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Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

David Melding AM,
Chair of the Constitutional and
Legislative Affairs Committee
29 High Street
Barry
CF62 7EB

31 January 2013

Dear David

Thank you for your letter of 16 January inviting me to give evidence to the Constitutional and Legislative Affairs Committee in relation to the Local Democracy (Wales) Bill and the handling of the two sets of council tax reduction scheme regulations considered by the Assembly on 19 December. I would be happy to attend the meeting on 4th February to provide evidence to the Committee.

I also enclose a briefing note in relation to the council tax reduction scheme regulations this supplements the information provided in the Explanatory Memorandum that accompanied the regulations.

I would be happy to provide any further information to the Committee on 4 February.

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Council Tax Reduction Scheme Regulations – Evidence for the Constitutional & Legislative Affairs Committee

1. Handling of the two sets of council tax reduction scheme regulations considered by National Assembly for Wales on 19th December

At the beginning of November it became apparent that it might be necessary for Standing Orders to be suspended in relation to the Council Tax Reduction Scheme (Default Scheme) (Wales) Regulations 2012 and the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012 (“the 2012 regulations”) in order for them to come into force with sufficient time for local authorities to undertake their local preparations to adopt a scheme by 31st January 2013.

Under the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012 local authorities are required to adopt their local schemes by 31 January otherwise the default scheme (set out in the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2012) will be imposed.

The reasons that the regulations were unlikely to be finalised in time were:

- The Local Government Finance Act 2012 which provides Welsh Ministers with executive powers to introduce council tax reduction schemes in Wales via subordinate legislation only achieved Royal Assent on 31st October.
- Preparing the Regulations was a highly complex and demanding task requiring detailed knowledge of the UK benefit system. It was therefore necessary to rely on many of the previous elements of the existing Council Tax Benefit Regulations, and to replicate them, with amendments, in new Regulations. It was also necessary for the Regulations to take account of the introduction of Universal Credit, which is being developed by central government. To assist in developing the technical aspects of the scheme, such as the method to be adopted in calculating income, officials have had to have regard to the draft Regulations which England prepared, as they have the benefit of the input of colleagues in DWP. In order to finalise the Wales Regulations officials hoped to see finalised versions of the England Regulations before the end of October however, these were delayed until mid November.
- The level of the financial transfer from the UK Government to provide council tax support in Wales would not be confirmed until the Autumn Statement. The approach in the 2012 Regulations relies on a single national framework scheme, which rebates a maximum percentage of an applicant’s council tax liability, and the maximum percentage rebate is calculated to take into account the shortfall in funding provided by the UK Government. This maximum percentage figure must be specified within the Regulations. If the

provisional funding figure from DWP and HMT had been used, which was £8 million lower than the final transfer figure, then the percentage figure set out in the regulations would have been 87%. This would have equated to households on benefit losing a further £25 a year on average.

Having recognised the possibility of having to suspend Standing Orders a number of steps were taken to try to avoid this situation including:

- official and ministerial efforts to obtain confirmation of the final funding figure in advance of the Autumn Statement on 5th December; and
- writing to the chairs of the Constitutional and Legislative Affairs Committee and the Communities Equality and Local Government Committee asking whether their committee would be prepared to agree a date on which it would consider the regulations and the date on which it would report by to enable the scheduling of a plenary debate.

However because the UK Government was not prepared to provide the funding figure in advance of the Autumn Statement it became apparent that the regulations would have to be finalised, laid and debated on 5th December. This was the final opportunity to have a plenary debate before Christmas Recess. Having taken this decision a number of further steps were taken to facilitate the debate on the regulations prior to them being laid:

- Issuing a written statement alerting all AMs on the need to suspend Standing Orders to vote on the regulations;
- Individual technical briefings provided to opposition parties - Peter Black, Jocelyn Davies and Janet Finch-Saunders;
- Issuing the finalised regulations in draft, but without the percentage figure, to all AMs a week before the regulations were due to be debated;
- Explanatory email provided by Special Advisor to all Business Managers.

