

**National Assembly for Wales**  
Constitutional and Legislative  
Affairs Committee

## Inquiry into the Council Tax Reduction Schemes Regulations

May 2013



Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales

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## Remit and Powers

The Constitutional and Legislative Affairs Committee was established on 15 June 2011 with a remit to carry out the functions and exercise the powers of the responsible committee set out in Standing Orders 21. This includes being able to consider and report on any legislative matter of a general nature within or relating to the competence of the Assembly or the Welsh Ministers.

## Current Committee membership



**David Melding (Chair)**  
Deputy Presiding Officer  
Welsh Conservatives  
South Wales Central



**Suzy Davies**  
Welsh Conservatives  
South Wales West



**Julie James**  
Welsh Labour  
Swansea West



**Eluned Parrott**  
Welsh Liberal Democrats  
South Wales Central



**Simon Thomas**  
Plaid Cymru  
Mid and West Wales

In accordance with Standing Order 17.48, Mick Antoniw AM substituted for Julie James AM.



**Mick Antoniw**  
Welsh Labour  
Pontypridd

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# 1. Introduction

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## *The Committee's remit*

1. The remit of the Constitutional and Legislative Affairs Committee (“the Committee”) is to carry out the functions of the responsible committee set out in Standing Order 21<sup>1</sup> and to consider any other constitutional or governmental matter within or relating to the competence of the Assembly or Welsh Ministers.
2. Within this, the Committee considers the political and legal importance and technical aspects of all statutory instruments or draft statutory instruments made by the Welsh Ministers and reports on whether the Assembly should pay special attention to the instruments on a range of grounds set out in Standing Order 21.
3. The Committee also considers and reports on the appropriateness of provisions in Assembly Bills and UK Parliament Bills that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General.

## *Terms of reference*

4. On 7 January 2013, the Committee agreed in principle to hold an inquiry into the Welsh Government’s handling of regulations about council tax reduction schemes. The regulations were passed by the Assembly on 19 December 2012, following its recall by the Presiding Officer.
5. We agreed the following terms of reference on 28 January:

*That the Constitutional and Legislative Affairs Committee considers the Welsh Government's handling of the making of the Council Tax Reduction Scheme Regulations, including, but not limited to:*

- why the Welsh Government was of the opinion that it could not lay the Council Tax Reduction Scheme Regulations before it had received the financial transfer from the Treasury which was*

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<sup>1</sup> National Assembly for Wales, *Standing Orders of the National Assembly for Wales*, December 2012

*eventually published in the Chancellor's Autumn Statement on 5 December 2012;*

- the extent and nature of communications that took place between the Welsh Government and Treasury and Wales Office in order to resolve the issue;*
- what lessons may be drawn from this episode.*

### **Evidence**

6. We took evidence from the then Minister for Local Government and Communities, Carl Sargeant AM (“the Minister”) on 4 February 2013.



## 2. Background

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7. The following sections set out briefly a timeline of events relating to the making of the legislation that is the subject of this inquiry.

### *Spending Review 2010*

8. In the 2010 Spending Review, the UK Government announced its intention to localise support for council tax from 2013-14 and reduce expenditure by 10 per cent.<sup>2</sup>

9. These proposals are being implemented by:

- the *Welfare Reform Act 2012*, which abolishes council tax benefit (CTB); and
- the *Local Government Finance Act 2012*, which provides for the introduction of council tax reduction schemes to replace CTB through amendments to the *Local Government Finance Act 1992*.

10. In England, it is the responsibility of individual local authorities to develop their own schemes. In Wales and Scotland, the devolved administrations are responsible for developing replacement schemes.

11. CTB was previously Annually Managed Expenditure (AME)<sup>3</sup> and local authorities were reimbursed in full by the Department for Work and Pensions (DWP) in respect of their expenditure on correctly processed claims.

12. From 2013-14, the DWP will no longer fund support for council tax from AME, and the UK Government will instead provide grants to local authorities in England, and the Welsh and Scottish governments.<sup>4</sup>

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<sup>2</sup> HM Treasury, [Spending Review 2010](#), 20 October 2010, paragraph 2.42 [accessed 11 December 2012]

<sup>3</sup> Expenditure in AME is less predictable than that in departmental expenditure limits (DEL). It covers spend which is generally demand-led and therefore provision cannot reasonably be subject to multi-year limits, (for example, the issue of student loans). This is reviewed and set twice a year by HM Treasury. AME can only be allocated to the purpose for which it is assigned; therefore the Welsh Government has no discretion over its allocation. Further AME can be drawn from HM Treasury if required, while any unspent AME must be returned.

<sup>4</sup> Joseph Rowntree Foundation, [Reforming council tax benefit](#), 30 May 2012 [accessed 12 December 2012]

### ***Welsh Government consultation on proposals***

13. In February 2012, the Welsh Government consulted on proposals for providing council tax support in Wales from April 2013 onwards.<sup>5</sup> These proposals were largely based on existing provisions relating to CTB and on the principle of a national scheme with limited local discretion for local authorities to avoid a “postcode lottery” for claimants.

### ***Requesting powers for Welsh Ministers***

14. When the Local Government Finance Bill was given its first reading in the UK Parliament in December 2011, it contained provisions for the replacement of CTB that related only to England. At the time, there were no existing legislative powers that could be used by Welsh Ministers to bring forward their own scheme. At the request of the Welsh Government, amendments were made to the Local Government Finance Bill in May 2012 that empowered Welsh Ministers to make regulations in order to introduce council tax reduction schemes in Wales.

15. In a plenary session of the Assembly on 22 May 2012, the Minister made a statement explaining why the Welsh Government had sought these powers:

“The Welsh Government is profoundly concerned by the UK Government’s plans to abolish Council Tax Benefit on 31 March 2013 and to localise support for council tax as part of its wider reforms of the benefit system. This is a huge challenge, requiring us to develop and implement a new scheme that provides crucial support for some of the most vulnerable members of our society. The timescales in which it is being forced through present significant challenges for the Welsh Government and our partners in local government [...]

“In England, local authorities have been left to develop their own schemes meaning that there could be hundreds of different approaches. This could see claimants in England with similar circumstances receiving every different levels of council

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<sup>5</sup> Welsh Government, [Providing Support for Council Tax in Wales](#), February 2012 [accessed 11 December 2012]

tax support depending on where they live. I have been clear that this will not be the case in Wales. Here we will have a nationally defined scheme that avoids a ‘postcode lottery’ and provides a consistent level of support across Wales...”<sup>6</sup>

***Letter to Chair of the Constitutional and Legislative Affairs Committee***

16. On 5 November 2012, the Minister wrote to the Chair of this committee outlining his concerns about the timing of the scrutiny of regulations (subject to the affirmative procedure) that would govern the operation of council tax reductions schemes in Wales. In explaining these concerns, he cited delays to the date of Royal Assent of the Local Government Finance Bill at Westminster and a lack of knowledge about the amount of the financial transfer from the UK Government to provide council tax support in Wales.

17. The Minister went on in his letter to seek the Committee’s agreement to an advance date for consideration of the regulations :

“I have sought advice on how the timing issues could be mitigated and have been advised that if the Constitutional and Legislative Affairs Committee was prepared to agree in advance a date upon which the Committee will receive and consider the Regulations, after the 6<sup>th</sup> November, and the date by which the Committee will prepare its report, then a later laying date could be achieved as in that instance it would not be necessary to observe the 20 day period before the holding of the plenary debate. In order to assist the Committee in considering these Regulations my officials would be happy to provide a technical briefing.”

18. In responding, the Chair of the Committee indicated that he could not guarantee that the Committee would be in a position to consider and report within the timeframe proposed by the Minister’s letter given the length and complexity of the regulations. In so doing, he stated that:

“I appreciate the difficulties you face as you have outlined in your letter. We will always endeavour to work flexibly to assist

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<sup>6</sup> National Assembly for Wales, Plenary, [RoP \[pp76-78\]](#), 22 May 2012 [accessed 13 December 2012]

the Welsh Government and, as such, to consider Statutory Instruments in a shorter period than the 20 days set by standing orders (particularly where the instrument in question is short or we have considered it in draft). However, we must also balance this approach against our obligations to scrutinise legislation effectively and in an open and transparent way.”<sup>7</sup>

19. A copy of the Minister’s letter is attached at Annexe 1 and our reply is at Annexe 2.

### ***Regulations for Wales***

20. Between 21 September 2012 and 19 October 2012 the Welsh Government held a technical consultation on the Council Tax Reduction Scheme (Default Scheme) Wales Regulations, which included a copy of the draft regulations.<sup>8</sup> Following the consultation, the Minister made a written statement to the Assembly on 27 November 2012 and stated that he had intended the regulations to come into effect on 1 December 2012. In the statement, he confirmed that the Welsh Government was still awaiting confirmation from the UK Government as to the level of grant that would be provided for council tax support in Wales:

“My Ministerial colleagues and I have been pressing the UK Government for confirmation of the funding transfer for several months. Last week, Treasury confirmed that the figure would not be provided until the Autumn Statement is made on 5 December. This means that it will not be possible to lay the regulations before that date. We have therefore requested that arrangements be made for the regulations to be considered in a plenary session as soon as possible after the regulations are laid.”<sup>9</sup>

### ***Plenary 5 December 2012***

21. Following the Chancellor’s Autumn Statement on 5 December 2012, the Welsh Government laid two sets of regulations before the

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<sup>7</sup> Letter from the Chair of the Constitutional and Legislative Affairs Committee, 9 November 2012

<sup>8</sup> Welsh Government, [Technical consultation on Council Tax Reduction Scheme \(Default Scheme\) Wales Regulations](#), 21 September 2012 [accessed 14 December 2012]

<sup>9</sup> Welsh Government, Carl Sargeant (Minister for Local Government and Communities), [Support for Council Tax in Wales](#), Cabinet Written Statement, 27 November 2012 [accessed 12 December 2012]

Assembly later that day:

- the *Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations*. These Regulations require each billing authority in Wales to make a scheme specifying the reductions which are to apply to amounts of council tax payable by persons, or classes of person, considered to be in financial need. The regulations set out matters that must be included in a scheme together with additional requirements which must or must not be included in a scheme.
- the *Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations*. These regulations prescribe 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 fails to make its own scheme in accordance with any duty imposed by virtue of regulations made by the Welsh Ministers.

