

Lesley Griffiths AC / AM
Y Gweinidog Llywodraeth Leol a Busnes y Llywodraeth
Minister for Local Government and Government Business



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref:

David Melding AM
Chair, Constitutional & Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

10 July 2013

Dear David

I have considered the recent report produced by the Constitutional and Legislative Affairs Committee on the handling of the Council Tax Reduction Scheme Regulations. Whilst the report relates to evidence provided by the former Local Government and Communities Minister, I would like to respond to the main points raised in your report before the Committee considers new regulations for Council Tax Reduction Schemes in the autumn.

Conclusion 1: We accept that the development of a new council tax reduction scheme was not going to be easy and that it presented the Welsh Government with significant challenges. However, the lack of communication between the UK Government and the Welsh Government on this important area of public policy is disappointing. It has not helped the efficient and effective development of a new scheme and has contributed to the difficulties that the Welsh Government has faced in bringing forward its legislative proposals.

Firstly, I would like to re-emphasise the scale of the challenge the Welsh Government faced in developing a replacement for a benefit system which had been in operation for 20 years, within very constrained timescales and with significantly reduced funding. Whilst I acknowledge there were difficulties during the legislative process, given the challenges encountered, it is important to recognise from 1 April 2013 council tax support has been provided to approximately 330,000 households in Wales. Most of these claimants were transferred seamlessly from the old council tax benefit system to the new scheme without the need to submit a new claim.

The problems caused by the UK Government's reluctance to engage and to share timely information during our efforts to develop a replacement scheme were cited as a case study when the First Minister recently gave evidence to the Silk Commission as to how the devolution settlement is working in practice. The context for discussions was set when the

UK Government announced it would be abolishing Council Tax Benefit and transferring funding, net of a 10% cut, to the Devolved Administrations, and that it would be for those Administrations to develop replacement schemes if they wished to continue to provide support with council tax liability. I should emphasise this announcement was made without any prior engagement with the Welsh Government.

However, given the UK Government's experience in operating council tax benefit, the inter-dependencies between our Council Tax Reduction Schemes and the social security benefits system and the wider welfare reforms, effective communication and information sharing with UK Government will continue to be important in developing regulations for 2014-15 onwards. I will, therefore, be seeking assurance the appropriate communication mechanisms are in place to facilitate the timely drafting of the regulations.

Conclusion 2: We believe there are lessons that the Welsh Government should learn about its approach to dealing with new and complex policy areas. Reviewing the methodology for undertaking such work, including its planning, is an internal matter for the Welsh Government; nevertheless, we hope that it takes the opportunity provided by this episode to improve its processes so that the difficulties faced are not repeated in the future, if at all possible.

I agree it is important lessons are learnt from our experience with the main Council Tax Reduction Scheme Regulations. Since then, seven additional sets of regulations which are required for the effective operation of the new schemes have been successfully made. Many of these were also technically complex or dependent on information from, and action by, UK Government departments. I believe this demonstrates the Welsh Government has learnt from this experience.

A detailed example of this is provided by the letter circulated by the Minister for Local Government and Communities to Party Spokespeople on 19 February 2013. This letter was issued to provide early notification of the timing issues concerning some of the regulations so Members were forewarned in the event these regulations were delayed. A copy of this correspondence is attached for your information as an annexe to this letter.

Detailed plans for the making of all sets of regulations connected with the creation and implementation of the new schemes across Wales were prepared from the outset. Making the regulations was one work-stream amongst a number of interdependent activities which included the development and design of the scheme.

Conclusion 3: We believe that the Welsh Government confused the political process with the legislative process. In doing so we believe that the Welsh Government may have, at times, lost sight of the Assembly's role as a legislative body.

The compression of the legislative process was a result of the extremely challenging timescales, the complexity of the legislation and the UK Government's delays in sharing crucial information. The Assembly's role as a legislative body was, and is, fully recognised. However, the Welsh Government also had an obligation to protect vulnerable communities by ensuring replacement schemes were operational prior to the abolition of council tax benefit. It also worth noting, despite the very tight turnaround times, the regulations for Wales incorporate a number of simplifications which reduce the costs of administering the schemes.

Conclusion 4: We believe that the Minister should have drawn the Committee's attention to his concerns about the making of these regulations much earlier in the process. Notifying the committee on 5 November of the problems was simply too late. There is an obvious contradiction between the reasoning given in the written evidence and the Minister's oral evidence. This reinforces the need for scrutiny that should have taken place in this instance on a draft set of regulations with an explanation of the outstanding matters. We expect the Welsh Government to follow that practice in future.

