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SPICe Briefing

Welfare Funds (Scotland) Bill

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The Welfare Funds (Scotland) Bill will place the interim Scottish Welfare Fund scheme on a statutory footing. This briefing provides an overview of the bill, its financial memorandum and impact assessments as well as offering further background information on the Scottish Welfare Fund.



The Scottish Parliament
Pàrlamaid na h-Alba

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EXECUTIVE SUMMARY

The Scottish Welfare Fund provides crisis grants which aim to provide a safety net for people on low income during a disaster or emergency. It also provides ad hoc community care grants to help vulnerable people remain independent in the community, preventing the need for institutional care. The fund 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.

The Welfare Funds (Scotland) Bill aims to put the interim scheme into legislation. The essence of the scheme will remain the same. The main change is the proposal to introduce the Scottish Public Service Ombudsman (SPSO) as a second tier reviewer dealing with applicants who wish to appeal their award decision. More information on the background to the interim Scottish Welfare Fund scheme is available in [SPICe briefing SB 13 / 54](#).

The Bill comprises eight sections. It confers duties on local authorities to maintain and administer welfare funds. It also confers powers on Scottish Ministers to make regulations, and publish guidance setting out how welfare funds should be administered. It requires the SPSO to carry out reviews in relation to local authority decisions on provision of assistance from welfare funds.

The detail of how welfare funds will be administered is not set out in the Bill. However, the intention is that the Bill will be part of a package alongside associated draft regulations and guidance which Ministers intend to produce which will include the relevant level of detail. Performance information on the fund to date is available in quarterly statistical publications produced by the Scottish Government.

The Welfare Reform Committee has been designated as lead committee and issued a call for evidence on 24 June which ends on 28 August 2014.

INTRODUCTION

The Scottish Welfare Fund (SWF) has been operating an interim scheme since April 2013. These interim arrangements are based on a voluntary agreement between Scottish Ministers and the Convention of Scottish Local Authorities (COSLA). According to the Scottish Government, the purpose of the interim scheme was to learn lessons from its operation, before putting the new arrangements to a statutory basis.

The Welfare Funds (Scotland) Bill seeks to place the scheme in legislation and to make provision for the establishment of welfare funds which will be maintained by local authorities. Social Security is generally reserved to the UK Parliament. However, a modification to Schedule 5 of the Scotland Act 1998 provided a new exception to the social security reservation, which widened the legislative competence of the Scottish Parliament so that it can legislate in relation to the provision of local welfare assistance in cases of crisis, or to help establish or maintain a settled home.

The detail of how welfare funds will be managed is not set out in the Bill. However, the intention is that the Bill will be published alongside associated draft regulations¹ and followed up with guidance. The main change between the interim and statutory schemes is the introduction of the Scottish Public Service Ombudsman (SPSO) as second tier reviewer for appeals.

BACKGROUND TO THE INTERIM SCHEME

As part of the Welfare Reform Act 2012, the UK Department for Work and Pensions (DWP) abolished the discretionary Social Fund, with effect from 1 April 2013. It consequently transferred Scotland's share of the discretionary elements of the Fund (Community Care Grants and Crisis Loans for living expenses) to the Scottish Government. This funding could have been used for any purpose; however Scottish Ministers decided to use it for local welfare provision. The UK Government also made the equivalent funding available to the devolved administration in Wales and local authorities in England to provide assistance as they saw fit.

The regulated part of the discretionary Social Fund remains the responsibility of the DWP, which will also continue to deal with Short Term Benefit Advances, Budgeting Loans for those on income related benefits and Budgeting Advances for those on Universal Credit.

The interim SWF aims 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. 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 results in a move.

¹ See section on Draft Regulations for further information.

Main service users include:

- disabled people
- lone parents
- unemployed people
- older people
- care leavers
- homeless people
- ex-offenders
- carers.

According to the explanatory notes, the interim SWF was designed to take advantage of local delivery, while maintaining a national character. It operates on a discretionary, budget-limited basis, with applications being prioritised according to need over the course of the financial year. Local authorities are able to supplement funding from Scottish Ministers, but are not obliged to do so. The intention is for the funds to link to other local services and provide a better service to vulnerable members of the local community. The most common services that applicants are signposted or referred to are advocacy, welfare rights, housing and money or debt management.

