

Social Justice and Social Security Committee

28th Meeting, 2023 (Session 6), Thursday, 9 November 2023

Subordinate Legislation Cover Note

Title of Instrument: [The Council Tax Reduction \(Scotland\) Amendment \(No. 3\) Regulations 2023](#)

SSI Number: SSI 2023/268

Laid Date: 21 September 2023

Reporting deadline: 13 November 2023

Coming into force: 5 November 2023

Type of instrument: Negative

Purpose of the regulations

1. As outlined in the [Policy Note](#) and [Explanatory Note](#) (available in the annex), this instrument amends the Council Tax Reduction (Scotland) Regulations 2021 and The Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 to make sure certain payments are not regarded as capital or income when calculating entitlements to council tax reduction. The payments concerned are:
 - Grenfell Tower payments (compensation payments to help those impacted by the fire in 2017)
 - Post Office compensation payments (compensation, support and settlement payments made in connection with the failings of the Post Office IT system in 1999/2000)
 - Vaccine Damage payments (payments from the Vaccine Damage Payment Scheme (VDPS) to those who have been found to have been seriously disabled by a vaccine administered to treat a disease listed in the Vaccine Damage Payments Act 1979 and their partners).
2. The instrument clarifies that the capital of the person liable to pay council tax has no impact on the person's entitlement to Second Adult Rebate. It also clarifies that Irish citizens who come to Scotland from Ukraine do not require leave to enter or remain in the United Kingdom.

Parliamentary procedure

3. 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.
4. 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.
5. 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

6. The Delegated Powers and Law Reform (DPLR) Committee considered the instrument at its meeting on [24 October 2023](#). The Official Report for the meeting is available [here](#).
7. At the meeting, the Committee agreed to draw the instrument to the attention of the Parliament on the general reporting ground in that it inserts into Part 5 of schedule 4 of the Council Tax Reduction (Scotland) Regulations 2021, which is headed “Payments”, a new paragraph (paragraph 46) which concerns the whole of a person’s capital rather than a payment. The Committee also welcomed that the Scottish Government has undertaken to insert a new Part number and heading into schedule 4 at the next available opportunity.

For decision

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

ANNEX

POLICY NOTE

THE COUNCIL TAX REDUCTION (SCOTLAND) AMENDMENT (NO. 3) REGULATIONS 2023

SSI 2023/268

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 this instrument is to amend The Council Tax Reduction (Scotland) Regulations 2021 and The Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 to ensure that Grenfell Tower payments, Post Office compensation payments and Vaccine Damage payments paid to partners are disregarded indefinitely as capital and income for the purposes of calculating entitlement to council tax reduction. In The Council Tax Reduction (Scotland) Regulations 2021 amendments are also being made to clarify the policy intent in relation to Second Adult Rebate and to clarify the effect of falling within section 3ZA of the Immigration Act 1971 in the context of people who are Irish citizens and come to Scotland from Ukraine.

Policy Objectives

Grenfell Tower Payments

The Grenfell Fire occurred on 14 June 2017 leading to the loss of seventy-two lives. A number of compensation schemes were set up to help those impacted by this tragic event. Additional sources of compensation payments have been provided, in particular, settlement payments resulting from the ongoing Grenfell Tower related civil litigation. This amendment is to ensure that any Grenfell Fire payment is disregarded in the calculation of council tax reduction.

Post Office Compensation Payments

The Post Office Horizon IT system was introduced in 1999/2000 as a point-of-sale accounting system. The system recorded shortfalls in cash in branches, which Post Office Ltd (POL) sought to reclaim. Some postmasters were consequently convicted of theft, fraud, or false accounting, based on what turned out to be flawed Horizon evidence. Over the last two years, the courts have overturned a number of convictions

which were based on flawed evidence from the Horizon system. This amendment disregards, from the calculation of council tax reduction, compensation and support payments made in connection with the failings of the Horizon system, or payments resulting from the settlement reached in *Bates and Others v Post Office Ltd* ((No. 3) “Common Issues”)([2019] EWHC 606 (QB))

Vaccine Damage Payments

The Vaccine Damage Payment Scheme (VDPS) is a no-fault scheme that provides, in accordance with the Vaccine Damage Payments Act 1979, a one-off, tax-free payment of £120,000 to those who have been found, on the balance of probabilities, to have been seriously disabled by a vaccine administered to treat a disease listed in that Act. Legislation exists to disregard payments made that relate to compensation for personal injury. However, this legislation does not apply to the partners of vaccinated individuals who receive a payment derived from a VDPS award. The amendment in this instrument creates a specific disregard for payments under the Vaccine Damage Payments Act 1979, and also extends the disregard to cover awards made to partners.

