

**Explanatory Memorandum to the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2018.**

This Explanatory Memorandum has been prepared by Local Government Strategic Finance 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 (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2018. I am satisfied that the benefits outweigh any costs.

**Mark Drakeford**  
**Cabinet Secretary for Finance**  
**27 November 2017**

## **Description**

1. Council Tax Reduction Schemes (CTRS) are the mechanism through which local authorities provide support to low income households in meeting their council tax liability.
2. This statutory instrument makes amendments to both the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 (referred to collectively in this Explanatory Memorandum as “the 2013 CTRS Regulations”). It uprates certain figures used to calculate an applicant’s entitlement to a reduction under a Council Tax Reduction Scheme, and the subsequent level of reduction.
3. This instrument also makes consequential amendments as a result of changes to the wider welfare and tax system.

## **Matters of special interest to the Constitutional and Legislative Affairs Committee**

4. None.

## **Legislative background**

5. Section 10 of, and Schedule 4 to, the Local Government Finance Act 2012 inserted a new Section 13A and new Schedule 1B into the Local Government Finance Act 1992 (“the 1992 Act”). These provisions enabled the Welsh Ministers to introduce Council Tax Reduction Schemes (“CTRS”) 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 26 June 2012. The Local Government Finance Act 2012 received Royal Assent on 1 November 2012.
7. This statutory instrument is laid and made under the new section 13A of, and the new Schedule 1B to, the Local Government Finance Act 1992. The instrument is subject to approval of the Assembly (the affirmative procedure).

## **Purpose and intended effect of the legislation**

8. This statutory instrument amends the 2013 CTRS Regulations to uprate certain figures used within those Regulations to calculate entitlement to a council tax reduction, and the amount of any reduction awarded to applicants in the 2018-19 financial year. It also makes a number of consequential and technical amendments to the 2013 CTRS Regulations to take account of related welfare benefits and ensure they remain fit for purpose.

## Background

9. The Welfare Reform Act 2012 contained provisions to abolish Council Tax Benefit from 31 March 2013. From 1 April 2013, responsibility for providing support for council tax devolved to local authorities in England. Fixed funding, reduced by 10% compared to 2012-13 costs, was passed to the Welsh Government and to the Scottish Government to allow the Devolved Administrations to develop replacement schemes.
10. Following the UK Government's decision, the Welsh Government sought provisions in the Local Government Finance Act 2012 which amended the Local Government Finance Act 1992 ("the 1992 Act"), to provide the Welsh Ministers with executive powers to introduce Council Tax Reduction Schemes in Wales via regulations.
11. The 2013 CTRS Regulations were approved by the National Assembly for Wales on 26 November 2013.
12. The Welsh Government provided £244m in the Local Government Settlement for CTRS for 2013-14. This was partly funded through the fixed budget of £222m which was transferred from the UK Government. The Welsh Government provided an additional £22m to enable local authorities to continue to provide all eligible applicants with their full entitlement to support. The Welsh Government has continued to provide £244m within the local government settlement each year since.

## 2013 CTRS Regulations

13. Aligned with the provisions in the 1992 Act, the 2013 CTRS Regulations govern the operation of CTRS in Wales. These regulations were closely based on the previous Council Tax Benefit rules and all eligible applicants were automatically transferred from Council Tax Benefit onto Council Tax Reduction Schemes from 1 April 2013.
14. If an applicant receives Income Support, Income Based JSA, Income Based ESA, Pension Credit, or Pension Credit Guarantee, they are entitled to the maximum reduction in their council tax liability. Approximately 70% of CTRS applicants in Wales receive the passported benefits.
15. If an applicant does not receive any of the passported benefits, the weekly amount of money which they are judged to need to live on is calculated. This is known as the 'applicable amount' and consists of two components:
  - The first is the personal allowance – the basic amount a person needs to live, which varies according to the household's circumstances. For example, the allowance for a couple with children is higher than for a single person without children. These allowances are also set at higher rates for those who have reached State Pension Age.

