

Explanatory Memorandum to the Council Tax (Administration and Enforcement) (Amendment) (Wales) 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 (Administration and Enforcement) (Amendment) (Wales) Regulations 2019. I am satisfied that the benefits justify the likely costs.

Rebecca Evans AM
Minister for Finance and Trefnydd
14 February 2019

PART 1

Description

1. Regulations 47 and 48 of the Council Tax (Administration and Enforcement) Regulations 1992 (the 1992 regulations) currently make provision for council tax debtors to be committed to prison.
2. The purpose of the amendment is to amend regulations 47 and 48 in the 1992 Regulations to remove the power of enforcement by committal to prison from 1 April 2019.

Matters of special interest to the Constitutional and Legislative Affairs Committee

3. None.

Legislative background

4. Currently, a council tax debtor may be committed to prison for up to three months. A court may only do this if it is of the view that the debtor's failure to pay council tax is due to wilful refusal or culpable neglect and is required to conduct a means assessment to determine whether the individual has the means to pay.
5. The legislation which provides for this sanction and its limitations is paragraph 8 of Schedule 4 to the Local Government Finance Act 1992 (the 1992 Act) and the Regulations made under it. Those Regulations are the Council Tax (Administration and Enforcement) Regulations 1992 (the 1992 Regulations) and they originally applied to England and Wales. They were made by the Secretary of State for the Environment in relation to England and by the Secretary of State for Wales, as respects Wales. Since functions under the 1992 Act were devolved to Wales in 1999, the 1992 Regulations have been amended several times by Welsh Ministers, but the provisions which deal with imprisonment for wilful or culpably neglectful non-payment of council tax remain unchanged.
6. However, the 1992 Act does not require the Welsh Ministers to make provision for council tax debtors to be committed to prison. It sets out the scheme which is to apply, if regulations do make provision enabling imprisonment for non-payment of council tax. Therefore, the Welsh Ministers may remove the power of enforcement by committal to prison by way of subordinate legislation revoking the relevant provisions of the 1992 Regulations in relation to Wales.
7. The enabling provision in the 1992 Act would remain. This means that, should there be a desire in the future, to reinstate the sanction of imprisonment for non-payment of council tax, this could also be done through subordinate legislation.

Purpose and intended effect of the legislation

8. The purpose of the amendment is to ensure that, from 1 April 2019, it will no longer be possible for a local authority to start proceedings to commit an individual to prison for council tax debt.
9. This amendment will complement the wider work being undertaken by the Welsh Government to ‘work with local government to review council tax to make it fairer’, as outlined in *Taking Wales Forward*. The Welsh Government takes the view that imprisonment for non-payment of council tax is an outdated and disproportionate response to a civil debt issue and that the financial costs and the impact on households outweigh any benefits. There is a growing body of evidence that the key to the effective management of council tax debt is early engagement with households in arrears or at risk of getting into arrears.
10. While the provisions to commit people to prison for council tax debt are intended only to be used in instances of wilful refusal or culpable neglect, there is evidence that this is not always the case. In addition, the original powers were introduced as a tool to assist local authorities in enforcing payment: they are not intended to be used as a mechanism to punish people for non-payment. The amendment will only affect the powers relating to committal. The other powers available to local authorities to enforce the payment of council tax will remain in place.

Consultation

11. A 12-week consultation ran from 11 June 2018 to 3 September 2018 on the proposal to remove the sanction of imprisonment for non-payment of council tax. The consultation was published on the Welsh Government’s website, social media, and emailed to key contacts. It was drawn to the attention of a wide audience of key stakeholders including local authorities, debt advice organisations and citizens.
12. During the 12 weeks that the consultation was open, 188 substantive responses were received.
13. Two questions were posed: ‘Do you agree that the sanction of imprisonment for non payment of council tax should be removed?’ and ‘Do you have any other comments regarding this consultation?’
14. A large majority (84%) of respondents indicated their support for the removal of the sanction, with a significant proportion commenting that it was an inappropriate punishment for a civil debt; or that imprisonment should be reserved for violent or serious crimes; or that it disproportionately and unfairly affected those who earned less.
15. Some respondents suggested that the removal of the sanction should be supported by alternative methods of recovery, the most common suggestion being community service. On the whole, those local

authorities who responded were opposed to the removal of the sanction without other measures being implemented to prevent an increase in wilful refusal to pay council tax. However, the responses did not offer substantive evidence to support this view.

