

Scottish Campaign on Welfare Reform (SCoWR) response to the Scottish Government consultation on the Welfare Funds (Scotland) Act 2014

The Scottish Campaign on Welfare Reform (SCoWR) is a coalition of leading civil society organisations. Members work with people experiencing exclusion and poverty across Scotland. This response draws on the consensus of opinion which exists among SCoWR members over the devolution of community care grants and crisis loans. Many of our members are also providing their own, detailed responses. This response is intended to complement those provided by individual members.

General comments

1. SCoWR welcomes the Welfare Funds (Scotland) Bill and the fact that it will give the Scottish welfare fund legislative underpinning. By legislating for a national framework the Scottish Government has the opportunity to establish a welfare fund which is transparent, accountable and accessible.
2. SCoWR supports the Scottish Government's decision to invest in the Scottish welfare fundⁱ. The fund provides an important means of mitigating some of the worst effects of ongoing changes to the UK tax and social security system. By increasing investment and ensuring that the fund is accessible and sufficient, the Scottish Government could prevent many vulnerable households from reaching crisis point and being forced to rely on costly public services such as residential care, homelessness services and the NHS.
3. SCoWR accepts that local authorities are likely to administer Scottish welfare funds for the foreseeable future. In order to ensure that this is an effective and efficient means of delivery we would ask the Scottish Government to ensure there is close scrutiny of local authority spending on administration costs related to the scheme.
4. SCoWR regrets that the closing date for the current consultation comes *before* publication of the latest statistics relating to implementation to the Scottish welfare fund (SWF). It is difficult to present an informed opinion without an up to date understanding of how the current scheme is operating and the extent to which previous concerns have been addressed by the Scottish Government, COSLA and local authorities. We would therefore urge the Scottish Government to ensure that interested parties are given further opportunity to comment on the latest statistics (due to be published on 11th February) before the contents of the Welfare Funds (Scotland) Bill are finalised.

Our response

5. The SCoWR manifestoⁱⁱ sets out the five reforms that our members believe are necessary for an adequate social security system:

- Increase benefit rates to a level where no one is left in poverty and all have sufficient income to lead a dignified life
- Make respect for human rights and dignity the cornerstone of a new approach to welfare
- Radically simplify the welfare system
- Invest in the support needed to enable everyone to participate fully in society
- Make welfare benefits work for Scotland

Increase benefit rates to a level where no one is left in poverty and all have sufficient income to lead a dignified life

The need to ring-fence the Scottish welfare fund

6. The Scottish welfare fund plays an essential role in preventing many households from reaching crisis point and being forced to rely on costly public services such as residential care, homelessness services and the NHS.

7. In order to ensure that the Scottish welfare fund is sufficient to meet demand it is essential that funds are clearly ring-fenced. While section 1 of the Welfare Funds (Scotland) Bill will *allow* the funding for the SWF to be ring-fenced, it does not oblige the Scottish Government or COSLA to do so. Given the increasing pressure on the SWF and wider local authority resources over in the coming years (largely as a result of tax and social security reforms at UK level) SCoWR does not believe this provision is strong enough.

Maintaining access to the Scottish welfare fund

8. The Scottish Government has repeatedly championed the benefit of taking an early intervention approach to poverty and hardship and we would urge it to remember this in its development of a devolved social fund. By taking an overly limited approach to eligibility, the Scottish Government could risk pushing people into further poverty, exclusion and ill-health. In many cases, the only alternatives to the SWF are high interest lenders, 'loan sharks' or selling items from the home – all of which are likely to exacerbate rather than resolve financial problems and increase the likelihood of eventual reliance on public services.

9. For this reason we do not believe the Welfare Fund (Scotland) Bill should further limit access to the SWF. We are particularly concerned about lack of provision in the bill for families experiencing exceptional pressure. Paragraph 3.4 of the Scottish Government's guidance on the Scottish welfare fund currently states that, "*A grant can be awarded in support of independent living...to help families facing exceptional*

pressures.” The draft legislation does not currently make provision for applicants in this group. We therefore suggest that a third category should be added under section 2(2) to include amongst qualifying persons (currently limited to those facing or leaving prison, hospital, residential care or homelessness) those who might otherwise be ‘*experiencing exceptional pressure*’.

Grants rather than loans

10. SCoWR also believes that in order to ensure those most in need of the social fund are able to benefit from it in the long term, the Welfare Funds (Scotland) Bill should state clearly that where an award is made under the scheme no repayment of awards can be required.

