

Citizen Participation and Public Petitions Committee

6th Meeting, 2021 (Session 6), Wednesday 3
November 2021

PE1897: Reform certain of the procedures for
the collection of Council Tax

Note by the Clerk

Petitioner	Richard Anderson
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to reform those procedures for the collection of Council Tax which apply when a person has difficulty in making payment.
Webpage	https://petitions.parliament.scot/petitions/PE1897

Introduction

1. This is a new petition that has been under consideration since 27 September 2021.
2. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe A**.
3. While not a formal requirement, petitioners have the option to collect signatures on their petition. On this occasion, the petitioner elected to collect this information. 8 signatures have been received.
4. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe B** of this paper.
5. The petitioner was invited to submit a written submission in response to the Scottish Government. On this occasion, the petitioner decided not to respond.

6. The petition calls for reform of Council Tax procedures which apply when a person has difficulty in making payment. The petition notes that local authorities refer debts to Sherriff Officers and believes this is causing “real hardship” as people can face difficulties in their lives, such as injury or redundancy, which can result in an inability to pay Council Tax.

Background information

7. The SPICe briefing outlines the process for the use of summary warrants to enforce Council Tax debts. It explains that a summary warrant issues information to a judge, who will then grant it without any further investigation of individual circumstances.
8. The briefing notes that by granting a summary warrant, a 10% surcharge will be added to the debts listed. Council tax debts which go through the summary warrant process do not currently appear on someone’s credit record.

Scottish Government submission

9. In its submission, the Scottish Government states that its policy is ‘to ensure households that are financially vulnerable do not have to meet a Council Tax liability they are unable to afford’ and highlights the Council Tax Reduction (CTR) Scheme.
10. The submission states that around half a million households receive some level of CTR and of those households, 80% receive a full reduction and are therefore not liable for council tax. CTR can be backdated by up to 6 months.
11. With regard to funding, the Scottish Government is providing £351 million to local authorities for the CTR Scheme in 2021/22 and the local government finance settlement of £259 million in recognition of additional COVID-19 pressures. The submission notes that additional pressures on local government includes an increase in households entitled to a CTR.
12. The Scottish Government also outlines the powers available to local authorities to formally recover outstanding Council Tax. This includes the application to a Sheriff Court for a Summary Warrant or agreeing a mutually suitable payment agreement with a household.
13. The submission also refers to the PTD (Protected Trust Deed) Protocol, which commenced on 1 October 2021, and sets out non-statutory changes to the operational processes for Protected Trust Deeds. A Protected Trust Deed is a voluntary agreement in which the person who owes money can agree to pay a regular sum towards their debts and at the end of a fixed time the rest of their

debts will be written off. As part of a PTD, a person's assets will be passed to a trustee, who will look after the individual's financial affairs.

14. The Scottish Government notes that the intention is to promote good practice, improve transparency and provide further clarity in support of the revised Accountant in Bankruptcy (AiB) PTD Notes for Guidance, better enabling trustees to manage debtor and creditor expectations in a PTD.
15. The submission addresses the petitioner's statement that there has been a 20% jump in Protected Trusted Deeds, pointing out that it is not borne out by AiB's statistics, which shows a marked decline in the numbers of PTDs over the past two years.

Action

16. The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

PE1897: REFORM CERTAIN OF THE PROCEDURES FOR THE COLLECTION OF COUNCIL TAX

Petitioner

Richard Anderson

Date Lodged

30/08/21

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to reform those procedures for the collection of Council Tax which apply when a person has difficulty in making payment.

Previous action

I wrote to the then leaders of all the main political parties in the including Richard Leonard MSP and Jackie Baillie MSP (Labour); Jackson Carlaw MSP (Scottish Conservatives) and a number of SNP MSPs. I have also written to my own local MSP.

Background information

Council Tax should be fair and just. It is not. For example, if a notice is not received by a person, the Council will simply refer the matter to Sheriff Officers. This results in an adverse entry on their credit record. This is causing real hardship. Those doing their best to pay can run into difficulties (injured; redundant). In any other case a person anticipating such a dispute could raise that issue - but not in relation to Council Tax which is excluded. The Summary Warrant issued is equivalent to a 'Court Decree'. The powers that Sheriff Officers now have are seemingly limitless. Bank Account arrestment and even bankruptcy. Those going to Citizens Advice Bureau for advice will be offered a form of voluntary bankruptcy known as a Protected Trust Deed (PTD). There has been a 20% jump in these. Reform is needed.

