

# **Social Justice and Social Security Committee**

## **13<sup>th</sup> Meeting, 2023 (Session 6), Thursday, 25 May 2023**

### **Subordinate Legislation Cover Note**

**Title of Instrument:** Council Tax (Discounts) (Scotland) Amendment (No. 2) Order 2023

**SSI Number:** SSI 2023/141

**Laid Date:** 5 May 2023

**Reporting deadline:** 12 June 2023

**Coming into force:** 14 June 2023

**Type of instrument:** Negative

#### **Purpose of the regulations**

1. The purpose of this Order is to amend The Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003 (“the 2003 Order”). The Order amends article 4(2) of the 2003 Order to update the qualifying benefits listed there. Entitlement to one or more of those qualifying benefits is one condition used to determine whether a resident is disregarded for the purposes of a council tax discount under section 79 and schedule 1 of the Local Government Finance Act 1992. The Order also clarifies how the change in entitlement to disregard because of having an award of universal credit, brought about by the Council Tax Discounts (Scotland) Amendment Order 2023, is to be applied to the case of a person currently disregarded on the basis of universal credit.

#### **Parliamentary procedure**

2. 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.

3. 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.
4. 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**

5. The Delegated Powers and Law Reform (DPLR) Committee considered the instrument at its [meeting on 16 May 2023](#) and made no recommendations in relation to this instrument. The Official Report for the meeting is available [here](#).

## **For decision**

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

# ANNEXE A

## POLICY NOTE

### THE COUNCIL TAX (DISCOUNTS) (SCOTLAND) AMENDMENT (NO. 2) ORDER 2023

#### SSI 2023/141

1. The above instrument is made in exercise of the powers conferred by section 113(1) and paragraph 2(1) (c) 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 2003 Order”).

The Order amends article 4(2) of the 2003 Order to update the qualifying benefits listed there. Entitlement to one or more of those qualifying benefits is one condition used to determine whether a resident is disregarded for the purposes of a council tax discount under section 79 and schedule 1 of the Local Government Finance Act 1992.

The Order also clarifies how the change in entitlement to disregard because of having an award of universal credit, brought about by the Council Tax Discounts (Scotland) Amendment Order 2023, is to be applied to the case of a person currently disregarded on the basis of universal credit

### Policy Objectives

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

3. The Council Tax (Discounts) (Scotland) Amendment Order 2023 came into force on 1 April 2023. This amended universal credit as a qualifying benefit used to determine if a resident is disregarded for the purpose of a council tax discount under section 79 and schedule 1 of the Local Government Finance Act 1992 so that it applies only to universal credit where the person has limited capability for work or limited capability for work and work-related activity (LCW/LCWRA). To protect those who received a discount, prior to this amendment, the policy intention was that a resident would continue to be disregarded until there is either a change to the amount of council tax payable in respect of the dwelling (other than as a result of a change to the council tax rate), or a change in the person's universal credit award (other than as a result of the uprating of universal credit). This amendment clarifies that policy intention.

4. This instrument removes disabled person's tax credit as a qualifying benefit used to determine if a resident is disregarded for the purpose of a council tax discount under

section 79 and schedule 1 of the Local Government Finance Act 1992 and replaces this with working tax credit under the Tax Credits Act 2002, where the rate of working tax credit includes at least one element in respect of the fact the person has a disability. This amendment is required as disabled person's tax credit can no longer be claimed or awarded.

5. This instrument also removes an outdated reference to the Naval, Military Pensions and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 and replaces it with Certified copy from legislation.gov.uk Publishing reference to the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006.

### **Consultation**

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

### **Impact Assessments and Financial Effects**

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

8. This instrument will not have any impact on Council Tax Income foregone by local authorities.

Local Government and Housing  
 Scottish Government  
 3 May 2023

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

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.