

## **Constitutional and Legislative Affairs Committee Report**

**CLA(4)27-13**

### **CLA329 - The Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013**

Section 13A of the Local Government Finance Act 1992 enables the Welsh Ministers to make regulations in connection with council tax reduction schemes. Paragraph 6 of Schedule 1B to the 1992 Act enables the Welsh Ministers to prescribe by regulations a default scheme. The default scheme is to take effect, in respect of dwellings situated in the area of a billing authority, if the authority doesn't make its own scheme in accordance with any duty imposed by virtue of regulations made by the Welsh Ministers.

The default scheme prescribed by the Welsh Ministers is set out in the Schedule to these Regulations.

#### **Procedure: Affirmative**

#### **1. Technical Scrutiny**

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument

1. 'The Fund' is defined in regulation 2 as "moneys made available from time to time by the Secretary of State for the benefit of persons eligible for payment in accordance with the provisions of a scheme established by the Secretary of State on 24 April 1992 or, in Scotland, on 10 April 1992". This presupposes that only one scheme was made by any Secretary of State on those dates. The definition of the Fund is unclear as the subject matter of the scheme is not identified.

[Standing Order 21.2 (v) – that the meaning needs further explanation]

2. The definition of 'independent hospital' in regulation 2 includes "an independent healthcare service as defined by s 10F of the National Health Service (Scotland) Act 1978". 'Independent healthcare service' in the 1978 Act includes (e.g.) an independent ambulance service. Ambulance services are not included in the definition of 'independent hospital' that relate to England or Wales. The 1978 Act does contain a definition of 'independent hospital' for Scotland, so it appears that the incorrect definition has been

cited in the current Regulations.

[Standing Order 21.2(vi) – defective drafting.]

3. The definition of ‘rent’ in paragraph 2 of the Scheme is “means “eligible rent” to which regulation 12 of the Housing Benefit (Persons who have acquired the qualifying age for state pension credit) Regulations 2006 refer”. In fact it is regulation 12B that deals with ‘eligible rent’.

[Standing Order 21.2(vi) – defective drafting.]

4. Paragraph 19(5)(e) of the Scheme refers to “a person granted limited leave to enter or remain in the United Kingdom outside the provisions of the rules made under section 3(2) of the Immigration Act 1971 on the rejection of their claim for asylum;” It appears from this reference that the rules concern ‘the rejection of their claim’. However the Welsh text states: ‘ar ôl gwrthod ei hawliad am loches’ (after rejection of their claim for asylum). The ambiguity of the English text is unhelpful to the reader.

[Standing Order 21.2(vi) – defective drafting.]

5. Paragraph 55(8)(j) of the Scheme refers to care provided “by any of the establishments mentioned in section 18(5) of the Childcare Act 2006 in circumstances where the care is not included in the meaning of “childcare” for the purposes of Part 1 and Part 3 of that Act by virtue of section 18(5) of that Act;” The care provided by any of the establishments mentioned in section 18(5) Childcare Act 2006 will never be childcare for the purposes of that Act (that is the point of s 18(5)). It appears that the second reference should be to section 18(3) which excludes school education and healthcare from the definition of childcare.

[Standing Order 21.2(vi) – defective drafting.]

6. Paragraph 57(14)(c) of the Scheme refers to the Local Government (Scotland) Act 1994. The correct title is the Local Government etc. (Scotland) Act 1994; “etc.” has been omitted in the Regulations.

[Standing Order 21.2(vi) – defective drafting.]

7. Paragraph 59(4)(a) of the Scheme refers to ‘any expenses deducted under sub-paragraph (3)(a), or, as the case may be, (5) of paragraph 58;’. Sub-paragraph (5) of paragraph 58 states that ‘no deduction is to be made under paragraph [this should read ‘sub-paragraph’] (3)(a) or (4), in respect of...’. The cross-reference in paragraph 59(4)(a) is therefore incorrect.

[Standing Order 21.2(vi) – defective drafting.]

8. Paragraph 64(4)(e) of the Scheme refers to ‘paragraph 49(1)(a)’ of Schedule 9. There is no such paragraph as paragraph 49 is not divided into numbered paragraphs. I

[Standing Order 21.2(vi) – defective drafting.]

9. Paragraph 65(10)(b) of the Scheme states that part-week “in relation to an amount mentioned in sub-paragraph (5)(b), means a period of less than a week for which housing benefit is payable;”. Sub-paragraph (5)(b) does not relate to housing benefit, but to state pension credit. Housing benefit is dealt with in sub-paragraph (5)(c).

[Standing Order 21.2(vi) – defective drafting.]

10-. The definition of “full time course of study” in paragraph 70(1) of the Scheme refers in the English text in sub-paragraph (b) to section 14 of the Education Act 2012. There is no such Act. Sub-paragraphs (a) and (b)(i) refer to section 14 of the Education Act 2002. Sub-paragraph (b) was probably intended to refer to the same Act. The Welsh text is correct.

[Standing Order 21.2(vi) – defective drafting.]

11. In paragraph 78(2)(b) of the Scheme, "quarter" is defined by reference to the Education (Student Support) Regulations 2005. Those Regulations were revoked in 2006 (for both England and Wales). The statutory instrument that revoked them has itself been revoked since that time. It is defective drafting (a) to define a relatively simple term such as this by reference to another instrument; and (b) it is all the more defective when the instrument in question has been revoked. Indeed it is not clear whether the definition is operative at all in these circumstances.

