



# Response to the Constitutional and Legislative Affairs Committee Inquiry: Making Laws in the Fourth Assembly

**June 2014**

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## About Citizens Advice Cymru

Citizens Advice is an independent charity covering England and Wales operating as Citizens Advice Cymru in Wales with offices in Cardiff and Rhyl. There are 20 member Citizen Advice Bureaux in Wales, all of whom are members of Citizens Advice Cymru, delivering services from over 250 locations.

The twin aims of the Citizens Advice service are:

- to provide the advice people need for the problems they face
- to improve the policies and practices that affect people's lives.

The advice provided by the Citizens Advice service is free, independent, confidential and impartial, and available to everyone regardless of race, gender, disability, sexual orientation, religion, age or nationality.

The majority of Citizens Advice services staff are trained volunteers. All advice staff, whether paid or volunteer, are trained in advice giving skills and have regular updates on topic-specific training and access to topic-based specialist support.

Local Bureaux, under the terms of membership of Citizens Advice provide core advice based on a certificate of quality standards on welfare benefits/tax credits, debt, housing, financial products and services, consumer issues, employment, health, immigration and asylum, legal issues, and relationships and family matters.

The Citizens Advice Service now has responsibilities for consumer representation as a result of the UK Government's changes to the consumer landscape<sup>1</sup>. From 1<sup>st</sup> April 2014 this includes statutory functions and responsibilities to represent post and energy consumers.

We are happy for our response to be made available to the public.

## Summary of Key Points

Citizens Advice Cymru would like to highlight the following points from our response:

- We think Explanatory Memoranda are a useful aid to understanding.
- We would like amending legislation to show new provisions in their entirety, avoiding the need to piece together various enactments to ascertain the impact of the changes.

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<sup>1</sup> On 1<sup>st</sup> April 2013 responsibility for consumer representation was transferred from Consumer Focus to the Citizens Advice Service (including Citizens Advice Cymru) following the UK Government's review of the consumer landscape.

## Consultation questions:

### Question 3

**We consider that Explanatory Memoranda are invaluable as an introductory to bills and regulations, particularly for lengthy legislation like the: Social Services and Well-being (Wales) Bill.**

We think that in general the Wales versions they are clearer than the Westminster versions. Example of both are shown below for illustrative purposes.

#### Welsh example

**Explanatory Memorandum to the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012.**

<http://www.assemblywales.org/sub-ld9137-em-e.pdf>

37. The means test is based on a comparison of income (as defined in the regulations) and the applicable amount (a living allowance). An individual's applicable amount will continue to be made up of four elements:

- A personal allowance in respect of the applicant;
- An amount in respect of any child or young person who is part of the applicant's family;
- A family premium element (where the applicant is part of a family of which at least one member is a child or young person); and
- Any premium amount, as set out in the regulations, which is applicable to the applicant.

#### English example

**EXPLANATORY MEMORANDUM TO THE COUNCIL TAX REDUCTION SCHEMES (PRESCRIBED REQUIREMENTS) (ENGLAND) REGULATIONS 2012**

[http://www.legislation.gov.uk/ukxi/2012/2885/pdfs/ukxiem\\_20122885\\_en.pdf](http://www.legislation.gov.uk/ukxi/2012/2885/pdfs/ukxiem_20122885_en.pdf)

The schemes are means-tests. They compare the income of an individual to a deemed living allowance (applicable amount). Both these elements are calculated according to detailed rules in the regulations, based on individual circumstances. For example:

- the 'applicable amount' is made up of a personal allowance (based on whether the applicant is single, part of a couple and whether they have dependents), and 'premium' amounts attached to personal circumstances or benefit indicators (see Default Scheme Part 6 and Schedules 2 and 3; Prescribed Requirements, paragraph 6 and Schedule 2).
- Income is any earned income, 'unearned' income – including benefits and a 'tariff' income (calculated on capital holdings), is taken into account (see Default Scheme Part 10 and Schedules 5-10), Prescribed Requirements Part 6 and Schedules 4-6).

## Annex 1, Question 4

**Citizens Advice Cymru would prefer that bills and regulations which are amending earlier provisions should consolidate or replace the provision, not merely show the changes to be inserted.**

The example below quotes The National Assistance (Sums for Personal Requirements) (Assessment of Resources) and Social Care Charges (Wales) (Miscellaneous Amendments) Regulations 2014  
<http://www.legislation.gov.uk/wsi/2014/666/contents/made>

Regulation 4 makes an amendment to: The National Assistance (Assessment of Resources) Regulations 1992.