16. Those who disagreed with the proposal expressed a view that it would encourage others not to pay council tax; that it was unfair to those who do pay to subsidise those who wilfully refuse to pay; or that the alternate methods of enforcement were insufficient.
17. A summary of the consultation responses is available at:
<https://beta.gov.wales/removal-sanction-imprisonment-non-payment-council-tax>

Regulatory Impact Assessment

18. The Welsh Ministers' Code of Practice on carrying out Regulatory Impact Assessments was considered in relation to these Regulations.
19. A Regulatory Impact Assessment has been conducted and is included in Part 2 of this document.

PART 2 – REGULATORY IMPACT ASSESSMENT

20. This Regulatory Impact Assessment summarises three options in relation to the use of the sanction of imprisonment for the non-payment of council tax from 1 April 2019. All costs and benefits quantified within this Regulatory Impact Assessment are based on information and data available to the Welsh Government leading up to publication.

21. Three options have been considered in the development of the amendment to the regulations. The options considered were:

Option 1: Do nothing, continue with the current arrangements for committing council tax debtors to prison;

Option 2: Explore alternative methods of recovery for council tax debt prior to removing the sanction of imprisonment from 1 April 2020 or later;

Option 3: Introduce legislation for 1 April 2019 to remove the sanction, monitor any potential impact on collection rates and introduce any necessary measures subsequently.

Option 1: Do nothing, continue with the current arrangements for committing council tax debtors to prison

22. Option 1 would involve no changes to the 1992 Regulations and would enable council tax debtors to be committed to prison for up to three months where they have been deemed to be guilty of 'wilful refusal to pay' or 'culpable neglect to pay' by a Magistrates Court.

Costs

23. Option 1 would result in a continuation of the current regulations and therefore there would be no additional costs to the Welsh Government.

24. There would be no additional costs to local authorities. However, the costs of the committal process to local authorities and the courts and the costs of detaining individuals in prison would continue, as would the costs associated with addressing the longer term effects of imprisonment on individuals and their families.

Benefits

25. The provision to commit a council tax debtor to prison already exists, meaning that all the necessary functionality is in place.

26. There are no additional financial benefits associated with Option 1.

Disadvantages

27. In *Taking Wales Forward* and *Prosperity for All*, the Welsh Government committed to reviewing council tax to make it fairer. Doing nothing, Option 1, would not contribute towards the policy objective.

Option 1 Summary

28. Doing nothing would retain existing arrangements and would not result in any additional costs to the Welsh Government, local authorities or other public services. Neither would it deliver any additional benefits or contribute to the Welsh Government's policy objective to make council tax fairer. This is therefore not the preferred option.

Option 2: Explore alternative methods of recovery for council tax debt prior to removing the sanction of imprisonment from 1 April 2020 or later

29. Option 2 would involve deferring this amendment to the 1992 Regulations until 1 April 2020 or later to coincide with the introduction of additional methods for recovering council tax debt.

Costs

30. Option 2 would result in a continuation of the current regulations for a period and therefore there would be no additional costs to the Welsh Government in the short term.
31. There would be no additional costs to local authorities. However, as with Option 1, the costs of the committal process and imprisonment would continue.

Benefits

32. Option 2 is supported by local authorities. Deferring the amendment until new methods of recovery have been introduced could mitigate any potential loss in revenue by local authorities if collection rates were to be negatively affected. However, there is no substantive evidence to indicate that the removal of the sanction of imprisonment will have an impact on council tax collection rates.

Disadvantages

33. With the exception of local authorities, Option 2 was not supported by other respondents to the consultation. It would enable council tax debtors to continue to be committed to prison until additional measures have been researched, designed and implemented. A recent judicial review highlighted the margin of error in cases of individuals committed to prison for non-payment of council tax.

34. This option would delay achieving the policy objective for an indefinite period.

Option 2 Summary

35. Deferring the amendment until other methods of recovery were introduced would maintain the current system and would not result in additional costs to the Welsh Government or local authorities. However, the current costs of the committal process and imprisonment would continue. While local authorities expressed their support for this option, it would enable council tax debtors to continue to be committed to prison. This position was not supported by other responses to the consultation. This option would delay achieving the Welsh Government's policy objective to make council tax fairer without there being substantive evidence for doing so.

