

## Constitutional and Legislative Affairs Committee

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Meeting Venue:  
**Committee Room 2 – Senedd**

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Meeting date:  
**4 February 2013**

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Meeting time:  
**13:30**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



For further information please contact:

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### Agenda

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#### **1. Introduction, apologies, substitutions and declarations of interest**

#### **2. Evidence in relation to the Human Transplantation (Wales) Bill**

Lesley Griffiths, Minister for Health and Social Services (1.30pm)

Pat Vernon, Policy for Organ and Tissue Donation Legislation, Welsh Government;  
Dr Grant Duncan, Medical Directorate, Welsh Government;  
Sarah Wakeling, Legal Services, Welsh Government

<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=3812>

#### **3. Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**

Negative Resolution Instruments

#### **CLA209 – The Council Tax (Administrative and Enforcement) (Amendment) (Wales) Regulations 2013**

Negative Procedure. Date made Not stated. Date laid Not stated. Coming into force date in accordance with regulation 1(2).

## **CLA211 – The Council Tax (Demand Notices) (Wales) (Amendment) Regulations 2013**

Negative Procedure. Date made 17 January 2013. Date laid 17 January 2013.  
Coming into force date 7 February 2013.

## **4. Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3**

### Affirmative Resolution instruments

## **CLA208 – The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2013 (Pages 1 – 14)**

Negative Procedure. Date made Not stated. Date laid Not stated. Coming into force in accordance with regulation 1(2).

### **Papers:**

**CLA(4)-05-13(p1)** – Report

**CLA(4)-05-13(p2)** – Regulations

**CLA(4)-05-13(p2)** – Explanatory Memorandum

## **CLA210 – The Council Tax Reduction Schemes (Transitional Provisions) (Wales) Regulations 2013 (Pages 15 – 24)**

Negative Procedure. Date made Not stated. Date laid Not stated. Coming into force in accordance with regulation 1(2).

### **Papers:**

**CLA(4)05-13(p4)** – Report

**CLA(4)05-13(p5)** – Regulations

**CLA(4)05-13(p6)** – Explanatory Memorandum

## **5. Evidence in relation to the Natural Resources Body for Wales (Functions) Order 2012 (Pages 25 – 35)**

John Griffiths, Minister for Environment and Sustainable Development (2.30pm)

Dave Clarke, Technical Adviser, Environment and Sustainability, Welsh Government;  
James George, Legal Services, Welsh Government

<http://www.assemblywales.org/bus-home/bus-legislation/fourth-assembly-sub-leg-reports.htm>

### **Paper:**

**CLA(4)-05-13(p7)** – Report

## **6. Evidence in relation to the Local Government (Democracy) (Wales) Bill**

Carl Sargeant, Minister for Local Government (3.00 – 3.30pm)

Frank Cuthbert, Head of Scrutiny, Democracy and Participation Team, Welsh Government;

Patricia Gavigan, Legal Services, Welsh Government

<http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IId=5052&AIID=8648>

## **7. Short Inquiry – Council Tax Reduction Scheme Regulations (Pages 36 – 39)**

Carl Sargeant, Minister for Local Government

Debra Carter, Deputy Director, Local Government Finance and Performance, Welsh Government;

Sharon Barry, Legal Services, Welsh Government

### **Paper:**

CLA(4)-05-13(p8) – Letter from Minister, 5 November 2012

## **8. Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

A Committee may resolve to exclude the public from a meeting or any part of a meeting where:

(ix) any matter relating to the internal business of the committee, or of the Assembly, is to be discussed.

## **9. Consideration of evidence**

## **10. Final Draft Report Regulated Mobile Homes Sites (Wales) Bill (Pages 40 – 72)**

## **11. Future Inquiries (Pages 73 – 75)**

### **Paper:**

CLA(4)-05-13(p9) – Future Inquiries

# Agenda Item 4.1

## **Constitutional and Legislative Affairs Committee Draft Report**

### **Title: The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2013**

These Regulations amend both the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012 ('the prescribed requirements Regulations') and the Council tax Reduction Schemes (Default Scheme) (Wales) Regulations 2012 ('the default scheme Regulations').

These Regulations amend the prescribed requirements Regulations and the default scheme Regulations. They increase the maximum amount of council tax reduction a person can receive under an authority's scheme from 90 per cent to 100 per cent and they up rate certain figures used within those regulations to calculate entitlement to a reduction and subsequently the amount of a reduction.

These Regulations also rectify a number of minor technical errors that were identified by the Constitutional and Legislative Affairs Committee during its scrutiny of both the prescribed requirements Regulations and the default scheme Regulations.

#### **Procedure: Affirmative**

#### **Technical Scrutiny**

Under Standing Order 21.2 the Assembly is invited to pay special attention to the following instrument:-

1. These Regulations have not been made bilingually.

[21.2(ix) - that it is not made or to be made in both English and Welsh].

The Welsh Government state in paragraph 2 of the Explanatory Memorandum:

*"It has not been possible to arrange for the Regulations to be provided in Welsh"*

## **Merits Scrutiny**

No points are identified for reporting under Standing Order 21.3 in respect of this instrument

## **Legal Advisers**

Constitutional and Legislative Affairs Committee

**January 2013**

## **Government Response**

Given the complexity of the regulations, the timescales within which they were produced, and the fact that there was no existing Welsh equivalent, regrettably it was not possible to translate the regulations in order to provide a bilingual version of the statutory instrument . When I wrote to you in November in connection with the Council Tax Reduction Scheme Regulations I advised that unfortunately this may be the case.

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DRAFT WELSH STATUTORY INSTRUMENTS

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**2013 No. (W.)**

**COUNCIL TAX, WALES**

**The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2013**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012 (“the prescribed requirements Regulations”) and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2012 (“the default scheme Regulations”) made under section 13A(4) of, and Schedule 1B to, the Local Government Finance Act 1992. The prescribed requirements Regulations require each billing authority in Wales to make a scheme specifying the reductions which are to apply to amounts of council tax payable by persons, or classes of persons, whom the authority considers are in financial need. The prescribed requirements Regulations also set out matters that should be included within such a scheme. The default scheme Regulations set out a scheme which will take effect, in respect of dwellings situated in the area of a billing authority, if the authority fails to make its own scheme on or before 31 January 2013.

These Regulations amend the prescribed requirements Regulations and the default scheme Regulations. They increase the maximum amount of council tax reduction a person can receive under an authority’s scheme from 90 per cent to 100 per cent (regulations 3, 6 and 14), and they increase certain of the figures which are used in calculating whether a person is entitled to a reduction, and the amount of that reduction. The up-rated figures relate to non-dependant deductions (adjustments 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) (regulations 4, 7 and 15); and the applicable amount in relation to an application for a reduction (the amount against which an applicant’s income is compared in order to determine the amount of reduction to which the applicant is entitled (regulations 5, 10, 19 and 20). The Regulations also amend errors that appeared in both the prescribed requirements Regulations and the default scheme Regulations (regulations 8, 9, 11, 12, 16, 17, 18 and 21).

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

**2013 No. (W.)**

**COUNCIL TAX, WALES**

**The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2013**

*Made* - - - - - \*\*\*

*Coming into force in accordance with regulation 1(2)*

The Welsh Ministers make the following Regulations in exercise of the powers conferred upon them by section 13A(4) of, and paragraph 6 of Schedule 1B to, the Local Government Finance Act 1992<sup>(1)</sup>:

In accordance with section 13A(8) of that Act, a draft of this instrument has been laid before and approved by a resolution of the National Assembly for Wales.

**Title, commencement and application**

1.—(1) The title of these Regulations is the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2013.

(2) These Regulations come into force on the day after the day on which they were made and apply in relation to Wales.