[Standing Order 21.2(vi) – defective drafting.]

12. In paragraph 79 of the Scheme, the reference to the Education (Student Support) (Northern Ireland) Order 1988 is incorrect. There is no 1988 Order. The date of the Order in question is 1998.

[Standing Order 21.2(vi) – defective drafting.]

13. Paragraph 89(3) of the Scheme states that:

“(3) Where a mover’s liability to pay council tax in respect of the new dwelling is to a second authority, the extended reduction (qualifying contributory benefits) may take the form of a payment from this authority to—

(a) the second authority; or

(b) the mover directly.”

This appears to suggest that the second authority makes payment to itself (or to the mover).

[Standing Order 21.2(vi) – defective drafting.]

14. Paragraph 92 of the Scheme states as follows:

**“Extended reductions: persons who are not pensioners (general)**

92. Paragraphs 93 to 102 apply in relation to applicants who are not pensioners.”

Paragraph 103 also applies to extended reductions for persons who are not pensioners. Paragraph 92 is therefore accurate, but incomplete, and therefore unhelpful.

[Standing Order 21.2(vi) – defective drafting.]

15. In the English text of paragraph 97(1) of the Scheme, the cross-reference to paragraph 93(1)(b) is followed by “(extended reductions: persons who are not pensioners)”. This does not appear in the Welsh text. [Standing Order 21.2(vii) – inconsistencies between the English and Welsh texts]

16. Paragraph 10(2) of Schedule 3 starts “For the purposes of sub-paragraph (1)(a)(vi), a person who has ceased to be registered as blind ...”. Sub-paragraph (1)(a)(vi) does not deal with persons who are blind, but with users of invalid carriages and other vehicles. It is sub-paragraph (1)(a)(vii) that refers to persons who are blind.

[Standing Order 21.2(vi) – defective drafting.]

17. Paragraph 9 of Schedule 6 starts: “In a case where paragraphs 4, 6, 7 and 9 of this Schedule do not apply to the applicant ...”. The cross-reference to that paragraph itself does not make sense. It is unclear what the correct reference should be.

[Standing Order 21.2(vi) – defective drafting.]

18. The English text of paragraph 32(e) of Schedule 7 refers to section 18 of the National Health Service Act 2006. The Welsh text refers more precisely to section 18(2)(c).

[Standing Order 21.2(vii) – inconsistencies between the English and Welsh texts]

19. Paragraph 40 of Schedule 7 refers to “paragraph 78(3) of this scheme (treatment of payments from access funds)”. Paragraph 78(3) does not deal with access funds; access funds are dealt with in paragraph 80.

[Standing Order 21.2(vi) – defective drafting.]

## 2. Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument:

20. Paragraphs 68 and 69 of the Scheme state that:

*“68. The capital of an applicant who is a pensioner, calculated in accordance with this Part, is to be treated as if it were a weekly income of—*

- (a) £1 for each £500 in excess of £10,000 but not exceeding £16,000; and*
- (b) £1 for any excess which is not a complete £500.”*

*“69. The capital of an applicant who is not a pensioner, calculated in accordance with this Part, is to be treated as if it were a weekly income of—*

- (a) £1 for each complete £250 in excess of £6,000 but not exceeding £16,000;*
- (b) £1 for any excess which is not a complete £250.”*

These paragraphs assume a return on capital of over 10% and 20% respectively. These appear to be unrealistic assumptions.

[Standing Order 21.3(ii) – that it gives rise to issues of public policy likely to be of interest to the Assembly.]

21. The Regulations, as a whole, are completely impenetrable. To what extent that is due to the policy and to what extent that is due to the drafting is unclear, which is why this is reported as a merits point rather than a technical point. Even to lawyers with an extensive background in statutory interpretation, it is impossible to fathom the policy intentions from the Regulations. Local authority officials charged with implementing them will find it completely impossible to be certain that they are implementing the Regulations correctly. It will be even worse for members of the public (and those such as CABx who advise them) who seek to ensure that they are being granted the benefits to which they are entitled under the schemes. This is due to the complexity of every part of the Regulations.

There are many aspects to this but an example is cited in paragraph 11 above where a term is defined by reference to a set of Regulations that has been revoked; and the Statutory Instrument revoking those Regulations has itself been revoked. So the user is sent on a ridiculous hunt for a simple definition of "quarter" that could easily have been defined in the Regulations themselves.

There are also lots of instances of provisions depending on events that must surely have no relevance to council tax reductions in 2014. Examples are grants awarded under a 1962 Act and others under SIs revoked in 2006 without savings that would apply now. Quite what relevance “a person in Great Britain who left the territory of Montserrat after 1 November 1995 because of the effect on that territory of a volcanic eruption” has to council tax in Wales in 2013 is anyone’s guess.

The Welsh Government has, quite rightly, advocated accessible legislation. These Regulations show how not to achieve that.

[Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.]

### **3. Government Response**

A Government response was not available at the time of the meeting.

### **4. Committee Consideration**

The Committee considered the regulations on 18 November 2013 and report to the Assembly in line with the technical and merits points referred to in sections 1 and 2 above.