



Draft proposal for a Bill to align local authority powers to pursue tax debts with those for other debts

A consultation document on the proposal for:

The Enforcement of Local Tax Arrears (Scotland) Bill

John Wilson MSP

Contents

- 1. Introduction**
- 2. Aims**
- 3. Proposals**
- 4. The need for change**
 - 4.1 The prescribed period**
 - 4.2 Summary warrants**
- 5. Summary of questions and how to respond**
- 6. Glossary of terms**

1. Introduction



John Wilson MSP, Central Scotland

In Scotland today local authorities can pursue people for Council Tax and Community Charge debts for up to 20 years after they are thought to have arisen. This means that long after anyone can be expected to retain evidence which could show part-payment, disputed liability, or eligibility for a discounted rate, and despite the revocation and replacement of the Community Charge Tax, local authorities can start legal proceedings for a debt alleged to have arisen anytime as far back as 1989. They do this using a procedure called summary warrant which ultimately allows them to freeze bank accounts, arrest wages and make direct deductions from benefits.

Ordinary creditors must initiate court actions to pursue debts within five years. This is a far more reasonable time-scale which would allow the debtor a fairer chance to challenge the debt with their own records and recollections. In fact, the five year time-scale already applies to local authorities in respect of other types of debt such as rent arrears.

Furthermore, there is no requirement through the summary warrant process to inform the debtor of when the application will be made. In addition, the debtor has no right or opportunity to represent themselves and dispute the facts of the case. This I believe to be fundamentally unfair as it omits the basic building block of our justice system, the right to effective legal representation.

This consultation paper contains my proposals for tackling these two issues.

Firstly, I propose to bring local authorities in line with ordinary creditors, requiring them to take legal action within 5 years of the alleged debt arising. This would encourage more effective debt collection and allow the person a greater chance of challenging the debt by proving it has been paid.

Secondly, I propose to end the practice of summary warrants for the collection of local taxes. I propose instead that local authorities follow the same debt recovery routes as ordinary creditors, with applications made individually and requiring to be intimated on the alleged debtor. This would allow an alleged debtor the opportunity to appear in court and dispute the allegations when an application for decree is to be heard.

1. Introduction (continued)

I must stress that my intent here is not to allow debtors off the hook and leave the rest of us carrying additional costs. The impact of these proposals would I believe ensure that local authorities collect taxes efficiently, that debtors have a right to dispute claims in any court action, and put the collection of these taxes onto a more equitable footing.

I hope you take the time to read these proposals and would be most grateful if you would complete section 5 and return your response by 10 June 2010. In addition, please pass this consultation document on to any other interested parties that you may be aware of.

John Wilson MSP

2. Aims

This Bill aims to:

- ***Bring local authorities into line with ordinary creditors in terms of how long they have to pursue a debt, encouraging efficient collection of local taxes and***
- ***End the system of summary warrants for local taxes, allowing people the right to challenge debts in court before local authorities are given the right to enforce them***

3. Proposals

This Bill would seek to achieve these aims through:

- 1. Reducing the time that a local authority has to establish that a debt is due from twenty years to five years - bringing them into line with ordinary creditors - and reduce the collection period thereafter, from 20 years to five years.***
- 2. Ending local authorities' use of summary warrants for the collection of local taxes. Instead local authorities will have to apply to the court for a decree to enforce such debts, allowing a debtor the right to appear and challenge the claim.***

4. The need for change

The need for change

Research on council tax collection in 2006 found the main underlying reasons for non-payment were chronic poverty, unemployment, under-employment, low wages, vulnerability to financial shock, low state benefits and the growth of multiple debt. There was no evidence of widespread non-payment on principle ¹.

A local authority's ability to recover debts up to twenty years old from such low-income households in a cost-effective way is limited and, I would argue, unjustifiable. These proposals will limit the right to both establish that the debt is due, and the time in which to legally collect it to a period of five years. This is a far fairer time period, and more in line with other debts.