**Amendments to the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012**

2. The Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012<sup>(2)</sup> are amended in accordance with regulations 3 to 12.

3. In paragraph 2(1) of Schedule 1 (maximum council tax reduction under an authority's scheme: pensioners) for "90 per cent" substitute "100 per cent".

4. In paragraph 3 of Schedule 1 (non-dependant deductions: pensioners)—

- (a) in paragraph (1)(a) for "£9.90" substitute "£10.95";
- (b) in paragraph (1)(b) for "£3.30" substitute "£3.65";
- (c) in paragraph (2)(a) for "£183.00" substitute "£186.00";
- (d) in paragraph (2)(b) for "£183.00", "£316.00" and "£6.55" substitute "£186.00", "£322.00" and "£7.25" respectively;
- (e) in paragraph (2)(c) for "£316.00", "£394.00" and "£8.25" substitute "£322.00", "£401.00" and "£9.15" respectively.

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(1) 1992 c.14; section 13A was substituted by section 10(1) of the Local Government Finance Act 2012 (c.17), and Schedule 1B was inserted by section 10(5) of that Act.

(2) S.I. 2012/3144 (W.316).

**5. In Schedule 2 (applicable amounts: pensioners)—**

- (a) in column (2) of the Table in paragraph 1—
  - (i) in sub-paragraph (1) for “£142.70” and “£161.25” substitute “£145.40” and “£163.50” respectively;
  - (ii) in sub-paragraph (2) for “£217.90” and “£241.65” substitute “£222.05” and “£244.95” respectively;
  - (iii) in sub-paragraph (3) for “£217.90” and “£75.20” substitute “£222.05” and “£76.65” respectively;
  - (iv) in sub-paragraph (4) for “£241.65” and “£80.40” substitute “£244.95” and “£81.45”;
- (b) in column (2) of the Table in paragraph 2 for “£64.99” in each place in which it occurs substitute “£65.62”;
- (c) in the second column of the Table in Part 4—
  - (i) in sub-paragraph (1) for “£58.20” in each place in which it occurs substitute “£59.50” and for “£116.40” substitute “£119.00”;
  - (ii) in sub-paragraph (2) for “£22.89” substitute “£23.45”;
  - (iii) in sub-paragraph (3) for “£56.63” substitute “£57.89”;
  - (iv) in sub-paragraph (4) for “£32.60” substitute “£33.30”.

**6. In paragraph 4(1) of Schedule 6 (maximum council tax reduction under an authority’s scheme: persons who are not pensioners) for “90 per cent” substitute “100 per cent”.**

**7. In paragraph 5 of Schedule 6 (non-dependant deductions: persons who are not pensioners)—**

- (a) in paragraph (1)(a) for “£9.90” substitute “£10.95”;
- (b) in paragraph (1)(b) for “£3.30” substitute “£3.65”;
- (c) in paragraph (2)(a) for “£183.00” substitute “£186.00”;
- (d) in paragraph (2)(b) for “£183.00”, “£316.00” and “£6.55” substitute “£186.00”, “£322.00” and “£7.25” respectively;
- (e) in paragraph (2)(c) for “£316.00”, “£394.00” and “£8.25” substitute “£322.00”, “£401.00” and “£9.15” respectively.

**8. In paragraph 19 of Schedule 6 (notional income: persons who are not pensioners)—**

- (a) in paragraph (4)(c)(i) for “regulation 75(1)(a)(ii)” substitute “regulation 75(1)(a)”;
- (b) in paragraph (4)(c)(ii) for “regulation 75(1)(b)(ii)” substitute “regulation 75(1)(b)”;
- (c) omit paragraph (4)(c)(iii);
- (d) omit paragraph (4)(a)(v);
- (e) in paragraph (7)(b)(i) omit “, other than where the service is performed in connection with the applicant’s participation in the Intense Activity Period specified in regulation 75(1)(a)(iv) of those Regulations”.

**9. In paragraph 30 of Schedule 6 (notional capital: persons who are not pensioners)—**

- (a) in paragraph (4)(b)(i) for “regulation 75(1)(a)(ii)” substitute “regulation 75(1)(a)”;
- (b) in paragraph (4)(b)(ii) for “regulation 75(1)(b)(ii)” substitute “regulation 75(1)(b)”;
- (c) omit paragraph (4)(b)(iii);
- (d) omit paragraph (4)(b)(v).

**10. In Schedule 7 (applicable amounts: persons who are not pensioners)—**

- (a) in column (2) of the Table in paragraph 1—
  - (i) in sub-paragraph (1) for “£71.00” in each place in which it occurs substitute “£71.70” and for “£56.25” substitute “£56.80”;



- (ii) in sub-paragraph (2) for “£71.00” substitute “£71.70”;
- (iii) in sub-paragraph (3) for “£111.45” substitute “£112.55”;
- (b) in column (2) of the Table in paragraph 3, for “£64.99” in each place in which it occurs substitute “£65.62”;
- (c) in the second column of the Table in Part 4—
  - (i) in sub-paragraph (1) for “£30.35” and “£43.25” substitute “£31.00” and “£44.20” respectively;
  - (ii) in sub-paragraph (2) for “£58.20” in each place in which it occurs substitute “£59.50” and for “£116.40” substitute “£119.00”;
  - (iii) in sub-paragraph (3) for “£56.63” substitute “£57.89”;
  - (iv) in sub-paragraph (4) for “£32.60” substitute “£33.30”;
  - (v) in sub-paragraph (5) for “£22.89”, “£14.80” and “£21.30” substitute “£23.45”, “£15.15” and “£21.75” respectively;
- (d) in paragraph 23 for “£28.15” substitute “£28.45”;
- (e) in paragraph 24 for “£34.05” substitute “£34.80”.

**11.** In paragraph 18 of Schedule 8 (sums disregarded in the calculation of earnings: persons who are not pensioners)—

- (a) in paragraph (2)(b)(iv)(bb) for “; or” substitute “.”;
- (b) omit paragraph (2)(c).

**12.** In paragraph 10(2)(c) of Schedule 13 (the award or payment of a reduction under a scheme) for “appropriate” substitute “inappropriate”.

## **Amendments to the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2012**

**13.** The scheme set out in the Schedule to the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2012(1) is amended as follows.

**14.** In paragraph 27(1) (maximum council tax reduction under this scheme: pensioners and persons who are not pensioners) for “90 per cent” substitute “100 per cent”.

**15.** In paragraph 28 (non-dependant deductions: pensioners and persons who are not pensioners)—

- (a) in paragraph (1)(a) for “£9.90” substitute “£10.95”;
- (b) in paragraph (1)(b) for “£3.30” substitute “£3.65”;
- (c) in paragraph (2)(a) for “£183.00” substitute “£186.00”;
- (d) in paragraph (2)(b) for “£183.00”, “£316.00” and “£6.55” substitute “£186.00”, “£322.00” and “£7.25” respectively;
- (e) in paragraph (2)(c) for “£316.00”, “£394.00” and “£8.25” substitute “£322.00”, “£401.00” and “£9.15” respectively.

**16.** In paragraph 53 (notional income: persons who are not pensioners)—

- (a) in paragraph (4)(c)(i) for “regulation 75(1)(a)(ii)” substitute “regulation 75(1)(a)”;
- (b) in paragraph (4)(c)(ii) for “regulation 75(1)(b)(ii)” substitute “regulation 75(1)(b)”;
- (c) omit paragraph (4)(c)(iii);
- (d) omit paragraph (4)(a)(v);

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(1) S.I. 2012/3145 (w.317).

- (e) in paragraph (7)(b)(i) omit “, other than where the service is performed in connection with the applicant’s participation in the Intense Activity Period specified in regulation 75(1)(a)(iv) of those Regulations”.

