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Y Gweinidog Llywodraeth Leol a Busnes y Llywodraeth
Minister for Local Government and Government Business



Llywodraeth Cymru
Welsh Government

David Melding AM
Chair, Constitutional & Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

19 November 2013

Dear David

Further to our discussion regarding the draft reports by the Constitutional and Legislative Affairs Committee (the Committee) on the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 (the 2013 Regulations), I am grateful to the Committee for considering the 2013 Regulations ahead of the plenary debate on 26 November. I am aware the Committee would have preferred additional time to scrutinise the Regulations, however, I have publicly set out, on a number of occasions, why the Regulations needed to be made in November to allow Local Authorities to consult on, and formally adopt their schemes ahead of 31 January 2014. A later plenary debate would have risked Local Authorities having the default scheme imposed for failure of adopting their own scheme in time. The Regulations were laid on 4 November, allowing for scrutiny in accordance with Standing Orders.

It is unfortunate, unlike last year, your officials did not engage with mine regarding the content of the draft reports. This was a very fruitful and constructive process and resulted in a number of points being resolved during scrutiny. Similar engagement this year would have helped to clarify a number of points and to facilitate this, a draft version of the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 was provided to the Committee alongside the technical consultation on the Regulations on 23 August. The offers of technical briefings for the Committee applied equally to officials acting on your behalf. Some of the points in your reports were raised during the technical briefing with the Communities, Equality and Local Government Committee last week and were able to be addressed at the time.

It is disappointing the Committee was unable to take up my offers of technical briefing to assist in the scrutiny process, particularly in light of the comments regarding the impenetrability of the Regulations. I enclose the detailed technical responses to the Committee's reports. Where the reporting points are accepted, these will be addressed when the Regulations to uprate financial figures in the 2013 Regulations are laid following the Chancellor's Autumn Statement.

As I have said elsewhere, the establishment of the Council Tax Reduction Scheme has involved our replacing a complex, means-tested benefits system which had been developed over a period of 20 years by the Department for Work and Pensions. The detail in the Regulations necessarily reflects the vast range of household circumstances which must be taken into account in delivering any means-tested system. This is not a question of simply following the arrangements in England. The Regulations form part of a wider legislative framework relating to welfare benefits. This framework includes the criteria for eligibility, for example, defining which persons from abroad (such as those from Montserrat and Zimbabwe) may apply for support and in what circumstances. There are technical reasons why the particular categories in the Regulations have been listed which could have been explained during a technical briefing. Any diversion from the framework would affect entitlements and could result in sudden shifts in the financial situations of some of our most vulnerable households. It would also add to the complexity for applicants, who could be subject to different criteria for CTRS and other forms of financial support. It would also result in significant additional administrative complexity and cost for Local Authorities, who must continue to process applications for Housing Benefit and certain passported benefits in accordance with the UK benefits regime.

We have worked closely with Local Government, professional bodies and the Third Sector in developing both the 2012 and 2013 Regulations and, far from being inaccessible to practitioners, the 2012 Regulations were implemented in April with the seamless transfer of over 300,000 households into the new arrangements. Those arrangements have continued to operate successfully since then.

The 2012 Regulations consolidated and simplified the extensive provisions of the previous benefits system which it replaced. Further simplifications have been incorporated into the 2013 Regulations, however, as indicated above, they are closely based on the 2012 Regulations to ensure the entitlements of applicants continue to be protected. The 2012 Regulations were the subject of four separate reports by the Committee between December 2012 and May 2013 and no similar "merits scrutiny" points were raised therein.

I was particularly disappointed by the comparison with the Council Tax Reduction Scheme (Wales) Regulations 1999 which was made during the Committee's meeting on 18 November. This demonstrated a lack of understanding of the nature of the 1999 Regulations, of the 2013 Regulations and of the differences between them. The 1999 Regulations are in no way comparable to the 2012 or 2013 Regulations and are a misleading reference point for the Committee. They relate to the reduction scheme which was introduced in connection with the reorganisation of Local Government in 1996.

This is covered in more detail in the enclosed responses. Again, this is a point which could have been readily addressed through technical discussions.

Regards

A handwritten signature in black ink, appearing to read 'Lesley Griffiths', written in a cursive style.

