

**Consultation on Regulations and Statutory Guidance  
under the Welfare Funds (Scotland) Act 2015**

**Response of Scottish Tribunals and Administrative Justice Advisory Committee**

*Q17 – Do you think that the draft regulations at Annex B to this consultation paper will have the effects that we have listed here?*

NO – see answer to question 18 for detailed explanation.

*Q18 - If you do not think that they will have these effects, please tell us about any gaps in the regulations or unintended consequences you would expect from these regulations.*

(i) Regulation 4: residence

We consider that there is significant scope for disputes to arise about the application of the residence test. Disputes may arise either between the applicant and a local authority (where the local authority to whom the application has been made denies that the applicant is resident there) or between two local authorities (where one local authority refers an application to another local authority and the latter considers that the referral is not appropriate). These may be either: (i) disputes about the primary facts, (ii) where the primary facts are not in dispute, disputes about whether the agreed facts amount to “residence”.

The draft regulations do not define residence, nor does the draft guidance. It would be useful to list the factors to be taken into account in deciding whether a person is resident in an area either in the regulations or in the guidance. In many cases, it will be obvious whether a person is resident in the area, but there may be cases which are less clear cut, and for these, more detailed guidance would be helpful.

(ii) Regulation 15: Reviews

Reg. 15(2) states:

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

We think that there is a lack of clarity about what ‘in writing’ means, that might be interpreted by local authorities in a way that would not facilitate access to the review procedure. In our view, the review procedure should be as accessible as is reasonably possible. It should be possible to apply for a review in any of the following ways:

- by submitting a letter or completing a paper form;
- by email;
- by completing an online form; or
- by telephone.

In the case of as telephone request, what we envisage is that a member of the local authority staff takes down details over the telephone, then generates a form which is posted to the applicant inviting the latter to check it , sign it and return it to the local authority. In this way the requirement in draft regulation 15(2) for the applicant to sign the request for review can be met.

This should be made clear to local authorities either in the regulations or in the accompanying guidance.

We also suggest that the time allowed for a first tier review of a Community Care Grant application be reduced to 10 working days. It ought to be possible to complete the process within that period given that the review is an internal process.

(iii) Regulation 16: Notification of Decision and Regulation 14 : Decisions on fund applications

The reasons given for the decision should include a brief statement of the essential facts on which the decision was based. The regulations should be amended to achieve this.

We also suggest that the words “unless the applicant requests otherwise” be deleted from Reg. 14(1). We consider that to have a written determination is necessary for transparency and to encourage high quality decision-making. However, we do understand it may be appropriate and important to communicate the decision to the applicant in a way that is easily accessible to them. Therefore, the guidance should clarify that the applicant may request the decision to be communicated to them in a particular way (for example in person, or by telephone). Where this is the case, such requests should be fulfilled.

(iv) Guidance, Para. 4.33

- para. 4.33 of the guidance states that it is up to local authorities to decide how best to fulfil Community Care Grants. The guidance should also state that fulfilment should be achieved as soon as reasonably practicable.

*Q19- Please tell us about any concerns, comments or suggestions you have on the draft statutory guidance at Annex C to the consultation paper that are not already covered by the questions in Section 1 of the consultation paper:*

Residence

See above.

First Tier Reviews

In para. 15. on p. 14 of the consultation document, we suggest that “not change the original decision” be replaced by “uphold the original decision”.

At certain points, the guidance could be clearer. We suggest the following amendments:

- in para 9.1, add after “them considering that there has been an error or failure in the decision making process” the words, “e.g. a mistake in assessing the facts, or a failure to take into account a matter relevant to the decision.”
- in para 9.8, substitute the word “policy” for “administrative.” Any decision taken by a public official is an administrative decision so the use of the word “administrative” in this context would be misleading.

*Q20 - Should the application form for the permanent SWF be:*

<i>A combined CG and CCG application form</i>	√
<i>Two separate application forms</i>	

*Please tick your chosen option.*

*Please explain your answer.*

- Claimants may not understand the distinctions between the two types of application;
- A particular claimant may be eligible for both a CG and a CCG;
- Reduces the risk of failing to collect and record the necessary data;
- Likely to be simpler administratively.

*Q21 - What information is collected on the application form for the interim SWF, at Annex D to this paper, that you do not think is needed to assess an application?*

*Q22 - How can the application form for the interim SWF, at Annex D to this consultation paper, be improved for the permanent SWF?*