

**Explanatory Memorandum to The Council Tax (Exempt Dwellings) (Amendment) (Wales) Order 2019 and The Council Tax (Additional Provisions for Discount Disregards) (Amendment) (Wales) Regulations 2019**

This Explanatory Memorandum has been prepared by Local Government Strategic Finance Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Council Tax (Exempt Dwellings) (Amendment) (Wales) Order 2019 and The Council Tax (Additional Provisions for Discount Disregards) (Amendment) (Wales) Regulations 2019. I am satisfied that the benefits justify the likely costs.

Rebecca Evans AM

**Minister for Finance and Trefnydd**

6 March 2019

## **PART 1**

### **Description**

1. The Council Tax (Additional Provisions for Discount Disregards) (Amendment) (Wales) Regulations 2019 add eligible care leavers to the categories of people to be disregarded for the purposes of calculating council tax.
2. The Council Tax (Exempt Dwellings) (Amendment) (Wales) Order 2019 adds dwellings occupied by care leavers to the categories of dwellings to be treated as being exempt from council tax.
3. Together, the Order and Regulations will have the effect of reducing the council tax liability for eligible care leavers to nil.
4. While it is legally imprecise to refer to people as being 'exempt' from council tax – a term which applies only to properties – the Explanatory Memorandum and Regulatory Impact Assessment uses this term to describe the effect of both pieces of legislation.

### **Matters of special interest to the Constitutional and Legislative Affairs Committee**

5. None.

### **Legislative background**

6. Two pieces of secondary legislation need to be amended to exclude care leavers from being liable for council tax, one to exempt dwellings occupied by care leavers, and one to require that care leavers are not included (disregarded) in the determination of the number of liable adults in a household.
7. The power to prescribe certain dwellings as being exempt from council tax is contained in section 4 of the Local Government Finance Act 1992. The Council Tax (Exempt Dwellings) Order 1992 (SI 1992/558), made under section 4, applies to England and Wales and exempts over 20 categories of dwellings from council tax. Since devolution, the Order has been amended separately in respect of Wales.
8. The powers to prescribe additional categories of people to be disregarded for the purposes of determining a discount on the amount of council tax payable are contained in section 11(5) and paragraph 11 of Schedule 1 to the Local Government Finance Act 1992. The Council Tax (Additional Provisions for Discount Disregards) Regulations 1992 (SI 1992/552) prescribe additional categories of disregards. They also apply on an England and Wales basis and have been amended separately since devolution. The powers would be used so as to ensure that if a care leaver lives with a person who would otherwise be entitled to a single adult

discount on their council tax bill, the bill would be calculated as if the care leaver did not live at the premises. In other words, the person living with the care leaver would still be entitled to the single adult discount. There are several categories of person disregarded for the purpose of a council tax discount, for example students and care workers.

9. The amendment of both pieces of legislation is subject to the negative procedure.
10. The powers conferred on the Secretary of State in relation to the above transferred to the National Assembly for Wales under the National Assembly for Wales (Transfer of Functions) Order 1999. These powers were subsequently transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

### **Purpose and intended effect of the legislation**

11. The purpose of these amendments is to ensure that, from 1 April 2019, eligible care leavers will be 'exempt' from paying council tax from their 18<sup>th</sup> to twenty-fifth birthday.
12. The amendments will complement the wider work being undertaken by Welsh Government to "work with local government to review council tax to make it fairer" as outlined in *Taking Wales Forward*.
13. Local authorities have discretionary powers to offer reductions on council tax bills and some have used these powers to exempt care leavers from liability. The legislative change responds to a proposal from local government to rectify inconsistencies in practice by replacing the discretionary relief made available by some authorities to some care leavers with a statutory requirement to provide an exemption.

### **Age range**

14. The exemption will apply from the age of 18 on the basis that this is the age at which care leavers could become liable for council tax.
15. The exemption will end on a care leaver's 25<sup>th</sup> birthday. The duties of local authorities to care leavers already apply to individuals up to the age of 21 or, if in education or training, up to the end of the agreed programme for those aged 25 or under. The Welsh Government has also funded local authorities to extend personal adviser provision until the age of 25. The exemption is therefore consistent with, and will complement, existing local authority support for care leavers.
16. The exemption is intended to support the transition of young care leavers into adulthood. The age range is considered to provide adequate time for care leavers to form an understanding of financial management and take ownership of their affairs, without encouraging dependency.