In February this year, the Minister for Community Safety, responding to a parliamentary question agreed there were problems with the existing law. He stated:

"The law of prescription of debt for ordinary debts between individual contracting parties covers five years, but there is not the same period for the recovery process for Government debts in all their forms. Local authorities can apply for a summary warrant to collect outstanding council tax and community charge moneys up to twenty years after the amount becomes due, and they then have up to a further twenty years to collect it.

Anyone can see that there are obvious difficulties in proving what occurred after such a long period – a person does not need to have had any involvement with the legal profession to see those difficulties. It is perfectly legitimate that Citizens Advice Scotland has indicated that it seeks a member's bill on the issue, and I would be happy to explore further with... other members and CAS the complex issues involved." ².

4.1 The prescriptive period

The area of law that governs local tax collection is the Prescription and Limitation (Scotland) Act 1973. This allows a local authority twenty years in which to establish legally that the debt is due, and a further twenty years after that in which to collect it. These periods of time are known as 'the prescriptive periods'. Both these time periods of 20 years can be renewed indefinitely, in certain circumstances. These proposals seek to reduce both collection periods to five years.

4.1 The prescriptive period (cont.)

But the existing law is very confusing. One of the main authorities discussing the legislation surrounding the area of law states:

"The law is relapsing into a confusing mess... It is very far from being a simple or clear body of principles and it gives rise to many disputes and many difficult problems of interpretation." 3.

And some local authorities do interpret the law differently from others. Edinburgh City Council for example takes the law to mean it has only five years to establish the debt is due. Moreover, as a matter of practice, some local authorities (including Fife, Aberdeen and North Lanarkshire) write off such debt after five years.

The 20 year periods also set local authorities apart from other creditors. Ordinary creditors have five years to begin to legally pursue a debt, HM Revenues and Customs has six years, while local authorities in England and Wales effectively have a six-year collection period. It therefore seems reasonable to review the period Scottish local authorities have to pursue and collect their debts.

It is my view that five years is clearly an adequate period to grant local authorities to pursue and collect these particular types of debt.

Five years is also a fairer amount of time as this would allow the person the ability and opportunity to more effectively challenge the debt. It may be the debtor was in receipt of certain benefits, or on a low income which would have meant they were liable for something less than 100% of the tax. It may be they believe they had paid something towards it, or they may not have received any demands for payments or notice of action. None of these things can be effectively challenged 20 years later, as very few of us keep records so far back. Indeed, even the Department of Work and Pensions will hold no information going back 20 years regarding someone's circumstances or their eligibility for rebates on local taxes. It is far more likely however that people will have records dating back five years. This would allow them and the courts to more effectively establish the facts of the case.

Proposal 1

I therefore propose to reduce the 'prescriptive periods' for the stages of local authority debt collection from 20 years to five years.

4.2 Summary warrant

The normal method for legally pursuing debts for local tax arrears is through the summary warrant procedure. Summary warrants are covered by the Local Government Finance Act 1992. The proposals contained in this section seek to amend that Act.

Within the specified time period, local authorities can apply for a summary warrant to collect outstanding monies for local taxes. Once a local authority has been granted a summary warrant it has 20 years to act upon it to recover or 'enforce' the debt. Enforcement can be through a variety of means including wage arrestment, deductions from benefits and freezing of bank accounts.

However, the process for obtaining a summary warrant means the debtor gets no warning that the warrant has been applied for, the case does not formally 'call' in court, and accordingly the debtor has no opportunity to appear before the court and challenge the debt or the processes followed.

I believe therefore that the process of enforcement through summary warrants is unfair as it excludes a person from representation, and may indeed be a breach of human rights.

Ordinary creditors are required to apply for a court decree to allow them to enforce a debt. This process allows for the debtor to appear in court and challenge the debt.

While court proceedings are more costly to pursue than summary warrant procedure, the reduction of time given in which to collect outstanding taxes means that local authorities will collect their debts quicker. This should lead to greater efficiency in terms of numbers of outstanding debts that require to be collected through more formal mechanisms. In any event, outstanding sums due are likely to fall within the small claims court procedure - which is designed to be quick, cheap and easy to use.