On the 5th December the Assembly did not support the motion to suspend Standing Orders, falling one vote short of the required two-thirds majority, and therefore a debate on the regulations did not proceed. As a result the First Minister took the decision to ask the Presiding Officer to recall the Assembly during Recess to vote on the regulations to ensure that local authorities were in a position to make arrangements to adopt their local schemes before 31st January. To facilitate this debate a sunset clause was inserted into the regulations limiting the scheme to the 2013-14 financial

year, and committing Welsh Ministers to bring forward regulations relating to subsequent financial years by 1st January 2014.

Given the extremely challenging timescales for drafting these regulations and as they are complex, reflecting a number of technical alterations, and there is no pre-existing equivalent in Welsh, they were only provided in English. The Chair of the Committee was alerted to the possibility of this in a ministerial letter issued on 5th November.

2. The Council Tax Reduction Schemes (Prescribed Requirements And Default Scheme) (Wales) (Amendment) Regulations 2013 laid on 17th January

This amending set of regulations makes changes to both the Council Tax Reduction Scheme (Default Scheme) (Wales) Regulations 2012 and the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012. The following changes have been made:

- Up-rating of the figures used to calculate entitlement to a reduction, and subsequently the amount of reduction which eligible applicants will receive on their council tax bills, in line with increases in costs of living and earnings following the Autumn Statement;
- Amending an error contained within the provisions relating to the manner of making an award or payment of a reduction under a scheme, where the regulations incorrectly contained the word “appropriate” as opposed to “inappropriate”;
- Addressing the minor technical errors identified during the scrutiny of the regulations by the Constitutional and Legislative Affairs Committee, as set out in their reports; and
- Increasing the maximum percentage by which a household’s council tax liability may be reduced under the scheme, from 90% to 100%, as a result of the additional funding identified.

It is only as a result of financial management at the year end that it has been possible to identify additional funding that could be provided to local authorities to support the increase in the maximum percentage reduction available under a council tax reduction scheme. Consequently arrangements had to be made to lay and debate the regulations as soon as possible, so that local authorities were in a position to make the necessary amendments to their local schemes and have sufficient time for the schemes to be adopted by 31 January. For a scheme to be adopted it must be approved by full council.

However because the 2012 regulations had been passed in December local authorities had already undertaken extensive preparations to adopt their schemes. This included local consultation on the areas of local discretion permitted under the Council Tax Reduction Schemes and

Prescribed Requirements (Wales) Regulations 2012 and the development of local schemes for adoption. The amendments made to the 2012 regulations only resulted in local authorities having to alter the financial thresholds in their local schemes. If the 2012 regulations had not been passed in December then local authorities would not have been able to make any preparations to adopt a scheme and therefore it is unlikely that they would have been in a position to adopt a scheme before 31st January.

These regulations were laid on 17th January and given the timing constraints mentioned above, there was a motion to suspend Standing Orders to allow the Assembly to vote on the regulations on 22nd January. As with the 2012 Regulations, these regulations were only provided in English.

In the letters provided to the Chairs of CELG and CLAC advance notice was given that a number of sets of regulations would be required for the effective operation of council tax reduction schemes in Wales. Briefing on this was also provided during the technical briefings to opposition parties and it was mentioned in the written statement issued at the end of November. Details of all of the regulations that would be required and the timescales for bringing them forward were provided to all AMs in a letter issued on 17th January.

3. The three other sets of regulations relating to council tax reduction schemes laid on 17th January

Three other sets of regulations were laid at the same time as the Council Tax Reduction Schemes (Prescribed Requirements And Default Scheme) (Wales) (Amendment) Regulations 2013 on 17th January. These were:

The Council Tax Reduction Schemes (Transitional Provisions) (Wales) Regulations 2013

These regulations are required so that current claimants of council tax benefit can be automatically transferred to a council tax reduction scheme without having to make a new application.

These regulations had to be in place before local authorities can start to issue their demand notices for council tax (usually from mid-February) because local authorities have to assess a claimant's entitlement to a reduction under a council tax reduction scheme in order to determine a claimant's remaining council tax liability.

