C Statement of practice

- (1) The Ombudsman must prepare a statement of practice setting out the approach which the Ombudsman intends to take to the conduct of reviews in pursuance of applications under section 6A(2).
- (2) Before preparing the statement of practice, the Ombudsman must consult—
- (a) local authorities, and
- (b) such other persons as the Ombudsman considers appropriate.
- (3) The Ombudsman must publish the statement of practice in such manner as the Ombudsman considers appropriate.
- (4) The Ombudsman may revise the statement of practice.
- (5) Subsections (2) to (4) apply to a revised statement of practice as they apply to the original statement of practice.

6D Procedural matters

- (1) The procedure for conducting a review in pursuance of an application under section 6A(2) is to be such as the Ombudsman thinks fit.
- (2) The Ombudsman may, in particular—
- (a) obtain information from such persons and in such manner, and make such inquiries, as the Ombudsman thinks fit,
- (b) hold an oral hearing or determine the review without one.
- (3) The Ombudsman may require any of the following persons to supply or produce information or documents which the Ombudsman considers is or are, or may be, relevant to the review—

- (a) the local authority concerned,
 - (b) the applicant for assistance,
 - (c) any other person.
- (4) The Ombudsman may administer oaths at an oral hearing held in relation to the review.
- 5 (5) The Ombudsman may make rules setting out—
- (a) factors to be taken into account by the Ombudsman in deciding whether to hold an oral hearing in relation to a review in pursuance of applications under section 6A(2),
 - (b) the procedure to be followed in connection with an oral hearing.
- 10 (6) Before making such rules, the Ombudsman must consult—
- (a) local authorities, and
 - (b) such other persons as the Ombudsman considers appropriate.
- (7) The Ombudsman must publish any such rules as soon as reasonably practicable.

6E Notice of decision and publication of report

- 15 (1) After conducting a review in pursuance of an application under section 6A(2), the Ombudsman—
- (a) must notify the applicant for assistance and the local authority concerned of the Ombudsman's decision, and
 - (b) may publish a report of the review.
- 20 (2) Apart from identifying the local authority concerned, a report of a review must not—
- (a) mention the name of any person, or
 - (b) contain any particulars which, in the Ombudsman's opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report.

General

6F Interpretation

25 In this Act, "the Ombudsman" means the Scottish Public Services Ombudsman.

6G Consequential modifications

- (1) The Scottish Public Services Ombudsman Act 2002 is modified as follows.
- (2) In section 14(1)(a), after "functions" insert "under sections 2 to 13".
- 30 (3) After section 16G, insert—

"Other functions of the Ombudsman

16H Reviews under the Welfare Funds (Scotland) Act 2015

35 As well as the functions conferred by sections 2 to 16G, the Ombudsman has the functions in relation to the review of decisions by local authorities conferred by the 2015 Act (see sections 6A to 6F of that Act)."

- (4) In section 18(1), after paragraph (c) insert—

- “(d) any statement made by the Ombudsman in pursuance of section 6E of the 2015 Act,
- (e) any statement made by the Ombudsman in communicating with any person for the purposes of a welfare fund review,
- 5 (f) any statement made by any person in communicating with the Ombudsman for the purposes of such a review.”.

(5) In section 19—

- (a) in subsection (2), after paragraph (d) insert—

“(e) where subsection (2A) applies, the purposes of a welfare fund review.”

- 10 (b) after subsection (2), insert—

“(2A) This subsection applies if—

- (a) the matter in respect of which the complaint or request has been made relates to an exercise of a function by a local authority on an application to receive assistance in pursuance of section 2 of the 2015 Act, and
- 15 (b) the welfare fund review relates to the decision made by the authority on that application.

(2B) Information obtained by the Ombudsman or any of the Ombudsman’s advisers in connection with a welfare fund review must not be disclosed except for any of the purposes specified in subsection (2C) or as permitted by subsection (3).

20 (2C) Those purposes are—

- (a) the purposes of the review,
- (b) the purposes of any proceedings for—
- 25 (i) an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by the Ombudsman,
- (ii) an offence of perjury alleged to have been committed in the course of the review,
- (c) the purposes of an inquiry with a view to the taking of any of the proceedings mentioned in paragraph (b),
- 30 (d) the purposes of any proceedings under section (*Obstruction and contempt*) of the 2015 Act,
- (e) where subsection (2D) applies, the purposes of any consideration of a complaint or request in respect of a matter, or the investigation of the matter.

35 (2D) This subsection applies if—

- (a) the matter in respect of which the complaint or request has been made relates to an exercise of a function by a local authority on an application to receive assistance in pursuance of section 2 of the 2015 Act, and
- 40 (b) the welfare fund review relates to the decision made by the authority on that application.”,

(c) in subsection (3), after “(1)” insert “or (2B)”,

(d) after subsection (5), insert—

“(5A) It is not competent to call upon the Ombudsman or the Ombudsman’s advisers to give evidence in any proceedings (other than proceedings referred to in subsection (2C)) of matters coming to the knowledge of the Ombudsman or advisers in connection with a welfare fund review.”.

5 (6) In section 20(1), after “Act” insert “or the 2015 Act”.

(7) In section 23(1)—

(a) before the entry for “action” insert—

““the 2015 Act” means the Welfare Funds (Scotland) Act 2015,”

(b) after the entry for “the Ombudsman” insert—

10 ““the Ombudsman’s functions” includes the Ombudsman’s functions under the 2015 Act,”

(c) after the entry for “request” insert—

““welfare fund review” means a review in pursuance of an application under section 6A(2) of the 2015 Act.”.

15 7 Commencement

(1) This section and section 8 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

20 (3) An order made under this section may include transitional, transitory or saving provision.

8 Short title

The short title of this Act is the Welfare Funds (Scotland) Act 2015.

Welfare Funds (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the maintenance of welfare funds and to provide for them to be used to help certain individuals; and for connected purposes.

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