

Explanatory Memorandum to The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (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 (Detection of Fraud and Enforcement) (Wales) Regulations 2013. I am satisfied that the benefits outweigh any costs.

Carl Sargeant

Minister for Local Government & Communities

19 February 2013

Description

1. This statutory instrument makes provisions for the creation of offences and for the imposition of penalties in relation to council tax reduction schemes in Wales. The instrument also makes provision for billing authorities to authorise individuals to exercise certain investigatory powers.

Matters of special interest to the Constitutional and Legislative Affairs Committee

2. This instrument (regulation 3) refers to persons employed to exercise functions relating to council tax reduction schemes by persons authorised under the Local Authorities (Contracting Out of Tax Billing, Collection and Enforcement Functions) Order 1996 (the 1996 Order). The 1996 Order does not currently make provision enabling local authorities to authorise persons to carry out their functions relating to council tax reduction schemes. The 1996 Order will be amended by the Local Authorities (Contracting Out of Tax Billing, Collection and Enforcement) (Amendment) (Wales) Order 2013 (the 2013 Order) in order to enable local authorities to authorise persons to carry out their functions in relation to council tax schemes.
3. The 2013 Order cross refers to the provisions of these Regulations and cannot therefore be made before these Regulations are in force. These Regulations may not be made until they have been approved by the Assembly. The 2013 Order is to be made by the Secretary of State following approval by Parliament as the relevant functions have not been transferred to Welsh Ministers.
4. A copy of the Local Authorities (Contracting Out of Tax Billing, Collection and Enforcement Functions) (Amendment) (Wales) Order 2013 is provided for information as an annexe to this explanatory memorandum.
5. The S.I. number of the 2013 Order will be inserted to the footnote on page 6 as soon as it become available.

Legislative background

6. The Local Government Finance Act 2012 inserts new sections 14A, 14B and 14C into the Local Government Finance Act 1992. This provides Welsh Ministers with executive powers to make provision via regulations for powers to require information, for the creation of offences and for the imposition of penalties in relation to council tax reduction schemes in Wales.
7. The relevant provisions in the Local Government Finance Act 2012 were subject to a Legislative Consent Motion which was approved by the National Assembly for Wales on 26th June 2012. The Local Government Finance Act 2012 received Royal Assent on 1 November 2012.
8. The instrument is subject to approval of the Assembly (the affirmative procedure).

9. The Council Tax (Administration and Enforcement) Regulations 1992 (SI 1992/613) as amended by the Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2013 (SI 2013/62) make provision about the billing, collection and enforcement of council tax. These regulations will be amended in due course to make provision for the collection of penalties which may be imposed under regulations 13-17 of these Regulations.

Purpose and intended effect of the legislation

10. 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.

The Local Government Finance Act 2012 made provision enabling Welsh Ministers to make regulations in connection with council tax reduction schemes. The Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012 require local authorities in Wales to make a scheme specifying the reductions which are to apply to amounts of council tax payable by persons considered to be in financial need. The Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2012 prescribe a scheme (the default scheme) which is to take effect if a local authority fails to make its own council tax reduction scheme.

11. The Social Security Administration Act 1992 (the SSAA) provides local authorities with specific investigatory and enforcement powers in relation to social security benefits, including council tax benefit. As those provisions apply to benefits, they do not apply to reductions to council tax under council tax reduction schemes. Local authorities will not be able to rely on their investigatory and enforcement powers under the SSAA to investigate and enforce fraud in relation to council tax reductions.
12. The Welsh Government wants to ensure that local authorities are able to investigate and tackle potential fraudulent claims made under a council tax reduction scheme. Therefore provisions were sought in the Local Government Finance Act 2012 to provide Welsh Ministers with executive powers to bring in the necessary powers, offences and penalties to replace those in relation to council tax benefit which will end in April 2013.
13. These regulations are based on existing provisions in Part 6 of the SSAA which makes provision for investigatory powers, offences and penalties in relation to social security benefits including council tax benefit. The regulations make provision for powers, offences and penalties that are appropriate for the new council tax reduction schemes.

14. These regulations provide the following:

- Powers for local authorities to authorise individuals to exercise certain investigatory powers;

- Powers to enable authorised officers to require information from specified persons to prevent, detect and secure evidence in relation to potential offences connected to the application for, or the award of, a reduction under a council tax reduction scheme;
- Powers to enable authorised officers to access electronic records which are thought to contain information relevant to preventing, detecting and securing evidence in relation to potential offences connected to the application for, or the award of, a reduction under a council tax reduction scheme;
- Making it an offence to intentionally delay or obstruct an authorised officer from exercising powers to require information or to access electronic records;
- Creating an offence where a person makes a statement or representation which that person knows to be false, or knowingly provides, allows or causes a false document or information to be provided, for the purpose of obtaining a reduction under a council tax reduction scheme;
- Creating an offence where there has been a change of circumstances which a person knows affects that person's entitlement to a reduction, and that person fails to give notice of the change as required by a local authority's council tax reduction scheme, or provides, allows or causes another person to fail to give this notice;
- Creating an offence where a person dishonestly makes a false statement or representation, or dishonestly provides, allows or causes a false document or information to be provided, for the purpose of obtaining a reduction under a council tax reduction scheme;
- Creating an offence where there has been a change of circumstances which a person knows affects that person's entitlement to a reduction, and that person dishonestly fails to give notice of the change as required by a local authority's council tax reduction scheme, or dishonestly provides, allows or causes another person to fail to give this notice;
- Making provisions for offences under the Regulations committed by corporate bodies;
- Setting out the time limit for commencing proceedings for an offence under the Regulations;
- Enabling a billing authority to invite a person to agree to pay a penalty as an alternative to a prosecution for an offence relating to the award of a reduction under a council tax reduction scheme to which a person was not entitled, or an offence relating to an act or omission which could have resulted in such an award; and

