

Scottish Government submission of 10 October 2023

PE1976/H: Backdate council tax discounts for dementia to the date of GP certification.

Thank you for your correspondence requesting further information from the Scottish Government in relation to PE1976.

Local authority approaches

As advised in our response to PE1976/D officials are working with COSLA to try to encourage all 32 local authorities to adopt a common approach to administering a disregard for persons suffering from Severe Mental Impairment.

A draft Severe Mental Impairment application form was presented to COSLA in March 2023. The COSLA Community Wellbeing Board gave their approval the adoption of a common approach in April 2023. Officials are continuing their engagement with COSLA to encourage local authorities to adopt this common approach.

The Scottish Government amended the list of qualifying benefits for Severe Mental Impairment in The Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003 on 5 May 2023. These amendments came into force on 14 June 2023.

Legislative test

The Local Government Finance Act 1992 defines severe mental impairment as "a severe impairment of intelligence and social functioning (however caused) which appears to be permanent" with medical certification required for these criteria to be regarded as being met.

In addition, to be classed as severely mentally impaired for the purposes of Council Tax liability, a person must be entitled to, or the partner of someone who is entitled to, certain benefits; or a person who would be so entitled, but for the fact that they are of pension age. The rules in relation to benefits are set out severe mental impairment in Article 4 of the Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003.

Scottish Ministers have used the power in Paragraph 2 (c) of schedule 1 of the Local Government Finance Act 1992, amongst other powers, to make the Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003.

As noted, Article 4 of that Order is what sets down the requirements for benefit entitlement in relation to severe mental impairment. It would be within the competence of Ministers to amend the Order to remove that requirement, in the same way as it was within the competence of Ministers to make the 2003 Order in the first place. This is about liability to Council Tax, which falls within devolved competence.

Discretionary discounts and exemptions

We refer to Alzheimer Scotland's submission of 14 June 2023, in connection with petition PE1976/F. The submission suggests that councils have considerable flexibility, under section 13A of the Local Government Finance Act 1992, to provide discretionary council tax discounts or exemptions to anyone in their area where they consider that appropriate. Section 13A(1)(c), which provides flexibility for local authorities in reducing liability to council tax, only applies to England and Wales.

The equivalent provision that applies to Scotland is section 80 of the Local Government Finance Act 1992, however this does not provide the flexibility that applies in England and Wales. It requires that any reduction in council tax liability be provided for by Regulations.

I hope that you find this helpful.

Local Taxation Unit