

Local Government, Housing and Planning Committee

7th Meeting, 2023 (Session 6)

Tuesday, 7 March 2023

SSI cover note for: Council Tax (Discounts) (Scotland) Amendment Order 2023

SSI 2023/25

Title of Instrument: Council Tax (Discounts) (Scotland) Amendment Order 2023

Type of Instrument: Negative

Laid Date: 2 February 2023

Circulated to Members: 2 February 2023

Meeting Date: 7 March 2023

Minister to attend meeting: No

Motion for annulment lodged: No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 20 March 2023

Recommendation

1. The Committee is invited to consider any issues which it wishes to raise on this instrument.
2. An electronic copy of the instrument is available at: [Council Tax \(Discounts\) \(Scotland\) Amendment Order 2023](#)

3. Copies of the Scottish Government’s Explanatory and Policy Notes are included in **Annexe A**.

Purpose

4. The purpose of this Order is to amend The Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003. The policy Note states that the amendment—

- (i) narrows the circumstances in which a person with an award of Universal Credit is disregarded, when working out the entitlement of a household to the council tax single person discount, in accordance with paragraph 2 of schedule 1 of the Local Government Finance Act 1992.
- (ii) aligns the earnings threshold used to establish whether an apprentice may be disregarded for council tax discount (in accordance with paragraph 4 of schedule 1 of the Local Government Finance Act 1992) with an existing income threshold used to establish entitlement of a household to the Second Adult Rebate of the Council Tax Reduction scheme.”

5. The Policy Note further explains that the first change “ensures consistency of treatment for all eligible households, irrespective of whether the person in question is in receipt of historic disability benefits or Universal Credit which also ensures consistency with the original policy intention. It aligns this element of the council tax system with equivalent council tax provisions in England and Wales.”

6. In respect of the second change, the Policy Note explains that it “provides a consistency of approach in reducing the council tax liability of households with residents on a relatively low income through council tax status discount of apprentice households and relief afforded by the Second Adult Rebate of the Council Tax Reduction scheme. The effect of the amendment is to increase the earnings threshold of eligible apprentices and ensure a subsequent increase each time the corresponding threshold of the Second Adult Rebate of the Council Tax Reduction scheme is updated.”

Delegated Powers and Law Reform Committee consideration

7. At its meeting on 21 February 2023¹ the DPLR Committee considered the instrument and agreed not to draw it to the attention of the relevant lead committee.

Procedure for Negative Instruments

8. 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

¹ <https://digitalpublications.parliament.scot/Committees/Report/DPLR/2023/2/21/8dd01c37-c4a0-4dae-84e7-f9697a11d416#Annex-A>

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.

9. If that is also agreed to, Scottish Ministers must revoke the instrument. 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.

**Clerks,
Local Government, Housing and Planning Committee**

Annexe A

Scottish Government Explanatory Note

EXPLANATORY NOTE

This Order makes amendments to the Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003 (“the 2003 Order”).

Article 2(2) alters the circumstances in which a person with an award of Universal Credit is disregarded when working out the entitlement of another person to a council tax single person discount, in accordance with paragraph 2 of schedule 1 of the Local Government Finance Act 1992 (“the 1992 Act”) (persons disregarded for purposes of discount). Paragraph 2 of schedule 1 makes provision in relation to persons who are severely mentally impaired. The disregard will apply where the person has included in their award of Universal Credit an amount to reflect the fact that they have limited capability for work and work-related activity within the meaning of regulation 40 of the Universal Credit Regulations 2013 (“the 2013 Regulations”). Alternatively it will apply where the person would have such an amount included, but for the fact that they are a member of a couple with a joint award of Universal Credit, with a limited capability for work-related activity element being included in respect of the other member of the couple. Further, it will apply where the person has an award of Universal Credit, and has limited capability for work within the meaning of regulation 39 of the 2013 Regulations. An award of Universal Credit will no longer be enough in itself, without one of these additional conditions being met. The change will not, though, apply in relation to anyone who is already disregarded in terms of

article 4(2)(m) of the 2003 Order as it applies on 31 March 2023, unless there is a change, other than to council tax rate, which affects the amount of council tax payable in respect of the dwelling in which the disregarded person resides; or a change which affects the entitlement of the disregarded person to Universal Credit.

