

# Social Justice and Social Security Committee

## SSI cover note

6<sup>th</sup> Meeting, (Session 6), 30 September 2021

**Title of Instrument:** [Council Tax Reduction \(Scotland\) Regulations 2021](#)

**Laid Date:** 25 June 2021

**Reporting deadline:** 4 October 2021

**Type of instrument:** Negative

### Parliamentary procedure:

Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.

If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.

If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book.) Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.

The Committee is asked to consider and agree on whether it has concluded its consideration of this instrument.

## Background

1. The Council Tax Reduction (CTR) scheme came into operation in 2013, and reduces the council tax liability of lower income households. The level of CTR a household is entitled to depends on household circumstances, income, savings,

and other factors. The reduction can be any proportion of the household's council tax liability, up to and including 100 per cent.

2. The UK Government's UK-wide benefit Universal Credit (UC) replaces four existing means tested benefits and two tax credits (collectively known as "legacy benefits"). The UK Government plans to move those receiving legacy benefits onto UC in the years ahead.
3. Currently the CTR scheme uses a different way of calculating CTR entitlement if a CTR applicant or recipient receives UC than for households who are not on UC. This existing calculation for UC households was introduced some years ago, when UC was being developed and its final form was unclear. However, analysis work has found that the two different ways of calculating CTR can produce different levels of CTR for households in the same circumstances.
4. More detailed background information is included in the [SPICe briefing on Council Tax Reduction](#).

## Purpose

5. According to the [Policy Note](#), the purpose of these Regulations is to ensure that, as far as practicable, a household in the same circumstances receives the same level of Council Tax Reduction whether it is on Universal Credit or not.

## Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform Committee considered the regulations at their meeting on [31 August 2021](#), and agreed to draw this instrument to the attention of the Parliament on the grounds that drafting errors were noted. However, it also welcomed the Scottish Government's commitment to bring forward an amending SSI to correct these errors before the Regulations come into force on 1 April 2022.
7. The Delegated Powers and Law Reform Committee also noted that its predecessor committee had called on the Scottish Government to consolidate both the Working Age Regulations and the Council Tax Reduction (State Pension Credit) (Scotland) Regulations. It therefore welcomed that the instrument will consolidate the Council Tax Reduction (Scotland) Regulations 2012 as previously recommended, but agreed to write to the Scottish Government to ask if and when the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 will also be consolidated.
8. Full detail of the Committee's consideration is included in its [report](#).

## Social Justice and Social Security Committee consideration

9. The Committee wrote to stakeholders on 23 August to seek written views on these regulations. It received responses from Citizens Advice Scotland, Child Poverty Action Group in Scotland, One Parent Families Scotland and the Institute of Revenues Rating and Valuation (IRRV). These responses are attached in full in the annexe.
10. The Committee wrote to the Scottish Government to seek a response to the issues highlighted by these organisations. The Minister's letter is included in annexe B.<sup>1</sup>
11. SPICe published a [briefing on Council Tax Reduction](#) on 24 September 2021. This includes background information on Council Tax Reduction, including the scale of the CTR scheme, the impact of the new rules and a summary of stakeholder views.

## For decision

12. The Committee is invited to consider any issues it wishes to raise regarding this instrument.

**Note by the Clerk  
27 September 2021**

<sup>1</sup> The Committee received a response from IRRV after it sent its letter to the Scottish Government. This response is therefore not highlighted in this correspondence. The Committee sent a subsequent request inviting the Scottish Government to respond to the points raised by IRRV. The Committee hopes to receive a response to this request on 29 September.

## **Annexe A – responses to the Committee’s letter**

### **Response from CPAG**

CPAG in Scotland’s briefing notes for Social Justice and Social Security Committee  
Notes on the Council Tax Reduction (Scotland) Regulations 2021  
September 2021

Key points:

- These regulations do make some changes to entitlement from the current working age council tax reduction (CTR) regulations. Therefore, there will be some winners and losers. For example, some families who get child tax credit (CTC) will be worse off than under the current regulations. Without a robust assessment of the impacts of such changes, it is difficult for parliament to assess who are the winners and losers. Such assessments should also consider how to proactively reduce inequality – this does not appear to have been done.
- Whilst the stated policy intention is largely met, we do not think that it was ambitious enough. For example, the Scottish Government has missed an opportunity to use these regulations to reduce child poverty by making the rules more generous for low income households. For example, disregarding CTC and the child element of universal credit (UC) would have made CTR more generous for low-income working households. CTC is already disregarded for people getting CTR who are over pension age.
- Changes to the working age CTR scheme made by the regulations also reduce or remove some existing entitlements for both UC claimants and other CTR applicants. For example, they exclude EU nationals with pre-settled status and jobseekers from entitlement to CTR. This appears at odds with wider Scottish Government policy to support EU nationals to remain in Scotland.

