

Explanatory Memorandum to Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2012.

This Explanatory Memorandum has been prepared by the Local Government Finance & Performance Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2012. I am satisfied that the benefits outweigh any costs.

Carl Sargeant

Minister for Local Government & Communities

5th December 2012

Description

1. This statutory instrument sets out the practical framework within which council tax reduction schemes will operate in Wales after the abolition of the current council tax benefit system.
2. The statutory instrument details the default scheme that will take effect if any local authority in Wales fails to adopt their own council tax reduction scheme, under the Council Tax Reduction Schemes (Prescribed Requirements) (Wales) Regulations 2012, by 31st January 2013.

Matters of special interest to the Constitutional and Legislative Affairs Committee

3. Because of the length and technical complexity of the regulations, the timeframes within which they have been compiled and the fact that they draw on council tax benefit regulations for which there is no existing translation, it has not been possible to arrange for the Regulations to be provided in Welsh.
4. The timescales also mean that it has not been possible for the Committee to consider the regulations between their being laid and considered in the Assembly.

Legislative background

5. Section 9 and Schedule 4 of the Local Government Finance Act 2012 inserts a new Section 13A and new Schedule 1B into the Local Government Finance Act 1992. This provides Welsh Ministers with executive powers to introduce council tax reduction schemes in Wales, via regulations.
6. The relevant provisions in the Local Government Finance Act 2012 were subject to a Legislative Consent Motion which was approved by the National Assembly for Wales on 26th June 2012. The local Government Finance Act 2012 received Royal Assent on 1 November 2012.
7. This statutory instrument is being made under the new section 13A, new Schedule 1B to the Local Government Finance Act 1992, to prescribe the 'default' council tax reduction scheme, which will take effect if local authorities do not adopt their own schemes by 31st January 2013.
8. The instrument is subject to approval of the Assembly (the affirmative procedure).

Purpose & intended effect of the legislation

9. The Welfare Reform Act 2012 contains provisions to abolish Council Tax Benefit from 31 March 2013. From this date the responsibility to provide support for council tax and the funding associated with it, will be devolved to local authorities in England, to the Scottish Government and to the Welsh Government
10. The Welsh Government wants to ensure that a single national framework scheme is introduced to provide a consistent level of support across Wales,

whilst enabling modest local discretion for local authorities to respond to their local circumstances. Therefore provisions were sought in the Local Government Finance Act 2012 (the Act) to provide Welsh Ministers with executive powers to introduce council tax reduction schemes in Wales.

11. In line with the provisions in the Act, two main sets of regulations will govern the operation of council tax reduction schemes in Wales and these are designed to ensure that all local authorities introduce some form of council tax support.

12. Subject to the approval of the National Assembly for Wales:

- One set of regulations will prescribe requirements for local schemes to be made by individual local authorities in Wales, as well as specifying a number of areas of local discretion ('the prescribed requirements regulations'); and
- The other set of regulations will prescribe the 'default' council tax reduction scheme, which will take effect if councils do not adopt their own schemes.

13. This statutory instrument relates to the regulations setting out the default scheme that will take effect in relation to the dwellings situated in a local authority's area if the authority fails to make a scheme by 31st January 2013.

14. The approach to calculating council tax reductions under these regulations reflects that in existing SI 2006/215 (the Council Tax Benefit Regulations 2006) and SI 2006/216 (the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006).

15. These regulations provide the following:

Definitions of key words and phrases

The procedure for reduction applications and appeals

16. The regulations allow an application to be made in writing, by means of electronic communications, or where the authority has published a telephone number for the purpose of receiving such applications, by telephone.

17. The regulations also set out the procedure by which a person may make an appeal against the decisions of the authority under the council tax reduction scheme, and provide for persons who are still aggrieved, or who have not received a response from the authority within two months of an appeal being made, to appeal to the Valuation Tribunal Wales.