Lesley Griffiths AC / AM

Y Gweinidog Llywodraeth Leol a Busnes y Llywodraeth
Minister for Local Government and Government Business

The Council Tax Reduction Schemes (Default Scheme) Regulations 2013

Technical Scrutiny

1. We do accept a number of the technical matters raised in the report, which have rolled over from last year's set of regulations. However, it is regrettable these points were not identified earlier. Our engagement with Local Government, professional bodies and the third sector, has given no indication to suggest Local Authorities cannot understand the regulations, or any of the matters identified have, in any way, damaged the operation of the schemes they have established. It is regrettable the legal advisors who found the regulations to be impenetrable did not avail themselves of the offers of assistance made by government lawyers to facilitate their understanding of the legislation, as they did last year. It is surprising that a technical evaluation of the regulations has been expressed in such atypical language.
2. The following **points in the report are accepted** and will be corrected as part of amendment regulations which are scheduled to be laid before the Assembly to deal with uprating;

Points 3, 6, 7, 8, 9, 10, 11, 12, 16, 17, 18 and 19.
3. The following **points in the report are not accepted**;
 - a. Point 1; the term "the fund" is a well accepted term in this type of legislation, and has been used since the introduction of the predecessor Council Tax Benefit system. It continues to be used in a variety of other legislation namely;
 - The Employment and Support Allowance Regulations 2008;
 - The Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008;
 - The Housing Benefit Regulations 2006; and
 - The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.

It is not therefore accepted that the term needs further explanation.

- b. Point 2; it is not accepted that the reference to section 10F of the National Health Service (Scotland) Act 1978 is defective drafting as the definition of "independent hospital" for the purposes of these regulations is within that section. Consideration will however be given to providing further clarification of the definition.
- c. Point 5; it is not accepted that the second reference to section 18(5) of the Childcare Act 2006 amounts to defective drafting. It is not accepted that the establishments mentioned in section 18(5) will never be "childcare". Those establishments can be "childcare" if they do not

fulfil the criteria within section 18(5)(b), and the second reference to section 18(5) is considered correct.

- d. Point 13; it is not accepted that paragraph 89(3) of the Default Scheme suggests that the second authority makes a payment to itself. “This authority” is the authority to whom the default scheme is applied by virtue of the Local Government Finance Act 1992. The provision must be read in the context in which it is written, which is, a stand alone scheme and not a requirement to be included within an as yet unwritten scheme.
 - e. Point 14: it is not accepted that the reference to “paragraphs 93 to 102” is incorrect. Paragraph 103 of the Scheme in fact relates to pensioners and persons who are not pensioners. It is accepted that this is not reflected in the heading to the paragraph and this will therefore be included as part of the amending regulations.
4. In terms of the reported **inconsistencies between the English and Welsh texts**;
- a. Point 15 will be addressed by amendments to the Welsh text being introduced as part of the amendment regulations which are to be laid before the Assembly to deal with uprating;
 - b. Point 4 is not accepted. The English text in the regulations is correct, and any ambiguity therefore arises from the use of the word “on” in the Welsh text. However, it is not considered that the drafting is defective in this instance. The New Shorter Oxford English Dictionary provides several meanings for on including “on the occasion of (an action); immediately after (and because of or in reaction to); as a result of”. As such the use of the word on in the Welsh text properly mirrors the English text.

Merits Scrutiny

- 5. Whilst it is recognised the legal advisors may have difficulties in understanding the interface of these Regulations with other welfare benefits legislation, this is not the position of the drafters, who do understand the necessary detail of the Regulations which form part of a wider, equally complex, pre-existing legislative framework relating to welfare benefits. This framework includes the criteria for eligibility, for example defining which persons from abroad may apply for support.
- 6. As is detailed below the regulations necessarily contain detailed provision regarding means-testing and, as such, cannot be simplified into an 8-page order as was suggested to the Committee at its meeting on 18 November 2013 by its legal advisor. The Council Tax Reduction Scheme (Wales) Regulations 1999 to which the Committee has been referred, prescribe for a reduction in the amount of council tax chargeable by reference to community areas. The 1999 regulations apply to all persons liable to pay

council tax in the eligible areas, regardless of income. As such no means-testing is required, and no complex provision regarding means-testing need be included in the Regulations. The reduction scheme provided for within the 1999 regulations, resulting from minor boundary changes, is in no way comparable to the Regulations which are the subject of this report and it is considered a misleading reference point for the Committee.

7. It should be noted similar Regulations introduced in England last year were the subject of the scrutiny of the UK Government's Joint Committee on Statutory Instruments and matters of impenetrability and complexity were not raised as points of concern by that Committee.
8. As referred to in the response to the technical scrutiny section of the report, it is surprising that a technical evaluation of the Regulations has been expressed in such atypical language.