Lack of guidance to local authorities results in different approaches in different areas, and means it is harder for individuals (and advisers) to understand the basis of decisions. This problem is exacerbated by the lack of an obligation to produce a detailed decision notice explaining how entitlement has been calculated.

### **Have you been consulted by Scottish Government officials on these regulations? If so, do you have any comment on that engagement?**

We have had several meetings with the relevant officials to discuss the regulations and this engagement is still ongoing. This has provided us with the opportunity to provide our view on various technical aspects of the regulations – a number of which are reflected in the drafting of these regulations. We are very grateful for this opportunity, and the willingness of officials to discuss the detail of the regulations.

However, we are not aware of any public consultation on these regulations. Therefore, there may be interested groups who have not had a chance to comment on these regulations. Given the size of the investment in low-income families involved, it is striking how little consultation there has been in relation to CTR compared to the approach taken to types of assistance under the Social Security (Scotland) Act, for example.

**Do you consider that the regulations meet the policy intent, set out in the [policy note](#) that: “as far as practicable, a household in the same circumstances receives the same level of Council Tax Reduction whether it is on Universal Credit or not.”**

Broadly, the regulations meet the policy intent. These regulations align the treatment of UC claimants and other applicants more closely than the current regulations. However, there are several instances where families on ‘legacy benefits’ will be worse off than they are under the current regulations.

In Reg 6(1) a ‘young person’ is defined as it is for UC. There is a difference between the definition of a young person for UC and CTC. For example, a parent of a 16 or 17 year old young person can continue to get CTC for the 20 week ‘extension period’ after they leave education. But CTC (which counts as income for CTR) will not be offset by a child premium, as it is in the current regulations, due to the amended definition of ‘young person’. Similarly, a parent may continue to get CTC for some periods during which a child is in prison or detention, but Reg 7(7) immediately brings the child premium to an end. Finally, the hard six month limit of treating a child or young person as part of a household during a temporary absence does not exist in CTC or the current regulations.

**The new rules aim to provide equity ‘as far as practicable’ but will not do so in every single circumstance. (See Scottish Government background paper sections 3.5 and 4). Have you identified situations where the new regulations will not provide the same level of CTR on Universal Credit as on legacy benefits and does this give you any concerns?**

Yes. Someone liable for council tax, can get a secondary form of CTR if they live with other adults on low incomes. This is known as a ‘second adult rebate’. Where the liable person is a student, and the property would be exempt from council tax but for the presence of a second adult, Sch 2 para 1(d) provides 100 per cent CTR if the second adult gets a DWP means-tested benefit **other than UC**. But if the second adult is in identical financial circumstances but gets UC, the reduction is only 25 per cent, or less if the second adult has any earned income.

Earned income is treated differently for some UC claimants and people without an award of UC. In essence the approach has been to maintain the current rules for people without an award of UC, and mirror the UC rules for people who do have an award of UC.

The main difficulty with this approach is that where someone's earnings fluctuate they may move in and out of UC entitlement. And if a UC award ends due to an increase in earnings the DWP keeps the UC account active for six months. So the local authority will still be able to see the calculation of employed earnings made for UC, but will be required to treat those earnings differently, in relation to pension contributions, for example (compare Reg 49(6) and Reg 50(3)). CPAG are aware of local authorities currently ignoring the rules about how earnings should be treated, and using the figures provided by UC for periods where there is no UC entitlement.

The regulations also give local authorities discretion to depart from a number of the UC rules about earnings (see for example the use of 'may' in Reg 47(2), and Reg 56(1) and (3)). In principle, this discretion could be a useful safeguard. However, applicants will not be able to challenge a failure to amend their award where there is a discretion to do so if it has been more than two months since the most recent determination of entitlement (as the time limit in Reg 93(3) cannot be extended).

Even if a CTR award is amended, it is vital that an applicant is able to understand the basis of the award. Like the current regulations, there is no requirement to notify a determination of entitlement to CTR in writing, or explain the basis on which it was made. Some local authorities provide as little as a single annual figure on the council tax demand notice, with no explanation of the level of entitlement for different weeks during the year. Combined with an increased discretion around treatment of earnings this risks applicants (and advisers) being unable to establish the basis of an award, and so not being able to challenge it effectively.