- Enabling a billing authority to impose a penalty on a person in circumstances where a person negligently makes an incorrect statement in connection with an application for a reduction under a council tax reduction scheme, or where a person fails to notify a change of circumstance when required to do so under such a scheme.

Consultation

15. No consultation has been undertaken in respect of this statutory instrument however the consultation on options to introduce a new scheme to provide council tax support included questions in relation to the detection and prosecution of fraud and local government practitioners have been involved in the drafting of the regulations.

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

Option 1 – Do nothing

16. The existing provisions to investigate and prosecute council tax benefit fraud in the SSAA 1992 do not apply to council tax reduction schemes. If no action was taken to replicate these provisions then local authorities would have to rely on wide provisions to prosecute under the Fraud Act 2006 which are not targeted towards these specific offences .

Option 2 - Draft regulations for the creation of offences and for the imposition of penalties in relation to council tax reduction schemes

17. Draft regulations to provide for the creation of offences and for the imposition of penalties in relation to council tax reduction schemes that closely replicate existing provisions in relation to council tax benefit.

Costs

Option 1 – Do nothing

18. If no action was taken to develop provisions for the creation of offences and for the imposition of penalties in relation to council tax reduction schemes to replicate the provisions that currently exist for council tax benefit, then local authorities would have to rely on provisions under the Fraud Act 2006 to investigate and prosecute offences.

19. However the powers under the Fraud Act 2006 tend to relate to serious offences and would not allow local authorities to utilise the powers that have been specifically developed to tackle benefit fraud such as offering administrative offences instead of prosecution.

20. Without specific provisions to investigate and prosecute offences in relation to council tax reduction schemes local authorities will not be able to make use of their existing processes and procedures to tackle cases of fraud.

21. Furthermore without specific provisions in relation to council tax reduction schemes there is far less of a deterrent and therefore local authorities could suffer financial losses.
22. Council Tax Benefit fraud for both England and Wales has been estimated by DWP for 2009-10 as approximately £50 million. This would roughly equate to approximately £3 million in Wales, divided across the 22 billing authorities at an average of about £136,000 per authority.
23. As such this is not considered a viable option.

Option 2 - Draft regulations for the creation of offences and for the imposition of penalties in relation to council tax reduction schemes

24. Local Authorities already have staff who investigate and prosecute council tax benefit fraud and staff or contractors who collect penalties in relation to these offences. As such by closely replicating the existing provisions that exist in relation to council tax benefit fraud there is not expected to be any additional costs for local authorities.

Benefits

25. By basing regulations for the detection and prosecution of council tax reduction scheme fraud on the existing system for council tax benefit fraud local authorities will be able to utilise their existing staff and processes.
26. This option will also provide local authorities with powers specifically tailored to council tax reduction scheme fraud and will therefore act as a deterrent to help prevent council tax reduction scheme fraud which will minimise financial losses for local authorities.

Sectors

27. 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.
28. Business will be required to assist in the detection and prevention of crime, through the provision of relevant information held by them or provision of access to electronic records relating to particular individuals. The powers to require information are reduced in scope in comparison with those which currently may be used in relation to welfare benefits including council tax benefit because such powers may currently be used both for the detection of crime and for more general investigations into benefit entitlement.

Duties

29. 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 in relation to the introduction of council tax reduction schemes.

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

Consultation

31. A consultation on the policy and delivery options for the development of a new scheme to provide council tax support, which included detailed questions in relation to the detection and prosecution of fraud, was sent to:

- Chief Executives, Leaders and Finance Directors of County and County Borough Councils in Wales
- Welsh Local Government Association
- Welsh Police Forces
- Local Taxation Working Group Members
- Institute of Revenues, Rating and Valuation
- Society of Welsh Treasures
- Children's Commissioner
- Older Person's Commissioner
- End Child Poverty Network
- Citizen's Advice Bureau and other Advisory Services
- Community Housing Groups, Tenants Associations & Housing Providers
- Members of the Welsh Government's Welfare Reform Officials Group who circulated the consultation to stakeholders likely to have an interest in the consultation

32. The consultation was also published on the Welsh Government's website.

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

Competition Assessment

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

Post implementation review

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