

**Explanatory Memorandum to the Council Tax Reduction Schemes
(Prescribed Requirements and Default Scheme) (Wales) (Amendment)
Regulations 2020**

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 2020. I am satisfied that the benefits outweigh any costs.

Rebecca Evans
Minister for Finance and Trefnydd
26 November 2019

PART 1: DESCRIPTION

1 Overview

- 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 updates certain figures used to calculate an applicant’s entitlement to a reduction under a Council Tax Reduction Scheme, and the subsequent level of reduction and makes certain technical and consequential amendments.

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

- 2.1 Paragraph 4.17 makes reference to amendments being made that are consequential on The Civil Partnership (Opposite-sex Couples) Regulations 2019. Those Regulations were made on 5 November 2019 and come into force in 2 December 2019. It is recognised that at the point of laying the changes will not have come into force. It is considered necessary to allow the instrument to be laid and approved in time for local authorities to approve their schemes for 2020-21 by the statutory deadline of 31 January 2020 and to provide the Assembly with sufficient time for scrutiny in line with Standing Orders.
- 2.2 Paragraph 4.19 makes reference to amendments being made that are consequential on a suite of Regulations that will implement provision in the Parental Bereavement (Leave and Pay) Act 2018 that are not expected to come into force until April 2020. It is considered necessary to allow the changes to be incorporated into council tax reduction schemes for 2020-21 in order to avoid having any period where persons in receipt of parental bereavement pay would not be able to access a reduction that they would have been entitled to but for that parental bereavement pay.

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 to reflect increases in the cost-of living. It also makes minor technical and consequential changes to the 2013 CTRS Regulations.

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. 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 these passporting benefits.

- 4.7 If an applicant does not receive any of the passporting 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.
- 4.8 For CTRS, 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.
- 4.9 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.
- 4.10 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).
- 4.11 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.
- 4.12 If a working-age applicant has capital of between £6,000 and £16,000, 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 £250 of capital between £6,000 and £16,000. 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.
- 4.13 If a pension-age applicant has capital of between £10,000 and £16,000, the local authority will treat it as income. The local authority will assume an

applicant has an income of £1 a week for each £500 of capital between £10,000 and £16,000. 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 2020-21

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 (2019), which is 1.7%.
- 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 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 have been 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.

Additional Consequential Amendments

4.16 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.

Same sex civil partnerships

4.17 Under the Civil Partnerships, Marriages and Deaths (Registration etc.) Act 2019, the Civil Partnership Act 2004 must be amended by 31 December 2019 to allow for opposite sex civil partnerships. This statutory instrument therefore includes amendments to ensure that opposite sex civil partnerships are treated on an equitable basis with opposite sex and same sex marriages and same sex civil partnerships for the purposes of CTRS.

4.18 The Civil Partnership (Opposite-sex Couples) Regulations 2019 were made on 5 November 2019 and come into force in 2 December 2019. It is recognised that at the point of laying this statutory instrument anticipates the changes to the primary legislation but this is necessary to allow the instrument to be laid and approved in time for local authorities to approve their schemes for 2020-21 by the statutory deadline of 31 January 2020 and to provide the Assembly with sufficient time for scrutiny in line with Standing Orders.

Parental Bereavement Leave and Pay

4.19 The Parental Bereavement (Leave and Pay) Act 2018 amends or inserts a number of provisions into the Employment Rights Act 1996 and the Social Security Contributions and Benefits Act 1992, providing powers to make regulations in relation to Parental Bereavement Leave and pay for eligible parents. The introduction of a specific, statutory entitlement to parental bereavement is intended to provide certainty for employed parents and employers in relation to parents' right to time off from work following the death of a child.

4.20 The Regulations that implement parental bereavement leave and pay are intended to come into force on 6 April 2020 and changes to the 2013 regulations to reflect this are being made in this statutory instrument. Again it is recognised that this statutory instrument anticipates the coming into effect of the primary legislation but, as above, this is necessary to allow the changes to be incorporated into council tax reduction schemes for 2020-21 and to avoid having any period where persons in receipt of parental bereavement pay would not be able to access a reduction that they would have been entitled to but for that parental bereavement pay.

EU Exit related changes

4.21 A new basis of stay has been created for EEA (European Economic Area) and Swiss nationals under the EU Settlement Scheme (EUSS) as of 30 March 2019. The EUSS is the means by which EEA and Swiss nationals and their family members, resident in the UK by the specified date, can apply for a UK immigration status which will protect their entitlements and right to remain in the UK. The specified date has been set at 31 December 2020 in the event the UK agrees a deal with the EU and the deadline for applying to the EUSS is 30 June 2021. If the UK leaves the EU without a deal, then EEA and Swiss nationals will need to be living in the UK before it leaves the EU to apply and the deadline for applying will be 31 December 2020.

4.22 Provision in the CTRS which makes provision about persons treated as not being in Great Britain has been updated to clarify that limited leave to enter or remain granted under the EUSS (also referred to as pre settled status) is not a relevant right to reside for the purposes of being habitually resident in the United Kingdom. The Regulations update references to the Immigration (European Economic Area) Regulations 2006 with references to the Immigration (European Economic Area) Regulations 2016 as the latter revoked the former. The Regulations also provide that a number of rights to

rights to reside established for nationals of European Economic Area states in connection with the United Kingdom's withdrawal from the EU are not relevant for the purposes of establishing habitual residence.

PART 2: 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 would lead to small decreases 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 If consequential amendments are not made to the 2013 CTRS Regulations, this would mean that they would not 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 for 2020-21 (1.7%, as measured by CPI). The personal allowances for pensioners will be uprated to align with those for Housing Benefit and the benefits 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.
- 7 The necessary technical and consequential amendments would also be made.

Costs and Benefits

Costs

Option 1 – Do nothing

- 8 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.
- 9 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.
- 10 If the technical and consequential amendments to the 2013 CTRS Regulations are not made, they would no longer align with Housing Benefit provisions and 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

- 11 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

- 12 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

- 13 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 (1.7%).

- 14 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.
- 15 If the financial figures in relation to non-dependant deduction rates are updated, 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.
- 16 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

- 17 Local government and the voluntary sector were consulted during the development of proposals to introduce CTRS in Wales. Draft regulations for 2020-21 have been shared with local authorities.
- 18 This legislation will not affect the business sector.

Duties

- 19 In drafting these Regulations consideration has been given to the duty on Welsh Ministers to promote equality and eliminate discrimination.
- 20 An Equality Impact Assessment was completed for the introduction of the 2013 CTRS Regulations.
- 21 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.
- 22 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.
- 23 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

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

Consultation

- 25 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

- 26 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.