

# Welfare Funds (Scotland) Bill

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## Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 8

Long Title

Amendments marked \* are new (including manuscript amendments) or have been altered.

### After section 1

**Margaret McDougall**

**Supported by: Ken Macintosh**

**24** After section 1, insert—

#### <General principles

In exercising its functions under sections 1 to 4 in respect of an applicant for assistance in pursuance of section 2, a local authority must take reasonable steps to facilitate the following principles—

- (a) that the right to dignity of the applicant is to be respected,
- (b) that the particular needs and choices of the applicant are to be considered.>

### Section 2

**Ken Macintosh**

**Supported by: Margaret McDougall**

**25** In section 2, page 1, line 9, leave out <or other>

**Ken Macintosh**

**Supported by: Margaret McDougall**

**26** In section 2, page 1, line 9, after <assistance> insert <or, in such circumstances as may be prescribed in regulations under subsection (3A), other assistance>

**Ken Macintosh**

**Supported by: Margaret McDougall**

**27** In section 2, page 1, line 14, after <individuals> insert <—

- (a) who are part of a family facing exceptional pressure, or
- (b)>

**Margaret Burgess**

**1** In section 2, page 1, line 17, at end insert—

<( ) The assistance which a local authority may use its welfare fund to provide does not include making loans.>

**Ken Macintosh**

**Supported by: Margaret McDougall**

**28** In section 2, page 1, line 18, leave out subsection (3) and insert—

<(3A) The Scottish Ministers may, by regulations, make provision about the circumstances in which a local authority may—

(a) provide goods or services to or in respect of an individual, or

(b) make 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.

(3B) Regulations under subsection (3A) are subject to the affirmative procedure.>

### **Section 3**

**Margaret Burgess**

**2** Leave out section 3

### **Section 4**

**Margaret Burgess**

**3** In section 4, page 2, line 4, leave out subsections (1) and (2) and insert—

<(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.

(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,

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

**Margaret Burgess**

**4** In section 4, page 2, line 10, leave out subsections (3) and (4)

**Margaret Burgess**

**5** In section 4, page 2, line 20, leave out <negative> and insert <affirmative>

### **Section 5**

**Margaret Burgess**

**6** In section 5, page 2, line 23, leave out <this Act> and insert <sections 1 to 4>

**Margaret Burgess**

**7** In section 5, page 2, line 37, leave out <this Act> and insert <sections 1 to 4>

**Margaret Burgess**

- 8 In section 5, page 2, leave out line 39

**Margaret Burgess**

- 9 In section 5, page 3, leave out lines 1 and 2

**Margaret Burgess**

- 10 In section 5, page 3, line 2, at end insert—

<( ) 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,>

**Ken Macintosh**

**Supported by: Margaret McDougall**

- 29 In section 5, page 3, line 7, at end insert—

<( ) Regulations making provision of a type described in subsection (2)(b) must provide that a local authority is to make its decision on an application for assistance in pursuance of section 2(1)(a)—

(a) immediately after the authority has received all information allowing a decision to be made, and

(b) in any event, no later than the end of the next working day.>

**Margaret Burgess**

- 11 In section 5, page 3, line 12, leave out subsection (4)

**Margaret Burgess**

- 12 In section 5, page 3, line 14, leave out <negative> and insert <affirmative>

**After section 5**

**Kevin Stewart**

- 30 After section 5, insert—

**<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

(b) that their dignity is preserved.>

**Section 6**

**Margaret Burgess**

- 13 In section 6, page 3, line 17, leave out <this Act.> and insert—

<(a) sections 1 to 4,

- (b) any regulations made under section 5.>

**Margaret Burgess**

- 14 In section 6, page 3, line 23, after <fit,> insert—  
<( ) the Ombudsman,>

**After section 6**

**Margaret Burgess**

- 15 After section 6, insert—

*<Further review by Scottish Public Services Ombudsman*

**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.
- (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.>

**Margaret Burgess**

- 16 After section 6, insert—

**<Ombudsman's powers**

If, on a review in pursuance of an application under section (*Application to Ombudsman for further review*)(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).>

