



Prescription (Scotland) Bill

Stage 3 Consideration

8 November 2018

Written briefing from Citizens Advice Scotland, Money Advice Scotland and StepChange

Summary

Citizens Advice Scotland, Money Advice Scotland and StepChange believe that the prescriptive period for Council Tax arrears and reserved social security benefits and tax credit debt should be reduced from 20 years to five years. **We support amendments 1 to 7** which would remove the exemptions in the Bill for these debts.

Removing exemptions to the five year period in the Bill

Currently under the Prescription and Limitation (Scotland) 1973 Act, every repayment made against debt, while it is still live within the prescriptive period, **fully renews** the 5 years the creditor has to enforce the debt through court. To enforce a debt through court the creditor only has to prove a payment or acknowledgement has been made in the previous 5 years, no matter how long ago the contract began. For instance, if the debtor only made a repayment towards their outstanding debt every 4 years and 11 months after the previous repayment, the debt would not prescribe and could still be enforceable decades later. Section 6 of the Bill would cap this renewal period at 20 years.

However some debts enjoy an even more privileged status (council tax, business rates, reserved benefits administered by the Department for Work and Pensions (DWP), tax and tax credit debts and court decrees) and are still enforceable 20 years from the last repayment (or the original decision if no repayments are made). In practice this has caused difficulties for debt advice clients who in some cases have been pursued for Council Tax arrears or benefit overpayments more than five years after they were allegedly incurred.

We believes it is in nobody's interests for a debt to remain unenforced for more than 5 years, due to the practical issues that can occur, such as clients' being unable to remember the debt or any action taken to repay it, or being unable to find relevant paperwork after a long period of time.



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However, this does occur in practice, for instance when a person retires and claims their pension for the first time, they can find they receive a reduced amount, due to a long past DWP overpayment which has not been previously collected.

In the 1973 Act there is no specific mention of benefits and tax credit overpayments. But, even without this specificity, in practice the DWP will still recover overpayment debts for up to 20 years after the last repayment. In doing so the DWP relies on Schedule 1, paragraph 2 (a) of the 1973 Act

We believe if the DWP, HMRC and councils cannot get a payment on record to their debts within 5 years, then it seems unfair to debtors to reward them with a further 15 years to do so with all means at their disposal. 5 years negative prescription ensures that all government bodies behave efficiently and timeously in their debt recovery to get a payment on record.

We agree with the Scottish Law Commission's original proposal that that there should be no exemptions to 5 year negative prescription for council tax, non-domestic rates, social security and tax credit debts in the Bill. We support amendment 2 (in the name of Mark Griffin) which would remove the exemption for social security and tax credit debts, and amendments 1 and 3 to 7, (in the name of Neil Findlay) which would do likewise for council tax and non-domestic rates.

Case studies

The following cases illustrate administrative issues that can arise when collecting debt over a long period of time:

A CAB in the North of Scotland reports of a client who visited the CAB after receiving a letter regarding council tax debt addressed to her late son. She reports that this debt dates from 1995. The threatening letter has caused considerable distress to the client at a difficult time.

A CAB in the East of Scotland reports of a client who is being pursued for a historic council tax debt, despite being declared bankrupt in 2017. The client says this is a debt of £559 dating from 2011/2012 and this debt is now being arrested from her wages. She reports that this debt was included in her bankruptcy.



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A client visited an East of Scotland CAB seeking advice on a council tax debt from 1999 and 2001. The client reports he has been trying to pay these off for a number of years. The client says despite payment being arrested from his wages the amount of this debt did not reduce between November 2017 and January 2018. Correspondence stated he still owed £1102.31 plus surcharges. Following a number of phone calls the local authority stated that he only owed £81.22.

The following cases illustrate how difficult it can be to challenge liability for long term debt due to the passing of time, loss of supporting evidence and IT change:

A client visited a North of Scotland CAB regarding a council tax debt from a property he lived in in 2013. The client reports he was doing the property up at the time and received a council tax exemption. He says he has now received a letter to say his case has been re-examined and he is liable for £700. He has also been asked to pay this amount by the end of the week.

