

REPORT TO: POLICY AND RESOURCES COMMITTEE ON 25 MAY 2010

SUBJECT: PROPOSED RESPONSE TO THE ENFORCEMENT OF LOCAL TAX ARREARS (SCOTLAND) BILL

BY: CHIEF FINANCIAL OFFICER

1. REASON FOR REPORT

1.1 This report invites the committee to determine the Moray Council's response to The Enforcement of Local Tax Arrears (Scotland) Bill.

1.2 This report is submitted to the council in terms of Section (A)(13) of the council's Administrative Scheme relating to the administration of the levy, collection, payment and recovery of Council Tax and Non-Domestic Rates.

2. RECOMMENDATION

2.1 It is recommended that the committee:

(a) agree the adoption of the content of this report as the Moray Council's response to the consultation on this private member's bill; and

(b) authorize the council's Chief Financial Officer to write to the Scottish Parliament communicating the Moray Council's official response to the consultation on this private member's bill.

3. BACKGROUND

3.1 Introduction

3.1.1 On 18th March, 2010, John Wilson MSP, Central Scotland, and Citizens Advice Scotland introduced a private member's bill entitled The Enforcement of Local Tax Arrears (Scotland) Bill to the Scottish Parliament.

3.1.2 A copy of this private member's draft bill has been placed in the Members' portal.

3.1.3 This draft bill aims to:

- *“bring local authorities into line with ordinary creditors in terms of how long they have to pursue a debt, encouraging efficient collection of local taxes and*
- *“end the system of summary warrants for local taxes, allowing people the right to challenge debts in court before authorities are given the right to enforce them.”*

3.1.4 The draft bill proposes to achieve these aims by implementation of the following outcomes:

- *“reducing the time that a local authority has to establish that a debt is due from twenty years to five years – bringing them into line with ordinary creditors - and reduce the collection period thereafter, from 20 years to five years.*
- *“ending local authorities’ use of summary warrants for the collection of local taxes. Instead local authorities will have to apply to the court for a decree to enforce such debts, allowing the debtor the right to appear and challenge the claim.”*

3.1.5 The draft bill invites responses to seven questions. These questions, and the proposed responses that members may wish to adopt, are detailed in Section 5.0, below.

3.1.6 The responses to these consultative-questions require to be lodged with the Scottish Parliament by 10th June, 2010.

4. ADMINISTRATION AND ENFORCEMENT OF LOCAL TAXES

4.1 Moray Council, as the statutory Council Tax and Non-Domestic Rates levying authority for Moray, has a legal duty to collect these taxes.

4.2 The council is an ‘involuntary creditor’ for these tax debts. Its relationship with its debtors differs to the relationship of an ‘ordinary creditor’ with a debtor on the following grounds:

- (a) local authorities are required by statute to levy Council Tax on all domestic properties and Non-Domestic Rates on all non-domestic premises within their area of responsibility as levying authority. This requires, in practice, the billing of thousands of tax-debtors. There may also be a need to recover unpaid taxes from a large number of debtors. Consequently, local authorities require a prompt and streamlined access to diligence; and

(b) the taxes which are levied by local authorities are levied on the basis of legislation passed by the British and Scottish parliaments. In these circumstances, there is no meaningful basis on which a debtor can dispute the establishment of a debt.

4.3 Council Tax

4.3.1 At the commencement of the last financial year, 2009-10, the council's Revenues Section issued Council Tax bills to 41,743 domestic households. These bills sought to collect taxes totalling £43.289M

4.3.2 It subsequently had to issue just over 14,000 reminder-notices and final notices in pursuit of unpaid monies of £4.3M.

4.3.3 A number of these reminder-notices and final notices remained unpaid and the Revenues Section sought grants of summary warrant for over 3,800 Council Tax accounts with a value of £2.38M.

4.4 Non-Domestic Rates

4.4.1 At the commencement of the last financial year, 2009-10, the Revenues Section issued Non-Domestic rates bills for 4,143 properties. These bills sought to collect rates totalling £25.515M.

4.4.2 It subsequently had to issue almost 400 final notices for unpaid rates totalling £1.63M.

4.4.3 A number of these final notices remained unpaid and the Revenues Section sought grants of summary warrant for 202 rates accounts with a value of £332K.

4.5 Summary Warrants

4.5.1 The summary warrant procedure has been in place for some time in Scotland. It represents an efficient and cost-effective mechanism by which local government creditors can access diligence for unpaid taxes against large numbers of debtors liable to pay a uniform tax-debt established by statute.