Finally, Reg 64(4) allows local authorities to average out a fluctuating award of UC itself. Changes to that award are in turn most likely to result from fluctuating earnings. Particularly as this is a new provision, it appears to be a situation in which guidance to local authorities setting out how they may wish to use their discretion would be particularly useful. It is our understanding that it will continue to be the case that no guidance to local authorities on how to administer the CTR scheme is made publicly available.

**Do you have any suggestions that would further reduce the occurrence of different levels of CTR support for those on Universal Credit compared to legacy benefits?**

Yes. If CTC and child elements of UC were removed from the list of unearned income in Reg 57, this would resolve the problems caused by differences between the way these benefits define being responsible for a child.

There are also ways in which these regulations could be amended to either improve entitlement for both universal credit and legacy benefit claimants, or remove provisions that make them less generous than the current regulations are for both groups. The issues that we have identified in the regulations include the following provisions.

1. Reg 90 provides for a 'non-dependant deduction' - reducing the amount of CTR where the applicant lives with another adult. No deduction is made for certain non-dependants, and these regulations have missed an opportunity to improve those rules. In particular, if a non-dependant has no income at all they are currently expected to pay £4.30 a week towards council tax. This is particularly common when there is a young adult who has left school, turns 18 and has yet to make a claim for benefits in their own right. As the young person has no income the liable person has to pay the shortfall. These regulations could have removed deductions for non-dependents who have no income, to align with the lack of deduction for those who get a means test benefit (see Reg 90(8)).
2. The definition of 'blind' in Reg 4 does not cover children with visual impairment in Scotland – they are no longer certified. An alternative definition, and one that is used for disability assistance, is found at [vincyp.scot.nhs.uk/access-to-services-and-support-for-children-with-vi](http://vincyp.scot.nhs.uk/access-to-services-and-support-for-children-with-vi) . Most visually impaired children will get disability living allowance or child disability payment, but for those who don't, access to the 'disabled child premium' will be lost.
3. As noted above Reg 16(4) and (6)(i) exclude people whose only right to reside is as a jobseeker or due to their pre-settled status from CTR. This is a change from the current regulations. Whilst there is an ongoing court case in relation to pre-settled status, it is worth noting that both groups are able to access pension age CTR. There is also a missed opportunity to make provision for family members of refugees and people with humanitarian protection (who may later separate and need to claim CTR themselves).
4. Statutory maternity pay counts as earned income, so partially disregarded. Maternity allowance, often claimed by mothers whose earnings are too low to be entitled to statutory maternity pay, is treated as unearned income so none of it is disregarded. Therefore mothers who claim maternity allowance are worse off than those getting the same amount of statutory maternity pay.
5. These regulations exclude a person with capital over £16,000 from qualifying for a second adult rebate. This is not the case at present, and it is not clear if this is a policy decision or an oversight.
6. There are no explicit provisions to withdraw a claim for council tax reduction after it has been awarded. There are specific circumstances where this could be important, and as a general principle claimants should have a right to withdraw a benefit claim.

7. We welcome the continued inclusion in Reg 21 of provisions to prevent local authorities from recovering overpayments of CTR that were due to official error. However, to ensure that this policy intent is fully met, Reg 21(2) could be redrafted to provide clarity that an overpayment cannot be recovered because the local authority later explains how it occurred. s64(4)(b) of the Social Security (Scotland) Act 2018, is an example of an 'avoidance of doubt' provision that would prevent this from happening.
  
8. The 'notional capital' rules widen the circumstances in which a local authority can treat someone as having failed to apply for capital (compare Reg 71(4) with Reg 48(2) of the current regulations). Whilst the general approach to assessing capital in the regulations is closely aligned to that taken by UC, the UC regulations contain no provision to treat someone as having capital that they have failed to apply for.

**Do you have any concerns about the changes to local authority systems that will be required as a result of the new rules in these regulations?**

As noted above, we remain concerned by the fact that local authorities are not required to provide decisions and adequate explanations in writing. It is unclear how local authorities will use their discretion and whether they will always pick up on changes to how income must be treated at different times.

A further concern is around the lack of publicly available guidance on how CTR should be administered. This would be of assistance to those administering the scheme, designing systems, and most importantly those who receive CTR and wish to understand their rights.



## Response from One Parent Families Scotland

One Parent Families Scotland (OPFS) is the leading organisation working with single parent families in Scotland. Building on seventy-five years of advocacy and service delivery expertise, OPFS provides single parent tailored information, advice and support, along with training activities, employability programmes and flexible childcare. OPFS campaigns with parents to make their voices heard to change the systems, policies and attitudes that cause child poverty. Our vision is of a Scotland in which single parents and their children are valued and treated equally and fairly.

