Social Justice and Social Security Committee

22nd Meeting, 2023 (Session 6), Thursday, 28 September 2023

Subordinate Legislation Cover Note

Title of Instrument:	Council Tax Reduction (Scotland) Amendment (No 2) Regulations 2023
SSI Number:	SSI 2023/197
Laid Date:	27 June 2023
Reporting deadline:	23 October 2023
Coming into force:	28 June 2023
Type of instrument:	Negative

Purpose of the regulations

1. As outlined in the Policy Note and Explanatory Note (available in the annex), the instrument amends the Council Tax Reduction (Scotland) Regulations 2021 ("the Working Age Regulations") to increase the maximum amount which may be disregarded in respect of childcare costs for recipients of Universal Credit when calculating their income for the purposes of the Council Tax Reduction scheme.

2. On 28 June 2023, the UK Government introduced an instrument to make changes to Universal Credit to increase the childcare cost caps to £950.92 for one child and £1630.15 for two or more children, per assessment period. The Scottish Government has stated it will therefore have to introduce an emergency instrument to coincide with the UK instrument.

3. The calculation of Council Tax Reduction uses information from a person's Universal Credit award to work out how much Council Tax Reduction they should get. This includes information on childcare costs. In June the UK Government increased the amount of childcare costs that could be claimed in Universal Credit. This had the

effect of increasing the amount that could be treated as income in the Council Tax Reduction calculation.

4. These regulations change Council Tax Reduction to prevent this. It means that nobody should be treated as having an increase in income in Council Tax Reduction as a result of the change to the Universal Credit rules.

Parliamentary procedure

5. Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. 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 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, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument.

6. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

7. Members should note that it is not always possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.

Delegated Powers and Law Reform Committee consideration

8. The Delegated Powers and Law Reform (DPLR) Committee considered the instrument at its meeting on 5 September 2023. The Official Report for the meeting is available here.

9. Under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, instruments subject to the negative procedure must be laid at least 28 days before they come into force, not counting recess periods of more than 4 days. The instrument breached this requirement as it was laid on 27 June 2023 and came into force the next day.

10. The Scottish Government wrote to the Presiding Officer of the Scottish Parliament stating that the UK Government laid UK wide regulations increasing the amounts that may be paid as part of Universal Credit in respect of childcare costs, which came into force on 28 June 2023.

11. The Scottish Government further stated that it was not made aware of this until 21 June 2023 and that without these regulations, affected households could have seen an unintended consequential rise in their Council Tax payments, unless the 2021 Regulations were amended.

12. The Scottish Government therefore made, laid, and brought into force the instrument to coincide with the UK instrument as a matter of urgency.

13. At the meeting, the DPLR Committee agreed to draw the instrument to the attention of the Parliament on reporting ground for failure to comply with laying requirements. Members of the Committee also agreed that they were content with the explanation that the Scottish Government had provided for the breach of the laying requirements.

For decision

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

ANNEXE A

POLICY NOTE

THE COUNCIL TAX REDUCTION (SCOTLAND) AMENDMENT (NO. 2)REGULATIONS 2023

SSI 2023/197

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

The purpose of these Regulations is to amend The Council Tax Reduction (Scotland) Regulations 2021 to increase the maximum deduction that can be made in respect of childcare costs for recipients of universal credit in the Council Tax Reduction scheme.

Policy Objectives

2. This instrument amends the Council Tax Reduction (Scotland) Regulations 2021 (“the Working Age Regulations”). The Council Tax Reduction (CTR) scheme ensures that nobody has to suffer hardship because they have lost the ability to pay their council tax. The scheme assesses a household’s income and other factors and can reduce council tax liability by up to 100% (meaning a household pays no council tax).

3. The UK Government has announced that from 28 June 2023 that they will introduce a change to universal credit which will increase the childcare cost caps to £950.92 for one child nd £1630.15 for two or more children, per assessment period.

4. In carrying out CTR calculations for CTR applicants of working age, the sum included in the universal credit maximum amount to reflect childcare charges is uplifted to make it equivalent to 100% of the childcare costs actually incurred. The figure arrived at is then deducted from the applicant’s unearned income, up to a maximum of £175 a week where there is one child in respect of whom relevant childcare charges are paid, and £300 where there are two or more children. Whilst the sum included in the universal credit maximum amount in respect of childcare charges is classed as unearned income (regulation 57(1)(p) of the Working Age Regulations), as things stand this will always be less than the maximum £175 or £300 that may be deducted. However, but for these regulations, from 28 June it will be possible for the childcare costs element of the universal credit maximum amount to exceed the childcare cost cap which can be deducted from income when calculating CTR entitlement. This could result in households seeing a higher proportion of their universal credit award being treated as income, whilst having their childcare costs capped at the current maximum amounts.

5. This instrument amends regulation 42 - Calculation of income on a weekly basis (applicants with an award of universal credit) to increase the maximum amounts that can be deducted from earnings to £258 where the applicant's family includes only one child in respect of whom relevant childcare charges are paid, and £442 where the applicant's family includes more than one child in respect of whom relevant childcare charges are paid. This will ensure that the maximum deduction that can be made from income will not be less than the amount included in the universal credit maximum amount in respect of childcare charges. So nobody should be treated as having an increase in income as a result of the change.

Consultation

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

Impact Assessments and Financial Effects

7. This instrument amends existing Working Age Relations and Pension Age Regulations.
There are no specific impact assessments. The amendments will not have a material impact on the cost of the scheme.

Local Government and Communities
Scottish Government
June 2023

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Council Tax Reduction (Scotland) Regulations 2021 (“the 2021 Regulations”).

Regulation 2 amends regulation 42 of the 2021 Regulations to increase the maximum deduction that may be made, in respect of relevant childcare charges, when calculating the income of a council tax applicant who has an award of Universal Credit.