

Purpose

This consultation paper considers the current regulations governing the enforcement of council tax arrears and proposes changes to the issue of summonses, attachment of earnings orders, charging orders, and certain aspects of the committal process. The paper also considers whether the enforcement system should be augmented by the introduction of community service orders as an alternative to committal.

Some of the proposed changes could be made by secondary legislation and we propose to introduce these on 1 April 1998. Other proposals, such as the possible introduction of community service orders, would require primary legislation for which there is no provision currently, and these may be subject to further consultation.

Copies of this consultation paper have been sent to the Local Government Association, the Association of London Government, the Chartered Institute of Public Finance and Accountancy, the Institute of Revenues, Rating and Valuation and the National Association of Citizens Advice Bureaux. A copy has also been placed on the Internet at the Local Government Finance Directorate website (<http://www.local.doe.uk>).

The Department may wish to publish responses to this consultation document in due course or deposit them in the Department's library. If this is done, all responses received will be so published or deposited, unless a respondent specifically asks the Department to treat his or her response as confidential. Confidential responses will, nevertheless, be included in any statistical summary of numbers of comments received and views expressed.

Comments on this consultation paper should be sent to Mr Tom Maunsell, Council Tax Branch, Zone 5/H2, Eland House, Bressenden Place, London SW1E 5DU by Friday 31 October 1997. Two copies of responses should be provided, unless the response is to be treated in confidence.

Introduction

The system of recovery and enforcement for council tax has remained relatively unchanged since the introduction of the tax in 1993. Only relatively minor amendments have been made to the regulations since then and by and large the system has worked well. However, we are aware that some local authorities and consumer groups have concerns about some enforcement options. This paper therefore considers the current enforcement mechanisms and proposes changes where appropriate with the aim of making the system fairer and more up to date. The paper also seeks views on the possible extension of the enforcement process through community service orders.

We would welcome the views of consultees on any other amendments to the current system and on additional or alternative mechanisms.

We consider that the various amendments to regulations proposed in this consultation paper should apply only to the regulations governing council tax and not to the community charge regulations. Whilst we appreciate that many local authorities are still pursuing community charge debts, any changes would be introduced at least five years after the abolition of the community charge. We do not propose to further amend community charge regulations unless it is absolutely necessary, for example to take account of significant policy changes which impact upon old community charge debts.

The current legislation

The regulations governing demands for council tax and the recovery of unpaid sums are set out in The Council Tax (Administration and Enforcement) Regulations 1992 (Statutory Instrument 1992/613 - as amended). Where instalments are unpaid and reminder (or final) notices are not complied with, the full amount of the outstanding tax for the year falls due for payment. Where this amount remains unpaid, the local authority can take proceedings through the magistrates court to recover the outstanding sum, plus costs.

When a liability order has been issued by the court, the authority can seek to recover the debt through a number of enforcement options. These are:

- i) deductions from income support
- ii) insolvency
- iii) attachment of allowances payable to local councillors
- iv) distress
- v) attachments of earnings orders
- vi) charging orders
- vii) commitment to prison

In this consultation paper we are making no proposals to amend the operation of options (i) to (iii) above. Option (iv), distress, is the subject of a separate consultation.

The Summons

A summons is issued to advise a taxpayer of an application for a liability order against him and the date of the court hearing. The costs of the application (including the issue of the summons) are payable by the taxpayer concerned.

The purpose of the summons is to provide an opportunity for the taxpayer to attend court and contest the application if he so wishes. Summonses, like all other notices, are considered served if they are addressed to the taxpayer's last known address. However, we receive many complaints that the summons is either not received or provides very short notice of the hearing at which the application will be considered.

It is important that the system operates as fairly as possible and that the summons is properly served. The taxpayer should receive adequate notice of the hearing to enable him to attend court and to seek professional advice beforehand if he requires it.

We propose that summonses should be issued at least 21 days before the court hearing to ensure that debtors have adequate notice to enable them to attend court if they wish and to seek advice as necessary.

