ENFORCEMENT OF LOCAL TAX ARREARS (SCOTLAND) BILL

JOHN WILSON MSP

SUMMARY OF CONSULTATION RESPONSES

Introduction

The intention of the proposal is to align local authority powers to pursue tax debts with those for other debts. The consultation document accompanying the draft proposal for the Enforcement of Local Tax Arrears (Scotland) Bill was issued on 17 March 2010 and ran until 10 June 2010. A number of late submissions were received after the closing date; they were accepted and have been included in this analysis.

The consultation document was made available from a link on the Proposals for Members’ Bills webpage on the Scottish Parliament website (http://www.scottish.parliament.uk/business/bills/membersBills.htm). It was also sent to 169 organisations and individuals with an interest in the issue; recipients were encouraged to bring the consultation to the attention of anyone else they thought might have an interest in the subject matter.

Additional activity

In addition to carrying out the public consultation, John Wilson MSP took part in a number of activities related to the subject of local tax arrears in order to inform the development of his policy. These included:

- the press launch of the consultation on Thursday 18th March 2010;
- an article published in SCOLAG Journal in May 2010.

General

In total, 44 responses were received; these were made up of the following individuals and organisations:

- 25 local authorities (LAs)
- 8 charitable organisations
- 2 professional associations
- 2 Executive agencies
- 2 membership organisations
- 1 private company
- 1 statutory organisation (consumer focussed)
- 1 public company
- 1 individual
- 1 MSP

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In 9% (4) of the responses received, it was unclear whether the respondents supported the proposal or not because their comments did not clearly state support or lack of support.

The responses from local authorities have been extracted here from the total figures. It is perhaps useful to compare the responses from local authorities with other bodies and individuals. 25 local authorities responded to the consultation (there are 32 unitary authorities in Scotland). This represents 57% of the total number of responses. 21 respondents stated that they did not support the proposal; 2 gave partial or qualified support; and in 2 it was unclear whether there was support.

Other bodies and individuals accounted for 43% of the total number of responses. 53% (10) of these remaining respondents fully supported the terms of the proposal. The reasons given included: greater parity with other creditors; record keeping would be more accurate over a shorter period for both LAs and debtors; debtors would have the opportunity to defend themselves in court and ensure the evidence presented was correct.

A further 26% (5) supported the proposals in part: 3 respondents were supportive of a reduction to 5 years for the prescriptive period with 1 respondent supporting a limit of 5 years from date of liability established and a further respondent supportive of a proposal that encourages non-preferential treatment of creditors.

A total of 21% (4) of respondents stated that they did not support the proposal for the following reasons: individual court actions would be time consuming and expensive to LAs; impact on court system with increased administration and costs; staffing issues for LAs and courts with increased court actions.

Responses

The consultation document posed seven questions; the responses to each are outlined below.

Question 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?*

15 (34%) agreed that there was no justification for LAs to retain a longer period of time than other creditors to initiate court proceedings. Many respondents were supportive of a reduction to 5 years.

The Institute of Chartered Accountants for Scotland felt that “there are no apparent reasons for not bringing prescription for LAs into line with that for
other creditors” and considered that if the proposal proceeds there should be “clarity in the law of what LAs are required to do before the end of the prescriptive period.”

Citizens Advice Bureau (CAB) and consumer advisors considered the current time period too long, causing debts to pile up. There was no warning notice to the public instructing them to keep receipts for 20 years; and it also felt that record keeping would be more complete and accurate over a shorter period. Alasdair Allan MSP cited an example of a constituent who was wrongfully pursued over an older ‘debt’, concluding it was “unjustifiable” for “one branch of Government to pursue debts on the basis of records older than the statutory period for which another branch of Government is required to maintain records which would demonstrate whether or not the debts were due."

In a joint submission, the Chartered Institute of Public Finance and Accountancy (CIPFA) and the CIPFA Directors of Finance Section acknowledged “there is a significant gap between the prescription period of 20 years and the proposed period of 5 years” but “in the absence of any research it is difficult to support modification at this time...”

