

Prescription (Scotland) Bill

COSLA Evidence to the Delegated Powers and Law Reform Committee
May 2018

Key Points

- COSLA is fully supportive of the recommendation by the Scottish Law Commission that Council Tax or non-domestic rates and any surcharge, fees, expenses or other sum recoverable in connection with its enforcement should be excluded from the 5-year negative prescription period.
- Local taxation is foundational to local democracy, and so to differentiate local taxes from other taxes (particularly those payable to the Crown) not only undermines those local taxes but also local democracy.
- The legislative basis governing substantive aspects of Council Tax billing and collection means consistency between local authority areas:
 - duty to levy
 - obligation to pay
 - exemption schemes, and
 - collection and enforcement
- There is an important distinction between raising actions (limitation) and the period for which the obligation to pay a debt lasts (prescription). It would be extremely rare for an action to be raised on an account which was more than 5 years old. However, it is common for debt to be repaid in small amounts over a period of more than 5 years – particularly as CT debt is a recurring obligation.
- The impact of imposing a 5-year negative *prescription* period on local authority taxes – where any responsibility for the debt ended after this period – would have significant consequences financially and in terms of the social contract between citizens and their local authority area.
- As part of the CT billing process, local authorities also collect a water and sewerage charge on behalf of Scottish Water. Implications of any change on Scottish Water should be carefully considered.

Introduction

1. COSLA welcomes the opportunity to contribute to the Committee's consideration of the Prescription (Scotland) Bill. It is hoped that this submission, formed after consultation with officers within local authorities, answers the queries set out by the Committee in the letter dated 3rd May 2018. The timescale has meant that the response has not been politically endorsed.
2. The consequences of moving to a 5 year prescription period would be significant both financially and in respect of the social contract between citizens and local authorities. COSLA is fully supportive of the recommendation by the Scottish Law Commission that Council Tax or non-domestic rates and any surcharge, fees, expenses or other sum recoverable in connection with its enforcement should be excluded from the 5-year negative prescription period¹.
3. As taxes subject to the same level of statutory regulation as taxes payable to the Crown, COSLA agrees with the conclusion of the SLC that the prescription period of local authority taxes should not be distinguished.

Local Authority Taxes

4. Council Tax (CT) and Non-Domestic Rates (NDR) form a core component of local government finance². Expected income from these taxes form a foundational calculation in the local government financial settlement – CT raises around £2bn every year across Scotland, while NDR raise around £2.75bn which represent roughly 17% and 23% of local authority income³. Taxes raised locally are used to fund the essential services provided by local authorities – education, housing, roads, planning, leisure and culture and much more.
5. As well as being a vital source of income, the ability to set and collect local taxation is a key component of an effective local democracy, and is central to the accountability relationship between councils and the communities that they serve⁴. The legislative basis for a Council's obligation to impose and a citizen's liability to pay local taxes⁵ structures the social contract whereby citizens contribute to the services they and their community receive.
6. This submission focuses largely on CT as this has been the basis of much consideration of the Committee but principles extrapolate to issues in relation to NDR. It should be noted that as part of the CT billing process, local authorities also collect a water and sewerage charges on behalf of Scottish Water. The current agreement with Scottish Water extends until 2020. The submission below focuses on implications that any change would bring to bear on Council Tax but it should be noted that there would be potentially significant implications for Scottish Water which should be carefully considered.

¹ https://www.scotlawcom.gov.uk/files/3414/9978/5138/Report_on_Prescription_Report_No_247.pdf

² For a comprehensive overview of local government finance, see for example Audit Scotland, *Local government in Scotland Financial overview 2016/17* available at http://www.audit-scotland.gov.uk/uploads/docs/report/2017/nr_171128_local_government_finance.pdf

³ <http://www.gov.scot/Publications/2018/02/1225/3>

⁴ See COSLA's submission to the Commission on Local Tax Reform at http://www.cosla.gov.uk/sites/default/files/images/cosla_response_to_commission_on_local_tax_reform_0.pdf