Initial guidance was issued when the scheme launched in April 2013. It was refreshed in October 2013 to allow for greater flexibility for local authorities to make awards and again in April 2014 to provide further clarification in relation to the approach to be taken towards DWP sanctions. For example, the April 2014 update widened eligibility criteria to allow sanctioned JSA claimants access to crisis grants from the Scottish Welfare Fund.

Statistics on the Interim Scheme are [published quarterly](#) by the Scottish Government. According to these statistics there is a wide variation in spending profiles across local authorities with some meeting their spending expectations and others falling below that level. The first set of statistics covering April – September 2013 suggested, assuming a flat spend profile (money spent equally throughout the year), that only around 56% of the available budget had been spent. This raised a number of concerns for charities and opposition parties in Parliament who wanted to ensure that the fund was used to its full potential. The Scottish Government responded by making changes to the eligibility criteria and by greater signposting to the fund. By 31 March 2014, local authorities had spent or committed to spend around 88% of the available budget (£29.0 million compared to a total budget of £33 million) with the remainder (estimated at around £4.3 million) carried forward to 2014/15.

More information on the interim scheme can be found in [SPICe briefing 13/54](#) on the Scottish Welfare Fund.

INDEPENDENT REVIEW OF THE INTERIM SCHEME

The Scottish Government commissioned Herriot Watt University to conduct a qualitative [review of the Scottish Welfare Fund Interim Scheme](#). The main aim of the review was to explore how well the interim arrangements had been working from the perspectives of applicants to the SWF and the third sector organisations supporting them.

The review focused on applicants understanding and awareness of the SWF, the applications process, eligibility and discretion, decision making for awards and the process for review. While the majority of interviewed applicants were satisfied overall with the operation of the interim scheme, a number of recommendations for improvements were put forward to help inform the remainder of the interim scheme and the permanent scheme arrangements. A summary of the findings is provided below. Please see the review report for full details.

- Most Community Care Grant applicants generally found out about the SWF from their existing networks e.g. social workers. Crisis Grant applicants tend to find out through the DWP or a third sector organisation. It was uncommon for applicants to find out about the SWF through local advertisements or online information.

- Applicants and the majority of third sector staff said that they understood the scheme. However, there was an appetite for a quick and easy DVD to help further improve staff knowledge.
- Third sector staff welcomed the updates made to the interim scheme guidance. However, they commonly felt that the SWF staff could more fully appreciate the nature of poverty and the vulnerability of applicants. They felt at times that there was an emphasis on strict adherence to rules and criteria rather than discretion in decision-making.² There were also some concerns that some applicants were discouraged from applying.
- Most applicants said that they understood the eligibility criteria, especially those with previous experience of the Social Fund. However, a few applicants gave examples of what they felt were “unfair” decisions. A number of very vulnerable applicants discussed instances where “the rules” had left them experiencing considerable hardship.
- Crisis Grant and Community Care Grant applicants typically applied by telephone (face to face, post and online applications are also available depending on the local authority). Staff were seen to be generally helpful, friendly and supportive. The application process itself was widely viewed as straightforward although some respondents raised issues about waiting times to speak to staff by telephone; the cost of telephone calls; and not being able to understand paper-based questions.
- Although satisfaction with awards was high, some rejections and partial awards meant that hardship was not totally prevented or alleviated. There were also some concerns about a lack of sign-posting to other assistance.
- The majority of unsuccessful or partially successful respondents did not ask for a review, mainly because they were not aware of that right; did not know on what exact grounds their application was rejected; felt grateful for a partial award; felt the review would not be successful; or had resolved their need. Third sector representatives felt that they should receive notification of the original decision to enable them to support clients in seeking a review.

PARLIAMENTARY SCRUTINY OF THE INTERIM SCHEME

The Welfare Reform Committee has held a number of sessions on the Scottish Welfare Fund and its related statistics, Main sessions include discussion around the [Independent Review of the Interim Scheme with Herriot Watt University](#); the [operation of the fund with Local Authorities and Scottish Government](#) and the SWF as a topic of [budget scrutiny](#). There have also been a wide ranging number of Parliamentary Questions on the SWF.

