

WELFARE FUNDS (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee (DPLRC) in its consideration of the Welfare Funds (Scotland) Bill. This Memorandum describes a new provision in the Bill conferring power to make subordinate legislation which was added at Stage 2. It also describes provisions in the Bill conferring power to make subordinate legislation which were amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INSERTED OR AMENDED AT STAGE 2

2. The delegated powers provisions in the Bill which were inserted or amended at Stage 2 are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

Section 4(2C) – Review of decisions

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Affirmative procedure of the Scottish Parliament

Provision

3. Section 4(2C) was inserted in the Bill at Stage 2. It provides that the Scottish Ministers may make regulations setting out the circumstances in which a local authority decision on a welfare fund application is not to be reviewed under section 4(2A); 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.

Reason for taking power

4. The reason for taking the power is to ensure that the Scottish Ministers can make regulations which would set parameters around when a local authority would have to carry out a review of a decision it has made on a welfare fund application.

5. The power has been included in the Bill in response to comments made at Stage 1 by the DPLRC on section 4. The DPLRC suggested that a right of review by local authorities should be provided for on the face of the Bill and that the detail of the types of decision subject to review and the circumstances of review could then be set out in regulations made by the Scottish Ministers.

6. Section 4 of the Bill, as introduced, was amended in the following way. Subsections (1) and (2) were omitted and three new subsections (2A), (2B) and (2C) were inserted in their place. The new subsection (2A) provides a right of review for applicants to welfare funds, where subsection (1) as introduced provided that the Scottish Ministers may make regulations requiring local authorities to review decisions made under section 2. New subsection (2B) makes the right of review subject to new subsection (2C). As explained at paragraph 3 above, new subsection (2C) enables the Scottish Ministers to make regulations limiting the circumstances in which a local authority decision on a welfare fund application must be reviewed. Regulations under subsection (2C) may also make provision about how an application for review is to be made and set time limits.

Choice of procedure

7. At Stage 2, the procedure for regulations under section 4 was changed from negative procedure to affirmative procedure. This responds to the DPLRC recommendation that the regulations which will set out the detail of how welfare funds will operate should be subject to a higher level of scrutiny than that afforded by the negative procedure.

Section 5(1) – Further provision

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Affirmative procedure of the Scottish Parliament

Provision

8. Section 5(1) provides the Scottish Ministers with the power to make regulations which would make further provision in connection with sections 1 to 4 of the Bill. Section 5(2) lists certain matters about which the Scottish Ministers may make provision in regulations under section 5(1).

Reason for taking power

9. The reason for taking the power, as introduced, to make regulations under section 5 was 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 a fund.

10. At Stage 2, section 5(1) was amended so that regulations under section 5 may make provision only in connection with sections 1 to 4 and not in connection with other sections of the Bill. This ensures that regulations may not include provisions about reviews by the Scottish Public Services Ombudsman and consequently, section 5(4) was no longer required and was removed from the Bill. These two changes to section 5 were made to reflect structural changes made to the Bill by other Stage 2 amendments. The structure of the Bill was altered because the Bill was amended to include more detailed provision about reviews by the Scottish Public Services Ombudsman.

11. Section 5(2)(h) provided that regulations under section 5 may make provision about arrangements which may be made in pursuance of section 3. Section 3 would have enabled local authorities to make arrangements for third parties to administer their welfare funds but it was removed from the Bill at Stage 2. Consequently, section 5(2)(h) was no longer required and was also removed from the Bill.

12. Section 5(2)(i) provided that regulations under section 5 may make provision about how an application for review by a local authority is to be made. Section 5(2)(i) was removed from the Bill at Stage 2 because this type of provision may be made under the new section 4(2C).

13. Section 5(2)(ga) was inserted in the Bill at Stage 2. It is to enable Scottish Ministers to make provision, in regulations under section 5, 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 any particular steps.

Choice of procedure

14. At Stage 2, the procedure for regulations under section 5(1) was changed from negative procedure to affirmative procedure. This responds to the DPLRC recommendation that the regulations which will set out the detail of how welfare funds will operate should be subject to a higher level of scrutiny than that afforded by the negative procedure.

Other relevant amendments

15. The amendments described above are amendments which insert or substantially alter provisions conferring powers to make subordinate legislation. In addition, the DPLRC will wish to note that there was an amendment to the order making power in section 7 so that an order under that section may not include incidental, supplementary or consequential provision. This amendment was lodged in response to the DPLRC's suggestion, at Stage 1, that subordinate legislation making incidental, supplementary or consequential provision should be subject to Parliamentary procedure. The effect of the amendment is that incidental, supplementary or consequential provision may not be made in an order under section 7. This type of provision may be made in regulations under section 5 and regulations under that section are subject to the affirmative procedure.

16. The DPLRC will also wish to note that there was an amendment to insert section 6D in the Bill. Section 6D(2)(b) provides that the Ombudsman, in reviewing a local

authority's decision, may hold an oral hearing or may determine the review without an oral hearing. Section 6D(5) confers on the Ombudsman a power to make rules setting out factors to be taken into account in deciding whether to hold an oral hearing and the procedure to be followed in connection with an oral hearing. It is considered appropriate for the relevant factors and the procedure to be set out in rules given the level of detail likely to be required. Having discussed the independent review function with the Ombudsman on a number of occasions, and having taken into account the importance of the Ombudsman being independent from the Scottish Ministers, it is considered appropriate for it to fall to the Ombudsman to make these rules. Before making such rules, the Ombudsman must consult local authorities and such other persons as the Ombudsman considers appropriate and the Ombudsman must publish any rules which are made.

This document relates to the Welfare Funds (Scotland) Bill as amended at Stage 2 (SP Bill 51A)

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