*The National Assistance (Sums for Personal Requirements)  
(Assessment of Resources) and Social Care Charges (Wales)  
(Miscellaneous Amendments) Regulations 2014*

*Reg 4 says:*

***Amendment of Capital Limit***

*4. In paragraph (2) of regulation 20A (Capital Limit – Wales) of the National Assistance (Assessment of Resources) Regulations 1992(1), replace the figure of “£23,750” with the figure “£24,000”.*

*(1)*[S.I. 1992/2977](#)]

However the version of SI 1992/2977 in the footnote has no regulation 20A as the link is to the original version of the regulations and regulation 20A was added later.

It was added by The National Assistance (Assessment of Resources) (Amendment)(Wales) Regulations 2005 SI 2005/662. It originally read:

**Capital limit — Wales**

**20A.** (1) This regulation applies in relation to Wales.

(2) No resident shall be assessed as unable to pay for his accommodation at the standard rate if his capital, calculated in accordance with regulation 21, exceeds £21,000.

The relevant part of those regulations has been amended 6 times since their introduction.

When the changes are all consolidated the wording actually reads:

- (1) *This regulation applies in relation to Wales.*
- (2) *No resident shall be assessed as unable to pay for his accommodation at the standard rate if his capital, calculated in accordance with regulation 21, exceeds £24,000.*
- [(3) *No resident is liable to pay for accommodation, or contribute to the cost of accommodation, from capital where the resident's capital, calculated in accordance with regulation 21, does not exceed the amount specified in paragraph (2).*

It would have been only a few words longer to replace regulation 20A instead of just changing the wording. Replacing it would avoid the need to check all the previous amendments in order to be sure of the final wording.

Another example of the extreme difficulty in working out what the actual regulations say occurs in:

*The National Health Service Travel Expenses and Remission of Charges Wales Regulations 2007.*

These regulations set the provisions for help with travel for NHS treatment. They calculate the level of help by reference to a modification of The Income Support (General) Regulations 1987. An extract from modified Schedule I of the Income Support (General) Regulations 1987 is reproduced in **Annex A**.

The National Health Service (Travelling Expenses and Remission of Charges) (Wales) (Amendment) Regulations 2011, amend the 2007 regulations.

Regulation 3 says:

**Amendment to the 2007 Regulations**

3. (1) The 2007 Regulations are amended as follows.

(2) In Column 2 of Table A in Schedule 1 (modifications of the Income Support (General) Regulations 1987), in the modification of regulation 45 (capital limit) for “£22,000” substitute “£22,500”.

Anyone trying to understand the present law, who does not have access to a database such as LexisNexis or Westlaw, has the very difficult task of piecing together the original wording and all the changes to be sure of arriving at the correct end result. Access to databases is expensive.

**Citizens Advice Cymru believes that one solution would be for regulations to be consolidated and then re-enacted in full each year, so that one document would set out all the regulations on this subject**

We assume that during the drafting process working documents must show the 'consolidated' result of the changes being made. We think options for using these documents to help understanding should be explored.

**Citizens Advice Cymru believe that the use of Keeling Schedules might be considered as this makes clear what has been changed and the impact on the previous provisions. An example page from a Keeling schedule can be seen at**

<http://webarchive.nationalarchives.gov.uk/20130802140618/https://media.education.gov.uk/assets/files/pdf/e/education%20bill%20keeling%20schedule%20%20%20clause%2015.pdf>

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## Annex A

### **SCHEDULE 1 Modifications of the Income Support (General) Regulations 1987**

#### **regulations 14, 15 and 16**

TABLE A

<i>Column 1</i>	<i>Column 2</i>
Regulation 23	In paragraph (1) for “[section 136 of the Social Security Contributions and Benefits Act]” substitute “regulation 14(3) of the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007”.
Regulation 25	For the whole of regulation 25 (liable relative payments) substitute— <b>“25</b> (1)Where a claimant's income consists of any payments made by a person, whether under a court order or not, for the maintenance of himself or herself or any member of the claimant's family, and those payments are made or due to be made at regular intervals, the claimant's normal weekly income from those payments must be determined— (a)as if before the relevant date those payments are made at regular intervals and in regular amounts,

by reference to the normal weekly amount;  
(b) if they are not so made, by reference to the average amount of such payments received in the 13 weeks immediately preceding the week which includes the relevant date.

(2) Any maintenance payment other than one to which paragraph (1) of this regulation applies must be treated as capital.”.

Regulation 25A

Omit this regulation.

Regulation 28

In paragraph (1) omit the words from “For the purposes” to “income support”).

In paragraph (1)(a) for “the weekly amount of his income” substitute “the normal weekly amount of his or her income at the relevant date”.