THE BILL

REFERENCE GROUP

The Scottish Government and COSLA, established a Reference Group to support the successful transition of the Scottish Welfare Fund onto a statutory basis. Meetings of the Reference Group took place on 27 June 2013, 2 October 2013 and 20 February 2014. Detailed minutes of the meetings are available on the [Scottish Government website](#).

² It was noted by the Herriot Watt University reviewers at the [Welfare Reform Committee on 27 May 2014](#) that this was a cultural legacy from using housing benefit staff, who are used to using strict criteria, to process applications. It was noted that this situation was improving as staff became more familiar with the discretionary elements of the scheme.

CONSULTATION

The Scottish Government consulted from 15 November 2013 to 07 February 2014 on the draft Welfare Funds (Scotland) Bill and on options for challenging decisions made by local authorities on applications to the SWF. The paper asked 6 questions seeking views on subjects such as which elements of the current Ministerial guidance on the SWF should be set out in regulations and which in guidance. It also sought views on the proposed options for second tier review. Fifty eight consultation responses were received from a range of respondents including COSLA, 18 local authorities, 24 third sector organisations, 4 other public sector bodies, 9 social enterprises, 1 business and an individual. All responses are available on the [Scottish Government website](#).

A summary of some of the key points included in the [consultation analysis](#) is set out below. Please see the analysis document for full information.

- The majority of respondents felt that the draft Bill contained the elements they would have expected. However, many called for more detail on the nature of welfare funds, and more detail to reflect the guidance on the interim SWF. Most respondents did not want to remove elements from the Bill. However, there were some suggestions to amend the Bill in relation to the administration of welfare funds.
- When asked 'do you agree with the proposed list of topics to be included in regulations?' the majority of respondents said no. There was a wide range of suggestions for topics to include in the regulations, or to move from regulations into either the draft Bill or the guidance. However, there was no general consensus on what these changes should be.
- The vast majority of respondents agreed that the characteristics of the review process and the purpose of second tier review should be the same under the permanent SWF as under the interim SWF. The responses also suggested that the majority of applications for second tier review would be best suited to an administrative rather than a legal solution such as a tribunal.
- The majority of respondents felt that if the SPSO was the chosen option for second tier review then it should also have additional powers to review discretionary decisions on the merits of the case. There was also very strong support for the SPSO being given powers to make alternative decisions which would be binding on local authorities. This was balanced by reservations about SPSO scrutiny of discretionary decisions undermining the discretionary nature of the funds. There were also reservations expressed about how the SPSO making binding decisions on local authorities would work in practice in respect of a budget limited fund.
- Respondents were asked to rank the 3 options for second tier review. Each of the 3 responses was then given a weighting. The local authority option gathered the greatest amount of support in both a traditional count of preferences, and the weighting of responses. The analysis also found that the local authority option generated the greatest number of comments with strong negative views being expressed on a perceived lack of independence on the one hand, and positive views on proportionality and effectiveness on the other. The analysis also found that there was no significant difference between comments for and against a tribunal or the SPSO, with the main issues identified by respondents being potentially high costs, slow turnaround times and proportionality as negatives, and impartiality and effective external scrutiny leading to overall improvements of welfare funds as positives.

PROVISIONS

The provisions in each section of the Bill are set out below.

Section 1: Welfare funds

This section establishes the concept of a “welfare fund”. It requires each local authority to maintain a welfare fund. The funds are to be made up of any grants paid into the fund by the Scottish Ministers and any additional amounts paid into the fund by the local authority.

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

This section sets out the general scope of the funds including the circumstances in which a local authority can provide financial or other assistance. In particular, it allows local authorities to:

- meet short term need arising out of an exceptional event or circumstance which is a risk to an individual’s wellbeing;
- provide occasional financial or other assistance to enable qualifying individuals to establish or maintain a settled home; and
- provide assistance to qualifying individuals who have been or, without assistance, might otherwise be in prison, hospital, residential care or other establishment such as foster care, or be homeless or otherwise living an unsettled way of life.

In addition, this section provides that a local authority may exercise its powers through third party provision of goods or services.

Section 3: Administration of welfare funds

This section allows a local authority to make arrangements for another organisation to administer its welfare fund on its behalf. This means that local authorities can outsource the provision of their welfare fund to the private or third sector or to another local authority. They would retain responsibility and accountability for the fund, but it would be delivered by a third party.