**17. In paragraph 64 (notional capital)—**

- (a) in paragraph (6)(b)(i) for “regulation 75(1)(a)(ii)” substitute “regulation 75(1)(a)”;
- (b) in paragraph (6)(b)(ii) for “regulation 75(1)(b)(ii)” substitute “regulation 75(1)(b)”;
- (c) omit paragraph (6)(b)(iii);
- (d) omit paragraph (6)(b)(v).

**18. In paragraph 116(2)(c) (the award or payment of a reduction under this scheme) for “appropriate” substitute “inappropriate”.**

**19. In Schedule 2 (applicable amounts: pensioners)—**

- (a) in column (2) of the Table in paragraph 1—
- (i) in sub-paragraph (1) for “£142.70” and “£161.25” substitute “£145.40” and “£163.50”;
- (ii) in sub-paragraph (2) for “£217.90” and “£241.65” substitute “£222.05” and “£244.95” respectively;
- (iii) in sub-paragraph (3) for “£217.90” and “£75.20” substitute “£222.05” and “£76.65” respectively;
- (iv) in sub-paragraph (4) for “£241.65” and “£80.40” substitute “£244.95” and “£81.45” respectively;
- (b) in column (2) of the Table in paragraph 2, for “£64.99” in each place in which it occurs substitute “£65.62”;
- (c) in the second column of the Table in Part 4—
- (i) in sub-paragraph (1) for “£58.20” in each place in which it occurs substitute “£59.50” and for “£116.40” substitute “£119.00”;
- (ii) in sub-paragraph (2) for “£22.89” substitute “£23.45”;
- (iii) in sub-paragraph (3) for “£56.63” substitute “£57.89”;
- (iv) in sub-paragraph (4) for “£32.60” substitute “£33.30”.

**20. In Schedule 3 (applicable amounts: persons who are not pensioners)—**

- (a) in column (2) of the Table in paragraph 1—
- (i) in sub-paragraph (1) for “£71.00” in each place in which it occurs substitute “£71.70” and for “£56.25” substitute “£56.80”;
- (ii) in sub-paragraph (2) for “£71.00” substitute “£71.70”;
- (iii) in sub-paragraph (3) for “£111.45” substitute “£112.55”;
- (b) in column (2) of the Table in paragraph 3, for “£64.99” in each place in which it occurs substitute “£65.62”;
- (c) in the second column of the Table in Part 4—
- (i) in sub-paragraph (1) for “£30.35” and “£43.25” substitute “£31.00” and “£44.20” respectively;
- (ii) in sub-paragraph (2) for “£58.20” in each place in which it occurs substitute “£59.50” and for “£116.40” substitute “£119.00”;
- (iii) in sub-paragraph (3) for “£56.63” substitute “£57.89”;
- (iv) in sub-paragraph (4) for “£32.60” substitute “£33.30”;
- (v) in sub-paragraph (5) for “£22.89”, “£14.80” and “£21.30” substitute “£23.45”, “£15.15” and “£21.75” respectively;
- (d) in paragraph 23 for “£28.15” substitute “£28.45”;

(e) in paragraph 24 for “£34.05” substitute “£34.80”.

**21.** In paragraph 18 of Schedule 6 (sums disregarded in the calculation of earnings: persons who are not pensioners)—

(a) in paragraph (2)(b)(iv)(bb) for “; or” substitute “.”;

(b) omit paragraph (2)(c).

Minister for Local Government and Communities, one of the Welsh Ministers

Date

**Explanatory Memorandum to the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2013.**

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 (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2013. I am satisfied that the benefits outweigh any costs.

*Carl Sargeant*

Minister for Local Government & Communities

17 January 2013

## **Description**

1. This statutory instrument makes a number of amendments to the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2012 and the Council Tax Reduction Scheme and Prescribed Requirements (Wales) Regulations 2012 (“the 2012 Regulations”) approved by the National Assembly for Wales on 19<sup>th</sup> December 2012.
2. This statutory instrument up-rates certain figures in the 2012 regulations used to calculate a claimant’s entitlement to a reduction under a council tax reduction scheme, and the subsequent level of reduction
3. This statutory instrument also amends an error which appears in both sets of the 2012 regulations within the provisions dealing with the award or payment of a reduction under a scheme, as well as addressing a number of minor technical referencing errors identified during the scrutiny of the 2012 regulations.
4. The statutory instrument also increases the maximum percentage by which a household’s council tax liability may be reduced under the scheme, from 90% to 100%.

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

5. It has not been possible to arrange for the Regulations to be provided in Welsh.
6. Due to timing constraints it has not been possible for the Committee to consider the regulations between them being laid and being considered in the Assembly.

## **Legislative background**

7. 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. These new provisions provide Welsh Ministers with executive powers to introduce council tax reduction schemes in Wales, via regulations.
8. The relevant provisions of the Local Government Finance Act 2012 were subject to a Legislative Consent Motion which was approved by the National Assembly for Wales on 26<sup>th</sup> June 2012. The Local Government Finance Act 2012 received Royal Assent on 1 November 2012.
9. This statutory instrument is being made under the new section 13A of, and the new Schedule 1B to, the Local Government Finance Act 1992.
10. The instrument is subject to approval of the Assembly (the affirmative procedure).

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

11. The Welfare Reform Act 2012 contains provisions to abolish Council Tax Benefit (CTB) from 31 March 2013. From this date the responsibility for providing support for council tax and the funding associated with it, will be transferred to local authorities in England and to the Scottish Government and to the Welsh Government.
12. In line with the provisions in the Act, the 2012 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.
13. The 2012 regulations were approved by the National Assembly for Wales on 19<sup>th</sup> December 2012.
14. This statutory instrument amends both sets of the 2012 regulations to up-rate certain figures used within those regulations to calculate entitlement to a reduction, and subsequently the amount of a reduction. The up-rated figures relate to:
  - Non-dependant deductions (adjustments 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);
  - The applicable amount (the amount against which an applicant's income is compared against to determine amount of reduction entitled to); and
  - The disregard that applies when calculating a person's income.
15. These up-rated figures have been calculated following the Autumn Statement, and increase the various figures in line with increased living costs and earnings. While the impact is dependent on a claimant's particular circumstances, if the up-rating amendments are not made, then applicants could be, on average, between 50p and £10 worse off a week.
16. This statutory instrument also amends an error in both of the sets of the 2012 regulations, which appears within the provisions dealing with the award or payment of a reduction under a scheme:
  - Paragraph 10(2)(c) of Schedule 13 to the Council Tax Reduction Scheme and Prescribed Requirements (Wales) Regulations 2012; and
  - Paragraph 116(2)(c) of schedule to Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2012 the default scheme regulations.
17. These provisions set out how an award or payment of a reduction is to be made to an applicant. They require that, in general, a billing authority must award a reduction by way of reducing an applicant's council tax liability. However, where it is inappropriate to reduce an applicant's council tax liability, the regulations enable billing authorities to make a payment to an applicant of the amount of the reduction.

