Explanatory Memorandum to the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2019

This Explanatory Memorandum has been prepared by Local Government Strategic Finance Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2019. I am satisfied that the benefits outweigh any costs.

Mark Drakeford
Cabinet Secretary for Finance
27 November 2018

1 Description

1.1 Council Tax Reduction Schemes (CTRS) are the mechanism by which local authorities provide support to low income households in meeting their council tax liability.

1.2 This statutory instrument makes amendments to the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 (referred to collectively in this Explanatory Memorandum as "the 2013 CTRS Regulations"). It uprates certain figures used to calculate an applicant's entitlement to a reduction under a Council Tax Reduction Scheme, and the subsequent level of reduction.

2 Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 None.

3 Legislative background

3.1 Section 10 of, and Schedule 4 to, the Local Government Finance Act 2012 inserted a new Section 13A and new Schedule 1B into the Local Government Finance Act 1992 (the 1992 Act). These provisions enabled the Welsh Ministers to introduce Council Tax Reduction Schemes (CTRS) in Wales via regulations.

3.2 The relevant provisions in the Local Government Finance Act 2012 were subject to a Legislative Consent Motion which was approved by the National Assembly for Wales on 26 June 2012. The Local Government Finance Act 2012 received Royal Assent on 1 November 2012.

3.3 This statutory instrument is laid and made under the new section 13A of, and the new Schedule 1B to, the Local Government Finance Act 1992. The instrument is subject to approval of the Assembly (the affirmative procedure).

4 Purpose and intended effect of the legislation

4.1 This statutory instrument amends the 2013 CTRS Regulations to uprate certain figures in those Regulations used to calculate entitlement to a council tax reduction, and the amount of any reduction awarded to applicants in the 2019-20 financial year.

Background

4.2 The Welfare Reform Act 2012 contained provisions to abolish Council Tax Benefit from 31 March 2013. From 1 April 2013, responsibility for providing support for council tax was devolved to local authorities in England. Fixed funding, reduced by 10% compared to the 2012-13 costs, was passed to the

Welsh Government and to the Scottish Government to allow the Devolved Administrations to develop replacement schemes.

4.3 Following the UK Government's decision, the Welsh Government sought provisions in the Local Government Finance Act 2012 which amended the Local Government Finance Act 1992 (the 1992 Act), to provide the Welsh Ministers with executive powers to introduce Council Tax Reduction Schemes in Wales via regulations.

4.4 The 2013 CTRS Regulations were approved by the National Assembly for Wales on 26 November 2013.

4.5 The Welsh Government provided £244m in the Local Government Settlement for CTRS for 2013-14. This was partly funded through the fixed budget of £222m which was transferred from the UK Government. The Welsh Government provided an additional £22m to enable local authorities to continue to provide all eligible applicants with their full entitlement to support. The Welsh Government has continued to provide £244m within the local government settlement each year since.

2013 CTRS Regulations

4.6 Aligned with the provisions in the 1992 Act, the 2013 CTRS Regulations govern the operation of CTRS in Wales. These regulations were closely based on the previous Council Tax Benefit rules to prevent low-income households facing sharp changes in the level of support they received. All eligible applicants were automatically and seamlessly transferred from Council Tax Benefit onto Council Tax Reduction Schemes from 1 April 2013.

4.7 If an applicant receives Income Support, Income-Based Jobseeker's Allowance (JSA), Income-Based Employment and Support Allowance (ESA), Pension Credit, or Pension Credit Guarantee, they are entitled to the maximum, full, reduction in their council tax liability. Approximately 70% of CTRS applicants in Wales receive the passported benefits.

4.8 If an applicant does not receive any of the passported benefits, the weekly amount of money which they are judged to need to live on is calculated. This is known as the 'applicable amount' and consists of two components:

- The first is the personal allowance – the basic amount a person needs to live, which varies according to the household's circumstances. For example, the allowance for a couple with children is higher than for a single person without children. These allowances are also set at higher rates for those who have reached State Pension Age.

- The second component is the premium – additional amounts added to reflect any personal circumstances which increase the cost of living, such as a disability or carer's responsibilities. Once the applicable amount has been determined, the applicant's level of income is calculated.

4.9 Universal Credit (UC) recipients are treated in a similar way to non-passported applicants. However, instead of an 'applicable amount' being calculated, the 'maximum amount' (calculated within their UC application) is used instead.

4.10 If the applicable amount (or maximum amount) is higher than an applicant's calculated income, they are entitled to the maximum reduction in their council tax liability. If income exceeds the applicable amount, the weekly entitlement is reduced by 20p for each £1 of excess weekly income, until entitlement is withdrawn – this is known as the taper.

4.11 Adjustments can be made to the maximum amount of reduction a person can receive to take account of adults living in the dwelling who are not dependants of the applicant and who are therefore assumed to make a financial contribution to the household (non-dependant deductions).