It also allows for a number of local authorities to come together and either administer or outsource the provision of their welfare funds jointly.

Section 4: Review of decisions

This section concerns the review of decisions made on eligibility or allocation of funding. It allows regulations to be made setting out arrangements that local authorities are required to have in place to carry out internal reviews of decisions. The regulations will set out the limits for the internal review and will be subject to the negative procedure³.

Subsection (3) sets out 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

³ Most statutory instruments (the most common form of subordinate legislation) are subject to either negative procedure or affirmative procedure. Affirmative instruments are normally laid before the Parliament in draft form and require the approval of the Parliament in order to come into force or (more rarely) to remain in force. Negative instruments are usually made (that is, signed by a Minister) before they are laid before the Parliament, and they come into force generally 28 days after being laid. To prevent a negative instrument coming into force or remaining in force, a motion to annul it has to be agreed by the Parliament in the Chamber no later than 40 days after the instrument was laid.

from the SPSO's current jurisdiction which involves considering whether there has been poor service or maladministration.

Where the SPSO considers that the decision made by the local authority is not the one that should have been made, subsection 4 allows it 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.

Section 5: Welfare funds: further provision

This section provides 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. Any regulations made under this section will in effect set out the detailed legislative framework for the operation of the welfare funds.

Regulations under this section are subject to the negative procedure and may not make provision about reviews by the SPSO. The SPSO is independent of Scottish Ministers and will set out its own procedures for undertaking the second tier review role.

Section 6: Guidance

This section provides for the guidance, issued by Scottish Ministers, which local authorities must have regard to. It also sets out consultation requirements and states that guidance must apply in the same way to all local authorities.

REVIEW PROCESS

As noted above, the main difference between the interim and the statutory scheme is the involvement of the SPSO in the second tier review process.

INTERIM REVIEW ARRANGEMENTS

First tier review

If an applicant disagrees with the decision made on their application, they can ask for a review. However, reviews cannot be sought for the level of priority set for awards in that period. Such reviews are considered to be first tier reviews and are carried out by another member of the welfare fund team within the local authority. According to Scottish Government guidance it offers an opportunity to "re-make" the original decision, based on a thorough look at the evidence and any new information. If the applicant is still unhappy with the decision following this first tier review they can ask for a second tier review.

Second tier review

Under the interim scheme second tier reviews are carried out by an impartial panel made up of local authority staff who are separate from the SWF team and, in some cases, independent members. [Interim guidance](#) states that the second tier review is an important step in the Scottish Welfare Fund process and is subject to a high degree of scrutiny. It provides an impartial check on local decision making processes, ensuring administrative justice for the applicant. If the review goes beyond the second tier the applicant can make a complaint to the SPSO who will consider whether there had been maladministration. The final stage in the process would be a judicial review.

PROPOSALS FOR INDEPENDENT SECOND TIER REVIEW

The Bill will maintain the current interim scheme procedure for first tier reviews. However, it proposes to remove the power to conduct second tier review from local authorities and to give this function to the SPSO. These powers would allow the SPSO to consider whether the decision regarding the award of a SWF grant is one that should have been made, and to direct the council to put in place an alternative decision or reconsider their original decision, where appropriate.

The SPSO has already had some limited experience of investigating matters relating to the interim Scottish Welfare Fund and aspects of the role which are already within its jurisdiction. This will not change and the way local authorities run the scheme and their handling of individual cases and the review process can still be the subject of complaints to the SPSO, on the basis that there has been maladministration or service failure.

Background to the SPSO

The SPSO is an independent parliamentary body set up by the Scottish Public Services Ombudsman Act 2002. The Act aimed to create a modern complaints service based on the devolution principles of power-sharing, accountability, access and participation, and equal opportunities. It looks into complaints where a member of the public claims to have suffered injustice or hardship as a result of maladministration or service failure. It considers itself to be the 'last resort', and investigates complaints which have been through the formal complaints procedure of the organisation concerned. The SPSO remit covers most organisations providing public services in Scotland. This includes local authorities, the National Health Service, housing associations, colleges and universities, prisons, most water and sewerage providers, the Scottish Government and its agencies and departments. More background information about the services of the ombudsman is available on the [SPSO website](#).

Why was the SPSO selected?