Option 3: Introduce legislation for 1 April 2019 to remove the sanction, monitor any potential impact on council tax collection rates and introduce any necessary measures subsequently

36. This option would involve amending the 1992 Regulations so that from 1 April 2019, it will no longer be possible to start proceedings to commit an individual to prison for council tax debt. Any impact would be monitored and new measures of recovery would be introduced if and when necessary.

Costs

37. There is no additional cost to the Welsh Government associated with this option.
38. There would be no direct costs to local authorities. However, local authorities take the view that this option will affect their collection rates.

Benefits

39. This option would achieve the policy objective of ensuring that individuals cannot be committed to prison for council tax debt from 1 April 2019. It would remove the financial costs associated with committal and imprisonment and end the negative impact this has on individuals and their families.
40. A period of monitoring would enable the Welsh Government to liaise with local government to consider whether additional measures of recovery are required.

Disadvantages

41. Some local authorities have expressed concern that the removal of the sanction of imprisonment might have an impact on council tax collection rates.

Option 3 Summary

42. This option would involve amending the 1992 Regulations so that from 1 April 2019, it will no longer be possible to start proceedings to commit an individual to prison for council tax debt. There are no direct costs to the Welsh Government or local authorities. Any impact, including on local collection rates, would be monitored and new measures of recovery would be introduced if and when necessary. This option contributes to the Welsh Government's policy objective and is the preferred option.

Analysis of other effects and impacts

Promoting Economic Opportunity for All (Tackling Poverty)

43. Council tax arrears disproportionately affect households on lower incomes. The amendment would ensure no individual is committed to prison for council tax arrears.

UNCRC

44. No negative impact on the rights of children has been identified. There is no evidence to indicate that this amendment will result in any reduction in funds available for local authorities. Therefore, there should be no impact on the provision of children's services by a local authority. Removing the sanction will end the negative impact on children arising from the imprisonment of a parent or guardian.

Welsh language

45. No effect on the opportunities to use the Welsh language or the equal treatment of the language has been identified in connection with this amendment.

Equalities

46. No negative impact on groups with a protected characteristic as a result of the amendment has been identified. The current use of the committal process and imprisonment disproportionately affects low-income households and its removal will end this inequality.

Well-being of Future Generations (Wales) Act 2015

47. Removing the sanction of imprisonment for non payment of council tax will help to contribute towards the wellbeing objective of a more equal Wales.

Impact on voluntary sector

48. No negative impact on voluntary sector organisations has been identified. Parts of the voluntary sector provide advice to people on council tax debt issues and the amendment will remove the need to advise on the committal process.

Competition Assessment

49. This amendment affects the administration of council tax and has no impact on businesses or competition. Therefore no competition assessment has been carried out.

Post implementation review

50. The Welsh Government will monitor the impact of the removal of the sanction of imprisonment for the non-payment of council tax through engagement with local authorities and other stakeholders and will consider introducing new measures for debt recovery if necessary.

Justice Impact Assessment

51. Policy officials have fully considered the impact of the Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2019 on the Ministry of Justice.
52. The Regulations do not introduce any new sanctions for non-payment of Council Tax in lieu of imprisonment. It is not envisaged that the Regulations will have a negative impact on any other area of the justice system.
53. In 2016/17, the average cost per prisoner in England and Wales was £22,293 (Direct Resource Expenditure) and £35,371 (Overall Resource Expenditure).¹ Currently, a council tax debtor may be committed to prison for up to three months. Not all cases recorded as resulting in committal by HMCTS result in a Custodial sentence being served. Consequently, it is difficult to estimate the cost saving with accuracy. However, there is evidently a direct saving to the Ministry of Justice.
54. Further, the Regulations will have the effect of reducing the administrative burden on the Ministry of Justice, namely as a result of a decrease in the volume of applications for Committal and the successful Suspended Committals for non-payment of Council Tax in Wales.
55. In accordance with Welsh Government policy, officials have engaged with the office of the Lord Chief Justice.

¹ Ministry of Justice. (2017). *Costs per place and costs per prisoner by individual prison*.