Article 2(3) adjusts the maximum weekly amount which a person may earn or receive and be classed as an apprentice for the purposes of paragraph 4 of schedule 1 of the 1992 Act.

POLICY NOTE

THE COUNCIL TAX (DISCOUNTS) (SCOTLAND) AMENDMENT ORDER 2023

SSI 2023/25

1. The above instrument is made in exercise of the powers conferred by section 113(1) and (2) and paragraphs 2(3) and 4(2) of schedule 1 of the Local Government Finance Act 1992. It is subject to the negative procedure.

The purpose of this Order is to amend The Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003.

The amendment:

- (i) narrows the circumstances in which a person with an award of Universal Credit is disregarded, when working out the entitlement of a household to the council tax single person discount, in accordance with paragraph 2 of schedule 1 of the Local Government Finance Act 1992.
- (ii) aligns the earnings threshold used to establish whether an apprentice may be disregarded for council tax discount (in accordance with paragraph 4 of schedule 1 of the Local Government Finance Act 1992) with an existing income threshold used to establish entitlement of a household to the Second Adult Rebate of the Council Tax Reduction scheme.

Policy Objectives

2. This instrument amends the Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003 (“the 2003 Order”).

3. Article 4 of the 2003 Order, is amended so that where a claim of Universal Credit is used as a qualifying state benefit in the disregard of a person for council tax discount, that claim must include (a) the limited capability for work and work-related activity (“LCWRA”) element (or, if it does not, would have but for regulation 27(4) or 29(4) of the Universal Credit Regulations 2013) or (b) have limited capability for work (“LCW”) within the meaning of regulation 39 of the Universal Credit Regulations 2013.

4. This change ensures consistency of treatment for all eligible households, irrespective of whether the person in question is in receipt of historic disability benefits

or Universal Credit which also ensures consistency with the original policy intention. It aligns this element of the council tax system with equivalent council tax provisions in England and Wales.

5. This change is subject to a provision protecting the entitlement of those currently eligible for this disregard, introduced as article 4(5) of the 2003 Order. The effect of this provision is that as of 31 March 2023, where a person is disregarded under paragraph 2(1) of schedule 1 of the Local Government Finance Act 1992 as a result of having an award of Universal Credit, the disregard will continue regardless of whether the person in question has the LCWRA or LCW element until either of the following occurs; there is a change in the person's entitlement to Universal Credit or there is a change in the amount of council tax payable in respect of the dwelling in which the person lives (other than that caused by a change in the appropriate council tax rate of the relevant local authority). At that point entitlement to disregard will be considered against the effect of the change. If the person does not meet the LCWRA/LCW requirements, they will no longer be disregarded for council tax discount.

6. This protective provision implements an appropriate balance between (i) the immediate removal of this disregard upon the amending Order coming into force and (ii) the indefinite continuation of the disregard in households which rely solely on the Universal Credit without the LCWRA/LCW elements as a qualifying benefit for the disregard.

7. The definition of apprentice set out in Article 5 of the 2003 Order is amended so that the salary threshold of eligible apprentices is aligned with the lower income threshold used in the Second Adult Rebate of the Council Tax Reduction (CTR) scheme (as specified in Schedule 2, paragraph 1(b)(i) of the Council Tax Reduction (Scotland) Regulations 2021).

8. This change provides a consistency of approach in reducing the council tax liability of households with residents on a relatively low income through council tax status discount of apprentice households and relief afforded by the Second Adult Rebate of the Council Tax Reduction scheme. The effect of the amendment is to increase the earnings threshold of eligible apprentices and ensure a subsequent increase each time the corresponding threshold of the Second Adult Rebate of the Council Tax Reduction scheme is updated.

Consultation

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

Impact Assessments and Financial Effects

10. This instrument retains the original policy intent of the amended provisions and therefore no specific impact assessments are necessary.

11. Inflationary uprating of the apprentice earning threshold may lead to limited increases in Council Tax Income foregone by local authorities.

Local Government and Communities
Scottish Government
30 January 2023