## **Definition**

17. “Care leaver” means a person who is—  
aged 24 or under; and  
a Category 3 young person where “Category 3 young person” has the meaning given in section 104 of the Social Services and Well-being (Wales) Act 2014.
18. There are various definitions of care leaver in use. The agreed definition is based on a Category 3 young person as defined in the Social Services and Well-being (Wales) Act 2014. This is substantially the definition which was proposed in the consultation and is one which is familiar to local authorities.
19. Using this definition means that, short term, pre-planned placements will be excluded when determining if an individual is a Category 3 young person. A young person who has lived with their parents for six months or more after being looked after will not fall within Category 3. Young people who left care under a Special Guardianship Order – a Category 4 young person – would not be included.

## **Evidence requirement**

20. As local authorities have existing and efficient systems for establishing evidence of a care leaver’s status, and to ensure that local authorities have the flexibility to adopt pragmatic solutions in complex cases, the legislation does not specify acceptable forms of evidence.

## **Exemption for dwellings occupied by care leavers living with other relevant persons**

21. Dwellings occupied by a combination of care leavers and other relevant persons should be exempt. For example, dwellings occupied by a mix of care leavers and students would be exempt.

## **Consultation**

22. Following a period during which the Welsh Government worked with local authorities to support the use of their discretionary powers to exempt care leavers, local government suggested the arrangements should be placed on a statutory basis. A six-week consultation ran from 7 November 2018 to 19 December 2018 on proposals to introduce a council tax exemption for care leavers. The consultation was published on the Welsh Government website and social media, and emailed to key contacts. It was drawn to the attention of a wide audience of key stakeholders including local authorities, debt advice organisations and citizens.
23. During the six weeks that the consultation was open, 69 responses were received. Ten questions were asked and comments invited.

- 91% of respondents agreed with the proposal to exempt care leavers from paying council tax.
  - 83% agreed that the exemption should apply from the age of 18.
  - 80% agreed that the exemption should apply until the age of 25.
  - 77% agreed with the definition 'young people who have been looked after for at least 13 weeks since the age of 14, and were in care on their 16<sup>th</sup> birthday'.
  - 85% agreed that the exemption should apply to care leavers living in Wales who had been looked after in other parts of the UK.
  - 94% agreed that local authorities should be responsible for establishing or seeking evidence of individual's care leaver status.
24. In response to the question 'How do you think local authorities should respond to existing council tax debt which has already been accrued by qualifying care leavers?', the most common response was that any existing debt accrued by care leavers should be wiped out.
25. In response to the question 'How should the Welsh Government and local authorities ensure all eligible care leavers are identified, and ensure maximum take-up of the exemption?', most respondents highlighted the importance of communication between social services and revenues officers at local authority level.
26. In response to the question 'Are there any other practical considerations that you think should be dealt with in guidance?', the role of the personal advisor and leaving care teams was a common response.
27. The consultation invited respondents to provide any other comments. The most common response was the need for additional support to be available for care leavers, including financial education, support in finding work, assistance with applying for the exemption, and social interaction.
28. A summary of the consultation responses is available at:  
<https://beta.gov.wales/council-tax-exemptions-care-leavers>

## **Regulatory Impact Assessment**

29. The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these amendments.
30. A Regulatory Impact Assessment has been conducted and is included in Part 2 of this document.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

31. This Regulatory Impact Assessment presents two options in relation to the introduction of council tax exemptions for care leavers from 1 April 2019. All costs and benefits quantified in this Regulatory Impact Assessment are based on information and data available to the Welsh Government leading up to publication.
32. Two options have been considered in the development of the amendment to the regulations. The options considered were:
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|----------|---|
| Option 1 | Do nothing, continue with the current arrangements where local authorities may choose to implement their own discretionary schemes. |
| Option 2 | Introduce legislation by 1 April 2019 to exempt eligible care leavers from council tax.   |

### ***Option 1: Do nothing; continue with the current arrangements where local authorities may choose to implement their own discretionary schemes.***

33. Option 1 would not require any legislative changes. Local authorities may, at their discretion, continue to administer and implement schemes to exempt care leavers within their authority from council tax.