22. Standing Order 12.20(i) requires that motions must be tabled five working days before they are debated. Standing Order 27.7 requires that no motion to approve a statutory instrument can be considered in plenary until the relevant committee has reported or at least 20 working days have lapsed since the instrument was laid. The Minister proposed a motion that Standing Orders be suspended so that both sets of regulations could be debated and voted on. Concerns were expressed in plenary that there had been insufficient time to scrutinise a substantial volume of very technical regulations. The motion to suspend failed to receive the required two thirds majority, so was defeated.<sup>10</sup>

### ***Assembly recall***

23. On 7 December 2012, the Presiding Officer announced that, following a request from the First Minister, the National Assembly would be recalled to debate the regulations on 19 December 2012.<sup>11</sup>

24. On 12 December 2012, both sets of regulations were again laid before the Assembly. The original prescribed requirements regulations were amended to include a “sunset clause” and a requirement for Welsh Ministers to bring forward new regulations by 1 January 2014

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<sup>10</sup> National Assembly for Wales, [Votes and Proceedings](#), 5 December 2012

<sup>11</sup> National Assembly for Wales press release, [Presiding Officer recalls National Assembly for Wales](#), 7 December 2012

for the financial year 2014-15 and subsequent years. The default scheme regulations were unchanged from those laid on 5 December 2012.<sup>12</sup> The Minister for Finance and Leader of the House wrote to all Assembly Members on 12 December outlining the changes that had been made to the legislation.<sup>13</sup>

25. We met on 17 December 2012 to consider the regulations and reported to the Assembly on 18 December 2012.<sup>14</sup> We also wrote to the Minister on 18 December to draw attention to our findings.<sup>15</sup>

26. The regulations were subsequently approved by the Assembly on 19 December 2012.

### ***Developments in 2013***

27. On 17 January 2013 the Minister issued a further statement on council tax reduction schemes and wrote to all Assembly Members.<sup>16</sup> The statement said:

“...the Welsh Government has decided to increase the maximum level of support from the current 90 per cent to 100 per cent. That means claimants will receive the full amount of support for their council tax bills to which they are eligible. Unlike the 2012 Regulations, not all claimants receiving support will have to pay a proportion of their bill. The Government will provide an additional £22 million to local authorities to implement the change. It has been possible to identify these funds as a consequence of the Government’s careful financial management and prudent use of reserves and departmental budgets.

“In order to implement this change, the existing regulations must be amended. The Government will also use the opportunity to uprate some financial thresholds in the current regulations and to make a small number of other minor adjustments, partly in response to the helpful scrutiny by the

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<sup>12</sup> National Assembly for Wales, [Subordinate legislation subject to approval](#) [accessed 14 December 2012]

<sup>13</sup> Letter from the Minister for Finance and Leader of the House, 12 December 2012

<sup>14</sup> Constitutional and Legislative Affairs Committee Report, 17 December 2012 meeting, CLA(4)-27-12

<sup>15</sup> Letter from the Chair of the Constitutional and Legislative Affairs Committee to Minister for Local Government and Communities, 18 December 2012

<sup>16</sup> Letter from the Minister for Local Government and Communities, 17 January 2013

Constitutional and Legislative Affairs Committee before Christmas.”<sup>17</sup>

28. He announced that he was laying the amending regulations<sup>18</sup> the same day and that he and intended to seek the support of the Presiding Officer and Business Committee to debate them in the Assembly early the following week. In view of the timing, this would also involve the suspension of Standing Orders. The amending regulations were approved by the Assembly in plenary on 22 January 2013.<sup>19</sup>

29. The *Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2013* made a number of amendments to the *Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2012* and the *Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012* (“the 2012 Regulations”) approved by the Assembly on 19 December 2012. The amending regulations:

- up-rate certain figures in the 2012 regulations used to calculate a claimant’s entitlement to a reduction under a council tax reduction scheme, and the subsequent level of reduction;
- amend the 2012 regulations within the provisions dealing with the award or payment of a reduction under a scheme, as well as addressing a number of minor technical referencing errors identified during the scrutiny of the 2012 regulations;
- increase the maximum percentage by which a household’s council tax liability may be reduced under the scheme, from 90 per cent to 100 per cent.

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<sup>17</sup> Written Statement, Carl Sargeant AM, Minister for Local Government and Communities, [Council Tax Support Arrangements](#), 17 January 2013 [accessed 18 January 2013]

<sup>18</sup> National Assembly for Wales, [Subordinate legislation subject to approval](#)

<sup>19</sup> National Assembly for Wales, [Votes and Proceedings](#), 19 December 2012

### 3. Our view

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30. We took evidence from the Minister on 4 February 2013. The Minister wrote to the committee on 31 January 2103 in advance of his appearance and this letter is attached at Annexe 3. The transcript of this evidence session is attached at Annexe 4.

31. Having considered the evidence from the Minister, we consider that it would be useful to identify two specific aspects of concern:

- communication with the UK Government;
- the delivery of a legislative solution for implementing a new council tax reduction scheme.

#### ***Communication with the UK Government***

32. The UK Government publically announced its intention to change the policy regarding council tax benefit in October 2010.

33. We note that the Minister wrote to the Secretary of State for Work and Pensions shortly after the announcement but received no response<sup>20</sup> and the Minister's view that there was "not a lot of information" coming from the UK Government.<sup>21</sup> We also note the Minister's view that the full extent of the welfare reform did not become clear until August 2011 and that the Welsh Government had only 18 months in which to "design a scheme from scratch."<sup>22</sup>

34. We note and agree with the Minister's acknowledgement that "communication is critical" and that "it works both ways".<sup>23</sup> We also agree with the Minister that the Welsh Government should have the ability to engage with the UK Government as early as possible when significant changes are being made that impact on devolved policies and functions.<sup>24</sup>

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<sup>20</sup> CLA Committee, RoP [paragraph 332], 4 February 2013

<sup>21</sup> CLA Committee, RoP [paragraph 482], 4 February 2013

<sup>22</sup> CLA Committee, RoP [paragraph 334], 4 February 2013

<sup>23</sup> CLA Committee, RoP [paragraph 482], 4 February 2013

<sup>24</sup> CLA Committee, RoP [paragraph 482], 4 February 2013



**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.**

35. In reaching conclusion 1, we note that corresponding legislative delays did not occur in England and Scotland.

36. Given the nature of the devolution settlement, relationships between the Welsh Government and UK Government are vital, and this is an issue that we will continue to monitor and take a close interest in during the 4<sup>th</sup> Assembly.

#### ***Delivery of a legislative solution***

37. As we have indicated above, we acknowledge the potential difficulties the Welsh Government faced in developing a new council reduction scheme. In this regard, we note the Minister's comments about the learning curve his team have undergone in preparing the regulations.<sup>25</sup>

**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 it faced are not repeated in the future, if at all possible.**

38. There are, nevertheless, areas where the approach taken by the Welsh Government impacts on the work of the legislature and on which it would be appropriate for this committee to comment. It is to those issues that we now turn.

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<sup>25</sup> CLA Committee, RoP [paragraph 478], 4 February 2013

39. Overall, we are disappointed by the way in which the Minister has handled the legislative delivery of this policy issue, particularly given the considerable implications it has for people across the whole of Wales.

40. The Minister knew that subordinate legislation would be needed to deliver new council tax reduction schemes, having sought these powers from the UK Government in May 2012; yet he waited until 5 November 2012 before engaging directly with this committee.

41. We note that Royal Assent for the *Local Government Act 2012* was delayed and was not received until 1 November 2012. We do not believe that this fact should have had any bearing on the timing of the Minister's engagement with us. In fact, if the Minister considered that this delay in Royal Assent could have had a negative impact on his ability to bring forward the relevant legislation in a timely fashion, he could and should have brought this to our attention at the earliest possible opportunity.

42. In the Minister's letter of 5 November, he asked us to agree an advance date for consideration of the regulations so that it would not be necessary to observe the standard 20 day period<sup>26</sup> prior to the holding of a plenary debate on 5 December. In our response of 9 November, we indicated that this may not be possible given the length and complexity of the regulations (see paragraphs 16 - 19 above).

43. However, in the event, the Minister did not lay the final regulations until the day of the plenary debate on 5 December, following receipt of the relevant financial figures from the UK Government. So, even if we had been able to give an advance date for consideration of the regulations and thereby help the Minister, he would not have been able to deliver the regulations to us—on his terms—to enable scrutiny on the agreed date. This highlights the importance of engaging with us at the earliest opportunity.