18. As with the operation of council tax benefit the regulations also set out the procedure by which a person can apply to an authority for a discretionary reduction under section 13A(1)(c) of the 1992 Act

The classes of person who are entitled to a reduction under the scheme

19. There will be four classes of person entitled to a reduction under the scheme:

- Class A: Pensioners whose income is less than the applicable amount.
- Class B: Pensioners whose income is greater than the applicable amount.
- Class C: Persons who are not pensioners whose income is less than the applicable amount.
- Class D: Persons who are not pensioners whose income is greater than the applicable amount.

20. The applicable amount is the amount that the Government says that the claimant and their family need to live on each week. The components that make up the applicable amount are detailed in paragraph 30.

The classes of person who are excluded from this scheme

21. The regulations apply the same restrictions that exist under the council tax benefit system to exclude foreign nationals with limited immigration status and non-economically active EEA individuals who are not exercising EU treaty rights from receiving council tax reductions.

22. However the regulations allow the established practice of allowing those who have recognised refugee status, humanitarian protection, discretionary leave or exceptional leave to remain granted outside the immigration rules and who are exempt from the Habitual Residence Test, to be entitled to apply for a council tax reduction provided that their status has not been revoked.

23. The regulations also replicate the existing provisions from the council tax benefit regulations in relation to other classes of person that are to be excluded from entitlement to a reduction under the scheme, namely: persons treated as not being in Great Britain, persons subject to immigration control and students.

24. The regulations in relation to persons who are to be treated as being in Great Britain are also replicated from the current council tax benefit regulations

The matters that determine eligibility for a reduction and the amount of reduction under the scheme

25. The determination of the class an individual is put into, and the reduction they will receive, will continue to be determined through means-testing, according to the same rules and criteria that are currently used under council tax benefit regulations.

26. However due to the reduction in funding being provided by the UK Government the maximum reduction in their council tax liability that a

claimant will be entitled to is 90%. Paragraph 67 sets out how this has been calculated.

27. The means test is defined in the regulations, aligned with existing regulations for council tax benefit for those of state pension age and working age (SI 2006/215 and SI 2006/216).
28. The means test is based on a comparison of income (as defined in the regulations) and the applicable amount (a living allowance). An individual's applicable amount will continue to be made up of four elements:
 - A personal allowance in respect of the applicant;
 - An amount in respect of any child or young person who is part of the applicant's family;
 - A family premium element (where the applicant is part of a family of which at least one member is a child or young person); and
 - Any premium amount, as set out in the regulations, which is applicable to the applicant.
29. The elements and calculation methodology for the applicable amount will be as set out under the existing regulations for council tax benefit (SI 2006/215 and SI 2006/216).
30. Where wider welfare reforms necessitate amendments to recognise any new benefits, such as the introduction of the Personal Independence Payment which replaces Disability Living Allowance for new claimants in April 2013, any technical amendments will be made by the Welsh Government.

How income and capital of the claimant, and others, should be treated when calculating entitlement to a reduction under the scheme, including cases where an applicant or their partner has an award of Universal Credit

31. Income and capital will be calculated for an applicant in line with existing provisions in the council tax benefit regulations (SI 2006/215 and SI 2006/2).
32. The income and capital of an applicant's partner (or, to mitigate the risk of over-claiming in a polygamous marriage, partners) will continue to be treated as income of the applicant. Income or capital of any child or young person will also continue not to be treated as income or capital of the applicant.
33. The regulations also allow a billing authority to treat the income or capital of a non-dependant (someone who is aged over 18 and who normally lives with the claimant for example adult son, daughter, relative or friend) as if it were the income or capital of the applicant in a case where it appears to the billing authority that the two have entered into arrangements to take advantage of the system. There is an exception to this rule for those on income related jobseekers allowance and income related employment and support allowance.

