

Explanatory Memorandum to The Council Tax (Joint and Several Liability of Care Leavers) (Wales) Regulations 2022

This Explanatory Memorandum has been prepared by Local Government Finance Reform Division and is laid before Senedd Cymru 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 (Joint and Several Liability of Care Leavers) (Wales) Regulations 2022. I am satisfied that the benefits justify the likely costs.

Rebecca Evans MS
Minister for Finance and Local Government
04 March 2022

PART 1

Description

1. The Council Tax (Joint and Several Liability of Care Leavers) (Wales) Regulations 2022 (the Regulations) remove eligible care leavers aged 24 and under from joint and several liability for the payment of council tax in relation to chargeable dwellings in Wales.
2. The Regulations will have the effect of reducing the council tax liability for eligible care leavers to nil.
3. While it is legally imprecise to refer to people as being 'exempt' from council tax – a term which applies only to properties – this Explanatory Memorandum and Regulatory Impact Assessment uses this term to describe the effect of the Regulations.

Matters of special interest to the Legislation, Justice and Constitution Committee

4. None.

Legislative background

5. Paragraph 12 of Schedule 1 to the Local Government Finance Act 1992 (the 1992 Act), as inserted by section 156 of the Local Government and Elections (Wales) Act 2021, enables the Welsh Ministers to amend the 1992 Act by way of regulations to allow care-leavers to be exempt from joint or severally liability for council tax in relation to chargeable dwellings in Wales.
6. The power to prescribe certain dwellings as being exempt from council tax is contained in section 4 of the Local Government Finance Act 1992. The Council Tax (Exempt Dwellings) Order 1992 (SI 1992/558), made under section 4, applies to Wales and England and exempts over 20 categories of dwellings from council tax. Since devolution, the Order has been amended separately in respect of Wales.
7. The powers to prescribe additional categories of people to be disregarded for the purposes of determining a discount on the amount of council tax payable are contained in section 11(5) and paragraph 11 of Schedule 1 to the Local Government Finance Act 1992. The Council Tax (Additional Provisions for Discount Disregards) Regulations 1992 (SI 1992/552) (the 1992 Regulations) prescribe additional categories of disregards. They also apply on an Wales and England basis and have been amended separately since devolution. The legislation ensures that if an eligible care leaver meeting the circumstances prescribed lives with a person who would otherwise be entitled to a single adult discount on their council tax bill, the bill would be calculated as if the care leaver did not live at the premises. In other words, the person living with the care leaver would still be entitled to

the single adult discount. There are several categories of person disregarded for the purpose of a council tax discount, for example students and care workers.

8. The powers conferred on the Secretary of State in relation to the above transferred to the National Assembly for Wales under the National Assembly for Wales (Transfer of Functions) Order 1999. These powers were subsequently transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

Purpose and intended effect of the legislation

9. Where care leavers are living with a spouse or partner or in households with more than one adult, all of the adults may be held jointly and severally liable for the council tax bill on their home. Therefore a risk remains that a care leaver could be held liable for payment of council tax where another person (who is not exempt) fails to pay their council tax.
10. To provide care leavers with exemption from joint and several liability, changes to primary legislation have been made. Provisions in Schedule 1 to the Local Government Finance Act 1992 (amended by section 156 of the Local Government and Elections (Wales) Act 2021) enable Ministers to specify in regulations that eligible care leavers who meet the circumstances prescribed in the 1992 Regulations are disregarded for the purposes of a council tax discount and may not be held jointly or severally liable for council tax in relation to any chargeable dwelling in Wales.
11. The amendments will complement the wider work being undertaken by Welsh Government to “seek to reform council tax to ensure a fairer and more progressive system” as outlined in the Programme for Government 2021-2026.
12. Local authorities have discretionary powers to offer reductions on council tax bills and some have used these powers to exempt care leavers from liability. The legislative change is the final step in response to a proposal from local government to rectify inconsistencies in practice by replacing the discretionary relief made available by some authorities to some care leavers with a statutory requirement to provide an exemption.

Consultation

13. A public consultation ran from 20 August to 12 November 2021 seeking views on the policy proposal to remove the joint and several liability for the payment of council tax for eligible care leavers aged 24 or under. The consultation was published on the Welsh Government website and emailed to a wide audience. The consultation was drawn to the attention of key stakeholders including local authorities, sector representative bodies, professional bodies/associations, debt advice organisations and Citizen’s Advice.