18. The provisions of the 2012 regulations referred to in paragraph 16 incorrectly contain the word ‘appropriate’, and it is necessary to substitute this with the word ‘inappropriate’ so that billing authorities can make payments in accordance with paragraph 17.
19. This statutory instrument also rectifies a number of minor technical errors identified by the Constitutional and Legislative Affairs Committee during its scrutiny of the 2012 regulations. These relate to:
- A reference made to regulation 75 (1)(a) (ii), 75 (1) (a)(iv) and 75 (1)(b) (ii) of the Jobseeker’s Allowance Regulations 1996. In fact these references should be to 75 (1)(a) and 75(1)(b) instead; and
  - A reference made to regulation 18(3) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002. This provision has in fact been repealed by regulation 2(19) of the Tax Credits (Miscellaneous Amendments) Regulations 2012.
20. Regulations 3, 6 and 14 also increase the maximum percentage by which a household’s council tax liability may be reduced under the scheme from 90% to 100%. This has been increased as a result of the decision by Welsh Ministers to provide £22million in additional funding to give additional help to individuals facing a cut in their Council Tax support following the reduction in funding announced by the UK Government in the Comprehensive Spending Review 2010.
21. The effect of increasing the maximum percentage by which a household’s council tax liability may be reduced from 90% to 100% is to ensure that people eligible for a reduction under a council tax reduction scheme receive 100% of their entitlement. This means that in contrast to the 2012 regulations, not all claimants receiving support under the council tax reduction scheme will have to pay a proportion of their council tax bill.

## **Consultation**

22. Details of the consultation undertaken are provided in the RIA below.

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

### **Options**

#### Option 1 – Do Nothing

23. Make no amendments to the 2012 regulations so that all those claiming support under the council tax reduction scheme would have to pay a proportion of their council tax bill.
24. None of the figures used to calculate entitlement to a reduction, and subsequently the amount of reduction which eligible claimants will receive on their council tax bill, would be up-rated in line with increased cost of livings and earnings.

## Option 2 – Make Amendments to the 2012 Regulations

25. Make amendments to the 2012 regulations to include up-rated figures and to increase the maximum reduction in council tax liability from 90% to 100%.

### **Costs & benefits**

#### **Costs**

## Option 1 – Do Nothing

26. If no action was taken to amend the 2012 regulations then all those claiming support under the council tax reduction scheme would have to pay a proportion of their council tax bill. While the amount a claimant would be required to pay would depend on their individual circumstances it is estimated that setting the maximum level of council tax liability which could be rebated at 90% would result in claimants losing on average an estimated £67 of support in 2013-14.

27. This would result in approximately 70% of current CTB claimants in Wales having to pay council tax for the first time and as a result local authorities 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 could be expected to fall by between 0%-1.5%.

28. Furthermore if the figures used to calculate entitlement to a reduction, and subsequently the amount of reduction which eligible claimants will receive on their council tax bill are not up-rated in line with increases in the cost of living and earnings, then it is likely to result in claimants being worse off by between 50p and £10 a week depending on their individual circumstances.

## Option 2 – Amend the 2012 Regulations

29. The Welsh Government is providing £22m in additional funding. This covers the 10 per cent cut in the funding as calculated by the UK Government. By meeting the shortfall in funding, the 2012 regulations can be amended to increase the maximum percentage reduction of a claimant's council tax liability from 90% to 100%.

30. The up-rated financial figures will increase local government expenditure on the council tax reduction schemes as the applicable amount and income disregards will be increased in line with the cost of living. This will be off-set in part by the increase in the amount deducted from a claimant's reduction under the scheme for non-dependants. However the funding transfer set out as a result of the Autumn Statement reflects the estimated expenditure for 2013-14 and this takes into account annual up-rating.



### **Benefits**

31. The additional funding to increase the maximum reduction in a claimant's council tax liability from 90% to 100% means that claimants will receive 100% of the reduction they are entitled to under the scheme. This means that claimants on the lowest incomes will not have to make any contribution to their council tax bills. As a result there will not be the anticipated fall in local government collection rates or the increase in demand for advice services in relation to council tax support.

### **Sectors**

32. 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 at paragraph 36 below.

33. This legislation will not affect the Business Sector.

### **Duties**

34. In drafting these regulations consideration has been given to Welsh Minister's duty to promote equality and eliminate discrimination. A detailed Equality Impact Assessment was undertaken to support the 2012 regulations which provided a maximum reduction of 90% in a claimant's council tax liability. This statutory instrument restores the 100% maximum reduction in council tax liability meaning that all eligible claimants will receive 100% of their entitlement. As a result there will be no net negative impact for claimants as a result of changes made to the 2012 regulations.

35. Council tax reduction schemes will be adopted and operated by local authorities who are under general duties to comply with Welsh Language and Sustainable Development duties.

### **Consultation**

36. The details of the consultation undertaken were provided in the Explanatory Memorandum to the 2012 regulations. There has been no further consultation in relation to the amendments made by this statutory instrument.

### **Competition Assessment**

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

### **Post implementation review**

38. The sunset clause means that the regulations only operate for the 2013-14 financial year. Therefore there will need to be a review to consider any amendments required in order to draft new legislation for 2014-15.

# Agenda Item 4.2

## Constitutional and Legislative Affairs Committee Draft Report

### Title: The Council Tax Reduction Schemes (Transitional Provisions) (Wales) Regulations 2013

These Regulations set out the transitional provisions to allow current claimants of council tax benefit to be automatically transferred to the new council tax reduction scheme without having to make a new application.

The transitional provisions cover:

- A person in receipt of council tax benefit;
- A person who has made an application to receive council tax benefit;
- A person whose entitlement to council tax benefit is wholly or partially suspended;
- A person who has applied for a revision in respect of a decision in relation to council tax benefit entitlement and the outcome of this revision is still pending;
- A person who has appealed against a decision in relation to a claim for council tax benefit and whose appeal is still pending.

### Procedure: Affirmative

### Technical Scrutiny

Under Standing Order 21.2 the Assembly is invited to pay special attention to the following instrument:–

1. These Regulations have not been made bilingually.

[21.2(ix) – that it is not made or to be made in both English and Welsh].

The Welsh Government state in paragraph 2 of the Explanatory Memorandum:

*“Given the complexity of the regulations, the timescales in which they have been produced, and the fact that there is no Welsh equivalent, it has not been possible to translate the regulations within the necessary timescales. As a result these regulations will be made in English only.”*

### Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument

**Legal Advisers**

Constitutional and Legislative Affairs Committee

**January 2013**

**Government Response**

Given the complexity of the regulations, the timescales within which they were produced, and the fact that there was no existing Welsh equivalent, regrettably it was not possible to translate the regulations in order to provide a bilingual version of the statutory instrument. When I wrote to you in November in connection with the Council Tax Reduction Scheme Regulations I advised that unfortunately this may be the case.

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DRAFT WELSH STATUTORY INSTRUMENTS

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**2013 No. (W.)**

**COUNCIL TAX, WALES**

**The Council Tax Reduction Schemes (Transitional Provisions)  
(Wales) Regulations 2013**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The Council Tax Reduction Schemes and Prescribed Requirements (Wales) (Regulations) 2012 (“the prescribed requirements Regulations”) require each billing authority in Wales to make a scheme specifying the reductions which are to apply to amounts of council tax payable by persons, or classes of persons, whom the authority considers are in financial need. These schemes will operate from 1st April 2013. The Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2012 set out a scheme which will take effect if an authority fails to make its own scheme on or before 31st January 2013.

Persons considered to be in financial need receive council tax benefit to assist them to meet their council tax liability. However, under the provisions of the Welfare Reform Act 2012, council tax benefit will be abolished on 31st March 2013. The reduction schemes which authorities are required to make in accordance with the prescribed requirements Regulations will replace council tax benefit. These Regulations set out the transitional provisions that will apply to persons who are in receipt of, or who have made an application for, council tax benefit when the reduction schemes come into operation (regulations 3 to 6).

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

**2013 No. (W. )**

**COUNCIL TAX, WALES**

**The Council Tax Reduction Schemes (Transitional Provisions)  
(Wales) Regulations 2013**

*Made* - - - - *\*\*\**

*Coming into force in accordance with regulation 1(2)*

The Welsh Ministers make the following Regulations in exercise of the powers conferred upon them by section 13A(4) of, and paragraph 7 of Schedule 1B to, the Local Government Finance Act 1992<sup>(1)</sup>.