Consideration of disability related benefits in relation to an SWF application

11. SCoWR accepts that there is a need for decision makers to take applicants’ available resources into account when they are considering an application to the SWF. However, there are certain resources which must be disregarded. Disability living allowance (DLA) and personal independence payment (PIP) for instance are intended to cover the additional costs related to having a disability and should not be classed as available resources by decision makers. Further consideration should also be given to how child related benefits are taken into account when calculating available resources.

Make respect for human rights and dignity the cornerstone of a new approach to welfare

Assistance in kind v cash payment

12. We are concerned by the broad scope which section 2(3) gives local authorities to pay third parties to provide goods or services ‘to or in respect of an individual’. There is a risk that by systematically referring individuals to third parties and/or allocating goods rather than cash payments local authorities will remove choice and undermine the dignity of the individual. Referral to food banks, for instance, could not only limit the choice available to applicants, in some cases it can also create stigma, undermine dignity and lead people to feel they are receiving hand outs rather than exercising a legitimate right to assistance . Local authorities should consider these factors in detail before making a referral to a third party.

13. It is also essential that, where assistance is given in kind, the goods allocated meet the applicant’s needs. A disabled individual, for instance, may need a specific type of mattress than cannot be provided by the local provider. In such circumstances it is essential that an appropriate supplier is identified or that a cash payment is made.

14. It is also essential that referral to a third party does not result in additional cost to the applicant. The costs involved in travelling to another location to pick up goods, for instance, should be covered by the award.

15. For the reasons above, SCoWR suggests that section 2(3) which currently gives local authorities wide powers to refer to a third party, be replaced with the following provisions.

“(3) Except in such circumstances as may be prescribed in regulations, a local authority must exercise its power under subsection (1) by providing financial assistance to the applicant.”

16. Regulations under this section might state that referral should only be made to a third party where it is a proportionate means of achieving a legitimate aim (as could be specified in the regulations). This would ensure that local authorities give full and proper consideration to how appropriate it is to make a referral.

Due process and accountability

17. SCoWR believes that the Bill should place a duty on local authorities to accept and record all applications made to the fund.

18. Under the current scheme many local authorities appear to be fettering their own discretion by refusing to accept, process or record certain applications. In some cases applications are not accepted because the decision maker deems them unlikely to succeed under the terms of the Scottish welfare fund guidance. In other cases local authorities appear to have developed internal practices or policies which exclude applications from certain groups. The refusal to accept an application prevents the applicant from being able to request a review of the decision.

19. Obliging local authorities to accept, process and record all applications will not only prevent local authorities from fettering their discretion (contrary to the legal principles governing public decision making) it will also allow the Scottish Government to collect accurate and comparable data about levels of demand for assistance across Scotland.

Communication of decisions

20. In order to give all applicants a meaningful right to challenge local authority decisions, the Welfare Funds (Scotland) Bill should include a duty on local authorities to provide written decisions in response to all applications to the welfare fund (unless the applicant has requested decisions in an alternative format). Regulations should specify that the written decision should specify:

- The decision,
- Reasons for the decision,
- Where the award is successful, the nature of support awarded

- The date on which the decision was made and
- How the applicant can challenge the decision.

21. The timely provision of such information is not only necessary to satisfy the demands of dignity and natural justice, is also essential if the applicant is to be given a meaningful opportunity to challenge either the local authority's decision or the adequacy/appropriateness of any goods provided by a third party.

22. The Scottish Government should also be mindful of its duties under the Equality Act 2010 and ensure that any communications meet the needs of those with protected characteristics in relation to the scheme. Accessible communication and disability awareness training is also essential and any phone line should have access to translation services such as Type Talk and Language Line.

Time limits

23. SCoWR also believes that Scottish Ministers should be obliged to introduce regulations setting out timescales within which applications to the Scottish welfare fund should be processed. Given the urgency with which many households make applications to the fund it is unacceptable that local authorities should have no legal obligation to attempt to process them within a set timescale. The current guidance gives local authorities a target of two working days to process an application for a crisis grant and 15 working days to process a community care grant application and we believe similar standards should be included in secondary legislation.

Independent review

24. An adequate, effective and independent system of challenge to decisions is also crucial to ensuring the dignity of applicants.

25. We agree with the characteristics and purposes attributed to first and second tier review in the consultation document. We also believe that it is essential that the second tier review body should have the power to make decisions which are binding on local authorities. An independent body with the power to overturn local decisions would have the following advantages:

- It would promote a perception of the review scheme as entirely independent and impartial.
- The prospect of external scrutiny would encourage a culture of reasoned, well-documented decision making
- It would lead to more consistent, reliable interpretation of legislative and regulatory provision relating to the fund.