34. There will be special treatment of income and capital for those in receipt of state pension credit:
- For those in receipt of the guarantee credit element of state pension credit, the whole of their income and capital will be disregarded.
 - For those in receipt of the savings credit element of state pension credit, the billing authority will be able to use the Department for Work and Pensions' Pension Service's assessment of income and capital of the individual, and adjust this to take into account income from this benefit and any other relevant requirements.
35. Provisions in the regulations that relate to income, the calculation of income on a weekly basis, what is to be regarded as income, and what is to be disregarded as income, replicate the operation of council tax benefit.
36. In relation to income, wider welfare changes mean new working age benefits will be introduced to replace some of the existing working age benefits mentioned in SI 2006/215 and SI 2006/216 for example Disability Living Allowance will be replaced by Personal Independence Payments.
37. New applicants will be migrated onto these benefits over time, so both benefits will co-exist for a number of years (for example Universal Credit migration will take place over a five year period). Where such benefits are mentioned in these regulations, an equivalent approach for an individual on the new benefit will be identified and agreed with the Department for Work and Pensions.
38. Provisions relating to capital, what is to be regarded as capital, what is to be disregarded as capital and other capital calculations will operate the same way as existing SI 2006/215 and SI 2006/216 regulations.

The application of the scheme to students

39. Matters relating to the application of the scheme to students will be dealt with in the same way as they currently are under the existing council tax benefit regulations.

Extended reductions

40. The regulations set out that an individual who is approaching pension credit eligible age:
- And who is in receipt of council tax reduction and not in receipt of working age benefits (income support, income related jobseeker's allowance, income related employment and support allowance),
 - Or whose partner has claimed state pension credit,

will continue to receive an extended payment of their council tax reduction for a period of four weeks.

41. The regulations also set out that a person who is entitled to a reduction under the scheme will be entitled to receive an extended payment of their council tax reduction for a period of four weeks, where the applicant or the applicant's partner was entitled to a qualifying income related benefit for a continuous period of at least 26 weeks and entitlement to this benefit ceased because the applicant or the applicant's partner:

- Commenced employment as an employed or self-employed earner;
- Increased their earnings from such employment; or
- Increased the number of hours worked in such employment.

42. If a person moves to the area of a new billing authority during the extended reduction period then the first billing authority will pay the second billing authority or the individual their reduction amount for the extended reduction period.

43. If the person applies for a council tax reduction in the second billing authority, the second billing authority will net off the reduction amount received from the first authority. Any balance of reduction award will be paid to the applicant. After the extended reduction period ends, the first billing authority's liability in relation to extended payments will cease and the new billing authority's reduction will apply.

Period of entitlement and changes of circumstances

44. While the regulations retain the existing council tax benefit provisions in relation to:

- Date on which a change of circumstances is to take effect; and
- Changes of circumstances where state pension credit is in payment;

45. Where possible these provisions have been simplified, to reduce the administrative impact on local authorities and to simplify the process for claimants, so that the majority of changes are effective from the date on which they actually occur.

46. The regulations also replicate current arrangements for a person to act on behalf of another for example where a person has been granted power of attorney over a liable council tax payer.

Award or payment of reduction

47. Matters relating to the time and manner of granting relief and persons to be paid will be dealt with in the same way as they currently are under the existing council tax benefit regulations.

Treatment of Universal Credit

48. The regulations contain provisions about applicants with an award of universal credit (an individual or a couple). For the applicable amount of such applicants the amount of the maximum award calculated for the purposes of universal credit is used. This ensures that there is a consistent approach between the amount that universal credit determines a person needs to live on and the amount that council tax reduction schemes assume a person needs to live on.

49. The income assessment made by DWP for universal credit will be reused, with the universal credit payment itself being included as 'income'. The treatment of income and earnings between universal credit and the default scheme will be aligned as far as possible. Any disregards of income (not already taken into account under universal credit) will be adjusted for.

50. Applicants will lose 20p for every £1 of income over and above their applicable amount, subject to any earnings disregards that may be applied under the scheme.

51. Taking into account universal credit as income in the way set out above supports positive work incentives by mitigating the risk of having high marginal deduction rates. (A marginal deduction rate is the proportion of any increase in earnings which is lost due to tax or reduced benefit payments.)

