

RESPONSE TO THE ONLINE CONSULTATION ON THE WORKING DRAFT OF THE PRESCRIPTION (SCOTLAND) BILL

This response has been copied without any personal data which it contained.

GLASGOW CITY COUNCIL

Dear Sirs,

I refer to the consultation on time bar – statutory obligations to make a payment including council tax and have noted below comments on behalf of Glasgow City Council.

Insurance Claims

Prescription establishes a time-limit within which a person who is aggrieved must raise his or her claim in court. If the time-limit is missed, the ability to pursue the claim is lost. Currently a pursuer/claimant has 3 years from the date of the incident to raise a personal injury action and 5 years for a property damage action.

The Damages Bill would propose to – *Amend the Prescription and Limitation (Scotland) Act 1973 to increase the limitation period for raising a personal injury action for damages from 3 years to 5 years.* If the Bill is passed into law, it would give claimants up to 5 years from the date of an accident before they would require to raise legal proceedings or lose the right to claim. Further understanding of the draft Bill is that it will bring the injury Limitation period in line with the 5 year property Limitation period.

If a claim has to be held open for a longer period of time than the current 3 years, this could potentially have cost implications on the Insurance Fund. In addition to this, the number of claims will potentially increase leading to an increased workload.

We will need to consider the higher insurance premium costs, as increasing the limitation period to 5 years will have an effect on insurers' process of underwriting and pricing liability policies. They will have to consider the longer period of their exposure as part of their underwriting criteria.

With regards to the 20 years as the appropriate length for the prescriptive period under section 7 – it is insurers' opinion that the current period of 20 years is very lengthy. In comparison with other jurisdictions it is seen to be something of an anomaly. The length of the prescription period does not provide an adequate balance and is weighted too heavily in favour of the pursuer. It is also too far removed from the five year period applicable to other obligations. A shorter period would be more equitable and allow certainty for defenders.

Council Tax and Business Rates

The current Legislation is defined by Section 6 and Schedule 1 of the Prescription and Limitation (Scotland) 1973 ("the 1973 Act"). Section 6 states that any obligation specified within the terms of Schedule 1 of the 1973 Act will prescribe if no relevant claim has been made within a continuous period of five years or if the obligation has not been relevantly acknowledged. Schedule 1 then narrates the various obligations to which Section 6 applies. Our position has always been that the obligation to pay statutory debt does not fall

within the terms of Schedule 1 and statutory debts are therefore not obligations in respect of which prescription applies.

The draft Bill proposes to amend Paragraph 1 of Schedule 1 of the 1973 Act to include a new sub-paragraph (h) which will include “any obligation to make a payment arising under an enactment (whether passed or made), not being an obligation falling within any other provision of this paragraph” as an obligation that falls within the terms of Section 6. Our interpretation of this draft proposal is that all statutory debts will prescribe after five years if no relevant claim has been made. The Guidance with the draft proposal does make it clear that “there is no exception in the draft Bill in relation to obligations to pay Council Tax and business rates as it is considered that there is no valid policy reason to make such an exception”.

In the informal consultation on the draft Bill, it is stated that “there would be no effect on statutory obligations to make a payment which are subject to their own statutory provisions on time limits. A statutory obligation to make a payment should be interpreted broadly so as to include any statutory obligation to pay something or to repay something.”

So, the draft Bill makes it quite clear that the right to recover Council Tax and Non-Domestic Rates (and most other statutory debts) will prescribe after five years unless a “relevant claim” is made.

In the normal course of events, a “relevant claim” has always been interpreted to be the raising of court proceedings. We believe this means that a Summary Warrant will constitute a “relevant claim” in terms of the legislation and thus stop the risk of prescription, as Summary Warrants are clearly the appropriate proceedings for recovery of Council Tax or NDR debt. A Summary Warrant as a form of Decree does not prescribe until the end of the twenty year prescription period.

We therefore consider that the new Bill, if ratified as proposed, will allow collection of Council Tax and Non-Domestic Rates for a twenty year period after a Summary Warrant has been granted, provided that the Summary Warrant has been granted within five years of the date of issue of the Council Tax or Non-Domestic Rates account.

However if the intention is to prevent recovery of statutory debts, including those subject to relevant claim (Summary Warrant) then the implications are significant. Council Tax and NDR debts are currently technically pursuable indefinitely but are practically limited by prescription of the Summary Warrant to 20 years after the warrant has been obtained. To reduce this to 5 would see councils arrears collection position adversely impacted as ongoing recovery activity for perpetual or historic non-payers would be restricted as would long-term arrangements to clear arrears.

I trust this is of assistance