44. We note the emphasis the Welsh Government has placed on the delay to the regulations being caused by the timing of the UK Government's announcement relating to the final funding settlement.

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<sup>26</sup> Standing Order 21.4 requires the committee to report on the draft statutory instrument no later than 20 days after it has been laid. Standing Order 27.7 requires that no motion to approve a statutory instrument can be considered in plenary until the relevant committee has reported or at least 20 working days have lapsed since the instrument was laid

45. In our view, the regulations could and should have been laid: with indicative financial figures, within an appropriate timeframe to allow for scrutiny of such lengthy and complex regulations and to allow us to report in time for the plenary debate on 5 December. If this approach had been adopted, it would have been open to the Committee to report to the Assembly and highlight any issues of concern, such as uncertainty over the funding settlement, as merits points. This would have been a much more open and transparent way of proceeding.

46. In his letter to us of 5 November, the Minister stated that:

“In order to finalise the Wales Regulations my officials had hoped to see finalised versions of the England Regulations by the end of October[. H]owever these have been delayed.”

47. He reiterated this point in his letter and enclosure to us of 31 January. However, during the oral evidence session, he indicated that the delay to the English Regulations had not contributed to the delay in the Welsh Regulations, adding “to be perfectly honest with you, what England does with its regulations is of little significance to me”.<sup>27</sup> This contradiction highlights why we are so concerned at the process the Welsh Government has followed in making these regulations.

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

**Conclusion 4: We believe that the Minister should have drawn our 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 written evidence and the Minister’s oral evidence as to why the regulations were not available at an earlier date. 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**

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<sup>27</sup> CLA Committee, RoP [paragraphs 376 - 379], 4 February 2013

outstanding matters. We expect the Welsh Government to follow that practice in future.

**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.

**Conclusion 5:** We re-iterate the views expressed in our letter of 9 November 2012 to the Minister that 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 (particularly where the instrument in question is short or we have considered it in draft). 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.

# Annexe 1 – Letter from the Minister for Local Government and Communities, 5 November 2012

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

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

5<sup>th</sup> November 2012

I am writing to you in relation to two sets of Regulations; the Council Tax Reduction Schemes (Default Scheme) (Wales Regulations) and the Council Tax Reduction Schemes (Prescribed Requirements) (Wales Regulations); in order to apprise you of the timing issues that we are facing in respect of laying these Regulations.

As a result of these constraints, which I set out in detail below, and the significant impact for local authorities if the Regulations are not able to come into force by 1<sup>st</sup> December, I am writing to ask whether you would be prepared to agree a date upon which the Constitutional and Legislative Affairs Committee will receive these Regulations for consideration and to agree a further date by which the Committee will prepare its report in respect of the same.

#### The Local Government Finance Act 2012

As you are aware I sought amendments to the Local Government Finance Act (the Act) to equip Welsh Ministers with executive powers to introduce council tax reduction schemes in Wales via secondary legislation, in order to replace the existing council tax benefit system that is being abolished by the UK Government. A Legislative Consent Motion on the provisions of the Bill that were within the legislative competence of the National Assembly for Wales (NAW) was approved by the Assembly on 26<sup>th</sup> June.

Whilst the Bill was supposed to achieve Royal Assent before the summer recess, it was ultimately deferred due to a number of outstanding issues within the Bill, most of which did not concern the provisions relating to the introduction of council tax reduction schemes. It received Royal Assent on 1<sup>st</sup> November.

Bae Caerdydd • Cardiff Bay  
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*Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)*

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In line with the provisions in the Act and, subject to the will of Parliament, I intend to bring forward two main sets of Regulations which will govern the operation of council tax reduction schemes in Wales. These Regulations are designed to ensure that councils introduce some form of council tax support.

- The first set of Regulations (the "prescribed requirements Regulations") will place a duty upon local authorities in Wales to introduce a council tax reduction scheme in their area by the 31<sup>st</sup> January 2012. These Regulations will prescribe elements which local authorities must include within the schemes they introduce, but will also permit a limited amount of local discretion.
- The second set of Regulations (the "default scheme Regulations") will set out in full the council tax reduction scheme that will take effect in any local authority area in the event that a local authority does not adopt its own scheme by 31<sup>st</sup> January 2013. This date has been set so that any reductions enabled by the schemes can be reflected within the calculation of council tax liability prior to the council tax bills for 2013-12014 being issued.

#### Timing Concerns

In order for local authorities to make their preparations to adopt their local schemes by 31<sup>st</sup> January 2013, which, in accordance with the prescribed requirements Regulations, they are required to consult on, it is considered necessary that both sets of Regulations will have to come into force by 1<sup>st</sup> December. As both sets of Regulations are subject to the affirmative procedure this requires there to be a plenary debate on them by the 27<sup>th</sup> November at the latest.

However for a plenary debate to be held on the 27<sup>th</sup> November, in order to comply with Standing Orders the latest date that the Regulations could be laid on is 6<sup>th</sup> November and due to circumstances outside of my control it is becoming increasingly likely that the Regulations will not be finalised by the 6<sup>th</sup> November. There are three main reasons for this:

- **The financial transfer.** The approach in Wales relies on a single national framework scheme, which rebates a maximum percentage of an applicant's council tax liability, and the maximum percentage rebate will be calculated to take into account the shortfall in funding provided by the UK Government. This maximum percentage figure must be specified within the Regulations. However, whilst DWP and HMT have provided provisional funding figures, the transfer may not be finalised until the Autumn Statement scheduled for 5<sup>th</sup> December. Therefore the actual shortfall – and the final percentage to be set in the Regulations – might not be known until this date.
- **Finalising the Regulations.** Preparing the Regulations has been a highly complex and demanding task requiring detailed knowledge of the UK benefit system. It has therefore been necessary to rely on many of the previous elements of the old Council Tax Benefit Regulations, and to replicate them, with amendments, in new Regulations. The Regulations also need 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, my officials have had to have regard to the draft Regulations which England are preparing, as they have the benefit of the input of colleagues in DWP. In order to finalise the Wales Regulations my officials had hoped to see finalised versions of the England Regulations by the end of October however, these have been delayed.

#### Implications if the Regulations cannot come into force by 1<sup>st</sup> December

If it is not possible for the Regulations to come into force by the 1<sup>st</sup> December there will be significant adverse implications for local authorities, and potentially for claimants. It will reduce the time in which local authorities will be required to introduce their schemes, including the time available to undertake local consultation, and depending on when the Regulations come into force, it may prove impossible for them to meet the 31<sup>st</sup> January 2013 deadline.

In that instance it may be necessary to revisit the Regulations with a view to delaying this implementation date. This however, will impact on the authorities' ability to issue council tax bills which has severe financial implications for local authorities. Furthermore it is likely to mean that current CTB claimants who will experience a change in the level of assistance they receive with their council tax bills will have less notification of the financial impact. As a result I am extremely keen to avoid a situation whereby these Regulations have to be delayed.

#### Mitigating the timing issues

I have sought advice on how the timing issues could be mitigated and have been advised that if the Constitutional and Legislative Affairs Committee was prepared to agree in advance a date upon which the Committee will receive and consider the Regulations, after the 6<sup>th</sup> November, and the date by which the Committee will prepare its report, then a later laying date could be achieved as in that instance it would not be necessary to observe the 20 day period before the holding of the plenary debate. In order to assist the Committee in considering these Regulations my officials would be happy to provide a technical briefing.

While I recognise that this is an unusual request, given the significant challenges we are facing in ensuring a viable replacement scheme is in place prior to the abolition of council tax benefit, I hope that it is one that you are prepared to consider.

#### Welsh Language Regulations

Finally I would like to give you prior notice that Welsh language versions of the Regulations will not be produced and that this may extend to all of the Regulations drafted to bring the new schemes into effect.

While this is extremely regrettable, given the very short timescales within which it has been necessary to produce the draft Regulations together with their length and complexity and the fact that the current CTB Regulations are only available in English so there is no existing translation to assist the translators, Legislative Translation Services have advised my officials that it is not possible to translate the Regulations into Welsh within the timescales required. In fact I am advised that in order for the Legislative Translation Services to have been in a position to have provided translated version of the Regulations, due to their length and complexity they would have had to have received finalised versions of both sets of Regulations by the May 2012. At that time we had not secured powers within the Bill to introduce Regulations in Wales.

The use of an external translator has also been considered, however there are only a limited number of translators who undertake legislative translation and they too are unable to translate the Regulations into Welsh within the timescales required. My officials will discuss the possibility of one of the local authorities in Wales providing a Welsh translation of the Regulations for everyday use, but even if they are willing to do this it is unlikely that such a translated version of the Regulations would be finalised before next year.

I will also be writing in similar terms to the Chair of the Communities, Equality and Local Government Committee.

A handwritten signature in black ink, appearing to read 'Carl Sargeant'.

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



## **Annexe 2 - Letter from the Chair of the Constitutional and Legislative Affairs Committee, 9 November 2012**

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**Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol  
Constitutional and Legislative Affairs Committee**

Carl Sargeant AM  
Minister for Local Government and Communities  
Welsh Government  
5th Floor, Tŷ Hywel  
Cardiff Bay  
CF99 1NA

9 November 2012

Dear Carl

### **The Council Tax Reduction Schemes (Default Scheme) Wales Regulations and the Council Tax Reduction Schemes (Prescribed Requirements) Wales Regulations**

Thank you for your letter of 5 November about the above Regulations.