As these regulations are also subject to the affirmative procedure a decision was taken that they should be tabled alongside the Council Tax Reduction Schemes (Prescribed Requirements And Default Scheme) (Wales) (Amendment) Regulations 2013 and voted on at the same time, provided the Assembly supported the motion to suspend Standing Orders.

As these regulations are complex, reflecting a number of technical alterations and there is no pre-existing equivalent in Welsh, they were only provided in English. The Chair of the Committee was alerted to the possibility of this in a ministerial letter issued on 5th November.

The Council Tax (Demand Notices) (Wales) (Amendment) Regulations 2013

These regulations and the Council Tax (Demand Notices) (Wales) Regulations 1993 which govern the content that local authorities must include in the council tax bills they issue. They need to be amended to reflect the abolition of council tax benefit and the introduction of council tax reduction schemes. They must be in force before local authorities begin to issue their demand notices (bills) for council tax in mid-February.

These regulations are subject to the negative resolution procedure and were laid on 17 January, with a coming into force date of 8 February. The amending provisions will therefore be in place in time for the local authorities to incorporate the changes within their 2013-14 bills.

These regulations were provided bilingually (the demand notice regulations form part of the pre-existing council tax system in Wales and have been routinely updated in the past to reflect similar changes).

The Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2013

These regulations amend the Council Tax (Administration and Enforcement) Regulations 1992 to reflect the move from council tax benefit to council tax reduction schemes. They also allow instalment dates to be changed from the current 10 months cycle to 12 months to assist those claimants required to pay council tax for the first time to spread the costs more evenly throughout the year.

Whilst the majority of the provisions of these regulations will not come into legal effect until 1 April 2013, the availability of 12 monthly instalments needs to be reflected within the demand notices which local authorities begin to issue from mid February. These regulations are subject to the negative procedure, they were laid on 17 January, with a coming into force date of 8 February. Local authorities will therefore be able to reflect the amended instalment provisions within their 2013-14 bills.

These regulations were provided bilingually (the administration and enforcement regulations form part of the pre-existing council tax system in Wales and have been routinely updated in the past to reflect similar changes).

In the letters provided to the Chairs of CELG and CLAC advance notice was given that a number of sets of regulations would be required for the effective operation of council tax reduction schemes in Wales. Briefing on

this was also provided during the technical briefings to opposition parties and it was mentioned in the written statement issued at the end of November. Details of all of the regulations that would be required and the timescales for bringing them forward was provided to all AMs in a letter issued on 17th January.

4. The remaining sets of regulations to be brought forward in relation to council tax reduction schemes

It is necessary to introduce three further sets of regulations to enable the effective operation of council tax reduction schemes in Wales from 1st April 2013. These are:

i) The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013

These regulations will be made under new provisions in the Local Government Finance Act 1992 (as inserted by the Local Government Finance Act 2012), to create fraud and offences in relation to the new council tax reduction schemes.

They are subject to the affirmative procedure and will be made bilingually

ii) The Valuation Tribunal for Wales (Amendment) Regulation 2013

These regulations will amend the Valuation Tribunal Wales 2010 regulations to allow the VTW to hear appeals in connection with the new council tax reduction schemes.

They are subject to the negative procedure and will be made bilingually.

iii) The Council Tax Reduction Scheme (Information Sharing) (Wales) Regulations 2013 (title subject to change)

These regulations are being made under new provisions inserted in to the Local Government Finance Act 1992 in order to ensure that local authorities continue to have access to information from HMRC to assess an applicant's entitlement to support. Without this legal gateway HMRC will not provide the data and local authorities would have to means-test all applicants, adding significantly to the costs of administration and to the complexity for applicants.

These regulations are subject to the negative procedure. Given the complexity of these regulations and the fact that there are no pre-existing Welsh versions to work from it will only be possible to provide these regulations in English within the necessary timescales.

These three sets of regulations need to be in place by 1st April 2013, and the intention is table them together on or before 26th February. This will allow sufficient time for a plenary debate on the regulations detailed at point (i) to take place on 19th March (in compliance with Standing Orders),

and will also allow sufficient time for the negative resolution Regulations to come into force before 1st April.