### **Costs to Welsh Government**

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

### **Costs to local authorities**

35. The cost to the average local authority of administering discretionary relief to care leavers is estimated to be £10,000 a year. Local authorities choosing to provide discretionary relief would continue to incur this cost.

### **Benefits**

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

### **Disadvantages**

37. In *Taking Wales Forward* and *Prosperity for All*, the Welsh Government committed to reviewing council tax to make it fairer. It is unlikely that doing nothing, Option 1, would contribute towards the policy objective.
38. Current practice amongst local authorities is inconsistent. Not all local authorities choose to provide discretionary relief to care leavers. Of those that do, the eligibility criteria in use vary.

39. Care leavers are widely recognised as being particularly vulnerable and Option 1 would do nothing to support them.

### **Option 1 Summary**

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

### **Option 2: Introduce legislation by 1 April 2019 to exempt eligible care leavers from Council tax.**

41. Option 2 would involve introducing legislation to 'exempt' eligible care leavers from council tax from 1 April 2019.

### **Costs to Welsh Government**

42. The Welsh Government may contribute to the costs to local authorities of making software changes to their systems. This is estimated to be less than £1,000 per authority.
43. There would be a negligible impact on the council tax tax-base.

### **Costs to local authorities**

44. The cost of the exemption would be borne by local authorities for the 2019-20 financial year. The net cost would be comparable with administering discretionary relief and is estimated to be around £10,000 for an average sized authority.

### **Benefits**

45. Option 2 is supported by local authorities. The introduction of this legislation responds to a request from local government to place the current provision of discretionary relief on a statutory basis.
46. Option 2 would ensure consistency in the council tax support available to care leavers in Wales between the ages of 18 and 25.

### **Disadvantages**

47. Currently, a local authority may choose to adopt a broader definition of a care leaver than this legislation has opted for, or extend support beyond their 25<sup>th</sup> birthday. Local authorities would continue to have the power to provide discretionary relief to those not included in the definition, or according to a broader definition.

48. The cost of the exemption would be borne by local authorities in the 2019-20 financial year. As noted, this would be comparable with the cost of administering discretionary relief, although not all local authorities in Wales have opted to provide care leavers with discretionary relief. In these cases, the costs would be additional. However, there should be offsetting savings in other local services as a result of care leavers being more financially secure and authorities not having to administer means-tested reductions for care leavers.

## **Option 2 Summary**

49. Option 2 requires legislative change. This involves some additional administrative cost to local authorities and the Welsh Government but this would be negligible. This option would provide consistent support to care leavers aged 18 to 25 and in doing so, support the Welsh Government's objective to make council tax in Wales fairer. It is therefore the preferred option.

## **Analysis of other effects and impacts**

### Promoting Economic Opportunity for All (Tackling Poverty)

50. Care leavers are more likely to be affected by council tax arrears than their peers. *The Wolf at the Door: How council tax debt collection is harming children* (2015) and *The Cost of Being Care Free: The impact of poor financial education and removal of support on care leavers* (2016) both highlight that care leavers are a particularly vulnerable group for council tax debt and that the transition into independent accommodation and living is challenging. The amendments will ensure care leavers are not liable for council tax before their 25<sup>th</sup> birthday.

### UNCRC

51. This measure will apply to young persons over the age of 18. No particular impact on the rights of children under 18 has been identified.

### Welsh language

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

### Equalities

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

“Care leaver” is defined to only include those who are under the age of 25, so those who are over 25 will not benefit from the exemption. Therefore this policy treats people differently on the basis of age.

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

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

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

#### Well-being of Future Generations (Wales) Act 2015

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

#### Impact on voluntary sector

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

### **Competition Assessment**

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

### **Post implementation review**

59. The Welsh Government will monitor the impact of the introduction of council tax exemptions for care leavers through engagement with local authorities and other stakeholders.