### Single Parent Families

- Single Parents Families are one of the six priority family types identified as being at highest risk of child poverty by Scottish Government.
- 38% of Lone parent families are living in poverty
- Families often belong to more than one priority group. For example, among children in relative poverty: 40% of children in lone parent families also have a disabled person at home; over half (54%) of children in a family with a younger mother are also in a lone parent household.
- The Child Poverty (Scotland) Act 2017 sets statutory ambitious targets to reduce levels of child poverty by 2030.
- The [first Delivery Plan](#) outlines action Scottish Government is taking to meet the 2030 targets and covers the period 2018-22. The [latest progress report](#) highlighted that significant progress needs to be achieved in the years ahead to deliver upon the 2030 targets.
- Some drivers show positive improvements, including key employment indicators, skills and childcare availability. Evidence suggests that lower housing costs can be credited with lower poverty rates in Scotland compared to the rest of the UK.
- SPF's make up 25% of all families, and 92% are headed by women

### OPFS submission

The [Council Tax Reduction \(Scotland\) Regulations 2021](#) consolidate the existing regulations for working age council tax reduction and make significant changes to the way it is calculated for those in receipt of Universal Credit. They are expected to come into effect for financial year 2022/23.

Currently some households get different levels of CTR depending on whether they are getting Universal Credit or legacy benefits. The new scheme seeks to address this, and analysis of its impact on different households with Micro-simulation modelling of the impact of the new rules across the whole caseload

The Social Justice and Social Security Committee wrote to OPFS to ask our views on these regulations. In particular:

1. If OPFS has been consulted by Scottish Government officials on these regulations?
2. Do we consider that the regulations meet the policy intent, set out in the [policy note](#) that: "as far as practicable, a household in the same circumstances receives the same level of Council Tax Reduction whether it is on Universal Credit or not."

3. The new rules aim to provide equity 'as far as practicable' but will not do so in every single circumstance. Does this give OPFS any concerns?
4. Does OPFS have any suggestions that would further reduce the occurrence of different levels of CTR support for those on Universal Credit compared to legacy benefits?
5. Does OPFS have any concerns about the changes to local authority systems that will be required as a result of the new rules in these regulations?

**1. Has OPFS been consulted by Scottish Government officials on these regulations.**

No, we have not been consulted.

**2. Do we consider that the regulations meet the policy intent, set out in the policy note that: "as far as practicable, a household in the same circumstances receives the same level of Council Tax Reduction whether it is on Universal Credit or not."**

The Scottish Government paper modelling the impact of the changes on different household types points out that '... households that are in receipt of UC have consistently received lower awards on average when compared to equivalent households where CTR entitlement is calculated under the Legacy CTR scheme. For example, in 2020-21, the average award for UC cases was £730 per year, £70 less than the average for legacy CTR cases ( 1.1.11.)

So, for a significant minority of cases CTR entitlement will reduce when households are moved to UC by DWP, when compared to their CTR entitlement under the Legacy CTR scheme. We therefore very much support the primary policy objective of the Revised UC CTR scheme, which is to ensure, as far as practicable, that households receive the same level of CTR on UC as they would on legacy benefits.

As stated in the policy paper receipt of income-based Jobseeker's Allowance, Income Support and income-related Employment and Support Allowance has the practical effect of automatically qualifying the recipient for full CTR. For others if a household's income is less than their applicable amount, they will be awarded 100% CTR, reducing their Council Tax liability to zero and therefore meaning they pay no Council Tax.

The UC CTR Scheme as set out in regulations calculates CTR entitlement through a similar mechanism to the Legacy CTR scheme, however there are some key differences in the definition of income and the applicable amount.( 2.3.1.)

It cannot be right that in the example given ( 2.4.4) a single parent household in receipt of CTR through the UC Scheme therefore has to pay around £273 more per year in Council Tax because of its lower CTR award. This is despite having no change in household circumstances (except the migration to UC) and in cash terms a marginal fall in overall household income.

The paper highlights that Low income households with children are generally not better off under the UC CTR Scheme under any combination of hours/earnings. Table 4 ( p 13) highlights this is particularly the case for families with more than 2 children and is a reflection of the impact of the UK government 2 child policy.

**3. The new rules aim to provide equity ‘as far as practicable’ but will not do so in every single circumstance. Does this give OPFS any concerns?**

We feel the proposed changes will result in a fairer system overall. For example, Table 6 ( p20) highlights that a Single Parent with one child on an earned income of around £145 will see an increase from 21% to 86% in CTR and for those with 2 children from 58% to 100% reduction.