14. There were 26 responses received to the consultation.

Summary of Responses

15. **Question 1:** Do you agree with the policy intent to remove care leavers from joint and several liability for council tax? Please give your reasons.

All 26 respondents replied to this question. Of these 25 agreed with the proposal to remove care leavers from joint and several liability for council tax. A common theme recognises that many young people leaving care are potentially vulnerable and this proposal would provide additional protection to them.

16. **Question 2:** We have proposed changes be made to the relevant legislation to remove care leavers from joint or several liability for council tax. Do you agree with this approach or can you suggest an alternative? All 26 respondents replied to this question and agreed legislation should be brought forward. No alternative approaches were suggested.

17. **Question 3:** We would like to know your views on the effects that the proposed policy would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

There were 16 responses for this question. The majority of responses did not consider the proposal would have a negative impact on the Welsh language or its use. No concerns were raised that the Welsh language would be adversely affected by the proposals in this consultation.

18. **Question 4:** Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

There were 13 responses for this question. No concerns were raised that the Welsh language would be adversely affected by the proposals in this consultation. One respondent did not consider the question relevant to the subject of the consultation.

19. **Question 5:** this question provided an opportunity to raise any related issues which were not specifically addressed by other questions. There were 10 responses to this question. Respondents considered a range of support should be made available to assist care leavers including financial education.

20. The majority of respondents welcomed:
 - the proposal to remove the risk to eligible care leavers of being liable for the payment of council tax where another person (who is not exempt) in the household fails to pay their council tax; and
 - the proposal to amend legislation to provide an exemption from this liability for eligible care leavers from 1 April 2022.
21. The consultation document and the summary of responses is available at: [Removal of eligible care leavers liability for payment of council tax | GOV.WALES](#)
22. The technical consultation on the draft statutory instrument was issued to Welsh local authorities and those who responded to the policy consultation for comment between 20 January and 10 February 2022. There was one response welcoming the policy and the Regulations.

PART 2 – REGULATORY IMPACT ASSESSMENT

23. This Regulatory Impact Assessment presents two options in relation to the introduction of council tax exemptions for care leavers from 1 April 2022. Specifically the removal of eligible care leavers from joint and several liability for the payment of council tax.
24. All costs and benefits quantified in this Regulatory Impact Assessment are based on information and data available to the Welsh Government leading up to publication.
25. Two options were considered in the development of the amendment to the regulations. The options were:
 - Option 1 Do nothing, continue with the current arrangements where local authorities may choose to implement their discretionary powers to provide relief to care leavers for joint and several liability for the payment of council tax.
 - Option 2 Introduce legislation by 1 April 2022 to exempt eligible care leavers from joint and several liability for the payment of council tax.

Option 1: Do nothing; continue with the current arrangements where local authorities may choose to implement their discretionary powers to provide relief.

26. Option 1 would not require any legislative changes. Current legislation reduces care leavers' council tax liability to nil apart from their joint and several liability for the payment of council tax. Local authorities may, at their discretion, continue to administer and implement schemes to exempt care leavers from this liability for council tax within their authority.

Costs to Welsh Government

27. Option 1 would result in the continuation of the current practice and there would be no additional costs to the Welsh Government.

Costs to local authorities

28. Until 2019 the cost to the average local authority of administering discretionary relief to care leavers is estimated to be £10,000 a year. Since 2019 legislation has been in place to reduce care leavers' council tax liability to nil apart from their joint and several liability for the payment of council tax. Local authorities choosing to provide discretionary relief for care leavers from joint and several liability for the payment of council tax would continue to incur a small cost.

Benefits

29. There would be no change in practice and no legislative changes would be required.

Disadvantages

30. In the updated *Programme for Government 2021-26*, the Welsh Government committed to seek to review council tax to make a fairer and more progressive system. It is unlikely that doing nothing, Option 1, would contribute towards the policy objective.
31. Current practice amongst local authorities is inconsistent. Not all local authorities might choose to provide discretionary relief to remove care leavers joint and several liability for the payment of council tax.
32. Care leavers are widely recognised as being particularly vulnerable and Option 1 would do nothing to support them.

Option 1 Summary

33. Doing nothing would retain existing arrangements and would not result in any additional costs to the Welsh Government. Local authorities would continue to bear the cost of administering any discretionary relief. The option would not further the Welsh Government's policy objective to reform council tax to ensure a fairer and more progressive system. It is therefore not the preferred option.

Option 2: Introduce legislation by 1 April 2022 to exempt eligible care leavers from joint and several liability for the payment of council tax.