In accordance with section 13A(8) of that Act, a draft of this instrument has been laid before and approved by resolution of the National Assembly for Wales.

**Title, commencement and application**

**1.**—(1) The title of these Regulations is the Council Tax Reduction Schemes (Transitional Provisions) (Wales) Regulations 2013.

(2) These Regulations come into force on the day after the day on which there were made and apply in relation to Wales.

**Interpretation**

**2.** In these Regulations—

“council tax benefit” means council tax benefit under Part 7 of the Social Security Contributions and Benefits Act 1992<sup>(2)</sup>;

“council tax reduction scheme” means a scheme made by a billing authority in accordance with the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012<sup>(3)</sup> or which applies in default in accordance with paragraph 6(1)(e) of Schedule 1B to the Local Government Finance Act 1992;

“relevant decision” has the same meaning as in paragraph 1(2) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000<sup>(4)</sup>;

“relevant authority” means an authority administering council tax benefit;

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(1) 1992 c.14; section 13A was substituted by section 10(1) of the Local Government Finance Act 2012 (c. 17), and Schedule 1B was inserted by section 10(5) of that Act.

(2) 1992 c. 4; the provisions of Part 7 relating to council tax benefit are repealed by section 147 of, and Part 1 of Schedule 14 to, the Welfare Reform Act 2012 (c.24). At the time of making these Regulations this repeal has not yet commenced.

(3) S.I. 2012/3144 (W.316).

(4) 2000 c.19; the provisions of Schedule 7 relating to council tax benefit are repealed by section 147 of, and Part 1 of Schedule 14 to, the Welfare Reform Act 2012 (c.24), but at the time of making these Regulations the repeal has not yet commenced.

“specified day” means the day on which these Regulations come into force;

“suspended” means suspended in accordance with regulation 11 or 13 of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001<sup>(1)</sup>.

### **Transitional provisions**

**3.**—(1) A person who falls within one of the categories of person described in paragraph (2) is deemed to have made an application for a reduction under a council tax reduction scheme on the specified day.

(2) A person referred to in paragraph (1) is a person—

- (a) who is in receipt of council tax benefit on the specified day;
- (b) who made a claim for council tax benefit which is not determined immediately before the specified day;
- (c) whose payments of council tax benefit have been wholly or partly suspended immediately before the specified day;
- (d) other than a person described in sub-paragraphs (a) or (c), who has applied for a revision of a relevant decision by a relevant authority and whose decision in respect of that revision is pending immediately before the specified day;
- (e) other than a person described in sub-paragraphs (a) or (c), who has appealed against a decision of the First-tier Tribunal, the Upper Tribunal or a court in relation to a claim for council tax benefit and whose appeal is pending immediately before the specified day.

(3) For the purposes of sub-paragraph (2)(d) a revision of a relevant decision relating to a claim for council tax benefit is pending if—

- (a) an application for a revision has been made but not been determined;
- (b) the time within which an application for a revision may be made as prescribed in regulations 4 and 5 of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 has not expired.

(4) For the purposes of sub-paragraph (2)(e) an appeal against a decision relating to a claim for council tax benefit is pending if—

- (a) an appeal against the decision has been brought but not been determined;
- (b) an application for permission to appeal against the decision has been made but not determined; or
- (c) the time within which—
  - (i) an application for permission to appeal may be made; or
  - (ii) an appeal against the decision may be brought,

has not expired and one of the circumstances prescribed in regulations 11(3) of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 apply.

**4.** A person who makes a claim for council tax benefit on any day during the period beginning on the specified day and ending on the 31st March 2013 is deemed to have made an application for a reduction under a council tax reduction scheme on the same day.

**5.**—(1) Where an application for a reduction under a council tax reduction scheme is deemed to have been made in accordance with regulation 3(1) and—

- (a) on the specified day, the person by whom the application is deemed to have been made is a person to whom paragraphs (10) to (12) of regulation 50 of the Council Tax Benefit

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(1) S.I. 2001/1002.

(Persons who have attained the qualifying age for state pension credit) Regulations 2006<sup>(1)</sup> (change of circumstances in connection with non-dependants) apply; and

(b) the effective date<sup>(2)</sup> for the change of circumstances is a date after 31st March 2013, that application is to be determined as though the change of circumstances has not taken place, but is to be re-determined upon the effective date to take account of the change of circumstances.

(2) Where an application for a reduction under a council tax reduction scheme is deemed to have been made in accordance with regulation 3(1) or 4 and—

(a) on a day in the period beginning with the day after the specified day and ending with the 31st March 2013, the person by whom the application is deemed to have been made becomes a person to whom paragraphs (10) to (12) of regulation 50 of the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (change of circumstances in connection with non-dependants) apply; and

(b) the effective date for the change of circumstances is a date after 31st March 2013, that application is to be determined to take account of the person's circumstances on the date the application for a reduction is deemed to have been made, but is to be re-determined upon the effective date to take account of the change of circumstances.

6. Where an application for a reduction under a council tax reduction scheme is deemed to have been made in accordance with regulation 3(1) or 4, the following provisions in a council tax reduction scheme do not apply in relation to that application—

(a) a provision contained in the authority's scheme by virtue of regulation 32(3) of, and paragraph 1(7) of Schedule 13 to, the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012<sup>(3)</sup>; or

(b) paragraph 107(7) of the scheme prescribed in the Schedule to the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2012<sup>(4)</sup>.

*Name*

Minister for Local Government and Communities, one of the Welsh Ministers

*Date*

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(1) S.I. 2006/216.

(2) "effective date" has the meaning given within regulation 50(12) of the Council tax Benefit (Persons who have attained the age of state pension credit) Regulations 2006.

(3) S.I. 2012/3144 (W.316)

(4) S.I. 2012/3145 (W.317)

**Explanatory Memorandum** to the Council Tax Reduction Schemes (Transitional Provisions) (Wales) Regulations 2013.

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 (Transitional Provisions) (Wales) Regulations 2013.

*Carl Sargeant*

Minister for Local Government & Communities

17 January 2013



## **Description**

1. This statutory instrument makes provisions to allow current claimants of council tax benefit to be automatically transferred to the new council tax reduction scheme without having to make a new application.

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

2. Given the complexity of the regulations, the timescales in which they have been produced, and the fact that there is no existing Welsh equivalent, it has not been possible to translate the regulations within the necessary timescales. As a result these regulations will be made in English only.
3. There are no other matters of special interest to the committee.

## **Legislative background**

4. Section 9 to, and Schedule 4 of, the Local Government Finance Act 2012 insert a new Section 13A and new Schedule 1B into the Local Government Finance Act 1992. These new provisions provide Welsh Ministers with executive powers to introduce council tax reduction schemes in Wales, via regulations.
5. 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<sup>th</sup> June 2012. The Local Government Finance Act 2012 received Royal Assent on 1 November 2012.
6. This statutory instrument is being made under the new section 13A of, and the new Schedule 1B to, the Local Government Finance Act 1992.
7. The instrument is subject to the approval of the National Assembly for Wales (the affirmative resolution procedure).

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

8. 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.
9. In line with the provisions in the Local Government Finance Act 2012 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.
10. The Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2012 and the Council Tax Reduction Scheme and Prescribed Requirements

(Wales) Regulations 2012 (the 2012 Regulations) were approved by the National Assembly for Wales on the 19<sup>th</sup> December 2012.

