POLICY NOTE

THE COUNCIL TAX REDUCTION (SCOTLAND) AMENDMENT (No. 2) REGULATIONS 2024

SSI 2024/230

The above instrument is made in exercise of the powers conferred by sections 80 and 113(1) and (2) and paragraph 1 of schedule 2 of the Local Government Finance Act 1992. It is subject to the negative procedure.

Summary Box

This policy amendment makes three changes to the Council Tax Reduction (Scotland) Regulations 2021("2021 Regulations"). The purpose of these amendments is:

- **to enable all children and young people 'looked after' by a local authority who are placed for adoption with a Council Tax Reduction applicant be considered to part of the applicant's family for the purposes of calculating Council Tax Reduction (CTR).**
- **to correct an omission to ensure that those who have an 'Enhanced Disability Premium' due to receiving Attendance Allowance, or Scottish Pension Age Disability Payment do not lose this premium if they are in hospital for more 28 days.**
- **to correct a minor error in Schedule 1, para 13.**

Policy Objectives

This instrument amends the Council Tax Reduction (Scotland) Regulations 2021 ("the 2021 Regulations").

Children and Young People placed for adoption with an applicant

Eligibility for Council Tax Reduction is determined using a calculation which awards allowances and premiums depending on the circumstances of the applicant and any dependants that are living in their household. Part of this calculation includes awarding a 'Child Premium' and where relevant a 'Disabled Child Premium' for any child or young person who is part of the applicant's family. (For the purposes of the 2021 Regulations a young person is a person falling within the meaning of "qualifying young person" under regulation 5 of the Universal Credit Regulations 2013 (S.I. 2013/376). This means a person who has reached the age of 16 but is under the age of 20 and who is in full-time non-advanced education or training).

In order to qualify for a 'Child Premium' or a 'Disabled Child Premium', a Council Tax Reduction applicant must have a child or young person as a member of their family. This means that the applicant or the applicant's partner must be responsible for the child or young person for the purposes of regulation 7 of the 2021 Regulations. Applying regulation 7 a

person is, in general, responsible for a child or young person who "normally lives" with them; in other words, the child or young person has the person's home as their address. Separate considerations apply where a child or young person routinely splits their time between two or more addresses, but these are not relevant for the purposes of this instrument.

In the 2021 Regulations as originally laid, regulation 7 provides for a general exclusion of children and young people 'looked after' by a local authority within the meaning of section 17(6) of the Children (Scotland) Act 1995 (c.36) from being treated as the responsibility of any person for the purposes of the 2021 Regulations. This is subject to certain exceptions, including where the child is placed with a kinship carer or where they continue to live with their parent, though 'looked after' by the local authority.

Under the new regulation 7(8) as it is to be substituted, there will be no general exclusion relating to 'looked after' children. In general, all that will matter for the purposes of establishing responsibility is whether such a child or young person "normally lives" with a Council Tax Reduction applicant or their partner. The fact that they are 'looked after' will be irrelevant. There is one exception to this; children placed with a foster carer under the Looked After Children (Scotland) Regulations 2009 are not to be considered the responsibility of any person for regulation 7 purposes. This maintains the position as it applies under regulation 7(8) of the 2021 Regulations as originally enacted. It reflects the differing status of foster carers, who are considered to provide care as self-employed persons, as compared to those with whom a child or young person is living with a view to adoption.

The only *change* made by new regulation 7(8) is that any child or young person 'looked after' by a local authority who is placed for adoption with a Council Tax Reduction applicant will be classed as being the responsibility of the applicant. They will not be excluded by their 'looked after' status. As a result, the child or young person will be a member of the applicant's family, and so the applicant will be entitled to the 'Child Premium' and, where relevant, a'Disabled Child Premium' in Council Tax Reduction in respect of them. This mirrors a change recently made to regulation 4A of the Universal Credit Regulations 2013 by the Social Security and Universal Credit (Migration of Tax Credit Claimants and Miscellaneous Amendments) Regulations 2024 (S.I. 2024/341). A Universal Credit claimant with whom a child or young person who is 'looked after' by a local authority is placed for adoption is entitled to an additional amount of Universal Credit in respect of the child.

Regulation 7(10) is amended as a consequence of the change to regulation 7(8). The definition of "looked after by a local authority" is no longer needed and is therefore removed.

<u>Enhanced Disability Premium</u>

As part of the Council Tax Reduction entitlement calculation, as outlined above, premiums can be awarded depending on the personal circumstances of the household. One of these premiums is the 'Enhanced Disability Premium'. An 'Enhanced Disability Premium' is awarded if an applicant is in receipt of a qualifying disability benefit.

To correct an omission in the 2021 Regulations an amendment is required to ensure that those who have an 'Enhanced Disability Premium' because they have Attendance Allowance or Pension Age Disability Payment do not lose this premium if they are in hospital receiving treatment as an inpatient for more than 28 days. This is the approach that is taken with entitlement to the 'Enhanced Disability Premium' for those who are in receipt of other qualifying disability benefits.

If this correction is not made, those who receive Attendance Allowance or Pension Age Disability Payment would cease to qualify for an 'Enhanced Disability Premium' after 28 days in hospital and there may be a reduction in their level of Council Tax Reduction as a result.

References to the 'daily living component' of Adult Disability Payment

These Regulations also correct a minor error in the order in which references to the 'daily living component' of Adult Disability Payment were inserted into paragraph 13 of schedule 1 of the 2021 Regulations by the Council Tax Reduction (Scotland) Amendment Regulations 2022 (S.S.I. 2022/52).

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Council Tax Reduction (Scotland) Amendment Regulations 2024 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

No formal consultation was required to be carried out in relation to these Regulations.

Impact Assessments

A Child Rights and Wellbeing Impact Assessment has been carried out in relation to these Regulations.

Financial Effects

The Cabinet Secretary for Finance and Local Government confirms that no Business-Related Impact Assessment is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Local Government and Communities
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