

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1897](#): Reform certain of the procedures for the collection of Council Tax, lodged by Richard Anderson

Background

The petitioner is concerned about procedures for enforcing payment of Council Tax. He believes the process is unfair and that those affected cannot dispute the matter in court.

Council tax collection

Local authorities are very constrained by legislation in relation to how they collect council tax. They have no powers to reduce the amount due, so they cannot accept a lower amount from a debtor who is struggling.

They can accept reduced payments (so a smaller amount is paid for a longer time), but the overall liability remains the same. However, many are reluctant to do so until they have a summary warrant (discussed below) in relation to the debt.

Councils can write off council tax debt – but this is a longer term accounting option for debts that are irrecoverable. It is not something that can be offered by frontline staff.

Billing process

The Council Tax (Administration and Enforcement) (Scotland) Regulations 1992 set the legal requirements for council tax billing.

- Regulation 17 requires that demand notices are sent out at the beginning of the financial year (where possible) setting out the amount of council tax due. Regulation 18 states that no payment need be made until a demand notice is sent.
- It is usually possible for council tax to be paid in 10 monthly instalments over the course of a year (see Part 1 of Schedule 1 to the 1992 Regulations). However, where more

than two payments are missed, or missed payments are not made up within seven days of a reminder notice, this right is lost.

- It is also possible for the council to agree a different payment schedule with the liable person (Regulation 21).
- Where an instalment is missed, the council is required to issue a reminder notice highlighting the amount that must be paid and the effects of not paying within seven days of the notice. If the instalment is the second instalment to be missed, the reminder notice must also highlight that, if another payment is missed, the whole year's liability will automatically become due (Regulation 22).

Enforcement where there is non-payment

Normally, where a creditor is owed money, they have to take court action if they want to access certain court-sanctioned enforcement options. The debtor will get an opportunity to defend the action, or ask the court to order a more reasonable repayment rate.

However, certain public bodies can use a fast-track procedure called "summary warrant" to enforce debts. This includes local authorities for Council Tax debts.

The council can present a summary warrant containing the following information¹ to a judge:

- a statement that the people specified in the application have not paid council tax
- a statement that the legally required reminder notices have been sent and that the full year's liability has now become due
- a statement that 14 days have passed between the full year's liability becoming due and the application for summary warrant

¹ The Council Tax (Administration and Enforcement) (Scotland) Regulations 1992, regulation 30.

- a statement that no appeal against the local authority's calculation of council tax has been made (or, if it has been made, it has been dealt with)
- a statement of the amount owed.

A summary warrant will contain the names of lots of people who owe council tax. The judge will grant it without any further investigation of individual circumstances. One of the effects of granting a summary warrant is that a 10% surcharge will be added to the debts listed.

The policy argument for the existence of summary warrant procedure is that to expect a local authority to deal with each debtor individually would hugely increase enforcement costs. Increased enforcement costs would ultimately have to be met by other council tax payers, in higher bills or through cuts to services.

The 10% surcharge is likely to exist to compensate the local authority for the additional costs of chasing the unpaid bill. This would include preparing information for the court and paying sheriff officers² to recover the debt.

Note that a local authority can also choose to take court action in the normal way to enforce payment of a council tax debt. This would happen if the council wanted to use a different debt enforcement option to those authorised by summary warrant – for example, bankruptcy.

Council tax debts which go through the summary warrant process do not currently appear on someone's credit record.

Methods of debt enforcement authorised by summary warrant

If a local authority has used summary warrant procedure, it is only authorised to use the following debt enforcement options:

- **attachment**, such as an exceptional attachment order used to seize goods in a debtor's home

² Sheriff Officers are officers of the sheriff courts under the authority of the Sheriff Principal for the area. They (and the "Messengers at Arms" of the Court of Session) are the only people in Scotland authorised to take enforcement action against debtors who have not paid.

- **money attachment** – note that this can only be used for money held somewhere other than the debtor's home
- **arrestment**, such as a bank arrestment used to freeze money in a debtor's bank account
- **earnings arrestment**, where a set proportion of wages are seized in the hands of an employer.

Protected trust deeds

A [protected trust deed](#) is one of the formal options for people who cannot repay their debts in the longer term. It is similar to bankruptcy. Only insolvency practitioners can offer protected trust deeds, but people may be referred to an insolvency practitioner as a result of seeking debt advice from a Citizens Advice Bureau.

People need to have some disposable income with which to repay their debts to qualify for a protected trust deed. Bankruptcy is likely to be the only available formal option for those with the lowest incomes.

Scottish Government Action

The Scottish Government established the [Commission on Local Tax Reform](#) in 2015. Its final report, [Just Change: a new approach to local taxation](#) (2015), made recommendations for reform.

The Scottish Government introduced legislative reform, based on the Commission's proposals, to redistribute the proportions of council tax paid by each council tax band in 2016.

The Community Charge Debt (Scotland) Act 2015 dealt with the forerunner to Council Tax, which had similar enforcement processes. It had the effect of writing off unpaid Community Charge debt.

The Bankruptcy and Diligence etc. (Scotland) Act 2007 introduced a requirement to issue a charge for payment before enforcing a summary warrant council tax debt. A charge for payment is a court notice delivered to the debtor by sheriff officers.

The charge for payment gives a debtor notice that the council is about to be in the position to take enforcement action against them. This would allow them to, for example, challenge the bill or

seek debt advice. The requirement was put in place, in part, to offset the lack of notice in summary warrant procedure.

Scottish Parliament Action

The Delegated Powers and Law Reform Committee considered council tax debt processes during its [scrutiny of the Prescription \(Scotland\) Bill](#) in 2018.

The [Scottish Parliament scrutinised the 2016 council tax reform proposals](#). It also [scrutinised the Community Charge Debt \(Scotland\) Bill](#).

The Scottish Parliament has considered several petitions asking for reform of council tax.

Key Organisations and relevant links

- Scottish Government
- Convention of Scottish Local Authorities
- SOLAR (Society of Local Authority Lawyers and Administrators in Scotland)
- Organisations offering, or representing people who offer, money advice, such as Citizens Advice Scotland, Money Advice Scotland and StepChange

Abigail Bremner
Senior Researcher
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