Second Adult Rebate

In the calculation of a Second Adult Rebate, the capital of the person liable to pay council tax has no impact on the person’s entitlement to second adult rebate. In order to clarify the policy intention, this instrument inserts a capital disregard to this effect in the council tax reduction working age scheme. This disregard already exists in the council tax pension age scheme.

Calculation of Non-dependant adult’s income

This instrument provides for the disregard of a number of payments in the calculation of a non-dependant adults income in the pension age scheme. These payments are Grenfell Tower payments, Post Office Compensation Payments, Vaccine Damage Payments, and payments in respect of historic child abuse in care. There is no need for an equivalent disregard in the working age scheme as all income types disregarded under regulation 75 are disregarded as non-dependant income.

Persons Treated as Not being in Great Britain

The Regulations clarify the effect of a person falling within section 3ZA of the Immigration Act 1971, as a result of being an Irish citizen. The effect is that they do not require leave to enter or remain in the United Kingdom.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government’s policy to maintain alignment with the EU.

Consultation

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

Impact Assessments

This instrument amends existing Working Age Relations and Pension Age Regulations. There are no specific impact assessments.

Financial Effects

The Minister for Community Wealth & Public Finance confirms that no Business Regulatory Impact Assessment is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government

Local Government and Communities Directorate

19 September 2023

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (“the 2012 Regulations”) and the Council Tax Reduction (Scotland) Regulations 2021 (“the 2021 Regulations”).

Regulation 2 amends the 2012 Regulations. Regulation 2(3) clarifies the effect of falling within section 3ZA of the Immigration Act 1971. Regulation 2(6) provides for the disregard of certain payments in calculating an applicant’s capital for the purposes of entitlement to council tax reduction. The payments are those made to provide compensation or support in respect of the Grenfell Tower Fire on 14 June 2017, payments made by the Secretary of State or the Post Office for the purpose of providing compensation or support in connection with the failings of the Post Office Horizon computer system or otherwise payable following the judgement in *Bates and Others v Post Office Ltd* ((No. 3) “Common Issues”) and certain payments made under the Vaccine Damage Payments Act 1979. It also provides for the disregard of compensation payments under the Windrush Compensation Scheme, currently provided for in paragraph 30F of schedule 4 of the 2012 Regulations. Regulation 2(4) provides that all of the payments just mentioned, together with those related to redress for historic child abuse in care, are also disregarded in calculating the income of a non-dependant adult who lives with a council tax reduction applicant, for the purposes of calculating how entitlement to council tax reduction is affected by the presence of the non-dependant adult. Regulation 2(5) amends schedule 3 of the 2012 Regulations to clarify the basis on which payments of compensation from the Windrush Compensation Scheme are disregarded when calculating income other than earnings for council tax reduction purposes. Regulation 2(2) inserts appropriate definitions into the interpretation provision in regulation 2 of the 2012 Regulations in light of these changes.

Regulation 3 amends the 2021 Regulations. Regulation 3(3) clarifies the effect of falling within section 3ZA of the Immigration Act 1971. Regulation 3(4) amends regulation 75 to provide for the disregard of the same payments as described above in relation to the 2012 Regulations when calculating an applicant's capital for the purposes of entitlement to council tax reduction under the 2021 Regulations. It also provides for the disregard of three payments currently disregarded under schedule 4 of the 2021 Regulations, namely payments under or in connection with the Windrush Compensation Scheme, redress payments under Part 4 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 and ex gratia payments from the Advance Payments Scheme in respect of cases of historic abuse in care. All disregards of compensation payments in calculation of capital are therefore now provided for in regulation 75. Regulation 3(2) inserts appropriate definitions in the interpretation provision in regulation 4 of the 2021 Regulations in light of the changes made by regulation 3(4). Regulation 3(5) amends schedule 4 of the 2021 Regulations to clarify that the whole capital of a person who is liable to pay council tax is to be disregarded when calculating their entitlement to second adult rebate.