4.5.2 Moray Council only includes debts which have been incurred in the last five years in any application that it makes for a grant of summary warrant at the Sheriff Court. This action is in accordance with the Prescription and Limitation (Scotland) Act 1973, Section Six, and is similar to the period in which an ordinary creditor can raise an ordinary court action.

4.5.3 Once the council has obtained a warrant, it has a twenty-year period to enforce payment of the debt. This is in accordance with the Prescription and Limitation (Scotland) Act 1973, Section Seven, and is similar to the period in which an ordinary creditor can enforce a decree.

4.5.4 There is provision within Council Tax and Non-Domestic Rates legislation for taxpayers to appeal against the amount to be paid (for example, when a Council Taxpayer feels that s/he has not been granted a discount). Any dispute about a Council Tax reduction, for example, is dealt with by the local Valuation Appeal Committee.

4.5.5 Taxpayers may also make use of the council's existing complaints procedure if, for example, they feel that their Council Tax or Non Domestic Rates bill has been improperly calculated or that a final notice has been improperly issued. Any such complaint will be fully investigated and a written summary of the findings issued to the complainant.

4.5.6 In the Bankruptcy and Diligence (Scotland) Act 2007, the Scottish Government put in place a requirement for Sheriff Officers to serve a Charge for Payment personally to the debtor prior to performing any diligence authorized by a grant of summary warrant. The service of a charge ensures that a debtor is aware of the existence of a debt for which diligence is to be performed (for example, in the form of a bank arrestment or an earnings arrestment) and gives the debtor an opportunity to raise any issues surrounding the debt. The charge also provides the debtor with a final opportunity to make payment.

4.6 Collection Performance

4.6.1 The Moray Council has an excellent record of promptly ingathering the local taxes due to it. At 31st March 2009, it had collected 96.7% of its 2008-09 Council Tax, placing it sixth amongst Scottish local authorities in Council Tax collection.

4.7 Conclusion

4.7.1 It will be clear from the preceding paragraphs that the council is required to issue bills for local taxes to a large number of debtors. It will also, when appropriate, be required to enforce payment of these tax-debts.

4.7.2 The introduction of any measure which delays the enforcement of Council Tax will inevitably impinge on the council's ability to efficiently and promptly ingather the local taxes which are due to be paid to it and which contribute to the funding of front-line services to the community.

4.7.3 Any measure which makes the collection of local taxes more complex will also result in an additional administrative burden falling on the council. This will inevitably increase the cost of collection of local taxes. Any increase in such administrative costs will reduce the sums which are available to be spent on the delivery of front-line services to the community.

4.7.4 The summary warrant represents a simple mechanism by which local authorities may obtain access to additional forms of diligence for uniform local tax debt which is levied in accordance with existing legislation. The debtor does, however, have ample opportunity to raise any concerns about the amount of a debt, both before and after the grant of a warrant. Recent legislation has also added a requirement to serve a Charge for Payment prior to performing diligence, thereby ensuring that a debtor is fully aware of the debt that is being enforced.

5. THE PRIVATE MEMBER'S BILL'S CONSULTATION QUESTIONS

5.1 Question one: "Are there any reasons to justify retaining the right of local authorities to initiate court proceedings after a longer period of time has elapsed than other creditors?"

5.1.1 The Moray Council does not believe that local authorities have a longer period to initiate court proceedings than ordinary creditors. Local authorities must, in accordance with the Prescription and Limitation (Scotland) Act 1973, Section Six, make an application for a Summary Warrant within five years of a debt being incurred. This is the same period allowed to other creditors for raising an ordinary court action.

5.2 Question two: "In what ways do you consider restricting the period within which local authorities can initiate court actions to five years would increase overall collection rates?"

5.2.1 The Moray Council believes that the only way to improve collection outcomes would be to improve the enforcement 'tools' available to local authority creditors so that action can be taken against those who can afford to pay but seek to avoid making payment. An example of such an improvement would be the better data-sharing by central government and central government agencies (for example, access to employment and banking records held for income tax purposes by Her Majesty's Revenues and Customs), which would reduce the opportunities for debtors who can afford to pay to thwart diligence measures and in an attempt to avoid making payment.

5.3 Question three: "Are there any reasons why local authorities should be allowed longer than five years to initiate court proceedings?"

5.3.1 The Moray Council, as indicated above, does not believe that legislation currently gives it more than five years to seek a summary warrant so it offers no response to this question.

5.4 Question four: "What should happen to existing local authority tax debts for which court action has not been initiated within five years?"

