Dear Sir or Madam

**RE: PRESCRIPTION (SCOTLAND) BILL 2018 – SUBMISSION OF EVIDENCE**

I am writing in relation to the Prescription (Scotland) Bill 2018, as introduced, which is currently at Stage One of the parliamentary process, in the hope my views may help inform the Committee’s consideration of the Bill.

**My Background**

My background is I graduated from the University of Aberdeen in 2003 with an LLB (Hons) Degree and have worked in the money advice and personal insolvency industry for the last 15 years. In that time I have filled various roles, including working as a case carrying money adviser and a sheriff court lay representative. I have also been a trainer and social policy officer for Money Advice Scotland and a Senior Manager in the personal insolvency industry. In 2015, I also became a licenced Personal Insolvency Practitioner in the Republic of Ireland and worked there throughout 2015.

I am currently employed as the Senior Money Adviser and Financial Inclusion Officer for Inverclyde Council.

I am making this submission in a personal capacity and from the perspective of being a Senior Money Adviser. Unfortunately, due to short notice, I have not been able to consult with other departments of Inverclyde Council, who I suspect may have different views from me in relation to the Bill, as they would consider it from Inverclyde Council’s perspective as a creditor.

**Prescription (Scotland) Bill – Section 2 – Inclusion of Contractual Obligations**

I welcome the inclusion of section 2 of the Bill to ensure all contractual obligations are subject to short-term negative prescription, as contained in section 6 of the Prescription and Limitation (Scotland) Act 1973 (the 1973 Act) (subject to contrary provisions contained elsewhere).

I do not believe there has been much dubiety in relation to this, in terms of obligations to pay debts, arising from contracts, however, believe this provision brings clarity and is to be welcomed.
Prescription (Scotland) Bill – Section 3 – Inclusion of Statutory Obligations

I also welcome the inclusion of section 3(2) (b) in the Bill, which aims to include all statutory obligations in Paragraph 1 of Schedule 1 of the 1973 Act. I believe this brings greater clarity, as it has not always been clear from a money advice perspective, what prescription rules applied to various statutory obligations, in particular, obligations to pay income tax and VAT to HMRC.

However, I question whether the correct approach is then taken in sub section (3) (b) of section 3, to specifically exclude a number of different types of statutory obligations, namely:

- obligations to pay taxes to the Crown;
- obligations to pay a sum recoverable under various UK Benefit legislation; and
- obligations to pay council tax, non-domestic rates and other ancillary debts.

My reasons for questioning this approach, is although I recognise the public interest in protecting these types of claims, in terms of tax debts owed to the Crown and local authorities for council tax, non-domestic rates and ancillary debts, I believe that these types of debts are sufficiently protected by Paragraph 2(a) of Schedule one of the 1973 Act, in that, excluded from the 5 year short-term negative prescription rule is, “any obligation to recognise or obtemper a decree of court, an arbitration award or an order of a tribunal or authority exercising jurisdiction under any enactment”.

As both local authorities and HMRC are able to use the summary warrant procedures to enforce these debts, and routinely do so, their claims are already protected by this process and there is no requirement to provide them with express exemption under the 1973 Act.

The only way I believe this may not happen is where a summary warrant was not considered to fall within the definition of “a decree of court”, however, I believe it would by virtue of section 73 of the Debtors (Scotland) Act 1987, which defines a summary warrant as a “decree or other document”.

This approach may be preferable as it would mean, in future, whether a statutory creditor requires additional protection for a claim, then this could be provided by ensuring it can be recovered using the summary warrant procedure and would not require further amendments to the 1973 Act.

I believe it would also help preserve the overall principle that if creditors wish to protect claims that arise from personal contract or statute, then they must act in their own interest and cannot rely on having an entrenched position under the 1973 Act, which I believe only encourages bad practice.

In terms of the provisions contained in the sub-section (3) (b) of section 3 of the 2018 Bill, which relates to obligation to make payments child support maintenance under the Child Support Act 1991, I have no objection to his being excluded, as the summary warrant procedure is not available to use and arguably as the obligation is owed to the child, additional statutory protection is justified. I wonder, however, whether this exclusion should also contain obligations owed under S1 (1) (c) of The Family Law (Scotland) Act 1985 (obligation to pay aliment to a child)?

Exclusion of UK Benefit Overpayments

In terms of the provisions in sub-section 3 (b) of section 3 of the 2018 Bill, which relates to the recoverability of amounts due under various UK benefit legislation, as has been highlighted by the
Child Poverty Action Group (Scotland) in their submission, this appears to be contrary to the position taken in section 38 of the Social Security (Scotland) Bill 2017.

I can see no argument that justifies debts that are largely similar in nature, but owed under different legislation, being treated different and believe a consistent approach has to be taken.

I also wonder as to what is the policy motivation behind the position that has been taken in the Social Security (Scotland) Bill 2017? If it is to provide a short recovery period for these types of debts, I do not believe it will achieve its goal, as most benefit payments are recovered directly from existing awards of benefits, which I believe would constitute a relevant claim by the creditor (if not a relevant acknowledgement by the debtor) and, therefore, would restart the running of prescription every time a payment is made.

Equally, I question whether, even if expressly included into paragraph one of schedule one of the 1973 Act, whether these types of obligations would still not be covered by long-term negative prescription, by virtue of paragraph 2 (a) of schedule one, of the 1973 Act? As every time a decision-maker makes a decision or a social security tribunal makes a decision that an overpayment is recoverable, I believe this would constitute “an order of a tribunal or authority exercising jurisdiction under any enactment for the purposes of that provision. This would mean these debts, once it is decided they are recoverable, may be covered by long-term negative prescription.

My preference, considering my money advice background, would be for a shorter recoverable period and that both UK and Scottish benefits should be treated the same. However, I do recognise this may require significant amendments of the 2018 Bill.

**No Interruption of the Long-Term Negative Prescription**

I fully support the inclusion of section 6 in the Bill, in that it will stop long-term negative prescription being interrupted by “relevant claims” and “relevant acknowledgements”. I believe this will prevent a repeat of the problem that arose in 2014 with historic community charge debts, dating as far back as 1989, still being recoverable under Scots law.

**Burden of Proof**

I also fully support section 14 of the Bill which will place a burden of proof on creditors, where a question arises, to provide evidence that a debt is not prescribed.

The rise in the sale of distressed debt books has become a growing problem for money advisers and their clients across Scotland since the credit crunch and often results in many questionable claims being raised in the sheriff courts in relation to debts that may be prescribed.

I do not believe the provision contained in section 14 will solve this problem, in itself, and I believe changes to court rules would be more effective, but believe the provision strengthens the position of debtors and makes stronger the arguments for court rules to be altered to ensure creditors, when raising a claim, can show the obligation is not prescribed.
Long-Term Negative Prescription

Finally, although the 2018 Bill does not seek to amend the duration of long-term negative prescription in Scotland, I do question whether the correct length of time should be 20 years.

As the Committee will be aware, the law in other parts of the UK specify periods of 6 years and 12 years. It seems arbitrary and unfair that people in Scotland can still be pursued for the same type of debts, owed to the same organisations, for periods up to 20 years and I believe a shorter, long-term prescription period of 10 or 15 years would be more appropriate.

Alan McIntosh