11. This statutory instrument sets out the transitional provisions that will apply to people who have made an application for, or are in receipt of, council tax benefit, when the new council tax reduction schemes come into effect.
12. The intention is to ensure that these groups of people do not have to make an application for a reduction under the new council tax reduction schemes, and instead their claims can be automatically transferred over onto the new system.
13. The transitional provisions cover:
  - A person in receipt of council tax benefit;
  - A person who has made an application to receive council tax benefit;
  - A person whose entitlement to council tax benefit is wholly or partially suspended;
  - A person who has applied for a revision in respect of a decision in relation to council tax benefit entitlement and the outcome of this revision is still pending;
  - A person who has appealed against a decision in relation to a claim for council tax benefit and whose appeal is still pending.
14. Under the existing council tax benefit regulations, claimants of pension age who have a change in circumstances which consists either or a non-dependant taking up residence with them, or there being a change in the circumstances of an existing non-dependant's, which affects the amount of support they receive, are given a 26 week grace period before the impact of those changes come into effect. This provision is also included under the council tax reduction scheme regulations.
15. However transitional arrangements need to be put in place so that council tax benefit claimants who are within this 26 week grace period at the point of transferring to the new reduction schemes (on 1<sup>st</sup> April 2013) will remain within that grace period until it expires. This is provided for in regulation 5.
16. The statutory instrument also makes provision to simplify administrative arrangements for local authorities in relation to deemed applications (i.e. those made between the time this statutory instrument comes into force and the commencement of the council tax reduction scheme on 1<sup>st</sup> April). Regulation 6 removes the duty upon billing authorities to notify applicants of their duty to report any changes in their circumstances between the time an application is deemed to have been made and the determination of that application. This provision only applies to applications made before 1<sup>st</sup> April 2013 in accordance with the transitional provisions.

### **Consultation**

17. No consultation has been undertaken in respect of this statutory instrument

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

18. No RIA has been prepared for this statutory instrument as it is considered that the instrument only facilitates technical and routine amendments. It has no major policy impact.

# Agenda Item 5

## **Constitutional and Legislative Affairs Committee Draft Report CLA(4)-03-13 Paper 7**

### **Title: The Natural Resources Body for Wales (Functions) Order 2012**

The Natural Resources Body for Wales (Establishment) Order 2012 established a new statutory body, the Natural Resources Body for Wales and provided for its purpose, membership, procedure, financial governance and initial functions. This Order makes further provision about the Body, including provision about the modification and transfer of environmental functions to the Body.

### **Procedure: Enhanced Affirmative**

The enhanced affirmative procedure:-

- Extends the period from the date on which a draft order was laid from 40 to 60 days
- Requires the Welsh Ministers to have regard to any representations, and resolution of the National Assembly for Wales and any recommendations of a committee charged with reporting on the draft Order made during the 60 day period
- Requires the draft Order to be re-laid before the Assembly with a statement summarising the changes, in the event that any material changes are made.

The revised draft order once laid will be subject to the normal affirmative procedure.

### **Technical Scrutiny**

Under Standing Order 21.2 the Assembly is invited to pay special attention to the following instrument:

**21.2 (i) - that there appears to be doubt as to whether it is intra vires**

## **Preamble**

The consent of the Secretary of State and Minister which is required under Section 17 of the Public Bodies Act 2011 has not yet been obtained<sup>1</sup>.

Section 17 provides that:-

*(1) The Secretary of State's consent is required for an order under section 13 or 14 which transfers a function to, or confers a function on—*

*(a) the Environment Agency,*

*(b) the Forestry Commissioners, or*

*(c) any other cross-border operator.*

*(2) The Secretary of State's consent is required for an order under section 13 or 14 made by virtue of section 15 which in any other way modifies the non-devolved functions of a person referred to in subsection (1).*

*(3) A Minister's consent is required for an order under section 13 or 14 which transfers a function to, or modifies the functions of, the Minister.*

## **21.2 (v) That for any particular reason its form or meaning needs further explanation**

### **Articles 5, 6 & 7**

“local enactment” is not defined which could lead to uncertainty as these Articles in effect tidy up other legislation that is not specifically referred to in any of the Schedules.

### **Schedule 3**

### **Welsh Language (Wales) Measure 2011**

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<sup>1</sup> Page 3 of the Explanatory Memorandum states that the Order will not be made without obtaining the necessary consent.

Paragraph 4 (2) – As the Environment Agency still exercise functions in relation to Wales it should still be subject to the Welsh Language (Wales) Measure 2011. The effect of the amendment would be to remove the EA from the requirement to comply with welsh language standards.

#### **Schedule 4**

#### **General Drainage Charges (Relevant Quotient) Regulations 1993**

Paragraph 31 (3) –The reference to the Flood and Coastal Erosion Risk Management (Levies) (England and Wales) Regulations 2011 refers to the Environment Agency (Levies) (England and Wales) Regulations 2011 which are renamed later in the Order. This is confusing to the reader who would be assisted by a suitable footnote.

#### **21.2 (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements**

#### **Schedule 2**

#### **Forestry Act 1967**

Paragraph 42 (3) – The reference to subsection 4 (a) is incorrect and should refer to subsection (4).

#### **Highways Act 1980**

Paragraph 102 (3) – It is not clear whether the reference to “organisation” is in respect of the first or second occasion where it occurs.

#### **Water Resources Act 1991**

Paragraph 198 (2) – There is no reference to the Environment Agency in section 118(b).

#### **Clean Air Act 1993**

Paragraph 256 – The reference to ‘appropriate authority’ should refer to ‘appropriate agency’.

### **Schedule 3**

#### **Control of Pesticides Regulations 1986**

##### **Paragraph 20 (2)**

This should refer to (if the area in which the intended aerial application is to take place in Wales).

#### **Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004**

Paragraph 158 (3) (b) and (5) - the date cannot just be substituted as the 2005 Order refers to Plant Health (Forestry) Order 2005, rather than the Plant Health (Forestry) **(Great Britain)** Order 1993.

#### **Welsh Language Schemes (Public Bodies) Order 1996**

Paragraph 72 - Because the Environment Agency still exercise functions in relation to Wales they should still be subject to the Order. The effect of the amendment is to remove the EA from the requirement to prepare a Welsh language scheme under the Welsh Language Act 1993.

#### **Bathing Water Regulations 2008**

Paragraph 232 - Paragraph 231 changes all references to Agency without excepting regulation 2, there is no definition to omit and the definition does not then make sense.

Paragraph 233 - The reference is to 'Agency' rather than 'Environment Agency'

#### **Infrastructure Planning (National Policy Statement Consultation) Regulations 2009**

Paragraph 260 (2) (a) - the entry should refer to 'forests and woodlands' rather than 'forests or woodlands'.

#### **Regional Flood and Coastal Committees (England and Wales) Regulations 2011**

Paragraph 317 (2) - The reference to 'opening words' in this paragraph does not make sense.

## **Waste (England and Wales) Regulations 2011**

Paragraph 325 – There is no reference to the Environment Agency or the Agency in regulation 3.

## **Greenhouse Gas Emissions Trading Scheme Regulations 2012**

Paragraph 334 – the reference to regulation 21 is incorrect and should refer to regulation 20.

Paragraph 335 – the reference to regulation 28 is incorrect and should refer to regulation 27.

Paragraph 336 – the reference to regulation 48 (5) is incorrect and should refer to regulation 45 (5).

Paragraph 337 – the reference to regulation 87 is incorrect and should refer to regulation 86.

Paragraph 338 – the reference to regulation 89 is incorrect and should refer to regulation 87.

Paragraph 339 – the reference does not make sense.

## **Schedule 5**

### **Wildlife and Countryside (Sites of Special Scientific Interest, Appeals) (Wales) Regulations 2002**

Paragraph 6 – “the Countryside Council for Wales” only appears on one occasion.