In relation to the statutory scheme three options were considered. These included

- panels, convened by local authorities, with mandatory independent membership. This was broadly based on the current practice under the interim SWF;
- second tier review by SPSO, with additional powers to consider the merits of cases rather than just maladministration and service failure; and
- a tribunal, supported by the Scottish Tribunals Service (STS).

The Scottish Government required a second tier review to achieve the following objectives:

- to ensure that both initial decisions and decisions on first tier review are consistent with the legislation and guidance relating to the disbursement of welfare funds and that discretion has been reasonably exercised;
- to identify any deficiencies in local authority decision-making and give feedback to local authorities on the quality of their decision-making;
- to give confidence to applicants for review and to the wider public that the arrangements for second tier review are independent and impartial and that there is an effective remedy for defective decisions by local authorities; and
- to identify where the regulations, guidance or local policies appear to be having unintended consequences.

The Scottish Government states that there are a number of desirable characteristics for first and second tier review. Reviews should:

- be transparent, fair and accessible;
- be timely, recognising the circumstances of the applicant;
- be high quality, impartial, free to use and independent;
- operate quickly, making sound and accurate decisions;
- communicate effectively; and
- be proportionate and cost effective.

The Scottish Government deemed the SPSO to be the most suitable of the three options as it met the majority of the objectives and desirable characteristics. However, it was recognised that the current processes and culture of the SPSO might not be suitable for the quick turnaround required for welfare fund cases. This is a point which the SPSO acknowledges, and according to the policy memorandum, will seek to address. More information on the decision making process is available in the policy memorandum document and discussed in the Business Regulatory Impact Assessment (BRIA) below.

Business and regulatory impact (BRIA)

The BRIA states that businesses, including local authorities and the third sector will not be adversely affected by the introduction of the Bill, or by using the SPSO to provide the second tier review. It recommends proceeding to place the SWF on a permanent footing in legislation with the SPSO as the provider of the second tier review service.

Table 1 below is taken from the BRIA and summarises the main benefits and costs associated with the options for second tier review:

Option	Benefit	Costs
LA panel	LA panels have already been established, therefore the impact on LAs would not be significant. No identified impact on business.	There would be ongoing costs to LAs to deliver review panels. No impact on business Identified.
SPSO (preferred option)	LAs would no longer need to undertake second tier review, saving them money and time. Review process independent from LAs.	There would be costs to LAs for the time taken to liaise with the SPSO. If the SPSO were to be granted additional powers to review the merits of SWF cases and make decisions that are binding on Local Government, there would be an impact on individual LA budgets, i.e. where a member of SPSO staff overturns a decision by a local government decision maker, the payment will come from the LA budget. No impact on business Identified

		except small positive impact from contracts/ use of services.
A Tribunal	<p>LAs would no longer need to undertake second tier review, saving them money and time. Review process independent from LAs.</p> <p>A Tribunal would satisfy Third Sector organisations' desire to have the reviewing mechanisms independent of LAs.</p> <p>No impact on business Identified except small positive impact from contracts / use of services.</p>	<p>Scottish Tribunals Service would undertake the administration attached to the Tribunal incurring significant costs to the SG.</p> <p>LAs would need to present their cases at oral hearings which would involve officer time and possibly some input from lawyers.</p>

SPSO CONSIDERATIONS ON THE PROPOSED ROLE

The SPSO has produced a [briefing note](#) (SPSO 2014) which outlines how it intends to carry out the function should it be granted the additional powers. As noted above the SPSO is independent of the Scottish Ministers and will set out its own procedures for undertaking the second tier review role. It has stated that it does not intend to express a view on whether it should or should not take on the role of second tier reviewer. Some of the key points are summarised below.

Structure & process

The SPSO has suggested creating a unit with sole responsibility for SWF review decisions. However, this will be dependent on the volume of applications. If only a low number of applications are received it intends to put in place a small team that will take on this additional responsibility alongside existing case work. Training will need to be put in place to bring staff up to speed in their new role.

The SPSO states that it will provide simple and accessible information to the public; allowing multiple routes to bring decisions to review, including online and by phone. There will be a single point of contact and the SPSO states that staff will build on their existing strong customer service base. The SPSO intends to go beyond reviewing paperwork and to interview, conduct visits or hold hearings to gather the information required to make a decision. It will consider targets to respond to the needs of vulnerable people and the urgent nature of crisis grants. It will also ensure access to its own complaints process for those that have issues regarding service delivery. A public annual report will also be produced.