I appreciate the difficulties you face as you have outlined in your letter. 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 (particularly where the instrument in question is short or we have considered it in draft). However, we must also balance this approach against our obligations to scrutinise legislation effectively and in an open and transparent way.

I understand that each set of Regulations is some 200 pages long and, as you indicate in your letter, that they are complex in nature. Furthermore, it is not expected that the Regulations will be laid before the National Assembly until the 15 or 16 November.

Regrettably, for these reasons, I cannot guarantee that the Committee will be in a position to consider and report on these Regulations within the timeframe proposed by your letter.

Nevertheless, please be assured that as soon as the Regulations are laid before the National Assembly, they will be reviewed and brought to the attention of the Committee as soon as possible.

I am copying this letter to the Chair of the Communities, Equality and Local Government Committee.

Yours sincerely

A handwritten signature in black ink that reads "David Melding". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

**David Melding AM**  
**Chair**

# Annexe 3 – Letter from the Minister for Local Government and Communities, 31 January 2013

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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

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

Dear David

31 January 2013

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 4<sup>th</sup> 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.

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

*Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)*

English Enquiry Line 0845 010 3300  
Llinell Ymholiadau Cymraeg 0845 010 4400  
Correspondence: Carl.Sargeant@wales.gsi.gov.uk  
*Printed on 100% recycled paper*

**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 19<sup>th</sup> 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 31<sup>st</sup> 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 31<sup>st</sup> 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 5<sup>th</sup> 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 5<sup>th</sup> 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 5<sup>th</sup> 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 31<sup>st</sup> 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 1<sup>st</sup> 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 5<sup>th</sup> November.

## **2. The Council Tax Reduction Schemes (Prescribed Requirements And Default Scheme) (Wales) (Amendment) Regulations 2013 laid on 17<sup>th</sup> 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 31<sup>st</sup> January.

These regulations were laid on 17<sup>th</sup> 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 22<sup>nd</sup> 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 17<sup>th</sup> January.

**3. The three other sets of regulations relating to council tax reduction schemes laid on 17<sup>th</sup> 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 17<sup>th</sup> 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 5<sup>th</sup> 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 17<sup>th</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> April 2013, and the intention is table them together on or before 26<sup>th</sup> February. This will allow sufficient time for a plenary debate on the regulations detailed at point (i) to take place on 19<sup>th</sup> March (in compliance with Standing Orders),

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

## Annexe 4 – Extract of committee record of proceedings, 4 February 2013

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3.41 p.m.

### **Ymchwiliad Byr—Rheoliadau Cynlluniau Gostyngiadau'r Dreth Gyngor Short Inquiry—Council Tax Reduction Scheme Regulations**

[323] **David Melding:** I remind Members that our inquiry focuses on, but is not necessarily limited to, why the Welsh Government was of the opinion that it could not lay the council tax regulations scheme before it had received the financial transfer from the Treasury, which was eventually published in the Chancellor's autumn statement on 5 December 2012; the extent and nature of the communications that took place between the Welsh Government, the Treasury and the Wales Office in order to resolve the issue; and, what lessons may be drawn from this episode.

[324] Again, I welcome the Minister, Carl Sargeant. Carl, do your new officials want to introduce themselves for this session?

[325] **Ms Barry:** I am Sharon Barry from Legal Services.

[326] **Ms Carter:** I am Debra Carter, head of local government, finance and performance.

[327] **David Melding:** I remind everyone that these proceedings will be conducted in Welsh and English. If you require translation, it is available on channel 1. Should you require amplification, it is on channel 0.

[328] Minister, when did you first become aware of the UK Government's plans regarding council tax support and what you may have wanted to do in particular in Wales?

[329] **Carl Sargeant:** Thank you for the opportunity to present to the committee for your inquiry. We, as well as the broader public, were alerted to it in the comprehensive spending review in 2010. The UK Government announced its intention to abolish council tax benefit and to pass that responsibility for providing assistance with council tax on to local authorities in England, the Welsh Government and the Scottish Government, accompanied by a 10% indicative reduction in funding at that time. It was done, at that point, without any prior warning or engagement with the Welsh Government.

[330] It is certainly worth noting the scale of challenge that we faced. Council tax benefit was not being devolved to Wales, or any other organisation—it was being abolished. The Welsh Government had to take up the responsibility of putting a new scheme in place, as did other organisations.

[331] **David Melding:** Can you describe the sort of discussions that you had with the UK Government during those early stages, when it became apparent that you would require different mechanisms to pursue a different policy potentially?

[332] **Carl Sargeant:** I can tell you in quite some detail, if that would be helpful; tell me when you have had enough detail. Following the announcement in 2010, I wrote to Iain Duncan Smith, shortly after his announcement, asking for an urgent meeting with him to discuss the proposed change in policy and to seek the implications for Wales. I did not

receive a response to that letter.

3.45 p.m.

[333] However, when the UK Government introduced the Welfare Reform Bill in Parliament on 16 February 2011, it became apparent that it was pressing ahead with its plans to abolish council tax benefit. At this time, again despite requests from the Welsh Government, I did not receive any details of the proposals to abolish council tax benefit, or the impact on Wales and the practicalities that had to be undertaken to continue a system. It was not until the publication of the Department for Communities and Local Government's consultation at the beginning of August 2011, and its plans to localise council tax support in England, that the full extent of the welfare reform started to become a little clearer.

[334] As I said earlier, it was not about council tax benefit being devolved, but about it being abolished and creating a new scheme. The relevant powers were not transferred to the Welsh Government and we have had to work out what could be achieved within the timescale of the existing council tax system, and within the Assembly's legislative competence, which explicitly excludes social security benefits. So, there was also a competence challenge to face. In short, we had to design a scheme from scratch and replace the council tax benefit scheme that had been developed and amended over a 20-year period. We had to do that within an 18-month timescale in Wales.

[335] **Mick Antoniw:** I have a couple of questions, Minister. The original Local Government Finance Bill did not include any mention of Wales. It was a rather strange position. Is there any background that we ought to know as to why Wales was specifically excluded and why it then became necessary for us to be included? What would the consequence have been if we had not been included?

[336] **Carl Sargeant:** We were subject to a lack of early dialogue and information coming from Westminster; we were just not included in many of the decisions taking place there. On the decision to abolish the scheme for the UK and to pass the responsibility to local authorities in England, the Welsh Government and the Scottish Government, prior to the introduction of the Local Government Finance Bill on 19 December, my officials were not made aware of the UK's intentions in the Bill, which included provisions enabling the replacement of the scheme only in England. Therefore, the Welsh Government was not given the opportunity to ask for the powers to be included in it. Although, following on from that, we had discussions with Eric Pickles at the time about securing time, which was more difficult than we had considered.

[337] **Mick Antoniw:** You had a number of discussions with Iain Duncan Smith and Lord Freud. Did those discussions reveal any explanation or greater understanding as to why Wales was so specifically excluded from the legislation? Are you saying that it was an oversight, or an error, or is there some reason that we were omitted?

[338] **Carl Sargeant:** I cannot offer reasons as to why the UK Government did not engage with us on the proposals. This is what I believe happened: it was a case of the UK Government saying, 'We are going to stop a scheme and we have a bundle of money and you, as the Welsh Government, the local authorities in England and the Scottish Government, can do with that consequential as you wish'. There was no guidance running alongside that.

[339] I went to see Iain Duncan Smith and Lord Freud, as you quite rightly said; I have been twice, maybe three times to see them. Leighton Andrews has also been to see them.

They were very welcoming, but the discussion was predominantly about the reduction in the amount of money that we would be getting and when we would have clarity around that. Nothing other than that was offered. Despite my visits to London and despite the Minister for Finance writing to the Treasury, we still could not get clarity from the UK Government on these issues.

[340] **Mick Antoniw:** Does it highlight the fact, perhaps, that within certain departments there is a lack of understanding of the devolution process? The devolution issues are arising as almost last-minute add-ons to some of the proposals and legislation.

[341] **Carl Sargeant:** I think that you are right to raise that. I also think that it is about the level of competence that the UK Government understands as being the competence level of devolved administrations. As I said earlier on the issue around the social security benefit element of this, we do not have competence over that. Therefore, we had to consider a scheme that could come across to Wales in the context of our legislative competence, and whether that would be a grant or a scheme such as the one that we have brought forward now. However, we do not have competence in relation to benefits, as the UK Government either missed or chose to miss.

[342] **Mick Antoniw:** If we just left the situation as it was, what would have happened?

[343] **Carl Sargeant:** At what point do you ask that question?

[344] **Mick Antoniw:** I suppose that I ask that question because, since there is no mention of Wales in the Local Government Finance Bill, and if we had just left that situation as it was, we would have ended up with a complete constitutional lacuna with the UK Government wanting to do something, but us not having the power to do it. There would have been an impact of some sort, would there not?

[345] **Carl Sargeant:** Technically, yes, but there would have been a transfer of funding across from the UK to Wales, and then, from the consequential, we would have had to develop a grant scheme of some sort to transfer that money out. It would have been even more difficult, I expect.

[346] **Mick Antoniw:** There is probably no advantage to speculate, is there?

[347] **Carl Sargeant:** Let us hope not.

[348] **David Melding:** Did you just want to clarify something, Simon?

