

Draft Regulations laid before the Scottish Parliament under sections 3(4) and 4(5) of the Welfare Funds (Scotland) Act 2015, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2016 No.

SOCIAL SECURITY

The Welfare Funds (Scotland) Regulations 2016

Made - - - - 2016
Coming into force - - 1st April 2016

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 3(3) and 4 of the Welfare Funds (Scotland) Act 2015⁽¹⁾ and all other powers enabling them to do so.

In accordance with sections 3(4) and 4(5) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Welfare Funds (Scotland) Regulations 2016 and come into force on 1st April 2016.

Interpretation

2. In these Regulations—

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

“care institution” means a hospital, a residential care establishment or any other institution providing care;

“community care grant” has the meaning given by regulation 6(3);

“crisis grant” has the meaning given by regulation 6(2);

“fund application” means an application to a local authority for the provision of assistance from the authority’s welfare fund.

Age

3. No fund application may be made by or on behalf of a person who is aged less than 16.

Residence

4.—(1) Subject to paragraph (2), a local authority may provide assistance out of its welfare fund only to or in respect of a person who—

- (a) is resident in the authority's area;
- (b) is about to become resident in the authority's area; or
- (c) is homeless.

(2) A local authority may provide assistance to a person who does not fall within paragraph (1) if—

- (a) that person is stranded in the authority's area and the assistance is a crisis grant which will assist the person to return home; or
- (b) there are exceptional circumstances justifying this.

Income and capital

5.—(1) A local authority is not to provide assistance from its welfare fund to or in respect of a person who appears to the authority not to require that assistance by virtue of—

- (a) income being received by that person; or
- (b) capital held by that person.

(2) A local authority is not to consider a person ineligible for assistance by virtue of paragraph (1) (a) if that person is entitled to—

- (a) an income-based jobseeker's allowance (payable under the Jobseekers Act 1995⁽²⁾);
- (b) income support under the Social Security Contributions and Benefits Act 1992⁽³⁾;
- (c) income-related employment and support allowance under Part 1 of the Welfare Reform Act 2007⁽⁴⁾;
- (d) universal credit under Part 1 of the Welfare Reform Act 2012⁽⁵⁾; or
- (e) state pension credit payable under the State Pension Credit Act 2002⁽⁶⁾.

(3) In deciding whether a person is ineligible for assistance by virtue of paragraph (1), a local authority is to have regard to any guidance about the assessment of income and capital issued by the Scottish Ministers under section 6 of the Act.

Types of assistance

6.—(1) Assistance out of a welfare fund may be provided by way of—

- (a) a crisis grant; or
- (b) a community care grant.

(2) A crisis grant is assistance for the purposes referred to in paragraph (a) of section 2(1) of the Act.

(3) A community care grant is assistance for the purposes referred to in paragraph (b) of section 2(1) of the Act.

(4) A community care grant may be provided where it appears to the local authority that the grant will—

(2) 1995 c.18.
(3) 1992 c.4.
(4) 2007 c.5.
(5) 2012 c.5.
(6) 2002 c.16.

- (a) enable a qualifying individual who falls within paragraph (5) to establish or maintain a settled home and that without the grant there is a risk that the individual will not be able to do this;
 - (b) enable a qualifying individual to maintain a settled home and that without the grant there is a risk of the individual needing to go into a care institution;
 - (c) enable a qualifying individual to establish or maintain a settled home after being homeless or otherwise living an unsettled way of life;
 - (d) enable a qualifying individual to maintain a settled home in a situation where that individual, or another individual in the same household, is facing exceptional pressure; or
 - (e) assist a person to care for a qualifying individual who has been released from prison or a young offenders' institution on temporary licence.
- (5) A qualifying individual falls within this paragraph if the individual—
- (a) has been in prison or a care institution for a period of at least 3 months, any part of which falls within the period of 9 months preceding the date of the fund application in question; or
 - (b) has been in a care institution for two or more separate periods within that 9 month period.

Procedure for applications

7.—(1) A fund application to a local authority must be made in accordance with the procedure for making an application established by that authority.

(2) Each local authority must give public notice of the application procedure established by it and such notice must include publication on a website.