Complaint or review?

The SPSO briefing note does not anticipate users clearly differentiating between its complaint function and a review function and will instead simply bring forth a number of reasons about why they are unhappy with a decision. It states that “the organisation will have two separate processes with two possible outcomes relating to one user experience dealt with by one organisation. We need to make sure these work together.”

The SPSO states that it wishes to avoid users having to engage two processes to get the full outcome and is in discussions with the Scottish Government to ensure that all of the SPSO's existing and new complaint and review powers can be used together for the benefit of the customer. The SPSO envisages that the review process will take precedence as it gives it the power to change the decision and that is the most significant outcome in relation to the SWF. However, the SPSO will also need to decide whether a case brought for review merits being considered as a complaint in terms of poor service or maladministration. The annex to the SPSO briefing note includes a flow chart and worked examples which outlines the decision making process in this eventuality.

Challenges for the SPSO as second tier reviewer

The SPSO outline in their briefing note a number of challenges in taking on the review role. Particularly, the uncertainty over the demand for the service and whether there will be a low or high case volume. It believes that low numbers may mean it takes more time to build experience and experience will be a driver of its ability to make decisions quickly which is essential in the context of the SWF. It may also make it difficult to sustain a separate, dedicated unit within the SPSO as proposed. Equally, unexpectedly high demand may create a risk to the early functioning of the review process.

The SPSO also highlights the inherent flexibility in its current process and legislation. It states that

“We would, though, be concerned if, as part of the process of the Bill going through the Scottish Parliament, changes were made that meant we lost some of that flexibility, or that our ability to work between powers was significantly curtailed.”

DRAFT REGULATIONS

Draft regulations were [published on the Scottish Government website](#) (Scottish Government 2014) on 24 June 2014. The draft regulations are illustrative only and do not have any status. The Scottish Government intends to refine these with stakeholders and then issue a formal consultation alongside draft statutory guidance once the Bill is 'sufficiently progressed'. The detail of the decision making process will appear in guidance rather than in regulations. The Scottish Government states in the [background document to the regulations](#) (Scottish Government 2014a) that it made this decision on the basis that that level of detail in the regulations would prove too restrictive to local authorities.

The background document states that, due to the fund's discretionary nature, the draft regulations are drawn quite broadly. They aim to achieve the advantages and flexibility of local networks and delivery while maintaining a national character. This national character will be established through a consistent decision making process in terms of establishing eligibility and key criteria, access to resources, limitations on repeat awards, gathering and recording information from applications and the prioritisation of need.

FINANCIAL MEMORANDUM

Start-up and administration costs have already been incurred by both the Scottish Government and local authorities in respect of the interim arrangements that have been in place since April 2013. These include staff costs, IT, staff training and publicity. After an initial offer of a one-off payment of just under £240,000 to cover all set-up costs the [Financial Memorandum](#) states that UK Government transferred in the region of £2 million to the Scottish Government to cover these.

DWP also transferred the amount that would have been spent in Scotland in relation to the discretionary Social Fund programme (£23.8 million annually for financial years 2013/14 and 2014/15). The Scottish Government provided an additional £9.2 million from 2013/14 – 2015/16, giving an annual SWF total of £33 million. The Financial Memorandum states that the additional funding is in recognition of the de facto cuts in spend on the Social Fund in the years before transfer and the expectation of additional demand on the fund as a result of the UK Government welfare reforms.

The DWP also transferred funding for administration costs of just over £5 million in 2013/14 and just over £4.6 million in 2014/15. Following representations by local authorities to make £6.8 million available for administration funding in 2014/15, Scottish Ministers decided to top up the administration funding that DWP had transferred for 2014/15 to £5 million to match that provided in 2013/14. The administration budget for 2015/16 has not yet been decided, however, the Financial Memorandum states that provision has been made within budget plans to maintain it at the same level.

The new powers of the SPSO diverge from its traditional role in dealing with maladministration and service failure. The Scottish Government has estimated set up costs and annual running costs for a separate unit within the organisation to deal with independent review requests. These are included in the table below. The SPSO is currently funded by the Scottish Parliamentary Corporate Body (SPCB). It is envisaged that temporary funding will be transferred from the Scottish Government to the SPCB for 2014/15 and 2015/16, after which permanent arrangements will be put in place.

