South Lanarkshire Council’s Response to Call for Views

Response to Call for Evidence on the Prescription (Scotland) Bill

1. Do you have any concerns about the approach taken in the Bill.

Response: We do not have any concerns regarding the approach taken in the Bill.

2. Do you think that negative prescription produces harsh results in individual cases? (You could illustrate by way of examples if you think that would be helpful to the Committee). If so, is this acceptable in policy terms?

Response: We do not think that negative prescription presently produces harsh results for Local Authorities.

3. Do you agree to the proposed extension in section 3 to the scope of the 5-year negative prescription, so it would apply to all statutory obligations to make payment (unless there are policy reasons to except them)?

Response: Many statutes provide for debts payable to Local Authorities, and for the recovery of sums paid by Local Authorities on behalf of other. One example is Care Home Costs. Where a resident cannot, or does not, make payment of Care Home Costs Local Authorities may pay these on the resident’s behalf, and recover these from the resident, if possible, in terms of the statute. In some cases the Local Authority may be protected by a Deferred Payment Agreement or a Charging Order. In other cases they may not. Where a Local Authority funds care costs for a period of over 5 years some costs will prescribe under the 5 year prescription, whereas previously they would not. Local Authorities may have to institute Court Proceedings to prevent this. This would increase the cost to Local Authorities of recovering such debts, and would lead to debtors incurring costs where previously they would not. The Debtors involved may be elderly and vulnerable

There are many other statutes providing for payment to Local Authorities. We would be concerned that in some cases the proposal may require Local Authorities to institute proceeding when previously recovery could be made without resort to the courts.

Where it is proposed that all statutory debts are to be subject to short negative prescription careful consideration should be given to all of these, on an individual basis, to determine whether such debts, as a matter of policy should be subject to Short Negative Prescription, and whether the increased cost incurred by Local Authorities and by the debtors involved as a result of the proposed change negate any advantage of the change.
4. Do you agree with the list of exceptions to the general rule relating to statutory payments set out in section 3 of the Bill?

Response: We agree that Council Tax, Non domestic Rates, and ancillary debts should be excepted. In the absence of a full and comprehensive review of all other statutory debts that are to become subject to Short Negative Prescription there may be concerns that the correct approach has been adopted in all cases.

5. Do you have any concerns about the proposed new discoverability test in section 5?

Response: No

6. Do you agree with the proposed change to the starting date of the prescriptive period in relation to obligations to pay damages in sections 5 and 8?

Response: Yes

7. Do you agree with the proposal in sections 6 and 7 to make the 20-year period no longer amenable to interruption by a relevant claim or relevant acknowledgement?

Response: Yes

8. Do you agree with the proposal to allow the extension of the 20-year period in certain circumstances as set out in sections 6 and 7?

Response: Yes

9. Do you have any concerns about those sections of the bill (sections 4, 13 and 14) that seek to clarify the law on prescription?

Response: No. Clarity will be beneficial

10. What are the financial implications of the Bill?

Response: We do not consider the Bill will have financial implications for Local Authorities.

11. The Scottish Government says that the Bill will increase clarity, certainty and fairness. It also says it will promote a more efficient use of resources (in that people will be less likely to have to raise court proceedings to preserve rights) and will reduce costs for those involved in insurance and litigation. Do you agree with this assessment?

Response: In respect of Statutory Debts due to Local Authorities we have concerns that the proposals in relation to Statutory Debts may require Local Authorities to institute Court Proceeding to prevent the prescription of debts that would not previously have prescribed. This will increase costs for Local Authorities and the Debtors involved.