⁵ For Council Tax, Local Government Finance Act 1992, s

Council Tax Collection and Enforcement

7. As with other elements of CT, collection and enforcement are governed by legislation⁶. In practical terms, this means that there is a consistent process regardless of the local authority area:
 - i. A bill is issued annually, with instalment dates to be met throughout the year
 - ii. A combined Reminder/Final Demand Notice is issued 7 days after an instalment has been missed
 - iii. If the instalment has not been paid within 7 days, the right to pay by instalment is lost
 - iv. If the balance is not paid within 14 days, application is made by the Local Authority for a Summary Warrant. At this point, 10% of the outstanding amount is added in fees.
 - v. The Summary Warrant is passed to either:
 - enforcement officers to collect sums due (either Sheriff Officers or a Council's debt management partners)
 - or, if the customer is in receipt of certain income related welfare benefits the case is passed to the Department for Work and Pension to recover from ongoing entitlement
8. To secure a Summary Warrant, a local authority must provide a certificate of steps taken to assure the Sheriff that due process has been followed. In relation to CT, there are important protections set out in secondary legislation⁷ where household circumstances impact on ability to pay with the effect of reducing the amount owed or exempting citizens – for example Care Leavers. Council Tax Reduction is designed with accessibility in mind and increasingly local authorities are exploring and harnessing data matching with national benefits databases to ensure protections like Council Tax Reduction reach the most vulnerable households.
9. In the stages of communication leading to the application for Summary Warrant, the local authority will encourage any citizen who is struggling to meet the financial commitment to get in touch with them or with an advice agency for help. This may include assessing the citizen for any entitlement to Council Tax Reduction or arranging a repayment plan.
10. In-year collection rates for CT are currently over 95%⁸. The Summary Warrant application process is completed swiftly when an instalment is missed. As a largely automated process, timescales follow those set out in legislation and so the Summary Warrant will typically be applied for and granted within 2 months of the missed instalment. This begins the enforcement process – either through Sheriff Officers or through the DWP.
11. In rare situations, retrospective billing may fall out with these timescales and process, for example:
 - A single person discount is cancelled back to the relevant date as a couple have failed to inform the local authority that they moved in to the same household.
 - A landlord fails to advise of a tenancy change and a local authority continues to look to a previous tenant for payment of Council Tax. Through investigation, and contact with the landlord, it becomes apparent that the tenant had left a number of years earlier and subsequently there have been

⁶ Council Tax (Administration and Enforcement) (Scotland) Regulations 1992/1332

⁷ The Council Tax Reduction (Scotland) Regulations 2012

⁸ <http://www.gov.scot/Resource/0052/00521386.pdf>

a number of tenancy changes. In fixing the account the local authority are required to update liabilities beyond 5 years and raise individual bills on the tenants.

12. In these examples, the Council would not be aware of the circumstances to allow the accounts to be billed timeously and in both circumstances the Council may look to retrospectively bill and collect – particularly when fraud is suspected.

Impact of a 5-year Negative Prescription Period

13. There is an important distinction between raising actions (limitation) and the period for which the obligation to pay a debt lasts (prescription). It would be extremely rare for an action to be raised on an account which was more than 5 years old. However, it is common for debt to be repaid in small amounts over a period of more than 5 years – particularly as CT debt is a recurring obligation.
14. The impact of imposing a 5-year negative *prescription* period on local authority taxes – where any responsibility for the debt ended after this period – would have significant consequences financially and in terms of the social contract between citizens and their local authority area.

Collection and Enforcement consequences

15. Although the in-year CT collection rate is high, the level of outstanding CT debt is substantial. More than £2bn is currently outstanding, with more than £1bn of this relating to debt more than 5 years old. This debt is the subject of around 4.5 million summary warrants, 3 million of which relate to debt older than 5-years. In the last financial year, the value of collected CT debt more than 5-years old was more than £20m. For some individual local authorities, this represented an income of more than £2m.
16. If local authority taxation debts were to prescribe after 5 years, there is a significant risk that this substantial public debt would be extinguished. Although the subject of Summary Warrants, there is uncertainty about the status of Summary Warrants. If classed as a court decree, the prescription of a Summary Warrant would be 20 years. However, this is untested. If it was decided that a Summary Warrant did not constitute a court decree and only had the effect of enabling enforcement for the period of prescription of the original debt, outstanding CT debt of more than 5 years would prescribe on enactment of any legislative change.
17. If this was the case, local authorities would have to carefully consider the method used to pursue debt. If debt extinguished after 5 years, there would be an increased impetus to secure repayment within this period which would increase local authority costs. This is especially with CT debt as a recurring obligation.
18. Alternatively, local authorities may have to explore raising court actions which would result in a court decree which would in turn have implications for the Scottish Court and Tribunals Service. The current Summary Warrant process is a process which enables multiple cases to be raised timeously, for both local authorities and SCTS. It is a largely administrative process. A parallel route would be for a local authority to raise a Simple Procedure Action or an ordinary court action which would represent significantly more work for both local authorities and Sheriffs with hundreds of thousands of actions being raised per year. This would also increase local authority costs in raising and preparing actions.

Consequences for the social contract

19. Another significant concern for local authorities is that by treating local authority taxation differently to other taxes – particularly those owed to the Crown – then local taxation is undermined. This is particularly a concern in terms of citizen perception. In-year collection rates have risen significantly from 87.2% in 1998-1999 to over 95% last year. However, there is a real risk that a 5-year prescription period would dis-incentivise payment and would lead to a decline in in-year collection. This would increase the rate of collection and enforcement needed, and compound the complexities outlined above.
20. Any avoidance rhetoric would be damaging for the social contract between citizens and their local authority, but would also create an unfair imbalance for those who did continue to pay while neighbours did not.

Conclusion

21. The consequences of limiting the prescription period of local authority taxes to 5 years would be significant – both in financial terms and in terms of the social contract between citizens and their local area. Local taxation is foundational to local democracy, and so to differentiate local taxes from other taxes (particularly those payable to the Crown) not only undermines those local taxes but also local democracy.
22. COSLA is fully supportive of the recommendation by the Scottish Law Commission that Council Tax or non-domestic rates and any surcharge, fees, expenses or other sum recoverable in connection with its enforcement should be excluded from the 5-year negative prescription period.
23. The consequences of moving to a 5-year prescription period would be so significant that any consideration of such a change should be subject to full public consultation and financial scrutiny.