As the paper highlights an estimated 85% of households were modelled to see no change in their CTR entitlement , 10% of the CTR caseload is expected to gain some CTR entitlement- these increases are concentrated in households with dependent children, including lone parent households.- and an estimated 5 % of the current CTR caseload would see a decrease mainly in high house bands. (4.4.3)

**4. Does OPFS have any suggestions that would further reduce the occurrence of different levels of CTR support for those on Universal Credit compared to legacy benefits? No**

**5. Does OPFS have any concerns about the changes to local authority systems that will be required as a result of the new rules in these regulations? No**

In conclusion we wanted to highlight that in Scotland people on low incomes, including families on benefit, do not get help with water rates . We have found that many single parents on benefit end up with arrears and in debt with water rates as they cannot afford to pay the sum from an already low income – esp. those families affected by the benefit cap and 2 child policy. Could water rates be included in a payment reduction scheme?

## Response from Citizens Advice Scotland

### **Have you been consulted by Scottish Government officials on these regulations? If so, do you have any comment on that engagement?**

In June, we were informed that these regulations were to be laid and these had been flagged to us prior to that.

### **Do you consider that the regulations meet the policy intent, set out in the [policy note](#) that: “as far as practicable, a household in the same circumstances receives the same level of Council Tax Reduction whether it is on Universal Credit or not.”**

Overall, we consider that the regulations meet the policy as set out in the attached note, particularly that they are “as fair as practicable, a household in the same circumstances receives the same level of Council Tax Reduction whether it is on Universal Credit or not”

Based on the new regulations and modelling, these proposals are a positive step forward and will even the playing field by re-introducing the lone parent disregard and recognising that Housing Element of Universal Credit was not being disregarded whereas legacy Housing Benefit was.

### **The new rules aim to provide equity ‘as far as practicable’ but will not do so in every single circumstance. (See Scottish Government background paper sections 3.5 and 4). Have you identified situations where the new regulations will not provide the same level of CTR on Universal Credit as on legacy benefits and does this give you any concerns?**

To date, we have not identified any situations where the new regulations will not provide the same level of CTR on Universal Credit as on legacy benefits.

That being said, as identified in the modelling paper, there is a possibility that some households may be affected. However, to be absolutely certain would mean we would have to conduct our own modelling to work out if our general clientele visiting our bureaux would be amongst those affected.

Nonetheless, on the face of it, our usual clientele should not be affected as most will likely benefit from the new regulations given that most tended to be lone parents on low incomes. However, we should highlight that during COVID, our clientele demographics have changed to reflect those impacted by the pandemic such as younger people aged under 35 and owner occupiers<sup>[1]</sup>. This could mean there is potential for future CABx clients being affected by these changes. Based on the modelling paper, this has already been considered and we accept that it is difficult to predict for certain what will happen once certain measures such as furlough and the Universal Credit £20 uplift officially ends.

Again, we wish to iterate that these regulations are certainly a good step forward for Universal Credit Claimants.

**Do you have any suggestions that would further reduce the occurrence of different levels of CTR support for those on Universal Credit compared to legacy benefits?**

Our only suggestion would be encouragement of local authorities to automatically apply Council Tax Reduction upon notification of a Universal Credit Application. Currently some councils have already implemented such automatic application, whilst others have opted for other processes such as sending a letter to encourage Universal Credit applicants to apply for CTR or to wait until the Universal Credit award has been paid.

Given the new revised scheme, councils should be able to work out a person's claim for CTR upon notification of a Universal Credit application as only certain elements such as child elements will be applicable.

Prior to the revised scheme, some councils were reluctant to do this as the whole Universal Credit Award had to be applied and there was no disregard for Housing Element. This meant that in order to avoid an overpayment, councils had to wait for the Universal Credit to be awarded as this would allow them to calculate the CTR applicable.

Under the revised CTR scheme, councils should be able to apply CTR at an earlier stage as the information pertaining to household composition should be accessible from the Universal Credit notification stage and thus meaning they no longer need to wait for the Universal Credit to be awarded which can take several months in some instances.

**Do you have any concerns about the changes to local authority systems that will be required as a result of the new rules in these regulations?**

At present, this is difficult to say for certain as there may be an initial cost for local authorities in getting the new regulations implemented in their systems and processes, such as changes to CTR award notification letters, training staff and updating software. However, given that this is likely to increase the amount of revenue in terms of council tax and CTR, local authorities may be able to absorb these costs.