Calculation of tariff income from capital: pensioners and persons who are not pensioners (Regulations 68 and 69)

9. The Regulations contain a means-test in order to calculate the reduction in council tax liability an applicant is entitled to. This is to ensure those households most in need of financial assistance receive the greatest level of support in meeting their council tax bills. As part of this means-test, an applicant's tariff income from capital is calculated. The tariff income is a notional amount for tapering the entitlement of applicants with capital: it does not reflect a "return on capital".
10. The provisions for calculating tariff income are identical to those which existed under the previous council tax benefit system which operated between 1993 and 2013. The same tariff income provisions are also included within the Housing Benefit Regulations 2006 and the Job Seekers Allowance Regulations 1996 (in respect of working age claimants). The Universal Credit Regulations 2013 also include an equivalent provision, although it should be noted tariff income is calculated on a monthly rather than weekly basis, in line with the operation of Universal Credit.
11. As such the amount of tariff income which it is determined can be calculated from capital, is well-established within the social security benefits system and the rules governing this are understood by Local Government practitioners and advice providers. As CTRS continues to be administered alongside Housing Benefit, any amendments to these provisions would considerably increase the administrative burden on Local Authority staff and would cause confusion for applicants who would be treated differently under the two systems.
12. It should also be noted the tariff income provisions are only applicable to approximately 30% of applicants. The remaining applicants are entitled to the maximum reduction in their council tax liability (a reduction to zero less

any deductions for non-dependants) as they are in receipt of a qualifying benefit (Income Support, income based JSA, income based ESA, Pension Credit, or Pension Credit Guarantee).

13. Furthermore any amendments to reduce the amount of tariff income which is calculated from an applicant's capital will increase expenditure on CTRS exacerbating the funding shortfall. This could mean maintaining full entitlements to support for eligible applicants becomes increasingly financially unsustainable.

14. For these reasons, this point is not accepted.

Impenetrability of the Regulations

15. The Regulations are interrelated with the Social Security Benefits System and contain a detailed financial means-test. As such they are technically complex, a point which the Welsh Government has made clear on a number of occasions.

16. Nevertheless, in bringing forward the 2012 Regulations, we brought together all the relevant legislation from the previous council tax benefit system and made considerable simplifications. These include rationalising the treatment of pensioners and persons of non-pension age within one set of Regulations to replace SI 2006/215 (the Council Tax Benefit Regulations 2006) and SI 2006/216 (the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006).

17. Extensive work was also undertaken with Local Government practitioners to incorporate simplifications when bringing forward the 2012 Regulations, for example:

- Harmonising the three sets of different rules which related to advance claims;
- Simplifying the number of complex rules governing the date that should be used to determine when a change of circumstances that affects entitlement comes into effect;
- Aligning the application of backdating provisions for working age and pension age applicants; and
- Removing the Second Adult Rebate Provisions - this reduced the classes of person entitled to a reduction from 6 to 4.

18. Further simplifications have also been incorporated within the 2013 Regulations, these have included:

- Removal of the 26-week grace period for non-dependant deductions;

- Removing the requirement for Local Authorities to engage with precepting Authorities before publishing a draft scheme to simplify the procedures to be followed when adopting a scheme; and
 - Amending provisions to allow Local Authorities to receive information "in writing" otherwise than by way of an approved form, in order to improve administrative processes for Local Authorities.
19. As a result of the policy decision to base CTRS on the previous council tax benefit system, in order to minimise the impact on applicants and the administrative risks in introducing a replacement scheme, it is incorrect to infer Local Authority officials will have difficulty in operating the Regulations. The 2012 Regulations reflected the approach which was taken to calculating Council Tax Benefit (as set out in SI 2006/215 and SI 2006/216) which Local Government practitioners had 20 years experience of operating. This extensive knowledge and experience was utilised to draft a number of the technical simplifications outlined above. It should also be noted where amendments have been made to the CTRS Regulations, Local Government have been provided with detailed information on the purpose and intended effect of the Regulations – see for example the Technical Consultation on the Draft Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013.
20. It is also incorrect to suggest Citizens Advice Cymru advisers will have difficulty in advising members of the public on the Regulations, as representatives from Citizens Advice Cymru have been closely involved in the preparation of both the 2012 and the 2013 Regulations.
21. It is accepted the Regulations may be inaccessible for members of the public. However, for this reason officials worked closely with Citizens Advice Cymru to provide clear and user-friendly information on the new Council Tax Reduction Scheme. As mentioned above, the Regulations represent considerable simplification on the benefit system they replace. They have been operating since 1 April 2013 when over 300,000 households were seamlessly transferred to the new scheme.
22. The technical point in relation to the definition of 'quarter' (paragraph 11 of technical aspect of the report on the Default Scheme Regulations; and paragraph 16 of the technical aspect of the report on the Prescribed Requirements Regulations) is accepted and this will be addressed in the Regulations which will be laid to uprate financial figures used in the Regulations in line with cost of living increase following the publication of the Autumn Statement.
23. It is disappointing to note Legal Advisers to the Committee consider the Regulations to be impenetrable, particularly when no such concerns were raised in the reports on the 2012 Regulations, which are detailed below, and upon which the 2013 Regulations are substantially based:

- The Report on the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012 published in December 2012;
- The Report on the Council Tax Reduction Scheme (Default Scheme) (Wales) Regulations 2012 published in December 2012;
- The Report on the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2013 published in January 2013; and
- The Report on the Inquiry into the handling of the Council Tax Reduction Scheme Regulations published in May 2013;

24. It should also be noted the purpose of the insertion of the sunset clause into the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012 was to give the Assembly the opportunity to revisit and scrutinise the Regulations. It is therefore disappointing, given the draft Regulations were published as part of the Technical Consultation on 23 August 2013 and the Committee was informed of this, that the Legal Advisers to the Committee who consider the Regulations to be impenetrable have not taken up the numerous offers of technical briefings (Ministerial Correspondence 23 August, Written Statements 16 August and 4 November) to assist with the scrutiny process.

25. For these reasons, this point is not accepted.

The Council Tax Reduction Schemes and Prescribed Requirements Regulations 2013

Technical Scrutiny

1. We do accept a number of the technical matters raised in the report, which have rolled over from last year's set of regulations. However, it is regrettable these points were not identified earlier. Our engagement with Local Government, professional bodies and the third sector, has given no indication to suggest that Local Authorities cannot understand the regulations, or any of the matters identified have, in any way, damaged the operation of the schemes they have established. It is regrettable the legal advisors who found the regulations to be impenetrable did not avail themselves of the offers of assistance made by Government lawyers to facilitate their understanding of the legislation, as they did last year. It is surprising that a technical evaluation of the regulations has been expressed in such atypical language.

2. The following **points in the report are accepted** and will be corrected as part of amendment regulations which are scheduled to be laid before the Assembly to deal with uprating;

Points 3, 4, 8, 12, 14, 15, 16 and 17.

3. The following **points in the report are not accepted**;

a. Point 1; the term "the fund" is a well accepted term in this type of legislation, and has been used since the introduction of the predecessor Council Tax Benefit system. It continues to be used in a variety of other legislation namely;

- The Employment and Support Allowance Regulations 2008;
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It is not therefore accepted that the term needs further explanation.

b. Point 2; it is not accepted that the reference to section 10F of the National Health Service (Scotland) Act 1978 is defective drafting as the definition of "independent hospital" for the purposes of these regulations is within that section. Consideration will however be given to providing further clarification of the definition.

c. Point 5; the purpose of regulation 20 is to permit the authorities to make a reasonable charge for the supply of documents, and there are no restrictions in terms of who this information may be provided to. However, authorities are not permitted to charge when providing

information in accordance with regulation 19. No reference to “charging” is required within regulation 19 to give effect to this purpose, and it is not accepted that the drafting is defective.

- d. Point 13; it is not accepted that the second reference to section 18(5) of the Childcare Act 2006 amounts to defective drafting. It is not accepted that the establishments mentioned in section 18(5) will never be “childcare”. Those establishments can be “childcare” if they do not fulfil the criteria within section 18(5)(b), and the second reference to section 18(5) is considered correct.

4. In terms of the reported **inconsistencies between the English and Welsh texts**;

- a. Points 9, 10 and 11 will be addressed by amendments to the Welsh text being introduced as part of the amendment regulations which are to be laid before the Assembly to deal with updating;
- b. Points 6 and 7 are not accepted.

Point 6; the English text in the regulations is correct, and any ambiguity therefore arises from the use of the word “on” in the Welsh text. However, it is not considered that the drafting is defective in this instance. The New Shorter Oxford English Dictionary provides several meanings for on including “on the occasion of (an action); immediately after (and because of or in reaction to); as a result of”. As such the use of the word on in the Welsh text properly mirrors the English text.

Point 7; although it is possible to translate the Welsh phrase “gofynion sylfaenol” as “basic requirements”, it can also be used as a valid translation for “minimum requirements”. This is not therefore considered to be defective drafting.

Merits Scrutiny

5. Whilst it is recognised the legal advisors may have difficulties in understanding the interface of these Regulations with other welfare benefits legislation, this is not the position of the drafters, who do understand the necessary detail of the Regulations which form part of a wider, equally complex, pre-existing legislative framework relating to welfare benefits. This framework includes the criteria for eligibility, for example defining which persons from abroad may apply for support.
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12. It should also be noted the tariff income provisions are only applicable to approximately 30% of applicants. The remaining applicants are entitled to

the maximum reduction in their council tax liability (a reduction to zero less any deductions for non-dependants) as they are in receipt of a qualifying benefit (Income Support, income based JSA, income based ESA, Pension Credit, or Pension Credit Guarantee).

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