

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Constitutional and Legislative Affairs Committee

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Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



4 December 2013

Dear Lesley,

Council Tax Reduction Schemes Regulations

Thank you for your letter of 19 November regarding the above Regulations.

I appreciate that technical briefings are offered in good faith and with the best of intentions. However, such private briefings should not be considered as the norm to explain difficult pieces of legislation. As I said in the Chamber, that defeats the Welsh Government's stated objective of making law more widely accessible.

Moreover, it is more transparent and democratically accountable for Ministers to explain their legislation during Assembly proceedings. It may be, therefore, that we will need to consider whether the views of Ministers should be sought during consultation exercises on more complex statutory instruments. Such an approach must not compromise the Committee's formal scrutiny role in relation to SIs once they have been laid before the Assembly, but may nevertheless be an opportunity to explore and resolve, in public, some of the issues that may give rise to concern.

Our work cannot be contingent on receiving a technical briefing from the government. Our technical and legal advice comes principally from our legal advisers who are independent of government. Confusion on this point risks

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undermining the legislative functions of the Assembly, something I am sure you do not want to do.

Your letter seems to suggest that criticisms can only be valid if communicated in advance after we have suggested to you ways to improve the relevant regulations. While we will always endeavour to help the executive to discharge its core duties when possible, it is not our responsibility to do so. We comment on regulations after they have been laid and in line with standing orders.

Turning to the Regulations themselves, they are exceptionally complex, as you acknowledge. We firmly believe that they could have been made simpler and easier to understand.

Paragraph 55 of the default Council Tax Reduction Scheme, which concerns the treatment of child care charges, provides an example of why we believe this to be the case. To understand its purpose, the reader first has to look at a separate provision, paragraph 54(1)(c). Paragraph 55 itself covers 9 pages of the Scheme and is divided into 18 sub-paragraphs. Many of them are divided into sub-sub-paragraphs, and some (eg 55(8)(a) and (e)) into sub-sub-sub paragraphs. Moreover, the provisions depend, for their full meaning, on 19 other pieces of legislation. All of this complex drafting deals with one single issue: what types of child care charges are to be deducted from an applicant's income, as calculated for the purposes of the Regulations, in order to ascertain their eligibility for a reduction and the amount of that reduction.

There are two other points relating to complexity that I would wish to draw to your attention.

First, your letter of 19 November refers to the work of the House of Commons Joint Committee on Statutory Instruments. You will be aware that this Committee, while reporting on SIs, does not assess the merits of any instrument or the underlying policy. Instead, this role is undertaken by the House of Lords' Secondary Legislation Scrutiny Committee, the successor to the Merits of Statutory Instruments Committee. In commenting on the similar English council tax Regulations of 2012, that Committee said:

"We would comment that these instruments demonstrate the complexity of the new arrangements, which can be expected to prove challenging as much for those required to implement them as for claimants who will need to understand the new system."

It is not the case, as you assert, that complexity was not identified as a concern in the English Regulations.

Secondly, during the debate in the chamber you referred to the Regulations under scrutiny as being 119 pages in length, and emphasised that they were very significantly shorter than the 2012 Regulations. The two bilingual statutory instruments we considered ran to a combined total of over 500 pages – as did the 2012 equivalents. I hope you will take the earliest opportunity to make clear to what documents you were referring and whether they were those scrutinised by the Committee.

I very much welcome the conciliatory approach you adopted in your closing remarks and trust that this letter is received in a similar vein. Your commitment to review the legislation and to keep Members informed is also welcome.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Melding', with a long, sweeping horizontal stroke extending to the right.

David Melding AM
Chair