- The second component is the premium – additional amounts added to reflect any personal circumstances which increase the cost of living, such as a disability or carer’s responsibilities. Once the applicable amount has been determined, the applicant’s level of income is calculated.
16. Universal Credit (UC) recipients are treated in a similar way as non-passported applicants. However, instead of an ‘applicable amount’ being calculated, the ‘maximum amount’ (calculated within their UC application) is used instead.
  17. If the applicable amount (or maximum amount) is higher than an applicant’s calculated income, they are entitled to the maximum reduction in their council tax liability. If income exceeds the applicable amount, the weekly entitlement is reduced by 20p for each £1 of excess weekly income, until entitlement is withdrawn – this is known as the taper.
  18. Adjustments can be made to the maximum amount of reduction a person can receive to take account of adults living in the dwelling who are not dependants of the applicant and who are therefore assumed to make a financial contribution to the household (non-dependant deductions).
  19. Adjustments can also be made to take into account of savings. If an applicant has capital of £6,000 (or £10,000 for pension age claimants) or less, this will be ignored when working out whether they are entitled to CTR.
  20. If a working age applicant has capital of between £6,000 and £10,000, the local authority will treat it as income. This is known as tariff income. The local authority will assume an applicant has an income of £1 a week for each £500 of capital between £6,000 and £10,000. This will be added to other income to work out whether an applicant is entitled to CTR and how much they are entitled to.

#### Uprating figures for 2018-19

21. This statutory instrument amends the 2013 CTRS Regulations to uprate financial figures used to calculate entitlement to a reduction in line with Welsh Government policy.
22. The statutory instrument seeks to uprate a number of other figures included in the 2013 CTRS Regulations. These include:
  - Personal allowances in relation to working age, and carer and disabled premiums  
The financial figures in respect of these allowances have been amended and have increased in line with the cost of living rises. The convention is to uprate in line with the Consumer Price Index September figure from the previous year (2017), which is 3.0%.
  - Personal allowances in relation to pensioners  
The financial figures in respect of pensioner rates have been amended and are aligned with Housing Benefit. These have been calculated with

assistance from the Department of Work and Pensions following the Chancellor's Autumn Budget 2017 and have been uprated by different mechanisms. For example, the Pension Credit standard minimum guarantee is uprated by earnings, whereas the Additional Pension and increments are uprated by prices.

- Non-dependant deductions

The financial figures in relation to both the income bands and deductions made in relation to 'non-dependants' will be uprated. If amendments are not made, appropriate deductions would not be made from CTRS awards as the income thresholds would no longer reflect average earnings and the deduction would no longer reflect the overall cost of council tax.

#### Additional Consequential Amendments

23. In addition to the uprating of financial figures, this statutory instrument makes a number of consequential amendments to the 2013 CTRS Regulations. These will ensure the 2013 Regulations remain up-to-date and fit for purpose.

#### Changes to Employment Support Allowance (ESA)

24. ESA is an income-replacement benefit for people of working age and is currently the main income-replacement benefit for those who cannot work because of a health condition or disability. Universal Credit provides a new single system of means-tested support for people of working age who are either in or out of work. UC is gradually replacing income-related ESA as it is rolled out and becoming available in an increasing number of areas across Great Britain.

25. In the Summer Budget 2015, it was announced that the Work-Related Activity Component paid to those in the ESA (Work Related Activity Group) (WRAG) would be abolished for new claims from 3 April 2017. The equivalent element in Universal Credit will also be abolished. However, there will be some ESA cases after April which will continue to have access to the Work-Related Activity Component.

26. This statutory instrument will make consequential textual amendments to largely mirror changes made to the benefit system to the 2013 CTRS Regulations whilst maintaining reference to the Work-Related Activity Component which will continue to be payable to some applicants. This will ensure the 2013 CTRS Regulations remain up-to-date.

#### The Regulation and Inspection of Social Care (Wales) Act 2016

27. In April 2018, Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 will be commenced for certain purposes. Part 1 of the Act will replace the regime for the regulation and inspection of social care settings in Wales. When fully implemented, these provisions will replace the regulation of social care establishments and agencies under the Care Standards Act 2000.

28. Part 1 of the 2016 Act will be commenced in respect of the following settings from April 2018:

- A care home service;
- A secure accommodation service;
- A residential family service; and
- A domiciliary support service.

29. This statutory instrument makes consequential changes to the 2013 CTRS Regulations to reflect the new services provision.

#### Change of Circumstances

30. Last year, consequential changes were made to the 2013 CTRS Regulations via the Council Tax Reduction Scheme (Prescribed Requirements and Default) Regulations 2017 to reflect an Upper Tribunal decision. The Tribunal found that, unless legislation provided otherwise, a person's earnings should only be attributed to them over the period following their receipt, rather than over the period for which they were earned. Amendments were made to the 2013 CTRS Regulations to address this and to enable earnings to be attributed to applicants over the period for which they were earned.

31. An anomaly has been identified in the wording of the amending provisions and their interaction with the change of circumstances provisions in the 2013 CTRS Regulations and this statutory instrument amends that anomaly.