Regulation 29

Omit this regulation.

Regulation 30

In paragraph (1) omit the words “Except where paragraph (2) applies”.

In paragraph (1)(a) at the beginning insert the words “except where sub-paragraph (b) or (c) applies,”.

In paragraph (1)(b) at the beginning insert the words “except where sub-paragraph (c) applies,”.

After paragraph (1)(b) insert the word “or” and the following sub-paragraph—

“(c) where in respect of the employment the claimant provides a profit and loss account (and, where appropriate, a trading account or a balance sheet, or both), and the profit and loss account is in respect of a period of at least 6 months but not exceeding 15 months and that period ends within the 12 months preceding the relevant date.”.

After paragraph (1) insert the following new paragraph—

“(1A) In paragraph (1)(c)—

(a) “balance sheet” means a statement of the



financial position of the employment disclosing its assets, liabilities and capital at the end of the period in question;

(b) "profit and loss account" means a financial statement showing the net profit or loss of the employment for the period in question; and

(c) "trading account" means a financial statement showing the revenue from sales, the cost of those sales and the gross profit arising during the period in question."

Omit paragraph (2).

Regulation 31

Omit this regulation.

Regulation 32

In paragraph (1) for "regulation 29" substitute "regulation 28" and for "subject to paragraphs (2) to (7)" substitute "subject to paragraph (6)".

In paragraph (6) omit "and has changed more than once".

Omit paragraphs (3) to (5), (6A) and (7).

Regulation 35

Omit paragraphs (1)(c), (1)(g), (1)(i), (1A) and (2A).

In paragraph (1)(d) omit the words after "employment".

In paragraph (2)(a) omit the words "subject to paragraph (2A)".

Regulation 36

In paragraph (1) for "regulation 29 (calculation of earnings of employers earners)" substitute "regulation 28 (calculation of income)".

Regulation 38

In paragraph (3) for "paragraph (9)" substitute "paragraphs (3A) or (9)".

After paragraph (3) insert—

"(3A) For the purpose of paragraph (1)(a), in a case where earnings of the employment are calculated over a period determined under regulation 30(1)(c), the net profit of the employment must, except where paragraph (9) applies, be calculated by taking

into account the earnings of the employment relevant to that period (whether or not received in that period), less—

(a) subject to paragraphs (5) to (7), any expenses relevant to that period (whether or not defrayed in that period) and which were wholly and exclusively incurred for the purposes of that employment; and

(b) an amount in respect of—

(i) income tax,

(ii) social security contributions payable under the Contributions and Benefits Act, calculated in accordance with regulation 39 (deductions of tax and contributions for self-employed earners), and

(iii) one half of any premium paid in the period that is relevant under regulation 30 in respect of a retirement annuity contract or a personal pension scheme.”.

In paragraph (4) after “ the net profit of employment” insert “, except where paragraph (3A) or (9) applies,”.

Regulations 39A–39D

Omit these regulations.

Regulation 40

In paragraph (1) for “regulation 29 (calculation of income other than earnings)” substitute “regulation 28 (calculation of income)” and for “paragraphs (2) to (3B)” substitute “paragraphs (2) and (3)”.

[For paragraph (6) substitute the following paragraphs—

“(6) Where—

(a) the claimant is a member of a couple or a polygamous marriage;

(b) the claimant or the claimant's partner (or either or any of them if the claimant has more than one partner) is receiving a contributory employment and support allowance; and

(c) that benefit has been reduced under

regulation 63 of the Employment and Support Allowance Regulations 2008, that reduction will not affect the amount of benefit that is to be taken into account.

(6A) Where—

(a) the claimant is a single claimant or a lone parent;

(b) the claimant is receiving a contributory employment and support allowance; and

(c) that benefit has been under regulation 63 of the Employment and Support Allowance Regulations, that reduction will not affect the amount of the benefit that is to be taken into account.”]

Omit paragraphs (3A) to (5).

Regulation 41 In paragraph (1) for “on the first day” to “the date of that supersession” substitute “at the relevant date”.

Omit paragraphs (3) and (4).

Regulation 42 In paragraph (4) omit the words from “and in any case” to “(trade disputes) applies”.

Regulation 44 In paragraph (1) for “on the first day” to “the date of that supersession” substitute “at the relevant date”.

Omit paragraphs (2), (3), (8) and (9).

Regulation 45 [For this regulation substitute—

**“45 Capital Limit**

For the purposes of regulations 5(2)(e) and 6(1)(a) of the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007 the capital limit is—

(a) for a claimant permanently residing in accommodation as defined in regulation 19A—  
[£22,500];

(b) in any other case—£16,000.”.]