26. There is a danger that without a central body providing clarity on how provisions should be interpreted, local variation will increase, leading to inconsistency and complexity. While there is a need for local authorities to be given some discretion in relation to how the scheme operates locally this must be balanced with transparency,

certainty and the need to ensure the applicant is central to the design of the system.

Radically simplify the welfare system

27. SCoWR is concerned that in regulating for certain aspects of eligibility the Scottish Government risks being too prescriptive and introducing unnecessary complications. Such an approach may also prevent applications from individuals experiencing extreme hardship. In particular, we do not believe it is appropriate for the following eligibility criteria to be detailed through regulation.

28. Qualifying benefits: We are concerned that by regulating to exclude those who are not in receipt of qualifying benefits, the Scottish Government will exclude individuals in extreme need. This might exclude, for instance, people who are often wrongly refused benefit (EU citizens, students, those recently granted refugee status) or those who are not on a means-tested benefit but are receiving the same amount as people on means-tested benefits do (e.g. someone on contributory ESA). Whilst we appreciate that Scottish Ministers will also have the power to lay down exceptions to the qualifying benefit rule, we are concerned that - given the complexity and changeability of the welfare benefits system – certain vulnerable groups could continue to be excluded if Ministers are unable to amend regulations at a rate which allows them to keep up with changes to welfare benefit entitlement.

Addressing the issue of qualifying benefits through guidance rather than regulations would allow local authorities more flexibility to respond to changing benefit rules and particular hard cases.

Providing specific guidance on the ability of refugees and other migrants to access the Scottish welfare fund would also be welcome as it would lead to more consistent decision-making in a traditionally complex area.

29. Residence: Stipulating that applicants must be resident in the local authority area potentially excludes those with chaotic lifestyles who have no way to prove their place of residence. It could also cause difficulties for those who experience crisis out-with the local authority area in which they are resident. Where, for example, a person is arrested and detained in another city and has no funds to return home they should not automatically be excluded from applying to the Scottish welfare fund.

30. We are also concerned that there is a lack of clarity caused by the interaction between the Scottish welfare fund and DWP support. Regulations or guidance could help to provide clarity on how local authorities should deal with applicants who could potentially access DWP resources such as budgeting loans and/or short term benefits advances. Guidance and/or regulations might specify, for instance, that where the DWP has informed the individual that s/he is not eligible for an advance,

then the general availability of such advances should not be considered relevant to the individual's application to the Scottish welfare fund.

Make welfare benefits work for Scotland

31. In developing the scheme and designing its delivery the Scottish Government must also continue to be aware of the changing context in which it will be operating. In particular, the Government must be aware of the impact the introduction of universal credit will have on households in Scotland. Universal credit will replace a range of benefits such as housing benefit, income support and child benefit. This means that a mistake or delay on the part of the DWP could result in people being deprived of *all* their benefit - not just one part of it. The Scottish Government must clarify with the DWP how the fund's decision making apparatus will be able to assist claimants in this situation. The introduction of universal credit should be seen as an opportunity to work with the DWP in a better way to protect potential applicants to the fund.

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SCoWR Members include;

Bipolar Scotland
Blackwood Housing Association
Capability Scotland

Child Poverty Action Group in Scotland
Children 1st
Children in Scotland
Church Action on Poverty
Energy Action Scotland
Engender
Glasgow Council for the Voluntary Sector
Glasgow Disability Alliance
Glasgow Homelessness Network
Hillcrest Housing Association
HIV Scotland
Homeless Action Scotland
Inclusion Scotland
National Autistic Society Scotland
One Parent Families Scotland
Oxfam
National Society for the Prevention of Cruelty to Children
Public and Commercial Services Union Scotland
Quarriers
Save the Children
Scotland's Commissioner for Children and Young People
Scottish Association for Mental Health
Scottish Drugs Forum
Scottish Federation of Housing Associations
Scottish Homelessness and Employability Network
Scottish Poverty Information Unit

Scottish Trade Union Congress
Scottish Women's Aid
Scottish Women's Convention
Scottish Council for Voluntary Organisations
Sense Scotland
Shelter Scotland
Terence Higgins Trust Scotland
The Action Group
The Stroke Association
The Iona Community
The Poverty Alliance
Turning Point Scotland
and other committed individuals.

ⁱ See the Budget (Scotland) Bill 2014/15 and related documents;
<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/70879.aspx>
ⁱⁱ Scottish Campaign on Welfare Reform, Manifesto for Change 2013
<http://www.cpag.org.uk/sites/default/files/SCoWR%20manifesto%202013.pdf>