Extensive efforts were taken to facilitate scrutiny of the regulations before they were laid including issuing draft regulations for technical consultation in September, sharing the draft regulations with all Members on 28 November and providing technical briefings to opposition parties.

Nevertheless, in bringing forward the new sets of Council Tax Reduction Scheme regulations, in line with the sunset clause agreed by all parties, I will ensure the relevant committees are engaged at the earliest opportunity.

Recommendation: We strongly recommend that, when the Welsh Government is to make subordinate legislation that is complex and lengthy in nature, or where it is facing time constraints, it seeks to engage with the Constitutional and Legislative Affairs Committee and relevant subject Committee at the earliest opportunity. This may involve providing advance copies of regulations in draft or laying incomplete regulations with a clear explanation of the reasons why this is being done.

I recognise the importance of engaging with the relevant committees at the earliest opportunity in order to facilitate the scrutiny process. As the Committee is aware, the figures were not available until late afternoon on 5 December, 2012.

It is also important to understand the percentage figure was an integral part of the regulations and, therefore, the scrutiny process. This figure determined the level of support a claimant would be eligible to receive based on the extent of the shortfall in funding transferred by the UK Government. Furthermore, if the £214m estimate provided by the UK Government in May 2012 had been used in the regulations, the Welsh Government would have had to set the percentage in the regulations at 87% instead of 90%. This would have equated to households on benefit losing a further £25 a year on average, on top of the £67 they would already have been losing by setting the percentage at 90%.

I agree the engagement around these regulations could have been improved if it had been possible for an incomplete set of regulations to have been made available in advance of the final funding figure being determined. I will, therefore, be recommending this proposal be referred to the Business Committee for their consideration.

Conclusion 5: We will always endeavour to work flexibly to assist the Welsh Government, and, as such, to consider Statutory Instruments in a shorter period than the 20 days set by Standing Orders. However, we must balance this approach against our obligations to scrutinise legislation effectively and in an open and transparent way. The 20-day notice period is the norm which must be respected by the Welsh Government. There will only be occasional instances where it is reasonable and in the public interest to shorten this notice period.

Whilst I recognise the Committee has an obligation to scrutinise legislation effectively and transparently, in this instance the Welsh Government had a moral responsibility to act within exacting time-scales to ensure replacement schemes were in place so support could continue to be provided to some of our most vulnerable communities. This was why the Assembly was recalled before Christmas. The insertion of the sunset clause into the regulations, approved when the Assembly was recalled, was a direct response to concerns raised by Members about the time available to scrutinise the regulations.

In line with this sunset clause, I intend to lay new regulations in November, 2013 which will allow time for scrutiny of the regulations. I will also be engaging with the Committee at the earliest opportunity, including when draft regulations are issued for technical consultation.

I am happy to keep the Committee informed of progress in developing the new regulations.

A handwritten signature in cursive script that reads "Lesley Griffiths". The signature is written in black ink and is positioned in the middle of the page.

Lesley Griffiths AC / AM

Y Gweinidog Llywodraeth Leol a Busnes y Llywodraeth
Minister for Local Government and Government Business

Carl Sargeant AC / AM
Y Gweinidog Llywodraeth Leol a Chymunedau
Minister for Local Government and Communities



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref:

Peter Black AM
Party Spokesperson
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

15 February 2013

Dear Peter,

I wrote to all Assembly Members on 17th January in relation to the sets of regulations that need to be made or amended by 1st April to ensure the effective operation of council tax reduction schemes in Wales.

Of the seven sets of regulations detailed in this letter there are now three sets still to be laid and I am writing to you today to provide an update on these.

To ensure you are kept informed of progress I am providing a detailed paper as an annexe to this letter setting out the dependencies that could impact on the drafting of the regulations, the potential impact on the timescales for making the regulations and the actions that are being taken to manage these risks.

Two of the remaining sets of regulations are highly dependent on Whitehall processes which are outside our control and could affect the timescales to which we are working to ensure that the remaining regulations come into force by 1st April in compliance with Standing Orders.

I will ensure that you are kept fully informed of the progress of these remaining sets of regulations.

A handwritten signature in black ink that reads "Carl Sargeant". The signature is written in a cursive style.

Carl Sargeant AC / AM
Y Gweinidog Llywodraeth Leol a Chymunedau
Minister for Local Government and Communities

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence: Carl.Sargeant@wales.gsi.gov.uk

Carl Sargeant AC / AM
Y Gweinidog Llywodraeth Leol a Chymunedau
Minister for Local Government and Communities



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref:

Rhodri Glyn Thomas AM
Party Spokesperson
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

15 February 2013

Dear Rhodri,

I wrote to all Assembly Members on 17th January in relation to the sets of regulations that need to be made or amended by 1st April to ensure the effective operation of council tax reduction schemes in Wales.