Table 2: costs identified as falling on the Scottish Government to the end of the current spending review period in 2015/16

Organisation funding allocation	Year			
	2013/14			
	Programme Funding (£)	Administration Funding (£)	Second Tier Review Funding (£)	Implementation and LA support (£)
SG				340,000
LA	33,000,000	5,000,000		
SPCB /SPSO				
	2014/15			
	Programme Funding (£)	Administration Funding (£)	Second Tier Review Funding (£)	Implementation and LA support (£)
SG				340,000
LA	33,000,000	5,000,000		
SPCB /SPSO			60,000 – 100,000	
	2015/16			
	Programme Funding (£)	Administration Funding (£)	Second Tier Review Funding (£)	Implementation and LA support (£)
SG				340,000
LA	33,000,000	TBC		
SPCB /SPSO			250,000 - 400,000	

Source: Welfare Funds (Scotland) Bill (2014) explanatory notes and other accompanying documents

Under the interim scheme, local authorities have been undertaking second tier reviews with the associated costs of arranging and supporting panel meetings being absorbed into their administration budgets. Following the set-up of an independent review by the SPSO, local authorities will no longer have to meet these costs.

The terms of the funding for 2015/16 are yet to be agreed between Scottish Ministers and COSLA. The Bill allows the funding to be ring-fenced and as the funds will be discretionary, the Bill does not create any entitlement to benefits. The UK Government has said that DWP funding for local welfare assistance schemes in England will [cease after 2014-15](#) (Work and Pensions Committee 2014), meaning that local authorities in England will have to fund such schemes from their overall block grant settlements. Scottish Ministers have already committed to maintaining the programme funding for welfare funds at £33 million for the current spending review period which ends in 2015/16. It will be for Scottish Ministers to allocate funds from the Scottish Government block grant from financial year 2016/17 in the same way as it meets other funding requirements.

IMPACT ASSESSMENTS

EQUALITIES & HUMAN RIGHTS

An Equalities Impact Assessment (EQIA) was carried out when the decision was taken to introduce the interim SWF. The EQIA identified relatively limited impact on groups who share protected characteristics from the change in delivery from the DWP to local authorities, but highlighted some potential for improvements in service to applicants as a whole. The EQIA was updated in May 2014 to take account of the progression from the interim scheme to the statutory scheme. The key areas of activity as a result of the EQIA are:

- a programme of work to improve data quality;
- on-going data monitoring to identify long term trends;
- working with local authorities to promote good practice in relation to equalities groups; and
- promoting the fund to groups where data suggests that they may be under-represented.

As the SPSO review service does not yet exist, there is no data to examine in relation to the statutory scheme. In practice, the regulations and statutory guidance will have a greater impact on equalities groups than the Bill itself. As such, the Scottish Government EQIA states that intends to undertake a further assessment at a relevant point in the development of the regulations.

The policy memorandum states:

“The Bill is considered to be fully compatible with the European Convention on Human Rights (ECHR). The only substantive ECHR issue arising relates to whether Article 6 of the Convention applies to a decision as to granting financial assistance out of a welfare fund. If it does (because the decision would involve a determination of a person’s civil rights and obligations), then Article 6 would require the availability of a process allowing decisions to be tested by an independent and impartial tribunal. It has yet to be established conclusively that decisions on welfare benefits of a purely discretionary nature fall within Article 6, but in any event the provisions in the Bill concerning review by the SPSO ensure that the Bill complies with that Article.”

PRIVACY IMPACT

Privacy Impact Assessment (PIA) is a tool to identify and reduce the privacy risks of a project. A PIA can reduce the risks of harm to individuals through the misuse of their personal information. The screening process suggests that there are limited concerns in terms of privacy as a result of the information being collected from local authorities about welfare fund applications and

awards. Where there are areas of concern there are mitigating activities in place. A matrix detailing the main privacy risks associated with the data processing for the SWF, and the action being taken to mitigate the risks is detailed at Annex A of the assessment.

SUSTAINABLE DEVELOPMENT / ISLAND COMMUNITIES

The policy memorandum has identified no impacts on sustainable development or island communities.

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