52. As detailed above, the regulations continue to provide for support to be tapered away at a rate of 20 per cent for every additional pound of income (universal credit plus universal credit-assessed) over and above the applicable amount once any additional disregards have been applied under a council tax reduction scheme. Since the 20 per cent council tax support taper applies to the universal credit income which has already been tapered by 65 per cent, marginal deduction rates cannot exceed 100 per cent and will instead be around 81 per cent, taking into account a person's tax and national insurance contributions.

53. A number of income and hours rules previously applicable under council tax benefit for benefits that universal credit is replacing, no longer apply for recipients of universal credit under these regulations. Under council tax benefit these rules controlled the way income was calculated and made staged adjustments (extended payments) at points where income increased – for example, due to a return to work).

54. Whilst these measures did provide some support for work incentives, the extended taper in universal credit provides better support smoothed over a

longer period, meaning claimants will not experience 'cliff edges' and their household income will always increase if they have increased earnings.

Consultation

55. The details of the consultation undertaken are included in the RIA below.

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

Option 1 – Do Nothing

56. If no action was taken then once council tax benefit is abolished from 31st March 2013, via provisions in the Welfare Reform Act 2012, Welsh Ministers will have no legal powers to introduce a new scheme to provide assistance to households in meeting their council tax bills. This means that the approximately 300,000 claimants currently receiving council tax benefit would be required to pay their council tax bill in full.

Option 2 - Draft Regulations Based On A Reform of The Existing Council Tax Benefit System

57. Given the extremely challenging timescales and the complex nature of the existing scheme, to minimise the risks of not having a new scheme in place prior to the abolition of council tax benefit, the draft regulations could be broadly based on the existing council tax benefit system. Though it should be noted that amendments will be required as social security is not a devolved matter and therefore any new scheme cannot be a benefit but must operate as a reduction in council tax liability as part of the council tax system.

Costs & benefits

Option 1 – Do Nothing

58. If no action was taken to develop a new scheme, then none of the administrative or transition costs for the Welsh Government or local government of operating a new scheme, set out under option 2 below, would be incurred.

59. Furthermore the funding being transferred from the UK Government to the Welsh Government following the abolition of council tax benefit could be used to support other policy initiatives. The funding that will be transferred for 2013-14 and 2014-15 is £222m and £223m respectively.

60. However if no form of assistance in meeting council tax bills is provided then the current recipients of council tax benefit in Wales (approximately 330,000) would be expected to meet their council tax bills in full – as at May 2012 the average council tax benefit award in the UK was £15.76 per week which equates to £819.52 per annum.

61. Given that CTB is an income-related benefit for those on low incomes this is likely to cause severe financial hardship for CTB recipients. As a result demand for advice and support from local advisory bodies and other third sector organisations would rise which would increase the costs incurred by these organisations. There could also be an increased number of applications to local authorities for hardship assistance or an increased incidence of homelessness.
62. As it is unlikely that a recipient currently receiving a CTB award of 100% would be able to pay their full council tax bill, there would be an impact on local authorities' collection rates and consequently the funds that local government has available to deliver its local services. This could also result an increase in council tax in future years.
63. There would also be significant costs for local government as a result of increased collection and enforcement activity.

Option 2 - Draft Regulations Based On A reform of The Existing Council Tax Benefit System

64. It should be noted that all of the costs outlined below result from the UK Government's decision to abolish council tax benefit and to reduce the funding available to provide future support. While discussions are still ongoing between the Welsh Government, the Department for Work and Pensions (DWP) and HM Treasury regarding the funding transfer there has been no confirmation that any funding will be provided to meet the new costs associated with establishing and running a new scheme.

Costs to Current Recipients

65. As the regulations reduce the level of assistance that is provided to claimants, in line with the funding shortfall being transferred by the UK Government, by only rebating a fixed percentage of a claimant's council tax liability, in the future those claiming support under the council tax reduction scheme will have to pay a proportion of their council tax bill.
66. The funding shortfall has been calculated as £22 million based on the latest estimates of expenditure for 2012-13.
67. This has been calculated by deducting the funding transfer from the cost of council tax benefit in Wales in 2012-13: £244 - £222 million.
68. After adjusting for the changes incorporated into the new scheme for 2013-14, this equates to setting the maximum level of council tax liability which can be rebated as 90%.
69. As a result claimants will on average lose an estimated £67 of support in 2013-14.