[349] **Simon Thomas:** Yes. Before we get into a little more detail about more recent events, I just want to reflect on that period. In general, Minister, things were being discussed in and among the English county councils about how this might be panning out; it was being done very tentatively, but there were discussions. There was also some consultation taking place in Wales over the summer with specific groups and the local authorities were asking about a possible scheme. At that stage, why did you not think that it would be appropriate to bring a debate or some kind of procedure to the Assembly by which more light could have been shone at an earlier stage on what was happening between Westminster and Cardiff bay, and on some of the difficulties that were happening? We might have questions on this, but when we came to the start of December, I think that many Members were very surprised at the difficulties that had been experienced. On reflection, do you think that we should have had an earlier attempt to look at some of these issues?

[350] **Carl Sargeant:** Politics aside in terms of some of the debates that have taken place in the Chamber, I have tried to be as open and transparent with regard to the process that has taken place with the UK Government. I have made statements in the Chamber, and have certainly had many questions throughout the year in terms of where we are. I have held nothing back on the issue around difficult processes that would have indicated that there was anything new to offer to the Assembly beyond the fact that we were having extreme difficulty in getting the numbers from the UK. That was of no surprise and it was known pre December. Certainly, the issue around the discussions that we have been having was made clear to Members through a statement to the Chamber. In terms of whether a debate would have helped, it may have been politically savvy to do that, but I think that, professionally, we believed that we were acting appropriately through all the process of taking this forward.

[351] **David Melding:** Before we relieve the preliminaries, Eluned, did you wish to add something?

[352] **Eluned Parrott:** I have just one point. You said, Minister, that you were concerned that there was no guidance from Westminster as to how to develop this particular area. Do you normally receive guidance on issues along these lines, and would you have welcomed it?

[353] **Carl Sargeant:** No, we would not. You are absolutely right about the guidance. Again, we were clear from the start. It was announced in the comprehensive spending review that this was going to happen and that council tax benefit would be abolished, at which point I was clear in saying, 'We don't want to be part of this. We don't want this function'. I still do not want this function, but we have it. I think that it is appropriate for the record, perhaps, to say that, in a discussion with senior Ministers at Westminster, it was suggested to me, 'We are removing the risk from the Westminster Government and we are passporting it through to you.' I was extremely concerned about that, and I said, 'I don't want your risk or the reduced amount of money. This is a duty of the UK', but it was a case of, 'Well, this is what's happening. Off you go and do what you wish', knowing that there was going to be a problem later on down the line in terms of funding.

[354] **David Melding:** Suzy Davies will take us on to the next set of questions.

[355] **Suzy Davies:** You got in touch with this committee in November last year to tell us that you had concerns about the timing of the scrutiny of the regulations. You pointed out that the Local Government Finance Bill was due to receive Royal Assent in the summer of last year, but it did not come until three or four months later. What effect did that have on your drafting of secondary legislation?

[356] **Carl Sargeant:** That was just one element of the difficulties that we were having in drafting the legislation. The regulations that we brought forward were based on the amount of funding that we were due to have. We were due to have that in the autumn statement, but the autumn statement, as was clear to all, came in December—a new definition of the seasons. However, that was the case, and it was extremely difficult to fit those numbers into the regulations. Again, the Local Government Finance Bill did not receive Royal Assent until 1 November, which put us back. With regard to the drafting of the regulations at that point, even if we had had those numbers earlier, I could not have delivered the regulations until the finance Bill had received Royal Assent, so, even if the statement had happened before then, 1 November would have been the earliest opportunity that I would have had to have started that process.

[357] **Suzy Davies:** Did you start drafting the regulations back in the summer, then?

[358] **Carl Sargeant:** We have been working on the regulations for an awful long time and, again, we are not in isolation. Simon Thomas alluded earlier to the discussions that we have been having with local authorities and other interested groups about shaping the way forward. We also did a scoping paper in terms of target groups and who would be negatively affected by such a process, and we hope that it is recognised and reflected in the scheme that we have tried to protect the most vulnerable in that process, albeit we have moved on since that day.

[359] **David Melding:** I am sorry if I am cutting across anyone, but you were already consulting on drafts, were you not, before the Royal Assent?

[360] **Carl Sargeant:** Yes, we were.

[361] **David Melding:** So, these regulations were drafted.

[362] **Carl Sargeant:** They did not have any legal standing, Chair.

[363] **David Melding:** That is true, but they were being consulted on.

[364] **Carl Sargeant:** Well, they did—yes. They did or they did not, Chair.

[365] **Suzy Davies:** Was the only thing that was missing at that stage the figures? I am trying to work out why the delay in Royal Assent was particularly important.

[366] **Carl Sargeant:** The Royal Assent was really important, because, as I said to the Chair, it determined the legal position of the scheme. If that had not happened, there would not have been a process for us to take the scheme forward. That was—

[367] **Suzy Davies:** But you had started, albeit informally.

[368] **Carl Sargeant:** Of course, but it is about appropriateness, is it not? It is a difficult call. If you wish Ministers to start issuing draft documents that may or may not come into force—just drafting these was an extremely challenging process and the closure of that was based upon whether the Local Government Finance Bill received Royal Assent or not. On the basis of that, we were able to start working up from the draft to a more final document that we could offer to the committee or Members who would wish to see it.

[369] **Suzy Davies:** Can you explain to me then when the English regulations came out, which obviously suffered from the delay in the Royal Assent as well?

[370] **Carl Sargeant:** I will ask Sharon to answer on the time element, but I will give you a fuller answer.

4.00 p.m.

[371] **Ms Barry:** One of the major issues in terms of the drafting was the welfare reform benefit changes and, in particular, the introduction of matters such as universal credit and personal independence payments. Effectively, the regulations set out the various types of income that people receive that must be taken into account when determining levels of income, as opposed to what is known as ‘an applicable amount’—they are all connected, in effect. The schemes are substantively based on the same provisions contained in the

existing council tax benefit regulations, which are excessively detailed also. However, previously, the only qualifying benefits that have really mattered are jobseeker's allowance, income support, et cetera, and they have to be replicated, because they will be carried forward for a time. In addition, however, you will have new benefits being introduced, and information about those new benefits was not finalised and produced to us until mid-November.

[372] **Suzy Davies:** So, are you saying that England had that information more quickly than we had it in Wales?

[373] **Ms Barry:** No; England actually had it about the same time.

[374] **Suzy Davies:** So, why were the regulations not out at the same time?

[375] **Ms Barry:** The English regulations were not made until the last part of November either. That is, the final English regulations for the reduction scheme were laid in November as well.

[376] **Suzy Davies:** So, because the English regulations were late as well, that in itself did not contribute to the Welsh regulations being late, did it?

[377] **Carl Sargeant:** No. To be perfectly honest with you, what England does with its regulations is of little significance to me. The issue for me is how we establish Welsh regulations that work for Wales.

[378] **Suzy Davies:** Okay. So, there was no question at all that you were waiting to see what was in the English regulations.

[379] **Car Sargeant:** Absolutely none.

[380] **Suzy Davies:** That is very clear. Thank you, Minister.

[381] **Simon Thomas:** Specifically, I am trying to understand constitutionally why English regulations could be made—it was all due to the Royal Assent, I accept that—before the funding settlement was known in the autumn statement, but you told the Assembly that you could not make the regulations in Wales until you knew the funding settlement. In fact, you brought them forward on the day of the autumn statement. Legally and constitutionally, how can it be that one country can go that way and another can go the other?

[382] **Carl Sargeant:** It was the same for Scotland, too, in that element, if I may offer that example. The regulations are not the same in that process. There are similarities, but they are very different schemes. We based our scheme on ensuring that we fully understand and prescribe the number within the regulations for funding. We were only able to do that once we had sight of the final number, which came through in the autumn statement at 4.15 p.m., on the last day of the Assembly term.

[383] In England, the scheme is very different, and Scotland is still amending their regulations now—it is the other way around, in effect. However, in terms of the technical aspect of that, I will ask my legal team to give you the detail, if that would be helpful.

[384] **Simon Thomas:** I think that Suzy has something further to ask about this.



[385] **Suzy Davies:** Yes. My remaining questions are on this area, really. It is still about trying to get to the bottom of why everybody heard the details of the spending review at the same time, they knew about the Local Government Finance Bill at the same time, and they knew about the Royal Assent at the same time, and yet we have Scotland, England and Wales coming out with their regulations at different times. We have a situation in which I think you said in a letter to us that—

[386] **David Melding:** It says:

[387] ‘To assist in developing the technical aspects of the scheme, such as the method to be adopted in calculating income, my officials have had to have regard to the draft Regulations which England are preparing, as they have the benefit of the input of colleagues in DWP.’

[388] So, it seems to contradict some of the statements.

[389] **Suzy Davies:** Thank you, Chair. That is my question, basically.

[390] **Carl Sargeant:** I said in response to Simon Thomas earlier that there were similarities to the English regulations, but, predominantly, there have been policy changes in England, Scotland and Wales in terms of their determinations. Let me give you an example, if I may, Chair, from England. The default scheme that would have come into place, subject to the non-adoption of a scheme, would indicate that a local authority in Wales would have to provide the full 100% of council tax benefit, despite our getting 90% of the funding for that from the UK. In England, if a new scheme had not been adopted, they would have had to find 100%. In Scotland, there was a pre-determined agreement between the Scottish Government and local government in Scotland on, for want of a better word, back-filling whatever the reduction would be. I was not in a position to do that, and that is why there are three definitive differences in the scheme in terms of the policy agenda.