Of the seven sets of regulations detailed in this letter there are now three sets still to be laid and I am writing to you today to provide an update on these.

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I will ensure that you are kept fully informed of the progress of these remaining sets of regulations.

A handwritten signature in black ink, appearing to read 'Carl Sargeant' with a stylized flourish at the end.

Carl Sargeant AC / AM
Y Gweinidog Llywodraeth Leol a Chymunedau
Minister for Local Government and Communities

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence: Carl.Sargeant@wales.gsi.gov.uk

Carl Sargeant AC / AM
Y Gweinidog Llywodraeth Leol a Chymunedau
Minister for Local Government and Communities



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref:

Janet Finch-Saunders AM
Party Spokesperson
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

15 February 2013

Dear Janet,

I wrote to all Assembly Members on 17th January in relation to the sets of regulations that need to be made or amended by 1st April to ensure the effective operation of council tax reduction schemes in Wales.

Of the seven sets of regulations detailed in this letter there are now three sets still to be laid and I am writing to you today to provide an update on these.

To ensure you are kept informed of progress I am providing a detailed paper as an annexe to this letter setting out the dependencies that could impact on the drafting of the regulations, the potential impact on the timescales for making the regulations and the actions that are being taken to manage these risks.

Two of the remaining sets of regulations are highly dependent on Whitehall processes which are outside our control and could affect the timescales to which we are working to ensure that the remaining regulations come into force by 1st April in compliance with Standing Orders.

I will ensure that you are kept fully informed of the progress of these remaining sets of regulations.

A handwritten signature in black ink that reads "Carl Sargeant".

Carl Sargeant AC / AM
Y Gweinidog Llywodraeth Leol a Chymunedau
Minister for Local Government and Communities

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence: Carl.Sargeant@wales.gsi.gov.uk

Update On The Remaining Sets Of Council Tax Reduction Scheme Regulations

Purpose

1. To provide an update on progress in preparing the remaining sets of regulations required to be in place by 1 April 2013 to ensure the effective operation of council tax reduction schemes in Wales.

Background

2. Details of the other sets of regulations that need to be made or amended by 1st April to ensure the effective operation of council tax reduction schemes in Wales were provided in a letter to AMs on 17 January. Further detail was provided to the Constitutional and Legislative Affairs Committee as background to its consideration of the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2013 on 4 February.
3. There are three sets of regulations yet to be laid. These are:
 - a) The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013
 - b) The Council Tax Reduction Schemes (Information Sharing) (Wales) Regulations 2013 (title subject to change)
 - c) The Valuation Tribunal for Wales (Amendment) Regulations 2013
4. The regulations listed at a) and b) are dependent on a number of actions being undertaken by Whitehall. These are not within our control to manage and, although a series of mitigating actions is being put in place, there is a risk that the timetable for laying and/or debating the regulations in accordance with Assembly procedures could be affected.
5. We would be happy to provide technical briefings on these regulations to party spokespeople.

The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013 – Affirmative Procedure

6. These regulations are being made under new provisions in the Local Government Finance Act 1992 (as inserted by the Local Government Finance Act 2012) to create offences and enable billing authorities to impose penalties in relation to the new council tax reduction schemes.
7. These regulations are due to be laid in bilingual format on 19 February with a plenary debate scheduled to be held on 12 March. This is a week earlier than the original timetable indicated because the regulations contain a number of provisions relating to criminal offences which will not come into effect until 14 days after the regulations have been made. Therefore to ensure that all of the regulations are in force by 1st April, the laying and plenary dates have been brought forward.

8. The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013 (the Detection of Fraud Regulations) have an interdependency with the Local Authorities (Contracting Out of Tax Billing, Collection and Enforcement Functions) (Amendment) (Wales) Order 2013 (The Contracting Out Order). The Contracting Out Order deals with functions that have not been devolved to Welsh Ministers.
9. The Contracting Out Order cross refers to the Detection of Fraud Regulations and vice versa, as the collection of penalties associated with a number of the fraud offences is a function that local authorities are to be permitted to contract out to another body to collect on their behalf. This is established practice in relation to the collection of penalties imposed in connection with council tax matters and the Order is required to allow such contracting out arrangements to be extended to the new penalty provisions. The interdependency between the two instruments means that they must be made (signed) on the same day. This is logistically complicated as the Regulations must be approved by the Assembly while the Order must be approved by Parliament.
10. The Contracting Out Order amends the Local Authorities (Contracting Out of Tax Billing, Collection and Enforcement Functions) Order 1996 which applies to England and Wales. The Whitehall departments concerned have already amended the original order, in its application to England, but they did not establish whether Wales would need similar provision, or indeed notify us that these amendments were being made, until after their draft Order had been laid.
11. As such arrangements, have had to be made with the Department of Communities and Local Government (DCLG) and the Wales Office for the Local Authorities (Contracting Out of Tax Billing, Collection and Enforcement Functions) (Amendment) (Wales) Order 2013 to be made on behalf of Welsh Ministers. DCLG has agreed that their Secretary of State will lay the Order for Wales and will sign it once it has been approved by Parliament. The Wales Office is however, responsible for scheduling the debate and arranging for a Welsh MP to lead the debate on the Order.

