



Date: 23 April 2018

Memorandum from the Department for Work and Pensions to the Delegated Powers and Law Reform Committee, Scottish Parliament.

Subject: Prescription (Scotland) Bill

DWP Benefit Debt Recovery and Child Maintenance Debt

1. DWP collects a range of benefit related debt including overpaid benefits, social fund loans, benefit advances, recoverable hardship payments and penalties.
2. It also collects child maintenance payments from non-resident parents, and pays the money over to the parent who is caring for the children. This is different from other DWP debt, as it is not owed to the Secretary of State. It is merely collected by the Department. Parents with care have no entitlement to recover the money themselves. It must be collected and paid out through the statutory scheme.
3. The proposals in the Scottish Law Commissions consultation on the draft Prescription (Scotland) Bill, in particular the rule which stated statutory obligations to make payment should be subject to a five year prescription, would impact on DWP's ability to collect both public sector debt and debt owed to parents with care. DWP therefore requested that these debts are excepted from the rule and remain subject to the twenty year prescription.

DWP Benefit Debt Recovery

4. DWP has a duty to protect public funds and collect such debt wherever it is reasonable and cost effective to do so. The high level policy is to collect debt as quickly and cost effectively as possible without causing undue financial hardship to debtors.
5. The avoidance of undue hardship is underpinned by a range of legislative and policy measures that limit the recovery options available and more importantly the rate of recovery.
6. When recovering via deductions from a person's ongoing income related benefit for example, the regulations set out maximum amounts that can be

taken from a person's benefit and set out which debts take priority. Deductions to secure essential services such as gas and electricity have priority over deductions for recovering DWP debt. This may result in a reduction in the amount we are able to make to recover the benefit debt or even preclude us from taking any recovery whilst the other deductions are on-going.

7. In addition, many of our customers have more than one debt to the DWP. It may be that due to their financial circumstances and needs that a customer has had to claim a benefit advance and perhaps over time two or more social fund loans for essential items. The legal limitations on recovery rates apply equally whether there are one or multiple loans/debts outstanding i.e. we cannot take three lots of maximum deductions in order to seek recovery from someone who has three loans outstanding.
8. In most circumstances we apply repayments to a single debt at a time rather than apportioning recovery across all debts proportionally. This means that some debts may be 'queued' for some time waiting for earlier debts to be fully recovered before recovery can commence on that particular debt.
9. The Department also operates a Repayment Negotiation Framework (RNF), where the level of recovery is reduced on account of the individual circumstances of the debtor. This considers the income and expenditure of the debtor but also takes account of other debts that the person may have in addition to the DWP debt(s). The RNF can result in a further reduction of our recovery potential and increases the length of time over which a debt will be repaid
10. The Department is totally committed to retaining the RNF and other policies aimed at reducing the burden of repayment amongst our customers and avoiding undue hardship especially for vulnerable customers. They are a key part of our welfare responsibilities.
11. We would be concerned that any move to a five year prescription period would impact our ability to recover debts where recovery rates have been reduced on account of hardship or where the customer has a number of debts and recovery of later debts is on hold whilst the earlier debt is recovered. As an indication of the scale, DWP have over the last few years recovered an average of around £120M per annum from debts over five years old.
12. However, this is not just about the financial impacts; we would also be concerned that a shortened prescription may lead to perverse behaviour. For example, there is a risk that customers could seek to withhold repaying their debts or seek to reduce their payments in order to take advantage of the five year limit and not repay their liability in full.
13. It could also lead to a greater pressure to secure full repayments of debt within a five year period and thus undermine or at least blunt the long-established hardship procedures the Department has to balance recovery

against welfare needs. This would place debtors in a worse position than they are now if there is an expectation to pay debts off quicker and hence at an increased rate of repayment.

14. It should be noted that extended recovery terms do not impact the debtor adversely in terms of the overall amount recovered as DWP does not add interest to any outstanding debt.
15. The recovery of DWP benefit debt will often take longer than five years to recover due to the possibility of higher priority debts, multiple debts and the welfare considerations that limit recovery rates. The application of the five year prescription would reduce our ability to recover public money and could erode some of the safeguards we have in place to protect our customers from harsh or excessive recovery rates.
16. DWP are of the view that the twenty year prescription period should continue to apply to Social Security debt. It would broadly maintain the current equivalence with the position in England and Wales, where such debt recovery is not subject to the 6 year limitation period.

Child Maintenance debt

17. The aim of child support is to ensure that a child is financially supported by their parents after relationship breakdown, irrespective of who they now live with.
18. A central principle of child support is to ensure that children receive the benefit of payments when they are growing up. It is the responsibility of the non-resident parent to ensure that child maintenance is paid. As a result, child maintenance debt is a priority debt and should be paid off when it becomes due in every case.
19. There remains an onus on the non-resident parent to meet that debt to the limit of his or her means, taking account of his or her circumstances and the circumstances of those dependent on him or her. As these circumstances may vary over time the amounts of the payment may also vary.
20. If a non-resident parent is unable to pay the full debt immediately it is expected that a payment arrangement will be agreed within child maintenance guidelines. The Child Maintenance Service ("CMS") aim to clear arrears within a maximum of two years so that children may benefit from maintenance payments while they are still children. As an organisation with a statutory duty to consider the welfare of any children affected by its decisions, the CMS will only accept payment agreements of more than two years in special circumstances. Where a non-resident parent does not make an acceptable payment offer the CMS may consider recovery through an appropriate enforcement measure.

21. The CMS has a range of collection and enforcement powers: administrative powers such as deductions from Earnings, lump sum deduction and regular deduction orders which can be made by the Secretary of State: and powers enforced by the courts, such as orders to confiscate goods, sell property and recover third party debts.
22. A 'child' for child maintenance purposes is defined in legislation as one who is:
- Under 16;
 - Under 20 and receiving full time, non-advanced education; or
 - Between the ages of 16 and 20 and in respect of whom child benefit could be paid, were a claim to it made.
23. Therefore a non-resident parent may be expected to make financial provision for a child for many years. If they fail to do so then DWP would not want any prescription period on the arrears that can be recovered for the receiving parents.
24. Currently there are no limitations in GB and Northern Ireland regarding the timescales for recovery of child maintenance arrears. If prescription period was set to 5 years this may encourage parents to defer responsibility for a set amount of time to avoid any financial responsibility for their child.
25. Furthermore, a non-resident parent's circumstances may change to the effect that, although they are paying the debt, the debt is a significant amount which would take longer than 5 years to fully recover. We would still want to recover such debt that is owed to the receiving parent and would not want liability to end when payment is still being made.
26. DWP are of the view that the obligations in relation to child maintenance arising under Child Support Legislation should be excepted from the five year prescription and remain subject to the twenty year period. This would broadly maintain the current equivalence with the position in England and Wales, where such debt recovery is not subject to the 6 year limitation period.