[391] **David Melding:** It is still with you, Suzy, unless we are moving on.

[392] **Suzy Davies:** I just wanted to ask this question: I take the point that you consider that it was not possible to bring forward your final regulations without the figures, but, obviously, a set of regulations was published without those figures—they were floating around just a couple of days before. Could those not have been brought to the Assembly a little earlier, with the proviso that the figures still had to be filled in?

[393] **Carl Sargeant:** We are talking days here, are we not? We are talking days.

[394] **Suzy Davies:** Are we?

[395] **Carl Sargeant:** Yes, we are—purely days. The fact of the matter is that I had also asked my team to give technical briefings to Members of all the opposition parties on the detail of the draft documents, so, when it was suggested that those parties had never seen them before, that was not strictly accurate in terms of the whole discussion. Members of parties had seen the draft regulations. The only thing that was absent was the numbers, and that was very clearly suggested to Members at that point. Could we have technically brought forward incomplete regulations? I would have to seek guidance from the committee—

[396] **David Melding:** Well, you could and it is often done, Minister. That is the whole

point of this inquiry.

[397] **Carl Sargeant:** On the issue of the detail in terms of the numbers, we were not able to quantify them, because we just did not have them.

[398] **Suzy Davies:** Do you accept that, in principle, a debate could have been brought forward sooner, without the figures, but with the kind of benefits that are referred on the face of the regulations, to discuss the principles by which those regulations were drawn up?

[399] **Carl Sargeant:** We can always look back at procedures and how we deal with these issues. I believed at the time that I brought forward the appropriate processes to engage with all the political parties of the Assembly in order for them to understand fully what the regulations might or might not be. In that process, I also explained to them the difficulty with the timeline and what the regulations contained at the appropriate time.

[400] **Suzy Davies:** So, you thought that you did enough.

[401] **Carl Sargeant:** At the time, yes, I did.

[402] **Simon Thomas:** I droi at rai o'r pethau a ddigwyddodd o gwmpas 5 Rhagfyr a'r broses a aethom drwyddi, rydych wedi sôn wrth ymateb i Suzy Davies bod fersiwn ddrafft o'r rheoliadau hyn wedi cael ei dangos i'r pleidiau eraill, ac, yn sicr, rwy'n meddwl bod rhyw fersiwn wedi ei ddosbarthu yr wythnos flaenorol i bob Aelod, os rwy'n cofio'n iawn. Pryd wnaethoch chi benderfynu nad oedd yn briodol i gael cymal machlud yn y rheoliadau?

**Simon Thomas:** Turning to some of the events that happened around 5 December and the process that we went through, you have mentioned in response to Suzy Davies that a draft version of these regulations was shown to other parties, and, certainly, I think that some version was distributed to every Member the previous week, if memory serves me. When did you decide that it was not appropriate to have a sunset clause in the regulations?

[403] **Carl Sargeant:** If I can couch that question in slightly different terms, when did I find it appropriate to add a sunset clause? When—

[404] **Simon Thomas:** I know when you found it appropriate to add one; I was asking when you found it appropriate not to have one. Was it suggested to you in advance of 5 December?

[405] **Carl Sargeant:** Around that time—that day, maybe. Around that time. However, the issue is that I brought forward the regulations as they were on the principle that I did not think that at the time that a sunset clause was required, or I would not have done that. The reason for that is partly because, as we are already seeing, the consequences of the sunset clause are that we have to bring it back to the Assembly every time. However, I accept that, to gain support from the opposition parties, the sunset clause was added.

[406] **Simon Thomas:** There is another aspect to this, Minister, if I may suggest it, which is that when you wrote to this committee saying that you did not have time to prepare these regulations bilingually, one of the things that you prayed in aid was the fact that this was being done at a very late stage in the day. We can take a judgement as to how late that was, but the committee's view in its reply was very strong that we thought that Welsh

legislation should be done bilingually. The sunset clause also benefits the preparation of legislation bilingually in the next year or so, does it not?

[407] **Carl Sargeant:** Yes, it does. On the issue of translating such a significant document that was being drafted at that stage, we have an indication that to translate this document would take around 26 weeks.

[408] **Ms Barry:** It is expected to be 20 weeks' translation work on an average of 92,000 words for one set of regulations, and roughly four to six weeks of Welsh-checking. There is some leeway to that, but that is the broad guidance that has been issued to us. To have laid Welsh regulations in November, they would have had to have been available for translation in May when the local government Bill was yet to be amended.

[409] **Simon Thomas:** Is that similar to the timescale that you have for next year as well?

[410] **Ms Barry:** Yes.

[411] **Simon Thomas:** Okay. To come back to your earlier question to me, when did you find it appropriate to include the sunset clause?

[412] **Carl Sargeant:** I made agreement with the parties seeking to support the Bill, subject to a sunset clause.

[413] **Simon Thomas:** So, it was not a constitutional decision but a political decision?

[414] **Carl Sargeant:** Yes.

[415] **Simon Thomas:** They often are. Turning to 5 December, the Government asked us to suspend Standing Orders in order to pass the regulations on the day. We did not see the final regulations until about 20 minutes before that. We had seen a draft the week before, but not the final regulations until about 20 minutes before. I am one of the Members who could not support your request on that occasion, as I felt it to be inappropriate. However, it emerged that you did not succeed in suspending Standing Orders; the Assembly had to be recalled, and they were passed with the agreement on the sunset clause, as we have just discussed. However, you came back in January and redid them all over again, which was very generous because it now has a better deal for the people of Wales. Therefore, why was it so essential to take that unusual step of suspending Standing Orders to pass regulations, when the final regulations that we passed were those that were passed in January, which have been widely welcomed and which local authorities are able to deliver, albeit tightly?

[416] **Carl Sargeant:** That is partly the reason. The last part of your question was about the ability of local government to consult on the regulations that were being laid. That is why we had to have regulations in place before Christmas in order to start that consultation process. If we had predetermined a decision to introduce new regulations in January, local government would not have had the time to consult on the regulations that were in place, and would therefore have fallen into the default scheme that commenced on 31 January. So, it was about following procedure for local authorities to be able to deliver on the consultation.

[417] **Simon Thomas:** Is it not the usual way to make regulations or any legislation to hit the consultation window and start consulting on a version and then suddenly to say 'This is the updated version'. That is not a very good way of making legislation, is it?

[418] **Carl Sargeant:** If you consider the whole process from removing the function that the UK Government is currently delivering to issuing a directive to any administration to say ‘Now you’ll be doing this’ with no structure in place and no understanding of finances, you will see that what we have done has been incredibly challenging, yet we have still delivered a scheme that I hope will be welcomed by many residents in Wales. It would be fair to say that this scheme is more substantially supported by any Government in the UK in terms of the additional finances that we have put in.

[419] **Simon Thomas:** Let us stick to your decisions. When did the Government decide to increase the support from 90% to 100%? Was it a Cabinet decision?

4.15 p.m.

[420] **Carl Sargeant:** It was a decision that was ratified by colleagues.

[421] **Simon Thomas:** When was that?

[422] **Carl Sargeant:** It was on 15 January, I think. I do not have the exact date, but it was during the week prior to the decision to lay them—

[423] **Simon Thomas:** For the third time?

[424] **Carl Sargeant:** The final time.

[425] **Simon Thomas:** And the final time; yes.

[426] **Carl Sargeant:** Yes, it was the last set of regulations.

[427] **Simon Thomas:** So, it was very much after the autumn statement, then.

[428] **Carl Sargeant:** Yes.

[429] **Simon Thomas:** You said in that statement that these funds and the increase in support were a result of careful financial management and the prudent use of resources, which is always good to hear. Why was it not possible to identify that in the Government’s finance systems in the week before Christmas when we had that opportunity to pass regulations?

[430] **Carl Sargeant:** The week before Christmas?

[431] **Simon Thomas:** Yes. The Government now has wonderful financial systems and I am trying to understand what new financial information identified that such a significant sum of money was going to become available not only from your department, as I understand it, but from other Government departments?

[432] **Carl Sargeant:** We measured the risks—and you will be very aware of pressures that start to be released towards the end of the year, such as risks related to a flu pandemic and so on—and some of the risk related to such events starts to pass. Changes to some of the welfare system benefits, which had been announced at the beginning of January, were also coming across. For example, issues that the Joseph Rowntree Foundation and Citizens Advice had alluded to. They were all adding additional pressure to the system and we measured those pressures versus the risk and what available finances were left among the

Welsh Government's finances.

[433] **Simon Thomas:** In effect, did it become a higher political priority?

[434] **Carl Sargeant:** It was always a high political priority.

[435] **Simon Thomas:** Yes, but did it become higher?

[436] **Carl Sargeant:** It was just a matter of affordability. It was not the case that I did not want to finance this fully in the beginning; the Welsh Government should not have been in that position because I still believe that this is a UK Government function. However, given the financial constraints on my budget at that time, I was unable to comply with increasing the funding in any way, as I hope I have been able to explain. The risk versus increased challenges in the welfare system and the availability of finance from other departments enabled us to finance that after Christmas.