Timing issues

12. In order to comply with the process for an instrument to be debated in Parliament it must first have been cleared by the Joint Committee on Statutory Instruments (JCSI). This Committee does not normally consider anything that was laid after the Monday of the previous week.
13. Although officials have been engaging with both DCLG and Wales Office since 24 January on this issue and requested that the Order be laid on 4 February so that it could be considered at JCSI on 13 February, it was not laid until 6 February. This means that it was not considered at JCSI on 13 February as we had hoped it would be. Furthermore it is not yet known whether the JCSI will meet on 27 February as it does not usually meet on a Wednesday after Recess. If this is the case then the instrument will not be considered until by JCSI until 6 March.

14. Officials have been advised that if the JCSI does consider, and subsequently clear, the Order on 27 February it could be taken in Commons Committee the week commencing 11 March. This would allow final for the approval of the Order before the Easter Recess, although officials are advised that even in this instance approval by 18 March would be challenging .
15. If the Order is not considered until JCSI on 6 March then Commons Committee would not normally be scheduled until the week commencing 18 March. Officials have been advised that expediting this debate would be a significant issue almost certainly needing Committee on the Floor of the House which is not often acceded to.

Mitigating action

16. Although these regulations are dependent on Whitehall processes and both the timing and agenda of the JCSI are outside our control a number of mitigating actions have been taken. These include:
- Letter from the Minister of Local Government and Communities to the Secretary of State Communities and Local Government requesting arrangements to be put in place to make the Contracting Out Order on behalf of Welsh Ministers;
 - Letter from the Secretary of State for Communities and Local Government to the Secretary of State for Wales requesting that the Wales Office arrange and support plenary debates on the Order; and
 - Letter from the First Minister to the Secretary of State for Wales setting out the timetable for the regulations and requesting assistance in ensuring that the Order is made within the same timescales.
17. Due to the dependency on the Contracting Out Order it is possible that the timescales for laying and debating the Detection of Fraud Regulations will be affected. However at present, we are proceeding with laying and making the Detection of Fraud Regulations in accordance with the timeline detailed in paragraph 6.

The Council Tax Reduction Schemes (Information Sharing) (Wales) Regulations 2013 (title subject to change) – Negative Procedure

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

19. Before these regulations can be laid they must be approved by the Commissioners for Her Majesty's Revenue and Customs.

Timing issues

20. As DCLG is leading on data-sharing discussions with DWP and HMRC on behalf of devolved administrations these regulations are dependent on the English regulations. These were due to be available in draft by the end of January. However officials have recently been informed that a draft version will not now be available until the end of February.
21. There is a possibility that DCLG could delay the England regulations further and still comply with Parliamentary processes, particularly because the regulations for England do not need to have formal approval of HMRC Commissioners prior to being laid.
22. However in order to comply with the Standing Orders for National Assembly for Wales and to ensure that the regulations for Wales come into force by 1 April these regulations will need to be drafted, agreed with HMRC, signed and laid by 8 March.
23. Given the timescales and the fact that there is no existing Welsh language version, these regulations will not be made bilingually.

Mitigating action

24. Officials are liaising with officials in DCLG regarding the progress of the regulations for England to ascertain exactly when they are likely to become available. This will be followed up with ministerial correspondence if required.
25. Concurrently officials are liaising with officials in HMRC to facilitate timely approval of the draft regulations by the Commissioners for HMRC. This will be followed up with ministerial correspondence if required.

The Valuation Tribunal for Wales (Amendment) Regulations 2013 – Negative Procedure

26. These regulations are currently being finalised and will be sent for translation by 15 February.
27. Once the completed regulations are available there will be a final discussion with Valuation Tribunal Wales to check the operation of the regulations. We are also required to consult with the Administrative Justice and Tribunals Council. A draft letter is currently being considered by Legal Services and will be issued shortly.
28. These regulations will be ready to be laid by 8 March so that they, in compliance with Standing Orders, can come into force by 1 April.