34. Option 2 would involve introducing legislation to 'exempt' eligible care leavers from their joint and several liability for the payment of council tax from 1 April 2022.

Costs to Welsh Government

35. There would be a negligible impact on the council tax tax-base.

Costs to local authorities

36. The cost of the exemption would be borne by local authorities. Due to the low numbers of eligible care leavers who might be affected, the net costs would be negligible.

Benefits

37. Option 2 is supported by local authorities and representatives of the sector. The introduction of this legislation is the final step in response to a

request from local government to place the current provision of discretionary relief on a statutory basis.

38. Option 2 would ensure consistency in the council tax support available to care leavers in Wales aged 24 or under.

Disadvantages

39. A local authority may choose to adopt a broader definition of a care leaver than current legislation has opted for, or extend support beyond their 25th birthday. Local authorities would continue to have the power to provide discretionary relief to those not included in the definition, or according to a broader definition.
40. The cost of the exemption would be borne by local authorities. As noted, this would be comparable with the cost of administering discretionary relief, although not all local authorities in Wales have opted to provide care leavers with discretionary relief. In these cases, the costs would be additional. However, there should be offsetting savings in other local services as a result of care leavers being more financially secure and authorities not having to administer means-tested reductions for care leavers.

Option 2 Summary

41. Option 2 requires legislative change. This involves some additional administrative cost to local authorities and the Welsh Government but this would be negligible. This option would provide consistent support to care leavers aged 24 or under and in doing so, support the Welsh Government's objective to reform council tax to ensure a fairer and more progressive system. It is therefore the preferred option.

Analysis of other effects and impacts

Promoting Economic Opportunity for All (Tackling Poverty)

42. Care leavers are more likely to be affected by council tax arrears than their peers. *The Wolf at the Door: How council tax debt collection is harming children* (2015) and *The Cost of Being Care Free: The impact of poor financial education and removal of support on care leavers* (2016) both highlight that care leavers are a particularly vulnerable group for council tax debt and that the transition into independent accommodation and living is challenging. The Children's Commissioner for Wales published *Hidden Ambitions* (2017) which called for young people leaving care to be central in work being carried out to make council tax fairer. The Commissioner highlighted the role of local authorities as Corporate Parents. This amendment will ensure care leavers are not liable for council tax including any joint and several liability before their 25th birthday.

UNCRC

43. This measure will apply to young persons over the age of 18 (children under 18 are exempt from council tax). No particular impact on the rights of children under 18 has been identified.

Welsh language

44. No effect on the opportunities to use the Welsh language or on the equal treatment of the language has been identified.

Equalities

45. Section 149(1) of the Equality Act 2010 requires the Welsh Ministers to have regard, in the exercise of their functions, the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; foster good relations between persons who share a relevant protected characteristic and person who do not share it.
46. For the purposes of section 149, the protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

‘Care leaver’ is defined to include those who are aged 24 or under, so those who are aged 25 or over will not benefit from the exemption. Therefore this policy treats people differently on the basis of age.

This policy does not negatively impact care leavers who are over 25 as they will remain in the same position as they are currently, while those under 25 will be in a better position (as they will no longer be jointly and severally liable for council tax).

This policy will help to meet the specific needs of care leavers who are aged 24 or under in supporting them on their transition into adulthood and independent living, which are not shared to the same extent by those aged 25 and over. This policy is considered to advance equality of opportunity.

47. There is not expected to be a negative impact on equalities as a result of the amendments.

European Convention on Human Rights (ECHR)

48. The ECHR has been considered with regard to
- Article 8(1) - respect for private and family life and the home.
 - Article 1 of Protocol 1 - protection of property
 - Article 14 - prohibition of discrimination
49. There is not expected to be a negative impact on these rights as a result a result of these Regulations.

Well-being of Future Generations (Wales) Act 2015

50. Introducing council tax exemptions for care leavers will help to contribute towards the wellbeing goal of a more equal Wales.

Impact on voluntary sector

51. No negative impact on voluntary sector organisations has been identified. Parts of the voluntary sector provide advice and support to care leavers on council tax debt issues and the amendments will remove the need to advise care leavers on this aspect of their finances.

Competition Assessment

52. The amendments concern the administration of council tax and have no impact on business or competition. Therefore no competition assessment has been carried out.

Post implementation review

53. The Welsh Government will monitor the impact of the introduction of council tax exemptions for care leavers, including the effect of these Regulations, through engagement with local authorities and other stakeholders.