COMMUNITY CHARGE DEBT (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Community Charge Debt (Scotland) Bill introduced in the Scottish Parliament on 3 December 2014. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 56-EN.

POLICY OBJECTIVES OF THE BILL

2. The purpose of the Community Charge Debt (Scotland) Bill (“the Bill”) is to end collection of community charge debts. It will ensure, following recent high levels of democratic engagement in Scotland, that the electoral registers are not used to pursue historic arrears of community charge, as well as ending ongoing repayment arrangements which are already in place. The policy will contribute to the Scottish Government’s National Outcomes of tackling inequalities in Scottish society, and promoting a strong, fair and inclusive national identity.

Background

3. The community charge was introduced in Scotland in April 1989 and superseded by the introduction of the current council tax system in 1993. As of 31 March 2014, Scottish local authorities reported a total of £425.3 million uncollected community charge for the years 1989-90 to 1992-93 inclusive, with much of that expected to now be uncollectable, in particular due to practical considerations and the operation of the law of prescription. Under the Prescription and Limitation (Scotland) Act 1973, obligations are extinguished if no claim has been made or acknowledged in relation to them for 20 years, unless they fall within the scope of section 6 and Schedule 1 to the Act (in which case they prescribe after five years) or unless they fall within the imprescriptible obligations specified in Schedule 3 to the Act. The effect is that community charge liability is subject to 20 year prescription. The amount of community charge arrears collected by local authorities across Scotland has fallen in recent years from £1,312,000 in 2009-10 to £327,000 in 2013-14, and some local authorities have ceased recovery of community charge debts altogether.

4. Media reports following the referendum on independence suggested some local authorities had indicated they would be reviewing the electoral registers, following increased voter registration, in order to assist with collecting outstanding community charge arrears.
On Thursday 2 October 2014, the then-First Minister announced that the Scottish Government would bring forward legislation as part of its forthcoming legislative programme that would remove the ability of local authorities to require payment of community charge arrears. This legislation would apply to community charge debt only, not to recovery of council tax arrears, which would continue. In the context of this policy decision, the Scottish Government has agreed a financial settlement with local government which reflects the outstanding amounts of community charge which local authorities might have expected to collect through existing recovery arrangements, had their community charge collection operations continued.

**Effect of the Bill’s provisions**

6. The policy intention of the legislation is to remove liability to pay community charge debt, rather than to make it illegal for local authorities to collect the debt. The legislation will operate, therefore, broadly in the same way as existing legislation covering prescription and limitation of debts. This approach does not prevent a taxpayer from voluntarily deciding to pay an outstanding debt as a donation to a local authority, if the taxpayer wishes to do so. This approach has been taken to mitigate the risk that, were the legislation to make it illegal for local authorities to collect community charge debts, authorities in receipt of money from long-standing direct debits or other repayment arrangements which could only be cancelled by the taxpayer would be accepting funds to which they are not lawfully entitled. This risk was deemed to be particularly relevant in this case because of the historic nature of community charge debts, and the possibility that some taxpayers have become uncontactable. However, the Scottish Government would expect authorities to reimburse any payments that were not due where they are able to do so, as they are required to do under the current legislation.

7. In addition, historic community water charge debt will no longer be collectable, nor will fees and other financial outlays for community charge debt enforcement action, surcharges and civil penalties. As Scottish local authorities have confirmed to the Scottish Government that none have sold off their community charge debt to private debt collectors, there is no potential loss of property rights for any debt collector.

8. Implementation of the legislation will necessitate the winding up of existing community charge debt collection processes which will require preparation by local authorities due to the individual nature of collection/recovery arrangements which are in place. To ensure prompt implementation of the Bill, therefore, it includes an anticipatory provision which backdates the extinguishing of liability under the legislation from the date of Royal Assent to an earlier point at 1 February 2015. This will ensure there will be no delay in local authorities becoming aware of the date that the legislation comes into force, which would otherwise arise from uncertainty as to when Royal Assent might be granted. A fixed date will enable local authorities and the UK Department for Work and Pensions (DWP) - where payments arise from what are known as ‘third party deductions’ from UK social security benefits - to close down collection arrangements at the date set, and to plan to do that.

9. The intention of this approach is to mitigate the potential risk of ‘overpayments’ of community charge beyond the commencement date, with consequential implications for repayment and creation of administrative complexity for local authorities, DWP and taxpayers. The date that is set also enables local authorities to undertake the necessary financial and
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Administrative preparations to close down community charge collection arrangements ahead of the date at which they will set their council tax levels for the 2015/16 financial year and begin the annual council tax billing process.

10. As noted above, some community charge debts are recovered through ‘third party deductions’ from UK social security benefits. The basis for these deductions for community charge debts would become obsolete because liability would no longer exist under this legislation. Such arrangements are administered by the DWP. The change in policy will be communicated to DWP in advance of the date at which liability will be extinguished, to ensure that they are aware of the removal of liability and can work with local authorities to ensure the cessation of third party deductions in these cases.