A West of Scotland CAB reports of a client with council tax arrears dating back to 2010. The client says that following the death of his father he moved in with his mother to provide care. He also states that they reported this to the local authority at the time. His mother recently returned a benefit review form and she has now been told that she has £3000 council tax arrears.

A North of Scotland CAB reports of a client who visited regarding an overpayment of Child Tax Credits. The client says he received Child Tax Credits until 2008 and recently received paperwork detailing an overpayment of £3983.68, but with no explanation of the reason for this. HMRC told the client that they had been chasing this debt since 2012 but the client stated he had not received any correspondence regarding this.



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An East of Scotland CAB reports of a client who has received a letter from DWP regarding a Direct Earnings Attachment for an old debt from 2000. The client says he paid the debt between 2002 and 2004 and has letters stating that his debt has been cleared. The client has twice sent proof of payment by recorded delivery and he is concerned that it is taking so long for the DWP to get to the bottom of the case. The DWP states that their system was changed in 2007, hence they are unable to look at the older entries and payments.

A South of Scotland CAB reports of a client receiving a letter from the council asking her to pay outstanding council tax for the period 1994 to 1998. The letter also warned of the debt being passed to the Sherriff Officers for immediate recovery action. They have sent her a spreadsheet showing her liability, a surcharge, benefit awarded and payments made. The client contacted the council stating that she has no knowledge of this issue and she was not aware of ever having received correspondence from the council at the time informing her of the fact that she was in arrears with her council tax. The council representative stated that they had no further details they could give her regarding this issue.

The following cases illustrate how the collection of long term debt can cause anxiety for our clients, especially if they have no prospect of ever being able to repay the debt:

A client's daughter contacted an East of Scotland CAB about issues experienced by her mother in regards to Pension Credit. The client is an elderly lady and is now being chased for an overpayment of Pension Credit which she was unaware of. The client appears to have had an administrative issue in 2008 with bank statements. She had no contact from 2008 to 2017 and in Oct 2017 received a call stating that she had committed fraud and that she should provide bank details on the phone, which she refused. She then had a visit from two DWP employees the following week accusing her of fraud. Since then she has received a letter asking her to pay £185 per week, which she cannot afford, then on the phone she was told to pay £185 per month. In either case, she cannot afford the repayments. The client is under a lot of stress and has collapsed and has been hospitalised.



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A South of Scotland CAB reports of a client receiving a letter informing her she owed council tax from 2012/2013. The debt is for £1353.67. The client says that as far as she was aware the council tax was being deducted from her benefits. The client was upset by this letter and says she thinks it should have been highlighted to her earlier, to prevent it building up.

A client visited a North of Scotland CAB following receiving a Charge for Payment for a historic council tax debt. The client reports that this debt refers back to 2009 and is for £3225.02. The client is on benefits and is unable to meet the demand for this payment. These demands are negatively impacting on his health.

Citizens Advice Scotland

Citizens Advice Scotland, our 60 member Citizen Advice Bureaux (CAB), the Citizen Advice consumer helpline, and the Extra Help Unit, form Scotland's largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone. Our self-help website Advice for Scotland provides information on rights and helps people solve their problems.

In 2016/17 the Citizens Advice network in Scotland helped over 310,000 clients in Scotland alone and dealt with over one million advice issues. With support from the network clients had financial gains of over £120 million and our Scottish self-help website Advice for Scotland received over 4 million unique page views.

The Scottish Association of Citizens Advice Bureaux is a registered charity, (Scottish charity SC016637 and company limited by guarantee 89892)

Money Advice Scotland

Money Advice Scotland is Scotland's Money Charity.

Our mission is to be the driving force towards financial wellbeing for the people of Scotland.

Money Advice Scotland is a registered charity, Registration Number: SC005663
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StepChange Debt Charity is an independent charity dedicated to overcoming problem debt. We are Scotland's largest provider of specialist telephone and online debt advice, with solutions that are effective, tailored and importantly free.

Foundation for Credit Counselling Wade House, Merrion Centre, Leeds, LS2 8NG trading as StepChange Debt Charity and StepChange Debt Charity Scotland.

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