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.

Abigail Bremner
Senior Researcher
30 September 2021

SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP

Scottish Government submission of 15 October 2021

PE1897/A - Reform certain of the procedures for the collection of Council Tax

The Scottish Government's policy is to ensure households that are financially vulnerable do not have to meet a Council Tax liability they are unable to afford. This is delivered by the Council Tax Reduction (CTR) Scheme which assesses a household's income and circumstances, and can reduce council tax liability by up to 100%. Currently, around half a million households (around one fifth of all dwellings chargeable for Council Tax) receive some level of Council Tax Reduction and of these, around 80% receive a full reduction, meaning they have no council tax liability.

The CTR scheme is administered by local authorities as part of their administration of Council Tax and applications can be backdated by up to 6 months. The Scottish Government is providing £351 million in funding to local authorities for the Council Tax Reduction Scheme in 2021/22. Local authorities are also able to draw on the £259 million included in the local government finance settlement in recognition of the additional financial pressures the pandemic has placed upon them, including an increase in the number of households becoming entitled to a Council Tax reduction.

The Scottish Government continues to promote take up of CTR as part of the Money Talk Team service. In the first two and half years of its delivery, covering November 2018 – July 2021, those who used the service gained almost £1,066,650 of CTR they were entitled to but had not applied for.

Council Tax is a local tax, set and collected by each local authority, and is important in ensuring each council is financially and administratively accountable to their electorate. Council Tax receipts play an important part in the funding of local public services, and as well as ensuring policies and funding are in place to protect vulnerable households from Council Tax liabilities they could not be expected to afford, the Scottish Government recognises the importance of ensuring that local authorities have the tools to protect their revenues – it is fundamentally unfair on

the vast majority of people who do pay their taxes to allow some to avoid paying their way.

Local authorities therefore have a range of statutory powers they can use to formally recover outstanding Council Tax and these include the power to apply to a Sheriff Court for a Summary Warrant. However, local authorities are not obliged to use Summary Warrant or any particular collection method and are free to agree mutually suitable payment arrangements with a household. Decisions on what collection methods to use are for local authorities to make. Where debtors feel they have been treated unfairly or unlawfully they have recourse to the Scottish Public Services Ombudsman which can make recommendations in individual cases.

Importantly, advice is available to those who do find themselves in a position of having accrued arrears in Council Tax and there are number of statutory solutions available to assist them in meeting their debts. More information on accessing advice and dealing with debt is available in the Account in Bankruptcy's Debt Advice and Information Package, available on their web site at www.aib.gov.uk. Overall, it is essential that anybody who is having difficulty in meeting their Council Tax liabilities should contact their council as soon as possible.

The specific matter of Protected Trust Deeds (PTD) was been the subject of a short enquiry by the Economy, Energy and Fair Work Committee of the previous Parliament. Following the Committee's report, the then Minister for Business, Fair Work and Skills, Jamie Hepburn MSP, pledged to undertake and develop a wider review of Scotland's debt solutions, chairing working groups with stakeholders. Further information regarding this is available on the AiB website at [Wider review of Scotland's debt solutions | Accountant in Bankruptcy \(aib.gov.uk\)](http://www.aib.gov.uk).

It was agreed, that AIB, in agreement with trustees and creditors, could introduce operational changes in the short-term to improve existing processes and fill any gaps identified in the report.

In December 2020 the AiB PTD case operations team discussed this with the Protected Trust Deed Standing Committee and set up a working group to review the points raised by the Parliamentary Committee. The committee agreed key areas which could be addressed operationally and fed into further discussions on the other areas identified which may require legislative change.

The PTD protocol was developed, which sets out non-statutory changes to operational processes. The intention is to promote good practice, improve transparency and provide further clarity in support of the revised AiB PTD Notes for Guidance, better enabling trustees to manage debtor and creditor expectations in a PTD. The PTD Protocol will commence on 1 October 2021.

Lastly, the background information supporting the petition asserts “a 20% jump in [Protected Trust Deeds]”. This is not borne out by statistics published by the Accountant in Bankruptcy, published on their web site, which shows a marked decline in the numbers over the past two years.