### **Merits Scrutiny**

Under Standing Order 21.3 the Assembly is invited to pay special attention to the following instrument:–

This Order is being brought forward under the powers contained in Sections 13 to 15 of the Public Bodies Act 2011.

The Legal Briefing note dated November 2012 (at Annex A) provides further background information to the Order.



The Committee has received correspondence which amongst other matters highlights issues as to whether various provisions of the Order introduced by Schedule 1 are ultra vires, because they do not meet the test under Section 16 of the Public Bodies Act 2011 in that they remove necessary protections.

The test under the Act is whether **the Welsh Ministers consider** that:

- (a) the Order does not remove any necessary protection, and
- (b) the Order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably be expected to continue to exercise.

Within the preamble to the Order, the Welsh Ministers state that they consider that the Order

*does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise*

At page 11 of the Explanatory Memorandum, it states:-

*In drafting this Order we have followed the general principle that we are transferring the existing functions of the three bodies in a manner which retains all existing protections and does not add any new restrictions on individual rights or freedoms.*

It would be difficult for the Committee to anticipate the practical effect of particular provisions within the Order; however should the Committee wish, evidence could be taken from the Minister for Environment and Sustainable Development as to the statement made within the preamble, prior to the final Order being laid.

## **Legal Advisers**

Constitutional and Legislative Affairs Committee  
**January 2013**

## Annex A

Paratowyd y ddogfen hon gan gyfreithwyr Cynulliad Cenedlaethol Cymru er mwyn rhoi gwybodaeth a chyngor i Aelodau'r Cynulliad a'u cynorthwywyr ynghylch materion dan ystyriaeth gan y Cynulliad a'i bwyllgorau ac nid at unrhyw ddiben arall. Gwnaed pob ymdrech i sicrhau bod y wybodaeth a'r cyngor a gynhwysir ynddi yn gywir, ond ni dderbynnir cyfrifoldeb am unrhyw ddibyniaeth a roddir arnynt gan drydydd partion.

This document has been prepared by National Assembly for Wales lawyers in order to provide information and advice to Assembly Members and their staff in relation to matters under consideration by the Assembly and its committees and for no other purpose. Every effort has been made to ensure that the information and advice contained in it are accurate, but no responsibility is accepted for any reliance placed on them by third parties

### Constitutional and Legislative Affairs Committee

#### The Natural Resources Body for Wales (Functions) Order 2012

#### Legal Briefing Note

##### 1. Background

1.1 On 15 November 2012, the Minister for Environment and Sustainable Development, John Griffiths AM, laid a draft of *The Natural Resources Body for Wales (Functions) Order 2012*.

1.2 The Order is to be made in accordance with the powers conferred by sections 13, 14, 15 and 35 of the *Public Bodies Act 2011* ("the 2011 Act").

1.3 This is the second order concerning the Natural Resources Body for Wales ('the Body'), its having been established on 19<sup>th</sup> July 2012 by the *Natural Resources Body for Wales (Establishment) Order 2012 No 1903 (W.230)*.

1.4 The Order is subject to a form of affirmative procedure which is explained on page 2 of the Explanatory Memorandum that accompanies the draft Order. The procedure set out in Section 19 of the Public Bodies

Act 2011, requires that the Order be laid in draft for 40 days, but that within 30 days of the laying of the draft Order, the Assembly may resolve or a committee charged with reporting on the draft Order may recommend that the enhanced affirmative procedure set out in Section 19 (6) - (9) should apply.

If no such resolution is made, or if a recommendation of the committee is overruled by a resolution of the Assembly, after 40 days a motion to approve the draft Order can be made.

#### The enhanced affirmative procedure

- extends the period from the date on which a draft order was laid to 60 days
- requires the Welsh Ministers to have regard to any representations, and resolution of the National Assembly for Wales and any recommendations of a committee charged with reporting on the draft Order made during the 60 day period.
- requires the draft Order to be re-laid before the Assembly with a statement summarising the changes, in the event that any material changes are made.

The revised draft Order would then be subject to normal affirmative procedure.

1.5 The Committee has recommended in its report laid on 23<sup>rd</sup> November 2012, that the enhanced affirmative procedure should apply to the Order. Unless this is overruled by a resolution of the Assembly by 11<sup>th</sup> January 2013 (the latest date this could be considered in Plenary would be 9<sup>th</sup> January 2013) then the Committee has until 10<sup>th</sup> February 2013 to report on the Order

## 2. Requirements of The Public Bodies Act 2011

2.1 Section 13 of the Act provides the Welsh Ministers with the powers to modify or transfer functions of the Countryside Council for Wales (CCW) and the devolved functions of the Environment Agency (EA) or the Forestry Commission (FC), the functions of the Welsh Flood and Coastal Committee or any devolved Welsh environment functions of any person to:

- **Welsh Ministers**
- **To one of the existing organisations or,**
- **To a new body**

**2.2 Section 16 (1) of the Act states that an Order may only be made under Section 13 for the purposes of improving the exercise of public functions having regard to efficiency, effectiveness and securing accountability to Welsh Ministers. Section 16 (2) states that an Order may only be made as long as it does not remove any necessary protection or does not impinge upon the exercising of any existing rights by individuals.**

**2.3 Section 17 requires the consent of the Secretary of State for an Order which transfers or confers a function on the EA, FC or other cross-border operator, or if it modifies a non-devolved function of one of the aforementioned bodies. A Minister's consent is required for an order which transfers a function to, or modifies the functions of the Minister.**

**2.4 Section 18 (1) of the Act states that in making an Order under Section 13, Welsh Ministers must consult any organisation or person exercising public functions to whom the proposals relate, other persons whose interests will be substantially affected by the proposals and any other person deemed appropriate.**

**2.5 Section 18 (2) of the Act provides that if, having carried out its consultation under Section 18 (1), the Welsh Ministers consider it appropriate to change the whole or part of the proposal, then they must carry out such further consultation with respect to the changes as seems appropriate.**

**2.6 Sections 21 -23 of the Public Bodies Act 2011 contain restrictions on the creation of functions, transfer and delegation of functions and the creation of criminal offences by Welsh Ministers.**

**2.7 The Welsh Government sets out how it has complied with each of these requirements within the Explanatory Memorandum.**

**2.8 It is important to note that the making of the Order is conditional upon the consent of the Secretary of State and any Minister being obtained in advance under section 17 of the Public Bodies Act 2011, and whilst the preamble to the draft Order states that the consent has been**

obtained, this will need to be satisfied before Welsh Ministers can make the Order.

### **3. The Order**

**3.1 The purpose of the Order is to transfer functions to the Body from CCW, EA and FC, and to ensure that the Body's general functions are appropriate for the range of functions it will exercise.**

**3.2 The Order transfers all CCW functions to the Body (apart from functions which are removed to avoid duplication). It also transfers a number of wildlife licensing functions of the Welsh Ministers to the Body.**

**3.3 The Order transfers most FC functions in respect of Wales to the Body, including its forestry management functions. The FC's powers to make subordinate legislation in relation to Wales and its functions relating to plant health are instead transferred to the Welsh Ministers.**

**3.4 EA functions are generally transferred to the Body in relation to Wales (and remain exercisable by the EA in relation to England). However certain functions relating to the water resources and flood risk management are divided differently; eg. functions relating to the regulation and management of cross-border rivers for the purposes of the Water Framework Directive become jointly exercisable by the EA and the Body. In addition, the transfer does not include the Wye Navigation or a small number of functions which the EA will continue to exercise on a UK-wide basis.**

**3.4 The Order also makes provision to abolish the CCW and the Welsh Environment Protection Advisory Committee and Regional and Local Fisheries Advisory Committee of the EA.**

**3.5 The details relating to the functions of the body are contained in the Schedules to the Order.**

#### **4. Action for Committee**

**4.1 The Committee's Legal Advisers will prepare a draft report in accordance with Standing Order 21, together with a detailed advice, for the Committee's consideration.**

**Legal Services  
November 2012**

Carl Sargeant AC / AM  
Y Gweinidog Llywodraeth Leol a Chymunedau  
Minister for Local Government and Communities



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref

David Melding AM,  
Chair of the Constitutional and  
Legislative Affairs Committee  
29 High Street  
Barry  
CF62 7EB

5h  
November 2012

I am writing to you in relation to two sets of Regulations; the Council Tax Reduction Schemes (Default Scheme) (Wales Regulations) and the Council Tax Reduction Schemes (Prescribed Requirements) (Wales Regulations); in order to apprise you of the timing issues that we are facing in respect of laying these Regulations.