As to the question on providing oral evidence if needed, on this occasion we will not put ourselves forward. This written response covers our supportive position on this matter.

Thank you again for the opportunity to respond to these regulations

<sup>[1]</sup> Citizens Advice Scotland's Annual Report 2020/2021 - [https://www.cas.org.uk/system/files/publications/cas\\_annual\\_data\\_report\\_2021.pdf](https://www.cas.org.uk/system/files/publications/cas_annual_data_report_2021.pdf)

## Response from IRRV

### **Social Justice and Social Security Committee: Consideration of the Council Tax Reduction (Scotland) Regulations 2021: Comments from the Institute of Revenue, Rating and Valuation.**

The Institute is pleased to provide the following comments in response to the Committee's recent correspondence on the *Council Tax Reduction (Scotland) Regulations 2021*.

We are grateful to the Scottish Association of the Institute for leading on this response.

The IRRV is the professional body concerned with all aspects of local taxation, valuation, appeals, financial management and local benefits administration in the United Kingdom. It has members within both the public and private sectors. Institute members are engaged in local taxation collection, property valuation, the appeals process, advising and representing ratepayers and financial management within local government.

In order to formulate this response, a survey was completed amongst Scottish IRRV members.

## Response to Questions

### ***Have you been consulted by Scottish Government officials on these regulations? If so, do you have any comment on that engagement?***

There has been some consultation in 2019, with the Scottish presenting options for amendment and limited circulation of draft regulations, prior to the delayed implementation. It's disappointing that the CTR Modelling Paper hadn't been more widely circulated at an earlier stage. It's a useful paper, although it's a bit of a difficult read.

The majority of respondents to the survey felt there had been no consultation on the draft regulations, only noting they had been advised there was to be an amendment to the regulations to meet the policy intent. There is a joint IRRV/Scottish Government event on the 1<sup>st</sup> October 2021 to present local authorities with the regulations and to advise how Council Tax reduction should now be calculated for customers in receipt of Universal Credit (from April 2022)

### ***Do you consider that the regulations meet the policy intent, set out in the policy note that: "as far as practicable, a household in the same circumstances receives the same level of Council Tax Reduction whether it is on Universal Credit or not."***

In principle the policy intent will be met with customer receiving higher incomes as a result of Universal Credit will receive the same (possibly higher) levels of Universal credit as customers in the same circumstances on the less generous legacy benefits.

***The new rules aim to provide equity ‘as far as practicable’ but will not do so in every single circumstance. (See Scottish Government background paper sections 3.5 and 4). Have you identified situations where the new regulations will not provide the same level of CTR on Universal Credit as on legacy benefits and does this give you any concerns?***

We are unable to perform the sort of analysis needed to respond to this question. Time will tell as the new way of calculating customers entitlement to Council Tax Reduction begins.

Practitioners express a concern over perceived unfairness where someone continuing on legacy benefits will not be better off, whereas a similar household who has moved to UC will receive much more income and CTR. The new regulations are more generous, and we would expect the increases in eligibility to result in additional caseload and additional costs to LAs.

***Do you have any suggestions that would further reduce the occurrence of different levels of CTR support for those on Universal Credit compared to legacy benefits?***

3.1.6. highlights that the equivalent income from Working Tax Credits (WTC) cannot be identified within UC, meaning that “households in receipt of working tax credits under the *Legacy CTR scheme* are likely to receive higher CTR awards under the *Revised UC CTR scheme* when compared to the *Legacy CTR scheme*, all else equal.” Would Scottish Government consider an amendment to the legacy scheme, for example an additional disregard for legacy claimants which would remove this discrepancy?

The managed migration of all remaining legacy Working age customers to Universal credit would ensure fairness across both benefit systems.

***Do you have any concerns about the changes to local authority systems that will be required as a result of the new rules in these regulations?***

Yes, there is engagement with IT providers to meet the changes, but still some clarification to be ironed out.

There are concerns about delivery on time, and uncertainty that costs of IT development, testing, training and implementation will be met by Scottish Government.

e.g. The CTR Modelling paper indicates that:

*CTR income = Net Earned Income + Benefit Income + Adjusted UC.*

However, UC LCTR data share from DWP categorises contains “Earned Income” and “Other Income”.

Clarification is required to understand whether LAs can assume that Net Earned

Income = Earned Income, and Benefit Income = Other Income. If not, then it will be impossible to deliver CTR with automation of data uploads and will result in increased levels of contact, administration and consequently cost to councils.