4.12 Adjustments can also be made to take into account of savings. If an applicant has capital of £6,000 (or £10,000 for pension age claimants) or less, this will be ignored when working out whether they are entitled to a reduction.

4.13 If a working-age applicant has capital of between £6,000 and £10,000, the local authority will treat it as income. This is known as tariff income. The local authority will assume an applicant has an income of £1 a week for each £500 of capital between £6,000 and £10,000. This will be added to other income to work out whether an applicant is entitled to a reduction and how much they are entitled to.

Uprating figures for 2019-20

4.14 This statutory instrument amends the 2013 CTRS Regulations to uprate financial figures used to calculate entitlement to a reduction in line with Welsh Government policy.

4.15 The statutory instrument seeks to uprate a number of other figures included in the 2013 CTRS Regulations. These include:

- Personal allowances in relation to working age, and carer and disabled premiums
  The financial figures in respect of these allowances have been amended and have increased in line with the cost of living rises. The convention is to uprate in line with the Consumer Price Index figure for September from the previous year (2017), which is 3.0%.

- Personal allowances in relation to pensioners
  The financial figures in respect of pensioner rates have been amended and are aligned with Housing Benefit. These have been calculated with assistance from the Department of Work and Pensions following the Chancellor's Autumn Budget 2017 and have been uprated by different mechanisms. For example, the Pension Credit standard minimum

guarantee is uprated by earnings, whereas the Additional Pension and increments are uprated by prices.

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

Bereavement Support Payments

4.16 A social security benefit called Bereavement Support Payment (BSP) was introduced for surviving spouses and civil partners who are widowed after April 2017. Unlike previous bereavement benefits which can be paid for as long as the applicant satisfies the conditions of entitlement, BSP is only payable for a maximum period of up to 18 months from the date the spouse or civil partner died. The amendments made to the 2019 Regulations ensure that various payments of BSP are disregarded in the calculation of income so that:

- The initial larger payment and any arrears which are included in the first monthly payment are treated as capital, and a 12-month disregard is applied from the date of payment, to allow for sufficient time for monies to be spent by the recipient;
- Subsequent smaller monthly payments (except for arrears) are treated as income and disregarded for a month.

Additional Consequential Amendments

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

Transfer of Name and Functions to Secretary of State

4.18 The Secretaries of State for Health and Social Care and for Housing, Communities and Local Government and Transfer of Functions (Commonhold Land) Order 2018 changes the name of the Secretary of State for Health to the Secretary of State for Health and Social Care and transfers functions from the Secretary of State for Housing, Communities and Local Government.

4.19 This statutory instrument makes consequential changes to the 2013 CTRS Regulations to reflect the change in name and transfer of functions.

Disregards for Members of a Couple

4.20 ESA is an income-replacement benefit for people of working age who cannot work because of a health condition or disability. Universal Credit provides a

new single system of means-tested support for people of working age who are either in or out of work. UC is gradually replacing income-based ESA as it is rolled out across the UK.

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

4.22 The 2013 Regulations make provision for a number of payments to be disregarded for the purposes of calculating income and/or capital. The amendments to the 2019 Regulations are intended to clarify the qualifying conditions for a disregard when an applicant is a member of a couple so that the person working must also be the person who meets the qualifying conditions by being the person who is:

- entitled to a disability premium, or
- is receiving the support component as part of their award of ESA, or
- is in the work-related activity group for ESA.

Non-dependant deductions

4.23 The 2013 Regulations make provision for deductions to be made when calculating the maximum council tax reduction a person will be entitled to including deductions for non-dependants who live with the applicant. However, further provision is made for certain non-dependants. The 2019 Regulations clarify the position in respect of non-pensioners so that that no deduction will occur where a non-dependant is not in the work related activity group and is in receipt of certain benefits (income support, state pension credit, income-based JSA or income related ESA). This mirrors provision made in the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2018 concerning pensioners.

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

4.24 Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 replaces the regime for the regulation and inspection of social care settings under the Care Standards Act 2000. Part 1 of the 2016 Act was commenced in respect of the following services in April 2018:

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

4.25 In April 2019, Part 1 will be commenced in respect of a fostering service. The process for approving foster parents is set out in the Fostering Services (Wales) Regulations 2003. However, in consequence of the commencement of Part 1, those Regulations may be replaced by further regulations made

pursuant to sections 87 and 93 of the Social Services and Well-being (Wales) Act 2014 during the next financial year.

4.26 In calculating income for the purposes of determining eligibility for a council tax reduction, the 2013 Regulations make provision for relevant childcare charges to be deducted from earnings including charges where the childcare is provided by a foster parents or a kinship carer who has been approved as such under the 2003 Regulations. The amendments in the 2019 Regulations ensure that foster parents approved under the current scheme set out in the 2003 Regulations or under any regulations made pursuant to sections 87 and 93 of the 2014 Act will be subject to provision made in the 2013 Regulations in respect of the treatment of childcare charges.