Regulation 46 In paragraph (1) omit the words “For the purposes”

	to "income support".
Regulation 48	In paragraph (2) omit the words from "Except" to "applies".  In paragraph (5) omit the words "Subject to paragraph (6),".  Omit paragraphs (6) and (10)(a) and (b).
Regulation 49	In sub-paragraph (b)(i) for "first day" to "date of that supersession" substitute "relevant date".
Regulation 51	Omit sub-paragraph (1)(b).
Regulation 51A	Omit this regulation.
Regulation 53	[Paragraph 1A is omitted.]  For paragraph (1B) substitute— "(1B) For the purposes of paragraph (1A) and regulation 45, the prescribed circumstances are that the claimant lives permanently in accommodation as set out in regulation 19A."  In paragraph (3) for the reference to "regulation 60" substitute reference to "regulation 25".
Regulations 54 to 60E	Omit these regulations.
Regulation 61	In paragraph (1) in the definition of "academic year" after "September" insert ", or 1 August in the case of a student attending a course in Scotland."
Regulation 62	In paragraph (1) for the words "subject to paragraphs (2) and (2A)" substitute "subject to paragraphs (2), (2A) and (2C)".  After paragraph (2B) insert— ["(2C) There must also be disregarded from a student's grant income— (a) any sum by way of maintenance grant available to a student under regulations 57 to 59 of the Education (Student Support) Regulations 2009 which is not taken into account in the calculation of the maximum amount of a loan for living costs under chapter 2 of Part 6 of those Regulations;

(b) any sum by way of maintenance grant available to a student under regulations 39 to 41 of the Assembly Learning Grants and Loans (Higher Education) (Wales) (No 2) Regulations 2011 which is not taken into account in the calculation of the maximum amount of a loan for living costs under regulations 49 to 52 of those Regulations; and

(c) any sum by way of maintenance grant available to a student under regulation 58 of the Education (Student Support) (No 2) Regulations (Northern Ireland) 2009 which is not taken into account in the calculation of the maximum amount of a loan for living costs under regulation 66 of those Regulations.”].

For paragraph (3) substitute—

“(3) In calculating the weekly amount of the grant to be taken into account as income—

(a) except where sub-paragraph (b) or paragraph (4) applies, the grant must be apportioned equally between 52 weeks; and

(b) in the case of a grant which is payable in respect of the final academic year of the course or if the course is only of one academic year's duration, in respect of that year the grant must be apportioned equally between the weeks in the period beginning with the start of the final academic year or, as the case may be, the single academic year and ending with the last day of the course.”.

Omit paragraph (3A).

Omit paragraph (3B).

In paragraph (4) for “weeks in the period beginning” to “last day of the period of study” substitute “remaining weeks in that period of study”.

Regulation 63

In paragraph (2) omit the words “or, if there are 53 benefit weeks (including part-time weeks) in the

- year, 53".
- Regulation 64 In paragraph (1)(c) omit the words "or, if there are 53 benefit weeks (including part-time weeks) in the year, 53".
- Regulation 65 For the words "No part" substitute "(1) subject to paragraph (2), no part".  
After paragraph (1) insert the following paragraph—  
"(2) For the purposes of this regulation and paragraph 15 of Schedule 9, "voluntary payment" does not include any payment made by a person whose income a Minister of the Crown or an education authority—  
(a) would take into account in assessing the amount of a student's grant or a student's loan if an application for it were to be made; or  
(b) has taken into account in assessing the amount of a student's grant or student's loan and which is in excess of contributions as assessed by a Minister of the Crown or an education authority.".
- Regulation 66A [For paragraph (1), substitute—  
"(1) A student loan must be treated as income unless it is—  
(a) a hardship loan; or  
(b) an additional loan, as described in the [[Student Support Information Guide 2011–12] issued by the Student Awards Agency for Scotland], paid pursuant to an application for a loan under regulation 5(1) or (9) of the Education (Student Loans) (Scotland) Regulations 2007 (applications for loans),  
in which case it will be disregarded.".]  
For paragraph (2) substitute—  
"(2) In calculating the weekly amount of the loan to be taken into account as income—  
(a) except where sub-paragraph (b) applies, the

loan must be apportioned equally between the 52 weeks in the academic year;

(b) in the case of a loan which is payable in respect of the final academic year of the course or if the course is only of one academic year's duration, in respect of that year the loan must be apportioned equally between the weeks in the period beginning with the start of the final academic year, or as the case may be, the single academic year and ending with the last day of the course, and, in the case of a person to whom paragraph (2A), (2B) or (2C) applies, £10 must be disregarded from the weekly amount so apportioned.”.