**Margaret Burgess**

- 17 After section 6, insert—

**<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 (*Application to Ombudsman for further review*)(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.>

**Margaret Burgess**

**18** After section 6, insert—

**<Procedural matters**

- (1) The procedure for conducting a review in pursuance of an application under section (*Application to Ombudsman for further review*)(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) 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 (*Application to Ombudsman for further review*)(2),
  - (b) the procedure to be followed in connection with an oral hearing.
- (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.>

**Margaret Burgess**

19 After section 6, insert—

**<Obstruction and contempt**

(1) Where—

- (a) a person, without lawful excuse, obstructs the Ombudsman in the exercise of the Ombudsman’s functions in relation to a review in pursuance of an application under section (*Application to Ombudsman for further review*)(2), or
- (b) a person does any act or fails to take any action in relation to such review by the Ombudsman which, if the review were a proceeding in the Court of Session, would constitute contempt of court,

the Ombudsman may apply by petition to the Court of Session for the person to be dealt with in accordance with subsection (2).

(2) Where such a petition is presented, the Court of Session may inquire into the matter and after hearing—

- (a) any witnesses who may be produced against or on behalf of the person in question, and
- (b) any statement which may be offered in defence,

may deal with the person as if the person had committed a contempt of court in relation to the Court of Session.>

**Margaret Burgess**

20 After section 6, insert—

**<Notice of decision and publication of report**

(1) After conducting a review in pursuance of an application under section (*Application to Ombudsman for further review*)(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.

(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.>

**Margaret Burgess**

21 After section 6, insert—

*<General*

**Interpretation**

In this Act, “the Ombudsman” means the Scottish Public Services Ombudsman.>

**Margaret Burgess**

22 After section 6, insert—

### <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”.
- (3) After section 16G, insert—

*“Other functions of the Ombudsman*

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

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 (*Application to Ombudsman for further review*) to (*Interpretation*) of that Act).”.

- (4) In section 18(1), after paragraph (c) insert—
  - “(d) any statement made by the Ombudsman in pursuance of section (*Notice of decision and publication of report*) of the 2015 Act,
  - (e) any statement made by the Ombudsman in communicating with any person for the purposes of a welfare fund review,
  - (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.”
  - (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
    - (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).

(2C) Those purposes are—

    - (a) the purposes of the review,
    - (b) the purposes of any proceedings for—
      - (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),

- (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.
- (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
  - (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.”.
- (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—
 

““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 (*Application to Ombudsman for further review*)(2) of the 2015 Act.”.>

**Margaret McDougall**  
**Supported by: Ken Macintosh**

**31** After section 6, insert—

**<Delivery of welfare funds: annual reporting**

- (1) The Scottish Ministers must prepare an initial report giving information about the delivery of welfare funds.
- (2) The initial report is to be laid before the Scottish Parliament on or before 30 June 2016.
- (3) The Scottish Ministers must prepare an annual report giving information about the delivery of welfare funds.
- (4) An annual report is—
  - (a) starting with 2017, required each year,
  - (b) to be laid before the Scottish Parliament on or before 30 June in the year concerned.



- (5) The initial report and an annual report must include information about—
- (a) the amount paid out of the welfare funds,
  - (b) the number of applications for assistance in pursuance of section 2 that have been received,
  - (c) the number of applications—
    - (i) in respect of which financial assistance was provided,
    - (ii) in respect of which other assistance was provided,
    - (iii) that were rejected.
- (6) The initial report or an annual report may include such additional information as the Scottish Ministers consider appropriate.>

### **Section 7**

#### **Margaret Burgess**

- 23** In section 7, page 3, line 31, leave out <incidental, supplementary, consequential,>



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ISBN 978-1-78534-799-3

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