[437] **Simon Thomas:** Taking all of this together, the fact that there are these uncertainties in the welfare system, which you have talked about, and that you could only identify this money in this financial year and not necessarily in future financial years, as well as the fact that the regulations will need to be recast bilingually because, I would imagine, that would certainly be the wish of this committee, does it not now look like the sunset clause would have been an appropriate way to make such regulations?

[438] **Carl Sargeant:** Is it the view of the committee that I, as Minister, had no intention to review the scheme moving forward? I had already said, before any discussion on a sunset clause, that this would be subject to a review. I have made many public statements—and I may be wrong about this, so I will try to choose my words carefully—in terms of the detail that I have given to the Assembly; I have said that, when moving forward, we would look at the target groups. We still do not fully understand the implications of welfare reform. I was working with third-party groups, looking at who should and should not be eligible for council tax benefit. That was always the case and I would have brought that back to the regulations. However, to give some security to the parties that have supported the Bill, it is clear that the sunset clause is the belt-and-braces element to this process.

[439] **David Melding:** I am finding it very difficult to understand how you had to wait until the autumn statement on 5 December to get the final figures, or what you thought would be the final figures. You knew that you would get 90% of the scheme, but that there would be a 10% reduction. What were your officials telling you the spread of risk was when the figures actually came through and you knew what 90% was? They must have given you a range, in terms of how difficult it was to estimate the sum that you were going to get.

[440] **Carl Sargeant:** Of course, and if I may clarify your question, because parts of it were not strictly accurate, in terms of my understanding of the amount of funding available for the scheme—

[441] **David Melding:** You made a statement to the Assembly saying that you were going to get 90%. I think that I am right in saying that. Or, you may have said that there would be a 10% reduction. You may have put it that way.

[442] **Carl Sargeant:** I was following on from the statement made by the UK Government that there was due to be a 10% reduction to the scheme, and I concur with that process. However, in the process of discussions with Lord Freud and my team, the figures

that were given to us, as the Welsh Government, was a more than 10% reduction. In fact, it was around a 13% reduction, in terms of the indicative figures.

[443] **David Melding:** Could you tell us how much that was?

[444] **Carl Sargeant:** What was the number?

[445] **Ms Carter:** We were given an indicative figure in May 2012 of £214 million, as the transfer. The issue with whether the percentage is 90%, or some other percentage, is that the 10% cut was not described in terms of what was being cut by 10%. So, we were looking at current expenditure figures, and compared to how things were currently panning out for 2012-13, the figure of £214 million was substantially more than a 10% cut. So, that was the focus of the discussions at that point: the basis for that £214 million figure, and when we would know the final figures. It took some time, but we established that the £214 million was based on a forecast of expected expenditure in 2013-14, and those forecasts were due to be updated on the basis of the Office for Budget Responsibility figures, feeding into the autumn statement. So, that is why the figures were uncertain. It is probably worth pointing out that there were estimates prior to that. In the previous autumn statement, the figure had been £220 million, and in the initial indications it was £225 million. So, there was a great deal of fluctuation around those numbers.

[446] **David Melding:** On the best data you had, what would a 10% reduction have been, because you have already passed a judgment that £214 million was substantially more than 10%, so, presumably, you know, roughly, what a 10% reduction would have been?

[447] **Carl Sargeant:** We had a figure in mind, and it was around the £220 million or £225 million figure.

[448] **David Melding:** Which would have reduced from what? Would that have been a £20 million or a £30 million reduction?

[449] **Ms Carter:** Working on an estimate for this year's expenditure of around £244 million or £245 million, the £220 million, which is now being provided, would be the 10% shortfall. However, that does not take account of what might happen subsequently.

[450] **Carl Sargeant:** That is a really important point. The discussion with Lord Freud was about—and I know that the committee recognises this—the fact that this went from being a demand-led budget to a fixed budget. We are working on the assumption that the fixed figure will be accurate on the demand of claimant. That may be completely wrong, and we may get many more claimants. The figures that we contested with the UK Government suggest that, with universal benefit, there will be a reduction in council-tax claimants. Year on year, for the past five years, there has been a marked increase of take-up; this year, for some reason, there is an indicator that would suggest that that will not happen. That is completely worrying.

[451] **David Melding:** The problem we have in all of this, Minister, is that you wrote to me saying that until you knew the financial settlement you could not lay the draft, and you needed the final figures, but then, hey presto, six weeks later you lay a different draft with new figures. Why such a contradictory approach, if you were able to lay a further draft later when you knew the final figures? As we have heard from your officials, all sorts of things get revised in-year to reflect the accurate expenditure levels. We got into this horrible delay waiting for a final figure, for which no other jurisdiction had to wait. Why was it so necessary here?

[452] **Carl Sargeant:** It was about different policy schemes and we believed that we were trying to protect the most vulnerable in our communities by creating a scheme. I could have presented regulations, as the Chair rightly suggests, with the numbers that were provided to us on an indicative basis from the UK Government, but they would have been completely wrong. In fact, it would have been a 13% reduction instead of a 10% reduction.

[453] **David Melding:** In effect, you have changed the ones that were eventually laid anyway, without further scrutiny. Although, I suspect that the scrutiny would not have said, 'We do not want the reduction to go to 100%.' However, we find it difficult to understand what you were thinking of doing and why you were using a process and delaying until you had a finitude, which, frankly, is often not achieved. You should have started the process much earlier, as other jurisdictions did, so that we could have got on with the blood and guts of the scrutiny. Then we could have said in a merits report that the final figures will come whenever for us to give them our attention.

[454] **Carl Sargeant:** I have seen the report in terms of the detail—the small amount of scrutiny that you have been able to apply to the regulations—but I do not accept that the delay is about the process that we follow. We have acted within the policy objectives of the regulations with the information that was provided by the UK Government, which was essential to delivering this properly. The whole process has not been pain-free. Anything that we could have done to bring that forward would have been appropriate, but I do not believe that we have tried to delay, or otherwise, any part of this process.

[455] **David Melding:** Will your future practice be not to lay regulations until you have certainty on figures?

[456] **Carl Sargeant:** We have learnt a lot from this process, in terms of the handling of regulations. We should not underestimate the scale of trying to establish a set of principles and regulations to develop a completely new scheme, with which we are not at all familiar. Our local authority partners have been very supportive in bringing this forward. Would I do this in a different way—

[457] **David Melding:** That is why we need scrutiny, Minister. We did not want to get into the situation that we did.

[458] **Carl Sargeant:** My point is that we were constricted in this process by what was happening in Westminster.

[459] **Suzy Davies:** Picking up on your last sentence, Minister, do you think that local authorities in England and the Government in Scotland were reckless in laying their regulations, when they had exactly the same information as you had?

[460] **Carl Sargeant:** No.

[461] **David Melding:** So, why did you not do so?

[462] **Carl Sargeant:** The whole policy agenda is different. The question was whether I think they were reckless, and, no, I do not. I do not think that we were, either.

[463] **Suzy Davies:** Do you think that their local authorities have suffered as a result of having longer to consult?

[464] **Carl Sargeant:** How have they had longer to consult?

[465] **Suzy Davies:** Their regulations were laid before the autumn statement.

[466] **Carl Sargeant:** In England, the regulations were not complete until a similar time as ours were complete.

[467] **Suzy Davies:** What about Scotland, given that you mentioned that they were already talking about amending the Scottish one? They presumably had a longer run at it.

[468] **Carl Sargeant:** Scotland is very different. Subject to the finance being available and to carrying the risk, we could have done exactly the same as Scotland did. I think that what Scotland has done in working with local authorities is commendable. It has managed to find additional funding to supply the council tax benefit. I did not have that flexibility within my budget to do that. That is the whole point. Therefore, we have to deliver a policy agenda and a scheme that complies with the procedural processes that we need to have in place. One of those is about knowing what the numbers were from the UK Government in order for us not to be able to backfill that provision, because we believed that that was not affordable. That is why we laid the regulations at that appropriate point.

4.30 p.m.

[469] **Suzy Davies:** I do not want to push it too far, but you talk about the flexibility in Scotland. I am not familiar with where that flexibility was found.

[470] **Carl Sargeant:** The indication from the Scottish Government was that it would backfill whatever the number was.

[471] **Suzy Davies:** That is quite reckless if it did not know the figures, surely?

[472] **Carl Sargeant:** That is your opinion. I do not believe that the Scottish Government or the English authorities have acted recklessly; I believe that they have reacted appropriately to their local demand, as we have. It could have gone horribly wrong in Scotland, and we were not prepared to take the risk, whether it was 10%, 13% or more, because we just did not know. Despite asking Lord Freud and Iain Duncan Smith, they were not able to tell us what those numbers were, even up to the day of the autumn statement when we thought that we would have them. We had great difficulty with the Treasury in identifying that number for the final session. So, even up to until 5.15 p.m. we were still struggling to find out what that number was.

[473] In terms of the technical detail, I will ask my colleague—

[474] **David Melding:** I am not sure that we need technical detail. You have given very clear answers. There may be some difference between the committee's view on whether the procedure could have been managed better, and all the rest of it, but it was a challenging area of policy, nobody can doubt that, and there can be very logical reasons about why different things were done in different jurisdictions. It is not for us to say that you should have followed others or that they should have waited and followed us.

[475] **Simon Thomas:** To pick up on that point, I appreciate that the numbers were very late coming and I am sure that you had to scream for them on the day, but that underlines the issue that we are trying to get hold of here. It is very unusual to legislate on the basis of numbers and the finance available; it is more usual to legislate on the principles that you



want to employ, to set out the principles on which you will use x sum of money, and, when the numbers become available, apply that as best as you can. You may have some examples of where your approach of waiting for the numbers then legislating has been done—I am not saying that it has never been done, but it is unusual.