#### Changes to income and capital disregards

32. A number of payments are disregarded for the purposes of calculating 'income' and/or 'capital'. This statutory instrument will ensure these references in the 2013 Regulations remain up-to-date for 2018-19.

#### Bereavement Support Payments

33. If a person's husband, wife or civil partner died before 6 April 2017, they would have been entitled to a Bereavement Payment or bereavement allowance. These payments are disregarded when calculating 'income' and 'capital' within the CTRS means test.

34. A new social security benefit called Bereavement Support Payment has been introduced for surviving spouses and civil partners who are widowed after April 2017. This statutory instrument will ensure changes are made to the 2013 CTRS Regulations to ensure these payments are not included in the list of capital and income disregards in respect of CTRS entitlement.

#### Manchester attack and compensation disregard and London Emergencies Trust

35. In 2017, two charitable funds were created to help victims of terrorist attacks:

- We Love Manchester Emergency Fund; and
- London Emergencies Trust.

36. This statutory instrument will ensure changes are made to the 2013 CTRS Regulations to ensure these payments are included in the list of income and capital disregards in calculating a person's entitlement to a council tax reduction.

Approved blood scheme (England), Scottish Infected Blood Support Scheme (Scotland) and Welsh Infected Blood Scheme (Wales).

37. Until recently, a UK-wide scheme provided financial support to people infected with HIV and/or hepatitis C following NHS treatment with contaminated blood in the 1970's and 80's. That scheme was administered by five individual bodies contracted by the Department of Health (the Skipton Fund, the Caxton Foundation, the Macfarlane Trust, the Eileen Trust and MFET Ltd). The scheme has been replaced in England by an approved blood scheme (schemes approved by the Secretary of State); in Scotland, by the Scottish Infected Blood Support Scheme; and in Wales, by the Welsh Infected Blood Scheme. Payments made from those schemes are exempt from tax and are not included in HMRC or DWP calculations for tax liability or benefits purposes.

38. This statutory instrument makes the changes to the 2013 CTRS Regulations so as to ensure that payments made from each of the above schemes are disregarded in the calculation of income or capital for the purpose of assessing a person's entitlement to a council tax reduction.

National Socialist Persecution payments

39. Currently, payments made to victims of National Socialist persecution by the Governments of Germany and Austria have a weekly £10 disregard applied from a number of UK welfare benefits, including CTRS in Wales. However, similar payments made by other governments are taken into account in full.

40. Following a Housing Benefit appeal, an Upper Tribunal held that payments made to victims of National Socialist persecution by the Netherlands Government should be treated in the same way as payments made by the Austrian and German Governments.

41. This statutory instrument makes necessary changes to the 2013 CTRS Regulations to ensure these payments are included in the list of income and capital disregards in respect of CTRS entitlement.

Thalidomide Health Grant

42. The Thalidomide Trust administers the Thalidomide Health Grant on behalf of the Department of Health. Payments from the Trust are intended to assist with meeting health-related costs of people whose disabilities were caused by Thalidomide use.

43. This statutory instrument amends the 2013 Regulations to make provision that such payments are to be disregarded in the calculation of capital for the

purposes of assessing a person's entitlement to a council tax reduction and when determining the income of non-dependants.

## **Regulatory Impact Assessment (RIA)**

### **Options**

#### Option 1 – Do nothing

44. If the financial figures used to assess the eligibility of households' allowances within the Council Tax Reduction means test remained static, the criteria used will be slightly less generous for non-passported applicants and lead to a small decrease in support in real terms.
45. The financial figures used to assess the eligibility of households with non-dependants would be out-of-date. The income thresholds would no longer reflect average earnings and the adjustment made to the final council tax reduction would no longer reflect overall cost of council tax.
46. It would also mean that consequential amendments would not be made to the 2013 CTRS Regulations to take account of changes to related welfare benefits and other legislation. This could disadvantage some applicants by reducing or stopping their entitlement to support and could also create confusion for applicants and increase the administrative burden for local authorities and advice providers.

#### Option 2 – Make amending Regulations

47. This option would mean that amendments would be made to uprate the financial figures in the 2013 CTRS Regulations according to Welsh Government policy.
48. The financial figures in relation to working age, disability or carer rates will continue to increase with the cost of living (3.0%, as measured by CPI) for 2018-19. The personal allowances for pensioners will be uprated to align with those for Housing Benefit and the benefit system. The increase would be aligned to the UK Government's Standard Minimum Guarantee and Savings Credit.
49. The financial figures used to calculate the adjustment for non-dependant deductions would be uprated. The income thresholds in relation to non-dependants would be uprated to reflect average earnings and the non-dependant deduction from CTRS would reflect the average increase in council tax.
50. In addition, consequential and technical amendments will be made to reflect wider welfare changes made by the UK Government. This ensures Council Tax Reduction Schemes reflect changes to interrelated social security benefits which often determine entitlement to a reduction.

