

28 February 2024

The Clerk
Equalities, Human Rights and Civil Justice Committee
Scottish Parliament
EH99 1SP

Dear Sir or Madam

Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Amendment) 2024

I am writing in relation to the above Act of Sederunt that has been laid before Parliament and which the Equalities, Human Rights and Civil Justice Committee is the lead Committee for.

Although on the face of it this legislation may appear to be a routine uprating of fees that takes place every 3 years, I am concerned that these fee increases will only lead to greater hardship for some of the poorest in our society.

I would ask that this uprating of Sheriff Officer and Messenger at Arms fees should not occur until steps are brought forward to mitigate the worst effects of them. This could be done, I believe, by the Lord President laying an Act of Sederunt to amend the Act of Sederunt (Form of charge for payment) 1988.

As I explained in a recent article I wrote for the Journal of the Law Society of Scotland (Time for Due Diligence on Debt Recovery – November 2023), the system of legalised debt recovery we have in Scotland, which we call the law of diligence, is almost now wholly dependent on raising fees from the poorest in our Society for Council Tax Arrears. This Act of Sederunt and the proposed increase in fees will only make that situation worse.

To illustrate this point, I would like to draw the Committee's attention to the fact that since 2011-12 the number of diligences being executed in Scotland has increased from 481,565 to 533,690 in 2022-23 (if you include charges for payment – a formal demand for payment), which represents a 10.82% increase. However, in relation to those diligences executed for summary warrants debts for council tax, the increase has been greater, with the overall number executed rising from 351,995 in 2011-12 to 454,390 in 2022-23: representing a 29.09% increase.

This increase in relation to council tax debt recovery has largely been driven by the increased use of charges for payment, which prior to 2008 were not required for council tax debt. Charge for Payments are a 14-day formal demand for payment that

Sheriff Officers must serve on someone in debt before they can take further action, like an earning or bank account arrestment.

The introduction of a requirement to serve Charge for Payments in relation to council tax debt was seen as positive step in 2008, as it provided people in debt with some advance notice before further action would be taken against them.

However, an unforeseen consequence of this change was that the number of Charge for Payments being served on people with council tax arrears, has significantly increased over the years and rose from 164,630 in 2011-12 to 213,900 in 2022-23, representing a 30% increase.

The problem with this is the cost of someone having a Charge for Payment served on them is currently £86.03 in Sheriff Officer fees, as they are required to be hand delivered by Sheriff Officers. This meant that in 2022-23 the 213,900 Charge for Payments that were served for council tax arrears led to £18.4 million in Sheriff Officer fees being added to debts. If the fee, because of the Act of Sederunt currently before the Parliament, is allowed to increase the fee to £96.27, the level of Sheriff Officer fees being added for charge for payments for council tax debt will increase to £20.6 M each year (an increase of £2.1 M).

This I believe would be unacceptable, particularly as it a direct result of a measure that was introduced by the Bankruptcy and Diligence Etc (Scotland) Act 2007, with the intentions of increasing protections for people with council tax debt and was never intended to plunge them further into debt.

However, I believe the worse effects of this proposed fee increase could be mitigated by the Lord President laying an Act of Sederunt to amend the Act of Sederunt (Form of charge for payment) 1988 requiring, at the very least, for Charge for Payments to be served using postal diligence. This would allow the Sheriff Officer fee for each charge to be reduced to £48.02 (a saving of £48.25 for everyone who has a Charge served on them). This would mean instead of £20.6 M of debt being added to those with council tax arrears each year (based on the number of Charges served in 2022-23), the amount would only be £10.2 M (a reduction of £10.4 M).

There is no reason why this should not be possible. It would not only reduce costs for Sheriff Officers but would significantly help those struggling with problem debts. There is also no reason why Charge for Payments must be hand delivered, considering it is possible for someone to be cited to court in relation to criminal matters with a letter sent by recorded delivery.

I also, for that matter, don't see any reason why it should not be possible for local authorities in relation to council tax debt from being able to use the post to serve their own Charge for Payment as a local government agency, for an even lesser fee, without having to use the services of Sheriff officers.



Advice Talks Ltd (SC533215)



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There also doesn't appear to be anything in section 90 of the Debtor (Scotland) Act 1987 from preventing this from happening and it should be noted that local authorities are already able to execute UK style diligences, such as Direct Earning Arrestments for overpaid benefits under the Welfare Reform Act 2012, without using the services of Sheriff Officers. This is also the case in relation to other Government Agencies such as the Department of Works and Pensions and HMRC. I also note that the Child Maintenance Service under the Child Support Act 1995 can also execute UK style diligence, such as a Deduction from Earnings Order, without having to use the services of Sheriff Officer or Bailiffs in other parts of the UK.

There appears to be no reason why this should not be possible for Council Tax debt recovery.

However, although this may require further consultation, I cannot see any reason why measures cannot be brought forward now to allow postal service for Charge for Payments and would argue that such a change is vital before any uplifting of Sheriff Officer and Messenger at Arm fees could be palatable.

Your sincerely

Alan McIntosh
Approved Money Adviser



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