There are strong concerns around the loss of automation using DWP data share which is currently utilised by the majority of Local authorities. Without automation local Authorities costs will increase significantly and existing staffing resources will not cope with the workload.

The current method is quite simple to explain to customers and much training and support will be required to ensure staff are able to support our customers to ensure they understand how their Council Tax Reduction is calculated.

As the new regulations will increase customers award of Council Tax Reduction, it will also bring many customers back into entitlement. A take up campaign will be required along with the resulting workload.

We trust that these points will be of assistance to the Committee in its consideration of the Regulations.



**Annexe B – letter from the Minister for Public Finance, Planning and Community Wealth, 23 September 2021 in response to a request from the Committee for the Minister to reply to issues raised by stakeholders.**

Dear Neil,

Thank you for your letter of 16 September to the Minister for Social Security and Local Government, setting out the feedback the Committee received from a number of stakeholders on the Council Tax Reduction (Scotland) Regulations 2021. I am replying as Council Tax and the Council Tax Reduction scheme (CTR) sit within the finance portfolio.

Overall, I welcome that the responses received by the Committee broadly agree that the regulations meet the policy intent. These regulations are the output of considerable analysis, modelling, and engagement with stakeholders and local government. The outcomes the CTR scheme currently produces for those on legacy benefits have never, to date, been raised as a general issue by stakeholders, local authorities, elected representatives or others. Therefore, these regulations seek to replicate the outcomes the scheme currently achieves for those on legacy benefits for those who are on Universal Credit (UC), as far as that is practicable.

Because these regulations do successfully replicate outcomes for the overwhelming majority of cases, we have not carried out a new set of impact assessments as the impacts of the CTR scheme are reflected in a range of published statistics and survey data. For the same reason we have not carried out a formal public consultation, although officials have been in regular contact with welfare rights groups, local authorities (including establishing a working group with COSLA) and others to discuss the changes.

The attached annex details the Government's response to the specific points raised by stakeholders. However, in reply to the general themes raised with the Committee, I would note that:

- Some points have been raised about local authority discretion. Broadly, the regulations define how a local authority should calculate the amount of CTR an applicant is entitled to. However, as Child Poverty Action Group (CPAG) highlight, the regulations provide some very limited circumstances where local authorities can exercise discretion in aspects of calculating the CTR award of a household. These generally reflect experience where this limited discretion reduces the compliance and administrative burdens for both applicants and local authorities respectively, and can be used to provide more certainty for a recipient. More widely, Council Tax, including this associated CTR scheme, are an important part of ensuring financial and administrative accountability for each local authority, with authorities accountable for how they choose to exercise their discretion.
- A number of points were also made about the potential role an expanded CTR scheme might have in tackling poverty and inequality. The CTR scheme already plays a role in reducing poverty, with just under 500,000 households receiving some level of CTR, and on average recipients saving over £750 a year. However CTR is a reduction in tax liability, rather than a benefit and the

powers under which these regulations are made mean that the CTR scheme cannot contribute to the alleviation of poverty beyond providing a reduction of the entirety of a particular household's council tax liability. By the nature of it being a reduction in tax liability no household can get more than 100% CTR.

As noted above these regulations have been compiled with extensive stakeholder engagement, including with CPAG. I am especially grateful to CPAG for their input and indeed for raising the detailed points in their submission to the Committee. The attached annex responds to these detailed points and my officials continue to engage with CPAG. Where CPAG have raised problems or potential errors in the regulations we will seek to amend the regulations before they come into force, as we have already undertaken to do so in relation to drafting points raised by the Delegated Powers and Law Reform Committee.

Lastly, several comments from stakeholders suggest changes that could be made that would make the CTR scheme more generous. We are open to considering such changes in the future, but the policy rationale behind these regulations is to replicate existing outcomes in a changing benefits landscape, rather than make new policy choices which would require considerable engagement, consultation, and development.

Yours sincerely,

**TOM ARTHUR**

## **ANNEX**

### **Scottish Government comments in reply to key points raised in response from Child Poverty Action Group (CPAG)**

- The Scottish Government welcomes that CPAG agree that the “stated policy intention is largely met”. We note that CPAG would have wanted more radical changes to be made to the CTR scheme, but that was not the policy intention behind these changes, which was to maintain the current pattern of CTR outcomes.
- We welcome the input from CPAG, and are grateful they acknowledge the meetings officials have held with them over the lifetime of the work on these revisions.

Turning to the specific points raised:

- Policy work is underway to address the issues raised around Child Tax Credits being taken into account as income in the CTR scheme in some limited scenarios. This is following recent discussions between officials and CPAG.