Proposal 2

I therefore propose to end local authorities' use of summary warrants for the collection of local taxes. Instead local authorities will have to apply for a decree of court to enforce such debt. This would allow the debtor to be given notice and the opportunity to appear and challenge the claim.

Conclusion

I believe that both the initial and follow-up twenty year periods for collection of local authority taxes are unfair and unreasonable, as is the existing summary warrant procedure. However setting these arguments aside, it is my view that the current confusion surrounding the law relating to prescriptive periods for Community Charge and Council Tax is in itself sufficient justification for amending the relevant legislation.

1. Scottish Government: Local Government Research Findings No.5/2006: Improving Council Tax Collection Rates in Scotland
2. Official Report of the Scottish Parliament 26 February 2009 Col 15280
3. Prescription and Limitation of Actions, Sixth Edition, David M Walker

5. Summary of questions and how to respond

Questions

1. Are there any reasons to justify retaining the right of local authorities to initiate court proceedings after a longer period of time has elapsed than other creditors?
2. In what ways do you consider restricting the period within which local authorities can initiate court actions to five years would increase overall collection rates?
3. Are there any reasons why local authorities should be allowed longer than five years to initiate court proceedings?
4. What should happen to existing local authority tax debts for which court action has not been initiated within five years?
5. What costs and benefits will arise from scrapping summary warrant procedure for these types of debts?
6. In what ways will the alignment of the prescription period as proposed and the scrapping of summary warrant procedure affect equal opportunities?
7. Do you have any other comments on the proposal?

How to respond

**Please return your responses, by 10 June 2010, to the above questions along with any other comments either by email to:
Lesley-Anne.Boyle@scottish.parliament.uk**

**Or by post to:
Lesley-Anne Boyle
Scottish Parliament
Edinburgh
EH99 1SP**

**Telephone: 0131 348 6684
Fax: 0131 348 6686**

**RNID TypeTalk calls welcome
Fax: 01698 269033**

Please make it clear whether you are responding as an individual or on behalf of an organisation.

If you wish your response to be confidential, please say so. Otherwise it will be available for public inspection, in accordance with the principles of transparency and freedom of information. Confidential responses will be included in any summary or statistical analysis but this will not reveal the identity of any respondent who has requested confidentiality.

**Additional copies of the paper or alternative formats can be requested using the contact details above and calls via Typetalk are welcome. An on-line copy is available on the Scottish Parliament website:
<http://www.scottish.parliament.uk/business/bills/membersBills.htm>**

Glossary of terms

Community Charge

Community charge (commonly known as poll tax) was a system of local personal taxation which was introduced in Scotland in April 1989 (and in England and Wales in April 1990). Most people aged 18 or over had to pay it. Community charge was replaced by council tax in April 1993.

Council Tax

Council tax is a local tax on residential property set and collected by local authorities in England, Wales and Scotland. It is only payable on a property which is domestic, self-contained and capable of occupation and which is on the council tax valuation list. The property can be owned or rented and can be a house, bungalow, flat, maisonette, mobile home or houseboat.

Decree of Court

A person taking legal action in court, if successful will gain a court order. Once an order is made, the person has a decree of court which allows them to enforce their rights – often a debt.

Ordinary Creditors

Ordinary creditor is the name given to a creditor who has no preferential rights.

Prescriptive Period

Prescription is the legal term that defines the effects of the passage of time on enforcement of rights. Specifically, the prescriptive period relates to the time span used in relation to the extinguishing of a right to pursue a debt. Different rules for prescription apply to different areas of the law, and are governed by the Prescription and Limitation (Scotland) Act 1973 as amended.

Summary Warrant

A fast track procedure that gives the creditor the equivalent of a decree of debt when the debt is for community charge, council tax, rates, road tax, VAT, income tax, national insurance or tax credit overpayment.

**A Consultation: The Enforcement of
Local Tax Arrears (Scotland) Bill
John Wilson MSP**

Money Notes image © Kat Jackson