70. However as the maximum level of support available is reduced before entitlement to a reduction under the scheme is calculated, the taper (the rate at which support is withdrawn above a certain income) is not reduced by the same proportion. The effect of this is that a claimant currently on the taper (ie. those not passported onto CTB by a contributory benefit) could experience a greater percentage reduction in the level of assistance they receive than passported claimants.

71. While this means the impact is proportionally more for claimants not passported onto CTB (approximately 30% of claimants in Wales) it means that those who have the lowest incomes ie. those that are passported onto CTB, will experience a smaller monetary reduction in support than if a flat rate reduction in support was applied after entitlement had been calculated. Therefore it is a less regressive option.

Transition Costs

72. The additional costs of moving from the existing council tax benefit system to a new scheme are set out in the table below, based on estimates received from Local Government, and previous exercises of a similar nature

Item	Details	One-off Costs	Recurrent Costs
IT System Alterations for new scheme	3 software suppliers are used by local authorities in Wales. Each authority's system will have to be altered for the new scheme.	The average cost per authority is £50k-70k. This equates to a Wales wide cost of £1.1m - £1.54m.	Estimated recurrent cost is 10% of one-off costs (standard charging tariff for software suppliers) £100k-£154k
Modelling software	To analyse the impact of the preferred scheme and any future amendments.	The cost of access to the system for two years is £140k. Agreement that in the first year this will be jointly funded by local Govt and Welsh Govt.	N/A
Training	LA Staff Training – for new scheme (inc. appeals & fraud) and software operation	£110k	N/A
Publicity	Publicising new scheme via a range of media channels:-	£110k	N/A

	<ul style="list-style-type: none"> – Mail shots – Website – Council newspapers 		
Total Costs:		£1.46m - £1.9m	£100k-£154k

Administration Costs – Local Government

73. In the first year of the scheme DWP has stated that the existing administration subsidy arrangements will continue with funding provided directly to local authorities to cover the administration costs of both Housing Benefit and Council Tax Support.

74. There will be a 5% reduction in the main administration funding provided by DWP in 2013-14 however the additional recessionary funding provided to cover the increase in caseload during the downturn will be reduced by approximately 50% due to improving economic circumstances.

75. The approximate figures for the main administration funding and the additional recessionary funding are £21.8m and £1.08m respectively.

Administration Costs – Welsh Government

76. There will be costs for the Welsh Government in relation to the implementation, maintenance and monitoring of the new scheme. The Welsh Government has asked that such costs be provided for in the funding transfer from the UK Government in recognition of this new responsibility arising from a UK policy decision. If such provision is not forthcoming, the costs will need to be met through the reprioritisation of resources within the Local Government and Communities Departmental Running Costs.

Other Costs

77. There will be costs associated with the fraud and enforcement arrangements and the appeals process for the new scheme however these will be detailed in the Regulatory Impact Assessment for the regulations covering these matters.

Indirect Costs

Impact on Council Tax Collection Rates and Collection Costs

78. Due to the reduction in funding available, the new scheme will mean that approximately 70% of current CTB claimants in Wales will have to pay council tax for the first time and as a result local authorities are expecting that their council tax collection rates could fall and the costs of collecting this additional council tax could rise. Individual estimates from local authorities suggest that dependent on the local authority area collections rates are expected to fall between 0%-1.5%.

Impact on Advisory Services and Third Sector Organisations

79. As approximately 70% of claimants have never previously paid council tax and will now be expected to pay a proportion of their council tax bill there is likely to be an increase in demand for advice and assistance from advisory services and other third sector organisations. The Welfare Reform and Legal Aid changes are also expected to lead to an increase in demand for advice services. Given these changes, a review of Advice Services is being undertaken and this will look at how we can develop a stronger network of advice services which is capable of providing people with support on all aspects of financial and housing related need.