Repeat applications

8.—(1) A local authority need not consider a fund application made by or on behalf of a person who has made another fund application within the previous 28 days.

(2) Paragraph (1) does not apply where—

- (a) the second application is different in its nature from the first application;
- (b) no decision was taken on the first application; or
- (c) it appears to the authority that the circumstances of the person by or on whose behalf the applications were made have changed in a relevant respect.

Limitation on award of crisis grants

9.—(1) A person is not entitled to receive in any 12-month period assistance by way of crisis grants in response to more than 3 fund applications (whether made to a single local authority or to different authorities).

(2) Paragraph (1) does not apply if the local authority considers that there are exceptional circumstances.

Form of crisis grant assistance

10.—(1) Any crisis grant is to be provided by way of a payment to the applicant in a form which does not require the applicant to make over the payment to a particular person or otherwise to use it in a particular way.

(2) Paragraph (1)—

- (a) does not apply where a local authority considers that it would be of advantage to the applicant for the crisis grant to be provided in a different manner;
- (b) does not require any crisis grant to be paid in cash.

Excluded items

11. Where a fund application seeks assistance in respect of a particular item and that item is listed as an excluded item in guidance issued under section 6 of the Act, no assistance is to be provided.

Application on behalf of a person

12. If a person indicates to a local authority that he or she is content for another person to make a fund application on his or her behalf, the authority may consider an application made by that other person.

Decisions on fund applications

13.—(1) Every decision on a fund application is to be communicated to the applicant in writing, unless the applicant requests otherwise.

(2) A local authority is to make its decision on an application for a crisis grant—

- (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.

(3) A local authority is to make its decision on an application for a community care grant no later than the end of the fifteenth working day after that on which the authority has received all information allowing a decision to be made.

Reviews

14.—(1) Where a local authority makes a decision on a fund application, the applicant may, within 20 working days of being notified of that decision, request that the authority review the decision.

(2) Any request under paragraph (1) must, unless the local authority considers that there are exceptional circumstances, be made in writing and signed by the applicant.

(3) On receipt of a request within the time period referred to in paragraph (1) or where it considers that there is good reason to act on a request received outwith that period, the authority is to arrange for review of the decision.

(4) Review is to be carried out by a person who was not (or persons who were not) involved in making the decision.

(5) Review under this regulation may not result in assistance awarded under the decision being reduced or withdrawn.

(6) A decision on a review request is to be made—

- (a) in the case of a decision on an application for a crisis grant, no later than the end of the second working day after that on which the request was received; and
- (b) in the case of a decision on an application for a community care grant, no later than the end of the fifteenth working day after that on which the request was received.

(7) Every decision on a review request is to be communicated to the applicant in writing, unless the applicant requests otherwise.

Content of decisions

15.—(1) Every written decision communicated under regulation 13(1) or 14(7) is to include—

- (a) details of the application;
- (b) the date of the application;
- (c) the date of the decision;
- (d) the reasons for the decision; and
- (e) details of any financial or other assistance awarded.

(2) A written decision communicated under regulation 13(1) must in addition specify the means by which, and the timescale within which, the applicant may ask for the decision to be reviewed.

Retention of information

16.—(1) A local authority is to retain, in respect of every fund application—

- (a) the information specified in regulation 15(1);
- (b) full details of—
 - (i) facts taken into account in making a decision on the application;
 - (ii) any information gathered in connection with the application but which the authority subsequently decided was not relevant for the purpose of making its decision; and
- (c) any contact between the authority and the applicant in relation to the application.

(2) The information referred to in paragraph (1) is to be retained by the local authority until 6 years after the end of the financial year in which the fund application was made.

(3) In paragraph (2), “financial year” means a period of 12 months ending on 31st March.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision as to the operation of welfare funds to be maintained by every local authority under the Welfare Funds (Scotland) Act 2015. They come into force on 1st April 2016, at which point that Act and provisions under it will replace the non-statutory arrangements under which local authorities currently maintain welfare funds.

The Regulations set out who may make applications for assistance from a welfare fund, the procedure governing applications and decisions on these, and what may be provided by way of assistance. Provision is also made for the details of internal review procedures where an individual wishes an initial local authority decision on an application for assistance to be reviewed.