## **Costs and Benefits**

### **Costs**

#### Option 1 – Do nothing

51. If the financial figures for working age and pensioner allowances do not increase with the cost of living (as measured by CPI) the CTRS recipients affected would be slightly worse off in real terms.
52. The financial figures used to assess the eligibility of households with non-dependants would also be out-of-date. The calculation would no longer make a fair assessment of the income of non-dependants or the overall cost of council tax. There is a risk that this aspect of the scheme would be viewed as unfair or inequitable.
53. If the technical and consequential amendments to the 2013 CTRS Regulations are not made, they would no longer align with Housing Benefit provisions or other related benefits. It would lead to references being out of sync with the overall benefits system and could disadvantage certain applicants by reducing their entitlement to support. This could potentially lead to additional administrative burden on local authorities and advice providers. It may also lead to confusion for some applicants who, as a result, could be treated significantly differently under benefit schemes.

### **Benefits**

54. Not uprating pensioner and working age figures would help to limit any increases in total reductions under Council Tax Reduction Schemes. However not uprating figures in relation to non-dependant deductions, would result in council tax reductions for relevant households being higher than they otherwise would be.

#### Option 2 – Make amending Regulations

### **Costs**

55. Uprating the financial figures in respect of pensioners and working age allowances would slightly increase total reductions under Council Tax Reduction Schemes. However, if the financial figures in relation to Non-Dependant Deductions were also uprated, this would mitigate some of the increase in total reductions. Consequently, total council tax reductions are not expected to rise significantly as a result of the uprating.

### **Benefits**

56. Uprating the financial figures in the 2013 CTRS Regulations will ensure that the personal allowance for working age applicants continues to increase in line

with the CPI (which is set at 3.0%). For example in 2018-19, the single person allowance would increase from £73.85 to £76.10 (an increase of £2.25).

57. Up-rating the financial figures in respect of the personal allowance for pensioners continues to increase in line with the standard minimum guarantee and savings credit. For example in 2018-19, the single person allowance would increase from £172.55 to £176.45 (an increase of £3.90).
58. If the financial figures in relation to non-dependant deduction rates are up-rated, this will ensure the calculation used to assess the eligibility of non-dependant households remains up-to-date. The calculation would continue to make a fair assessment of the income of non-dependants and the cost of council tax. This will ensure the system remains fair and equitable.
59. As part of these Regulations, consequential and technical amendments are made that are associated with wider welfare changes made by the UK government. This will ensure Council Tax Reduction Schemes reflect changes made to interrelated social security benefits which often determine entitlement to a reduction. It will also avoid any additional administrative burden for local authorities or advice providers.

## **Sectors**

60. Local government and the voluntary sector were consulted during the development of proposals to introduce Council Tax Reduction Schemes in Wales.
61. This legislation will not affect the business sector.

## **Duties**

62. In drafting these Regulations consideration has been given to the duty on Welsh Ministers to promote equality and eliminate discrimination.
63. An Equality Impact Assessment was completed for the introduction of the 2013 CTRS Regulations.
64. This statutory instrument is provided bilingually. Council Tax Reduction Schemes are implemented and operated by local authorities who are under general duties to comply with Welsh language and sustainable development duties.
65. Further consideration has been given as to whether CTRS could be used to improve the opportunities of persons to use the Welsh language treating the Welsh language no less favourably than the English language. As the sole purpose of CTRS is to provide support to low-income households in meeting their council tax liability, it is considered there are no such opportunities.
66. The policy supports the principles within the Well-being of Future Generations (Wales) Act 2015. Maintaining full entitlement to CTRS will continue to help

low income households in meeting their council tax liability and as such will help to contribute to the wellbeing objectives of: a prosperous Wales; and a more equal Wales.

### **Competition Assessment**

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

### **Consultation**

68. No consultation has been undertaken in respect of this statutory instrument. The 2013 CTRS Regulations were consulted upon and details are provided in the Regulatory Impact Assessments accompanying those Regulations.

### **Post implementation review**

69. Amendments are required on an annual basis to update the financial figures used to calculate entitlement to a reduction. This provides an opportunity to review the legislation.