- In the regulations the value of any Universal Credit (UC) child element is to be treated as income. This is purely because receipt of a child element in UC is the best proxy for whether such a household would have received Child Tax Credits if they were on legacy benefits. The UC child element and Child Tax Credits are payable at similar amounts, therefore taking the value of any child elements into account meets the policy intention that those on UC and Child Tax Credits receive the same amount of CTR as far as possible.
- The regulations maintain the way in which the current CTR scheme handles cases involving people from abroad. This is an area that the Scottish Government would be open to looking at in the future, but was not the focus of the changes in these regulations.
- The Scottish Government has never provided guidance for local authorities on the administration of CTR. Council Tax, including this associated CTR scheme, are an important part of ensuring financial and administrative accountability for each local authority. Each local authority is accountable for how they choose to exercise their discretion. It would therefore not be appropriate for the Scottish Government to advise local authorities on how to administer the CTR scheme, as any revenue risk from such an approach would sit with local authorities rather than the Scottish Government. However, we have arranged an event in early October for local authority revenue and benefit professionals, hosted by the IRRV, to provide an overview of the revised scheme.
- As indicated in the covering letter because these regulations do successfully replicate outcomes for the overwhelming majority of cases, we have not carried out a formal public consultation, although officials have been in regular contact with welfare rights groups, local authorities and other stakeholders.
- CPAG have suggested there are 'several instances' where households on legacy benefits will be worse off than they are under the current Regulations. While it may be possible to produce theoretical scenarios where this is the case we are not aware of any significant cohort of those reign legacy benefits that will get less CTR than they do now. Scottish Government analysis and modelling has found that 85% of the CTR caseload would get the same level of CTR under the changes, 10% would a higher level of CTR, and 3% would lose some CTR entitlement and 2% would lose all their CTR entitlement. In addition, some households would now become eligible for CTR.
- Officials are currently considering the points raised by CPAG around the definition of a 'young person'. If necessary we will amend the Regulations before they come into force to address any issues identified.
- In relation to the point raised by CPAG in relation to UC and the second adult rebate we have identified a drafting error. We are grateful to CPAG for bringing this to our attention and plan to amend the Regulations to address this before they come into force.

- As the Regulations were focussed on replicating the current outcomes in the CTR scheme we have not made changes to how non-dependent deductions are handled.
- We are currently clarifying the correct definition of ‘blind’ and will amend the Regulations as necessary.
- We will consider further the point raised around jobseekers and pre-settled status. This is a complex area, but the overarching policy intention for these Regulations is to maintain the provisions that currently apply.
- The Regulations replicate the way the current scheme handles statutory maternity pay and Maternity Allowance, treating statutory maternity pay as earned income and Maternity Allowance as a benefit. We are open to considering the point raised by CPAG further, but such changes were not the purpose of these Regulations.
- We plan to amend the Regulations to ensure that those with capital in excess of £16,000 can continue to qualify for a second adult rebate. This was a drafting error and we are grateful to CPAG for highlighting this to us.
- The provisions dealing with withdrawal of applications, and for dealing with overpayments, reflect the current measures in the CTR scheme. No issues have been raised in the past in relation to these provisions.
- The provision in relation to notional capital was drafted to make explicit what is implied in Regulation 50(1) of the Universal Credit Regulations 2013, which is that “deprivation” of capital is to include the failure to apply for capital that would otherwise have been acquired. The Scottish Government believes that making this explicit provides clarity on this point.

**Scottish Government comments in reply to key points raised in response from One Parent Families Scotland (OPFS)**

- The Scottish Government welcomes that OPFS feel that the proposed changes “will result in a fairer system overall”.
- In relation to water charges, the Water Charges Reduction Scheme (WCRS) reduces the water charges paid by eligible households. The Principles of Charging for 2021-27 were published in December 2020 and seek to increase the maximum discount under the existing WCRS from 25% to 35% - which should protect those households from any charge increases this period. These changes are expected to provide an extra £86 million financial support over the next 6 years to around 446,000 vulnerable households that receive CTR. Revised arrangements are expected to nearly treble the number of households that are eligible to receive a reduced water and sewerage bill because of their financial circumstances.

**Scottish Government comments in reply to key points raised in response from Citizens Advice Scotland (CAS)**

- The Scottish Government welcomes that CAS see the proposed regulations as a positive step forward which meet the stated policy intention.
- We note CAS' view that under the revised regulations a local authority may be able to apply CTR to UC cases at an earlier stage than they do currently. Under the CTR scheme it is open to a local authority to determine what they consider to be an application for CTR.