5.4.1 Local authorities should continue to seek to collect these debts as they represent an income-stream which is required for the provision of services to the community. In practice Moray Council avoids this situation by ensuring that it quickly initiates enforcement action for any unpaid local-tax debts. In the current financial year, for example, it applied for a summary warrant at Elgin Sheriff Court on 6th May, 2010 to enforce payment of unpaid Council Tax instalments which were payable on 1st April 2010. It will maintain this policy of prompt action throughout the remainder of the financial year.

5.5 Question five: “What costs and benefits will arise from scrapping summary warrant procedure for these types of debts?”

5.5.1 The Moray Council believes that local authorities, as involuntary creditors for the local taxes that they have a statutory duty to collect, find themselves in the unique position of having to bill, and, where necessary, enforce payment of, thousands of tax-debts each year. It is important to differentiate between the status of an ordinary creditor – who has entered into an individual agreement with a debtor for the provision of goods or services – and a local authority involuntary creditor – which has a legal duty to pursue a debt for tax established by statute. This important distinction results in local authorities seeking to obtain payment of a high volume of tax-debts which are of a uniform nature and for which there are no grounds on which the debtor may meaningfully defend an ordinary action to obtain decree.

The nature and volume of the tax-debts being pursued by local authorities justifies the use of the summary warrant process and if that was removed by the proposals contained in this draft bill, the Moray Council believes that this would result in a significant increase in the cost of collecting local taxes. The principal costs that it believes would be incurred are:

- (a) an increase in the staffing resource which is required to administer accounts which require to be enforced by court action. The summary warrant allows local authorities to deal efficiently with high volumes of tax-debts. If local authorities were required to make an individual application to the Sheriff Court for enforcement powers, this would require substantial preparatory work which would inevitably consume staffing resources. The local authority would incur the burden of additional administrative and staffing costs which would increase the cost of collecting local taxes and would correspondingly reduce the monies which are available for the provision of front-line services to the community;
- (b) the devotion of staffing resource to appearing in court to present cases for enforcement individually before the sheriff. It is likely that such a hearing would require the attendance of a solicitor and this would incur a cost to the council which would inevitably result in it becoming more expensive to collect local taxes at a time when local authorities are seeking to drive down administrative costs;

- (c) an increase in the time taken to collect local taxes from debtors who can afford to pay but choose to avoid doing so until diligence is directed against them personally. This would result in it taking longer to collect monies payable by such debtors and this would have a cost implication for local authorities by reducing the local tax income stream available for the provision of services to the community;
- (d) the Scottish court system would require to devote significant resources to potentially hearing many enforcement cases. At Elgin Sheriff Court, for example, in the past financial year, 2009-10, the sheriff would have been required to hear almost 4,000 applications for enforcement powers to be granted to the local authority for unpaid tax-debts. It is unlikely that this additional workload could easily be handled by the court without the deployment of additional financial resources.

5.5.2 The Moray Council, as an involuntary creditor required to collect local taxes from a large number of debtors, is unable to identify any benefit which will accrue to it from the proposals contained within this draft bill.

5.6 Question six: “In what ways will the alignment of the prescription period as proposed and the scrapping of summary warrant procedure affect equal opportunities?”

5.6.1 The Moray Council does not believe that the proposals contained in this bill will promote equal opportunities. The council currently operates a policy of treating all persons who are required to pay local taxes on an equal basis and does not believe that anything contained in this bill will add to or subtract from that policy.

5.7 Question seven: “Do you have any other comments on the proposal?”

5.7.1 The draft proposal for a bill appears to display a misunderstanding of the current statutory framework for the collection and enforcement of Council Tax and Non-Domestic Rates.

6. SUMMARY OF IMPLICATIONS

(a) Single Outcome Agreement/Service Improvement Plan

There are no implications for the Corporate Plan arising from the content of this report.

(b) Policy and Legal

No policy or legal implications arise from the content of this report.

(c) Resources (Financial, Risks, Staffing and Property)

The draft proposals contained in the Enforcement of Local Tax Arrears (Scotland) Bill, if implemented, would result in a significant drain on the resources of this council. It would result in senior officers having to spend much of their time preparing to attend, and subsequent attendance of, the Sheriff Court to obtain legal authority to enforce payment of local-taxes payable to the council. This would significantly delay the collection of local taxes, with implications for the council's cashflow. These factors would inevitably result in it becoming significantly more expensive to administer and to collect local taxes at a time when all local authorities are seeking to drive down such costs.

(d) Consultations

No consultation has been carried out in the preparation of this report.

7. CONCLUSION

- 7.1 The committee is asked to agree to the response contained within this report becoming the Moray Council's formal response to the questions contained in The Local Tax Arrears (Scotland) Bill.

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Background Papers:
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