The reasons given by those respondents who supported a longer period were that liability in some cases can take a number of years to determine; and to limit backdating could encourage evasion of council tax. Although City of Edinburgh Council considered that “in the vast majority of cases liability will be established well within the 5 year period” and Scottish Borders Council felt that “5 years would present more than enough opportunity to initiate proceedings against a debtor from the time of identifying that they were liable for the debt.”

Glasgow City Council stated that “(it) would not oppose a limit of 5 years for taking legal action provided the period of 5 years commences from the date liability is established.”

**Question 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?*

In answer to Question 2, respondents considered the 5 year time limit would have the following effects:

- force LAs to expedite collection and this would benefit taxpayers
- would make LAs more proactive in revenue collection
- threat of action may make debtors pay sooner
- debtors more likely to repay the arrears
- solve problems caused by multiple diligence.

Consumer Focus Scotland believed that there is “wide variation in the interpretation of the legislation by LAs and how it is applied.”
One LA respondent suggested that studies “by the Scottish Government and Audit Scotland have identified deprivation as a factor affecting council tax collection and that in areas of higher deprivation LAs take on average longer to collect charges”, arguing that a shorter period would have an adverse affect. Several LAs considered that collection outcomes could be increased by improving enforcement ‘tools’ i.e. better data-sharing by central government and central government agencies (i.e. access to employment and banking records held for income tax).

Citizens Advice Scotland acknowledged that debts need to be collected by LAs, pointed out that most of its clients fall into the ‘can’t pay’ rather than ‘won’t pay’ category and stated that in trying to “cope with repayment of old bills suddenly demanded years later, clients can find they end up in debt with the existing year’s payments…servicing very old debts whilst falling behind with current obligations is counter-productive.”

8 (18%) respondents thought that recovery levels would be reduced. 5 respondents (11%) thought they would increase and 20 (45%) felt that there would be no significant impact to collection levels. 11 (25%) respondents did not provide an answer to this question.

**Question 3**

*Are there any reasons why local authorities should be allowed longer than five years to initiate court proceedings?*

In response, 23 (52%) respondents - 21 of those being LAs - considered that LAs should be allowed longer than 5 years to initiate court proceedings. The main reasons given were: dubiety over who should be billed; and the necessity that LAs have the power to amend records, and update or correct information that was not available or not provided at an earlier time.

There were “no apparent reasons” for a period of longer than 5 years, according to the Insolvency Committee of the Institute of Chartered Accountants of Scotland. South Lanarkshire Council stated that “legitimacy of the charge is the important factor and not the fact that it may have taken more than 5 years to establish.” On the other hand East Ayrshire Council “felt that systems for billing and recovery are sufficiently robust to allow the identification of a debt and recovery action to commence within a 5 year period.”

In its response, Roxburgh CAB took the view that if the debtor is out of the country then LAs should be able to use this as a reason for a longer time limit.

**Question 4**

*What should happen to existing local authority tax debts for which court action has not been initiated within five years?*

The responses to this question were varied as described below:
• LAs can make reasonable and sensible decisions - should look at each case on its own merits
• existing LA tax debts for which court action has not been initiated within 5 years should fall
• should be provision for cases where liability has not been established because of ‘avoidance’
• if court proceedings cannot be initiated after 5 years the debt would become time barred
• transition to any new arrangement should be phased in over time
• no option but to write off debts
• LAs should be able to continue to pursue outstanding debts.

Several Councils felt that the 5 years limit would not be an issue:

• Moray Council maintains a policy of prompt action throughout the financial year
• Renfrewshire Council considered that court action not initiated within 5 years only occurs in a very small number of cases where system error has prevented the obtaining of a summary warrant
• Aberdeenshire Council did not have any debts that fell into this category
• Scottish Borders Council has no outstanding debts which are approaching 5 years.

Consumer Focus Scotland referred to the Scottish Government publication, *Improving Council Tax Collection Rates in Scotland*, that identified the need to catch non-payers early in the process as one of the key principles of council tax collection and felt that “While there is little doubt some councils would incur costs if debts older than 5 years were written off, improving council tax collection methods earlier in the process, should lead to improved collection rates overall.”