As a result of these constraints, which I set out in detail below, and the significant impact for local authorities if the Regulations are not able to come into force by 1<sup>st</sup> December, I am writing to ask whether you would be prepared to agree a date upon which the Constitutional and Legislative Affairs Committee will receive these Regulations for consideration and to agree a further date by which the Committee will prepare its report in respect of the same.

### The Local Government Finance Act 2012

As you are aware I sought amendments to the Local Government Finance Act (the Act) to equip Welsh Ministers with executive powers to introduce council tax reduction schemes in Wales via secondary legislation, in order to replace the existing council tax benefit system that is being abolished by the UK Government. A Legislative Consent Motion on the provisions of the Bill that were within the legislative competence of the National Assembly for Wales (NAW) was approved by the Assembly on 26<sup>th</sup> June.

Whilst the Bill was supposed to achieve Royal Assent before the summer recess, it was ultimately deferred due to a number of outstanding issues within the Bill, most of which did not concern the provisions relating to the introduction of council tax reduction schemes. It received Royal Assent on 1<sup>st</sup> November.

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In line with the provisions in the Act and, subject to the will of Parliament, I intend to bring forward two main sets of Regulations which will govern the operation of council tax reduction schemes in Wales. These Regulations are designed to ensure that councils introduce some form of council tax support.

- The first set of Regulations (the “prescribed requirements Regulations”) will place a duty upon local authorities in Wales to introduce a council tax reduction scheme in their area by the 31<sup>st</sup> January 2012. These Regulations will prescribe elements which local authorities must include within the schemes they introduce, but will also permit a limited amount of local discretion.
- The second set of Regulations (the “default scheme Regulations”) will set out in full the council tax reduction scheme that will take effect in any local authority area in the event that a local authority does not adopt its own scheme by 31<sup>st</sup> January 2013. This date has been set so that any reductions enabled by the schemes can be reflected within the calculation of council tax liability prior to the council tax bills for 2013-12014 being issued.

### Timing Concerns

In order for local authorities to make their preparations to adopt their local schemes by 31<sup>st</sup> January 2013, which, in accordance with the prescribed requirements Regulations, they are required to consult on, it is considered necessary that both sets of Regulations will have to come into force by 1<sup>st</sup> December. As both sets of Regulations are subject to the affirmative procedure this requires there to be a plenary debate on them by the 27<sup>th</sup> November at the latest.

However for a plenary debate to be held on the 27<sup>th</sup> November, in order to comply with Standing Orders the latest date that the Regulations could be laid on is 6<sup>th</sup> November and due to circumstances outside of my control it is becoming increasingly likely that the Regulations will not be finalised by the 6<sup>th</sup> November. There are three main reasons for this:

- **The financial transfer.** The approach in Wales relies on a single national framework scheme, which rebates a maximum percentage of an applicant’s council tax liability, and the maximum percentage rebate will be calculated to take into account the shortfall in funding provided by the UK Government. This maximum percentage figure must be specified within the Regulations. However, whilst DWP and HMT have provided provisional funding figures, the transfer may not be finalised until the Autumn Statement scheduled for 5<sup>th</sup> December. Therefore the actual shortfall – and the final percentage to be set in the Regulations – might not be known until this date.
- **Finalising the Regulations.** Preparing the Regulations has been a highly complex and demanding task requiring detailed knowledge of the UK benefit system. It has therefore been necessary to rely on many of the previous elements of the old Council Tax Benefit Regulations, and to replicate them, with amendments, in new Regulations. The Regulations also need to take account of the introduction of Universal Credit, which is being developed by central government. To assist in developing the technical aspects of the scheme, such as the method to be adopted in calculating income, my officials have had to have regard to the draft Regulations which England are preparing, as they have the benefit of the input of colleagues in DWP. In order to finalise the Wales Regulations my officials had hoped to see finalised versions of the England Regulations by the end of October however, these have been delayed.



## Implications if the Regulations cannot come into force by 1<sup>st</sup> December

If it is not possible for the Regulations to come into force by the 1<sup>st</sup> December there will be significant adverse implications for local authorities, and potentially for claimants. It will reduce the time in which local authorities will be required to introduce their schemes, including the time available to undertake local consultation, and depending on when the Regulations come into force, it may prove impossible for them to meet the 31<sup>st</sup> January 2013 deadline.

In that instance it may be necessary to revisit the Regulations with a view to delaying this implementation date. This however, will impact on the authorities' ability to issue council tax bills which has severe financial implications for local authorities. Furthermore it is likely to mean that current CTB claimants who will experience a change in the level of assistance they receive with their council tax bills will have less notification of the financial impact. As a result I am extremely keen to avoid a situation whereby these Regulations have to be delayed.

## Mitigating the timing issues

I have sought advice on how the timing issues could be mitigated and have been advised that if the Constitutional and Legislative Affairs Committee was prepared to agree in advance a date upon which the Committee will receive and consider the Regulations, after the 6<sup>th</sup> November, and the date by which the Committee will prepare its report, then a later laying date could be achieved as in that instance it would not be necessary to observe the 20 day period before the holding of the plenary debate. In order to assist the Committee in considering these Regulations my officials would be happy to provide a technical briefing.

While I recognise that this is an unusual request, given the significant challenges we are facing in ensuring a viable replacement scheme is in place prior to the abolition of council tax benefit, I hope that it is one that you are prepared to consider.

## Welsh Language Regulations

Finally I would like to give you prior notice that Welsh language versions of the Regulations will not be produced and that this may extend to all of the Regulations drafted to bring the new schemes into effect.

While this is extremely regrettable, given the very short timescales within which it has been necessary to produce the draft Regulations together with their length and complexity and the fact that the current CTB Regulations are only available in English so there is no existing translation to assist the translators, Legislative Translation Services have advised my officials that it is not possible to translate the Regulations into Welsh within the timescales required. In fact I am advised that in order for the Legislative Translation Services to have been in a position to have provided translated version of the Regulations, due to their length and complexity they would have had to have received finalised versions of both sets of Regulations by the May 2012. At that time we had not secured powers within the Bill to introduce Regulations in Wales.

The use of an external translator has also been considered, however there are only a limited number of translators who undertake legislative translation and they too are unable to translate the Regulations into Welsh within the timescales required. My officials will discuss the possibility of one of the local authorities in Wales providing a Welsh translation of the Regulations for everyday use, but even if they are willing to do this it is unlikely that such a translated version of the Regulations would be finalised before next year.

I will also be writing in similar terms to the Chair of the Communities, Equality and Local Government Committee.

A handwritten signature in black ink, appearing to read 'Carl Sargeant'.

**Carl Sargeant AC / AM**

Y Gweinidog Llywodraeth Leol a Chymunedau  
Minister for Local Government and Communities

By virtue of paragraph(s) ix of Standing Order 17.42

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