Benefits

80. Through the implementation of council tax reduction schemes, current CTB claimants will continue to receive financial assistance in meeting their council tax bills. This will avoid the financial hardship and the associated costs listed under option one of requiring people on the lowest incomes to pay their council tax bill in full.

Sectors

81. Local Government and the Voluntary Sector have been consulted during the development of proposals to introduce council tax reduction schemes in Wales. This is detailed in the Consultation section.

82. This legislation will not affect the Business Sector.

Duties

83. In drafting these regulations consideration has been given to Welsh Minister's duty to promote equality and eliminate discrimination. A detailed Equality Impact Assessment has been undertaken and is provided at **Annexe A** and an assessment of the policy in relation to the United Nations Convention on the Rights of the Child has also been undertaken (this is included as an annexe to the EIA).

84. The default council tax reduction scheme will be implemented and operated by local authorities who are under general duties to comply with Welsh Language and Sustainable Development duties.

Consultation

85. A consultation on the policy and delivery options for the development of a new scheme to provide council tax support was sent to:

- Chief Executives, Leaders and Finance Directors of County and County Borough Councils in Wales
- Welsh Local Government Association
- Welsh Police Forces
- Local Taxation Working Group Members
- Institute of Revenues, Rating and Valuation
- Society of Welsh Treasures

- Children’s Commissioner
- Older Person’s Commissioner
- End Child Poverty Network
- Citizen’s Advice Bureau and other Advisory Services
- Community Housing Groups, Tenants Associations & Housing Providers
- Members of the Welsh Government’s Welfare Reform Officials Group who circulated the consultation to stakeholders likely to have an interest in the consultation

86. The consultation was also published on the Welsh Government’s website. 32 responses were received and a summary of consultation responses is provided at **Annexe B**.

87. Of the questions in the consultation directly relevant to the drafting of these regulations the following responses have been directly incorporated:

- All respondents to the question were supportive of the development of a national framework scheme;
- Most respondents preferred only a limited amount of local flexibility to ensure a consistent approach across Wales;
- The majority of respondents suggested that basing the new scheme on the existing council tax benefit scheme would provide a certain degree of protection for vulnerable groups by giving them a higher premium;
- More than half of the respondents who replied to the question on the vulnerable groups expressed significant concern that a decision to protect any group or groups would increase the hardship for other claimants as it could result in a greater reduction in support for them;
- Providing run-ons was the preferred approach to support work incentives (these are provided for as extended reductions in the regulations).
- While the majority of respondents offering suggestions on how the funding shortfall could be managed preferred the application of an equal cut in support for all claimants, a number of responses pointed out that those that could least afford a reduction in support should not be disproportionately burdened and that there should be a careful balance between how passported and non-passported claimants are treated under a new scheme.

88. Local Government practitioners have been involved throughout the drafting of these regulations and informed a number of simplifications that have been made.

89. A technical consultation and a copy of the draft Regulations was published on the Welsh Government we-site and was sent to:

- Members of the Welsh Government’s Welfare Reform Officials Group who circulated the consultation to stakeholders likely to have an interest in the consultation
- Members of the Local Taxation Working Group
- Welsh Local Government Association
- Chief Executive of the Valuation Tribunal Wales
- Citizen’s Advice Bureau and other Advisory Services

- Community Housing Groups, Tenants Associations & Housing Providers

90. Nineteen responses were received and as a result a number of amendments were made to the regulations including:

- Technical amendments to update cross-references to existing regulations;
- Revision of Regulation 107 date on which an application is made;
- Revision of Regulation 114 notification of decisions;

91. In response to feedback received regarding proposed changes to the regulations it was also decided not to make amendments to the current arrangements that allow Child Maintenance Payments to be fully disregarded from income calculations when assessing entitlement to a reduction.

Competition Assessment

92. This has been scored against the competition filter test which indicated that there will be no detrimental effect on competition.

Post implementation review

93. As a result of the impact of wider welfare reform changes and the current uncertainty around the level of funding that will be provided by the UK Government to operate council tax reductions schemes in Wales, this legislation will have to be reviewed in 2013-14 to consider any amendments required for 2014-15.