**Question 5**

*What costs and benefits will arise from scrapping summary warrant procedure for these types of debts?*

Benefits and costs mentioned in responses to the consultation are summarised below.

**Potential benefits**

• debtors given opportunity to challenge liability in court
• debtors may be made to look at Council Tax as a priority debt
• small claims procedure is cheaper and debtor is kept informed (Roxburgh CAB)
• decrees will be visible to credit check agencies which may help with the recovery of debt.

North Ayrshire Council suggested that, as a summary warrant does not currently include notification to the debtor when the warrant has been applied
for, one solution would be to serve notice of the court date to each debtor to allow them to challenge the summary warrant. If the debtor challenged the summary warrant then the account could be removed and raised as an ordinary debt action.

The Institute of Chartered Accountants of Scotland considered that “scraping summary warrants may potentially lead to a reduction in sequestrations.”

**Costs**

- increase in staffing to prepare and represent court actions on Sheriff Court system
- additional operational costs to LAs and courts
- additional court costs being added to the bills of an already indebted group.

Although 20 respondents felt that there would be no significant impact to collection levels, a number of LAs expressed concern about the perceived higher costs in both time and resources which might lead to reduced revenue and, as a consequence, a reduction in services.

**Question 6**

*In what ways will the alignment of the prescription period as proposed and the scraping of summary warrant procedure affect equal opportunities?*

In response to Question 6 several respondents felt that there would be no affect as the changes would be subject to an equality impact assessment and that LAs already work within the framework of equal opportunities. Other comments included:

- alignment of the prescription period would bring council tax in line with other unsecured debts and as such provide equality in their treatment
- all creditors would be treated equally under law
- appeal rights are contained in existing legislation.
- the current summary warrant procedure does not allow for the debtor to be represented in court
- unreasonable to expect debtor to retain evidence for period of 20 years
- adverse impact on debtors with low disposable income.

**Question 7**

*Do you have any other comments on the proposal?*

The majority of comments in relation to this question reiterated concerns over resources.

East Ayrshire Council pointed out that “whilst it is reasonable to expect that LAs establish a debt is due within 5 years and take action to recover it there must also to an onus on the debtor to clear the debt within a 5 year period.”
Dundee City Council felt that “if the system is to be overhauled, it should only be done following an independent, systematic, reasoned and costed examination of the present system and alternatives”.

The Chartered Institute of Public Finance and Accountancy (CIPFA) and the CIPFA Directors of Finance Section considered that “local taxation and fiscal reform could be a key area of debate” and “that modification, however small, should be considered only against the background of what wider reforms may take place as part of a wider fiscal reform”.

The British Bankers’ Association was “supportive of proposals that encourage non-preferential treatment of creditors and the pro-rata distribution of debt repayments to creditors”.

**Summary**

Almost all of the LAs put their focus on costs and collections and saw the current summary warrants system and 20 years’ prescription period as an efficient, cost effective process. They felt the relevant aspects of administration and collection both for themselves and the courts were not addressed by the proposal.

However, several LAs were supportive of a reduction of the prescriptive period from 20 years to 5 years. It seemed to a number of respondents unreasonable to expect people to retain evidence for 20 years when this evidence would have been submitted at the time of an application to waive charges. Based on their experience and anecdotal evidence, CABs and consumer advisers considered that unpaid taxes should be collected timeously and that LAs should be brought into line with other creditors. It was also felt that any debt policy should take a comprehensive account of the debtor’s circumstances rather than concentrate only on maximising collection.

One of the possible benefits highlighted was the debtor having ‘his day in court’ and, for debtors who have a legitimate case to pursue, this would be beneficial. However, it may not be what the majority of debtors want and to avoid this (and having their credit rating affected) they may decide to settle their debt sooner rather than go to court thus increasing revenue collection.

The responses to the consultation have provided a number of suggested amendments that the Member will consider and may use to refine policy before submitting a draft bill.

**September 2010**