ALTERNATIVE APPROACHES

11. As part of its replacement of the community charge system with the council tax, the Local Government Finance Act 1992 abolished the community charge with effect from 1 April 1993 and provided for the repeal of the legislation which introduced it - the Abolition of Domestic Rates Etc. (Scotland) Act 1987. That repeal has not been fully commenced but could (and will) be progressed by order made by the Scottish Ministers.

12. However, any commencement order under the Local Government Finance Act 1992 can only repeal the community charge regime to the extent that the 1992 Act permits it. Due to a saving in the 1992 Act, the commencement of this repeal would not affect the operation of the community charge regime where it relates to a debt arising in respect of a day falling before 1 April 1993. As a result, those warrants or decrees already in existence authorising action to recover community charge debts could continue uninterrupted (if the debt has not prescribed), as could payment arrangements that are in place.

13. To fulfil the Scottish Government’s commitment to ensure that community charge debts are no longer recoverable requires primary legislation. The approach of commencing the provisions within the Local Government Finance Act 1992 will tidy the statute book and avoid confusion by removing provisions which will now no longer need to be referred to, but this will not on its own remove the legal basis for recovery of these debts. The use of the commencement order alone was, therefore, discounted on the basis that it is not a mechanism for fulfilling the policy commitment.

CONSULTATION

14. The period available for the Bill’s development, due to the necessity of having legislation in place prior to the commencement of the 2015/16 financial year, has not permitted a formal public consultation exercise to be undertaken on the policy. However, officials have consulted COSLA and local authority practitioners on development of the provisions in the Bill which have operational implications for local authorities, in order to ensure these provisions are informed by how community charge debt collection operates in practice. In turn, COSLA has undertaken consultation with local authority Directors of Finance on ongoing activity in relation to community charge collection and the practical operation of debt recovery arrangements which are in place. This information has assisted in informing the drafting of the Bill.
EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT, ETC.

Equal opportunities

15. The Scottish Government has considered potential equalities impacts and does not consider that the Bill’s provisions are discriminatory on the basis of age, gender, race, disability, marital status, religion or sexual orientation. The provisions of the Bill are not intended to eliminate any specific form of discrimination or promote equality of opportunity, and relate solely to extinguishing of liabilities. The provisions will be more relevant, for example, to some age groups than to others (as community charge liability has not arisen for 21 years and, therefore, those aged under 39 years cannot ever have had any liability), but their effect is to place all persons who had a liability in the same position. Those groups or individuals who do not have community charge liabilities will not suffer negative impacts as a result of the Bill’s provisions. For these reasons, a full Equalities Impact Assessment has not been undertaken, but the Scottish Government will continue to monitor and examine any potential equalities impacts which emerge as the policy is implemented.

Human rights

16. The Scottish Government is satisfied that there are no European Convention on Human Rights (ECHR) implications from the provision made by the Bill. A right to require payment of a debt is potentially an asset that could be a possession for the purposes of Article 1 of the First Protocol to the ECHR. However, Scottish local authorities have confirmed that no community charge debt has been sold to private debt collectors or others to recover, therefore there are no creditors who have such property rights. No other ECHR issues have been identified by the Scottish Government.

Island communities

17. The Scottish Government is satisfied that the Bill has no differential impact on island and rural communities.

Local government

18. Whilst some local authorities have indicated that they no longer actively pursue and recover community charge debts, local authorities are the bodies which administer and collect local taxes which include outstanding community charge. For this reason, it is deemed that all local authorities could be affected by the provisions in this Bill and, therefore, its effects on local government have been considered. The primary impact of the legislation on local government will be the ending of local authorities’ ability to recover community charge debts, where it is still possible to do so and recovery is not prevented by the law of prescription, and associated sums of money which will be foregone as a result.

19. Although not required by the Bill, in recognition of this potential cost to local government, the Scottish Government has agreed to a financial settlement of £869,000 to local authorities for the estimated sums foregone as a result of community charge collection ceasing. This final once-and-for-all settlement is based on COSLA and local authorities’ estimate of the
total amount of community charge which would have been collected within the lifetime of their existing recovery arrangements, and which will now no longer be recoverable. The Financial Memorandum provides further detail on this financial settlement.

**Sustainable development**

20. The Scottish Government has undertaken a Strategic Environmental Assessment (SEA) pre-screening report in order to determine whether the proposed provisions of the Bill would have environmental effects. Based on this evaluation, the Scottish Government concluded that the proposed provisions of the Bill are likely to have no environmental effects, and that an SEA was not required. The pre-screening report is available within the SEA database: [http://www.scotland.gov.uk/Topics/Environment/SustainableDevelopment/14587/SEAG](http://www.scotland.gov.uk/Topics/Environment/SustainableDevelopment/14587/SEAG)

**Business and Regulatory Impact Assessment**

21. The Scottish Government has undertaken a Business and Regulatory Impact Assessment (BRIA) and is satisfied that the Bill has no significant impact on businesses and other non-public bodies.
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