After paragraph (2) insert the following paragraphs—

“(2A) This paragraph applies to a student whose applicable amount includes any premium specified in Parts II and III of Schedule 2.

(2B) This paragraph applies where the claimant is a student to whom paragraph 12 of Schedule 1B applies;

(2C) This paragraph applies where the student is a partner of a claimant and the claimant is not also a student.”.

Schedule 8

For paragraph 4(3) substitute the following paragraph—

“(3) This paragraph applies where—

(a) the claimant is aged not less than 60; or

(b) the claimant is a member of a couple, where at least one partner is aged not less than 60.”

In paragraph 4 omit sub-paragraphs (4) and (7).

[After paragraph 4 insert—

**“4A**

(1) Income is disregarded under this sub-paragraph where—

- (a) the claimant is undertaking work which falls within the categories in paragraphs (2) to (4) of regulation 45 of the Employment and Support Allowance Regulations;
- (b) the partner of a claimant is in receipt of employment and support allowance and is undertaking work which falls within the categories in paragraphs (2) to (4) of regulation 45 of the Employment and Support Allowance Regulations but paragraph (c) is not applicable; or
- (c) both a claimant and the partner of the claimant are in receipt of employment and support allowance and both are undertaking work which falls within the categories in paragraphs (2) to (4) of regulation 45 of the Employment and Support Allowance Regulations.
- (2) Where sub-paragraph (1)(a) or (b) applies, income is disregarded to the same extent as it would be disregarded under regulations 5 and 6 of Schedule 7 to the Employment and Support Allowance Regulations.
- (3) Where sub-paragraph (1)(c) applies, the aggregate income of the claimant and the partner is disregarded to the same extent as it would be disregarded under paragraphs 5 and 6 of that Schedule in the case of an individual.
- (4) The other disregards in paragraphs 4 to 9 are not applicable where income is disregarded under this paragraph.
- (5) In this paragraph "employment and support allowance" means an employment and support allowance under Part 1 of the Welfare Reform Act."]  
In paragraph 6A(1) for "none of paragraphs 4 to 6 applies" substitute "paragraph 4 does not apply".  
In paragraph 7 for the words "none of paragraphs 4



to 6B" substitute "none of paragraphs 4 or 5 or 6A or 6B".

In paragraph 8 omit "part-time".

After paragraph 8 insert the following paragraph—  
"8A In a case in which none of paragraphs 4 to 8 applies to the claimant and he or she is one of a married or unmarried couple and a member of that couple is engaged in employment, £10; but if this paragraph applies to a claimant it does not apply to his or her partner except where, and to the extent that, the earnings of the claimant which are to be disregarded under this paragraph are less than £10."

In paragraph 9 for "8" substitute "8A".

Omit paragraphs 6, 10, 13 and 16.

Schedule 9

[In paragraph 15(1) for "sub-paragraph (3)" substitute "sub-paragraphs (1A), (1B) and (3)".

Insert after paragraph 15(1)—

"(1A) In respect of a voluntary payment made to a student, sub-paragraph (1) will only apply to £20 of that payment.

(1B) The total amount disregarded in respect of voluntary payments to a student under sub-paragraph (1) may not exceed £20 per week.

(1C) In sub-paragraphs (1A) and (1B) "student" has the meaning given in regulation 61(1)."]

In paragraph 16 for "paragraphs 36 and 37" substitute "paragraph 36". In paragraph 19 for "£4.00" substitute "£20.00" and omit sub-paragraph (b).

For paragraph 21(1) substitute the following paragraph "Subject to paragraph (2), any income in kind."

Omit paragraph 21(3).

In paragraph 28 omit the words from "Except" to

“return to work”).

For paragraph 29(1) substitute the following paragraph—

“(1) Subject to sub-paragraph (2), any payment received under an insurance policy taken out to insure against the risk of being unable to maintain payments of housing costs which qualify under paragraph 17(1)(zb) or (zc) of Schedule 3, or for repairs or improvements to the dwelling occupied as the home to the extent that it is used to meet—  
(a) repayments of unsecured loans for the purposes of carrying out repairs and improvements to the dwelling occupied as the home; or  
(b) any amounts due by way of premiums on that policy.”.

Omit paragraphs 30, 34 and 37.

After paragraph 77 insert the following paragraph—

“77A Any payment of State Pension Credit Savings Credit as defined under sections 1 and 3 of the State Pensions Credit Act 2002.”.

Schedule 10

In paragraph 17 for the words from “Except” to “payment” substitute the words “Any payment”.

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