Regulatory Impact Assessment (RIA)

Options

Option 1 – Do nothing

1 If the financial figures used to assess household allowances in the council tax reduction means-test remained static, the criteria used would be slightly less generous for non-passported applicants and lead to a small decrease in support in real terms.

2 The financial figures used to assess the eligibility of households with non-dependants would be out-of-date. The income thresholds would no longer reflect average earnings and the adjustment made to the final council tax reduction would no longer reflect overall cost of council tax.

3 It would also mean that consequential amendments would not be made to the 2013 CTRS Regulations to take account of changes to related welfare benefits and other legislation. This could disadvantage some applicants by reducing or stopping their entitlement to support. It could also create confusion for applicants and increase the administrative burden for local authorities and advice providers.

Option 2 – Make amending Regulations

4 This option would mean that amendments would be made to uprate the financial figures in the 2013 CTRS Regulations in line with to Welsh Government policy, cost-of-living increases and changes to qualifying benefits.

5 The financial figures in relation to working age, disability or carer rates will continue to increase with the cost of living (2.4%, as measured by CPI) for 2019-20. The personal allowances for pensioners will be uprated to align with those for Housing Benefit and the benefit system. The increase would be aligned to the UK Government's Standard Minimum Guarantee and Savings Credit.

6 The financial figures used to calculate the adjustment for non-dependant deductions would be uprated. The income thresholds in relation to non-dependants would be uprated to reflect average earnings and the non-dependant deduction from CTRS would reflect the average increase in council tax.

Costs and Benefits

Costs

Option 1 – Do nothing

7 If the financial figures for working age and pensioner allowances do not increase with the cost of living (as measured by CPI), CTRS recipients would be slightly worse off in real terms.

8 The financial figures used to assess the eligibility of households with non-dependants would also be out-of-date. The calculation would no longer make a fair assessment of the income of non-dependants or the overall cost of council tax. There is a risk that this aspect of the scheme would be viewed as unfair or inequitable.

9 If the technical and consequential amendments to the 2013 CTRS Regulations are not made, they would no longer align with Housing Benefit provisions or other related benefits. It would lead to references being out of sync with the overall benefits system and could disadvantage certain applicants by reducing their entitlement to support. This could potentially lead to additional administrative burden on local authorities and advice providers. It may also lead to confusion for some applicants who, as a result, could be treated significantly differently under benefit schemes.

Benefits

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

Option 2 – Make amending Regulations

Costs

11 Uprating the financial figures in respect of pensioners and working age allowances would slightly increase total reductions under CTRS. However, if the financial figures in relation to non-dependant deductions were also uprated, this would mitigate some of the increase in total reductions. Consequently, total council tax reductions are not expected to rise significantly as a result of the uprating.

Benefits

12 Uprating the financial figures in the 2013 CTRS Regulations will ensure that the personal allowance for working age applicants continues to increase in line with the CPI (2.4%).

13 Uprating the financial figures in respect of the personal allowance for pensioners continues to increase in line with the standard minimum guarantee and savings credit.

14 If the financial figures in relation to non-dependant deduction rates are uprated, this will ensure the calculation used to assess the eligibility of non-dependant households remains up-to-date. The calculation would continue to make a fair assessment of the income of non-dependants and the cost of council tax. This will ensure the system remains fair and equitable.

15 As part of these Regulations, consequential and technical amendments are made that are associated with wider welfare changes made by the UK government. This would ensure CTRS reflects changes made to interrelated social security benefits which often determine entitlement to a reduction. It would also avoid any additional administrative burden for local authorities or advice providers arising from managing different regimes.

Sectors

16 Local government and the voluntary sector were consulted during the development of proposals to introduce CTRS in Wales. Draft regulations for 2019-20 have been shared with local authorities.

17 This legislation will not affect the business sector.

Duties

18 In drafting these Regulations consideration has been given to the duty on Welsh Ministers to promote equality and eliminate discrimination.

19 An Equality Impact Assessment was completed for the introduction of the 2013 CTRS Regulations.

20 This statutory instrument is provided bilingually. CTRS is implemented and operated by local authorities who are under general duties to comply with Welsh language and sustainable development duties.

21 Further consideration has been given as to whether CTRS could be used to improve the opportunities of persons to use the Welsh language treating the Welsh language no less favourably than the English language. As the sole purpose of CTRS is to provide support to low-income households in meeting their council tax liability, it is considered there are no such opportunities.

22 Maintaining full entitlements to CTRS will continue to help low-income households in meeting their council tax liability and, as such, will contribute to the Welsh Government's commitment to make council tax fairer.

Competition Assessment

23 These Regulations have been scored against the competition filter test which indicated that there will be no detrimental effect on competition.

Consultation

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

Post implementation review

25 Amendments are required on an annual basis to uprate the financial figures used to calculate entitlements to reductions. This provides an opportunity to review the legislation.