[476] I want to go back to several things that you raised, Minister, in reply to questions. You said several times that this is not usually a devolved area in terms of competence. Therefore, by inference and by experience, that is not an area in which Welsh Government officials have much experience, and legislating is not something that is usual for Welsh Government in this area. We have ongoing welfare reform, including the social fund, which will also be devolved. What lessons can you take from all of this in terms of the capacity of Welsh Government to deal with this complex area, and on the way in which we should legislate in future in trying to equitably distribute an ever decreasing sum of money, because that is what is basically happening? Is there not something to be said for taking a different approach to the one that you took on these particular regulations?

[477] **Carl Sargeant:** That is a really useful question in terms of asking how we can prevent some of these issues from arising in the future. The Member is quite right to suggest that this is a moving feast; we are still unsighted on some of the proposals, whether we like them or not. The politics of this is that it is happening, and we still do not know what the effect will be.

[478] You are absolutely right that my team did not have the experience to build a scheme such as this, and it has been a huge learning curve for it in just drafting the regulations—it is a huge set of regulations, as Members have seen—but also in terms of delivery. I pay tribute to the proposals that the team has put forward—it has worked very hard—

[479] **Simon Thomas:** That was not meant as a criticism; I was just giving an analysis.

[480] **Carl Sargeant:** Of course. You are right about how we should develop these new interventions. I have spoken to my director about how we can strengthen the teams in these areas, but, again, we just do not know what the effects will be. On the back of the sunset clause, I am still keen to ensure that we target the right people with the limited amount of money that we have, and that will be subject to support from opposition parties. Alongside Leighton Andrews, who is running the welfare reform group in terms of understanding all of the implications, we are trying to understand the impacts this will have in Wales, and how we can best mitigate those through our interventions. Again, can we strengthen the teams in terms of support? Absolutely, and the director fully understands that, but that should not be taken as a criticism of the team that was in place to draft these.

[481] **Simon Thomas:** Precisely. The second bit of the question was about strengthening the team and also about your reflections on the way you might need to legislate in future. What lessons have you learnt from this process?

[482] **Carl Sargeant:** I have learned that communication is critical and that it works both ways. If we take a step back and look at the process—I have tried to answer the questions that you have offered to me today—we will see that when we first engaged with the UK Government there was not a lot of information, apart from ‘It is going to be 10% less, but you will be getting it—off you go’. That was not a lot of information, and we were in that position for quite a long time. Despite asking, it was not forthcoming. So, it works both ways. Actually, the UK Government could help: if there are going to be significant changes, or any changes to any part of a devolved or non-devolved function, we should

have the ability to engage with it as early as possible.

[483] Without being overtly political, Chair, a lot of the decisions being taken, and a lot of these changes, are being thought through on the hoof. This has not been planned; it is about a number and a structure so that they can save in the longer term. I accept that; that is what the decision is. It is just that it complicates things when you passport the risk. I was told, ‘This is not our problem anymore; it is yours. Get on with it.’ We have had to create the scheme. So, dialogue is important, and having that information. Again, the datasets that come alongside welfare reform are not held by us; they are held by the UK, and we have had to make some significant financial investment to ensure that we could draw down those data to deliver these schemes. This was not a duty of ours, and we should never have had it, but we have, and that is just one element of it. Communication is essential in taking this forward.

[484] **David Melding:** Eluned, we might have covered most of your questions, but there might be one or two points that you want to make.

[485] **Eluned Parrott:** Minister, would you accept that, given that the Scottish Government was able to lay its regulations a full month before you were able to lay your first version, and if engagement and communication are the critical factors here, the Scottish Government was more effective in that area than you were?

[486] **Carl Sargeant:** No.

[487] **Eluned Parrott:** I am surprised by that answer, Minister, because clearly there is a month’s difference—actually seven or eight weeks’ difference in the time that the Scottish Government needed to lay its regulations and the time in which you laid your latest version. Clearly, the Scottish Government was better able to communicate. Certainly it had its local authorities on board much earlier than the time you spoke to yours in the process.

[488] **Carl Sargeant:** No, that is not the case. Again, if you were comparing apples with apples I might agree with you, but you are not; the scheme is completely different. Actually, the decision by the Scottish Government to backfill any risk that would be relayed to the Scottish Government or to local authorities is significantly different to what is happening in Wales.

[489] **David Melding:** It had the same information that you had, though, did it not?

[490] **Carl Sargeant:** Yes.

[491] **David Melding:** It would not have known what 10% meant, either.

[492] **Carl Sargeant:** Of course, and that is why I said that the risk to the Scottish Government was enormous. It could have been 10% or 50%. We were unsighted, and so was Scotland. I wrote a joint letter with John Swinney to the UK Government—in fact, two letters might have gone—elaborating on the issue about not understanding the consequences of the finances. A bigger element for Scotland was trying to manage the risk of what it had committed to, because the numbers could have been very big, and we just could not carry that risk. So, I do not accept that we are measuring the same thing here, and that is where the policy agenda is completely different.

[493] **Eluned Parrott:** But do you never budget on the basis of a forecast?

[494] **Carl Sargeant:** Not on the basis of being told one thing when they deliver another.

[495] **Eluned Parrott:** The variance in this case is less than 3%, and you have managed to find four times that amount down the back of the sofa in the three weeks following the laying of the regulations, have you not?

[496] **Carl Sargeant:** That is an interesting comment, but it certainly was not down the back of the sofa. The Member may think that 3% of this amount—£22 million—is insignificant, but I certainly do not.

[497] **Eluned Parrott:** No, I certainly do not think that it is an insignificant amount, but I do think that it is interesting that you were able to find four times that amount in the space of three weeks, Minister. It suggests to me that there was perhaps an aversion to risk in the Welsh Government that was not seen in other places.

[498] **Carl Sargeant:** We call that responsible government.

[499] **Eluned Parrott:** I see, and so, you are suggesting that other places were not implementing responsible government, Minister.

[500] **Carl Sargeant:** I did not suggest that at all. I said that we were introducing responsible government, and the Member may want to reflect on her comments.

[501] **Eluned Parrott:** Fair enough.

[502] Moving on, you said to Suzy Davies a little earlier that you felt that you had taken the appropriate steps at that time. With the benefit of hindsight, what steps would you take to avoid that situation arising again?

[503] **Carl Sargeant:** For any Minister who takes legislation to the Chamber that does not pass, it is not a good place in terms of where you would like to be. The discussions with opposition parties, which ultimately supported the regulations, were certainly welcome, and perhaps a lesson learnt is one of ensuring engagement early on, despite the fact that it would be wrong to say that there was no engagement and the regulations were not shared with parties. What is more critical is that you share information with opposition parties—that is, at some point, you look to gain support earlier than on the day of the vote.

[504] **Eluned Parrott:** I think that that is certainly appropriate.

[505] **Mick Antoniw:** I have two very short points to make. You mentioned the implications of several percentage points of variance and how it could cause a significant impact. One of the issues raised with me by local government at the time was about the accuracy of the data given that the data on which the calculations were based were already considerably out of date. That is: the number of claimants, who is claiming, the amounts, et cetera—none of it is ever static. What implication did that have? Also, what implication does it potentially present for any considerations next year? You mentioned that these are data that had to be accessed—well, of course, there must be question marks now as to the extent to which those data are accurate for future preparations.

[506] **Carl Sargeant:** In developing these regulations, we were in the lap of the gods in trying to understand what data were available. We have not done this before; it is completely new to my team and to local government. So, we were creating a new scheme that was reliant on the number of people eligible to claim and the amount of money

available for the system. There is also the fact that we were moving from a demand-led system to a fixed budget. All of those factors presented risks then and in the development of the process, but the risks are actually even higher now that we have regulations in place. I do not know whether the amount of funding available within the council tax benefit system that we have introduced will be enough for the claimants in Wales. That causes concern for local authorities, and for me, because, unlike what happens elsewhere, I am not prepared to say that the risk has been transferred to local authorities. What we have to do is to measure this risk together and try to find a suitable outcome. I am hopeful that there will be enough money in the pot, but the indications that we saw, and the historic data, suggest that there has been a year-on-year growth in council tax benefit claims. Unless something significant happens, such as welfare reform, I do not know why I or anybody else would have reason to believe that those figures are not going to increase.

4.45 p.m.

[507] **David Melding:** I just have Suzy to come in quickly.

[508] **Suzy Davies:** That might have answered my question, Minister, because I was going to ask whether we will have to wait until the autumn statement this year for any proposed amendments to the existing regulations.

[509] **Carl Sargeant:** We will be working on the new regulations, and the translation element of this means that we will have to start early to take this forward. Chair, I accept that this has not been an easy process for the Assembly or for my department with the information that we have received. However, we have tried to be as open and transparent as possible with the information that we have received from the UK Government. Not having some of that information has had a knock-on effect. Therefore, I am pleased that, in January, we approved a more generous scheme than anywhere else in the UK, but the procedures and processes to get there probably could have been a lot better.

[510] **David Melding:** That is a good note on which to end. I thank you and your officials. I think that we have had a useful and candid session, and we will draw some conclusions and make some recommendations in our report. Thank you for your attendance this afternoon, Minister.