We have also considered whether to introduce a new requirement that summonses sent by post should be sent by recorded delivery. Given the difficulties that this would cause in ensuring service, we are not convinced that this would be an appropriate measure. However, we would welcome views.

The Liability Order

There are some defences against the making of a liability order - these include the fact that an amount has not been properly demanded or that the amount has been paid. Unless a defence is accepted by the court the order will be granted - in practice very few are refused.

However, it can emerge after the order has been made that a mistake has occurred, perhaps because a taxpayer has later been able to find receipts proving payment. Although no action will be taken on a liability order in these circumstances, the taxpayer will understandably regard the order as an unwarranted stain on his character and demand that the liability order be deleted from the record. At present this can only be achieved on application to a higher court and we are aware that authorities have initiated this action where they concede responsibility for the mistake. The considerable cost involved in this process seems unnecessary where there is no dispute about the facts.

We therefore propose to introduce a power for local authorities to request a magistrates' court to overturn a liability order previously made by the court as soon as an opportunity arises to amend primary legislation.

Attachment of Earnings Orders (AEOs)

Attachments of earnings are a straightforward means of recovering a debt from a person who is working. They provide a steady income and the administrative effort for local authorities in monitoring debts recovered in this way is minimal. The deductions made are a set proportion based on a debtors take home pay. However, the current system has attracted criticism that it fails to take account of debtors' other commitments and that it can, as a result, leave some people facing severe financial difficulties, at least in the short term. This is particularly the case where several AEOs are being enforced at the same time. We have therefore considered whether any changes should be made to the current attachment of earnings regime.

In its report "Taxing Times" published in 1994, the National Association of Citizens Advice Bureaux called for the introduction of protected earnings rates (PER) for council tax AEOs. PERs are used for orders made under the Attachment of Earnings Act 1971 and represent a minimum level of earnings that the debtor must retain when orders are administered. The PER is set following an assessment of the debtors income and other financial commitments. Provision for protected earnings under council tax AEOs is provided through a standard minimum net earnings level, below which a deduction cannot be made.

We are not convinced that changing the current basis on which provision is made for protected earnings under the council tax AEOs would be appropriate, although we do propose changing the minimum earnings levels that apply (see below). PERs could impose a heavy administrative burden on local authorities if they were expected to make a full assessment of the debtor's financial circumstances. However, we would welcome views.

Deductions under AEOs are based on salary bands. These were first introduced for local tax recovery in 1989 in preparation for the community charge. The major change since then has been the replacement of the original bands in 1992 by a smaller number of wider bands, and the use of percentage deduction rates to replace the fixed sums used previously.

The lowest level of deduction is 3% of net weekly earnings of £35. At the other end of the scale, quite stringent rates of deductions can apply at what are now relatively modest salary levels. The maximum level of deduction on weekly pay is 17% of the first £250 plus 50% of anything over £250.

The changes in salary levels since 1989 have been considerable. In 1989, £250 was some

10% above national average earnings; in 1996, it represented 71% of average earnings. To illustrate, the degree of change, a deduction based on the 1989 national average weekly wage of £239.70 would have been £40.75 or 17% (or £42 under the old system of fixed deductions); on today's national average wage of £351.70 the deduction would be £93.35 or 27%.

We consider that the current salary bands for AEOs should therefore be amended and propose that the current income bands in use for AEOs should be uprated in line with wage inflation since 1989 as set out in Annex A.

A further difficulty arises where a number of AEOs are in operation at the same time. Where this occurs, each further deduction is based on net earnings after the previous AEO has been actioned. In some extreme cases, a debtor may have several AEOs in operation at once.

For example, a person with net earnings of £400 a week with four AEOs in force against him will find his take home pay reduced by nearly £250, or 62% (this and other examples are illustrated in Annex B). The debtor will have relatively low residual earnings to meet his other commitments, including his mortgage or rent and current council tax bill, and we have anecdotal evidence that this causes some debtors to leave employment and claim benefit because they are better off as a result.

As discussed above, we do not favour the introduction of a protected earnings limit for council tax AEOs. However, whilst authorities must be able to recover sums owed, the enforcement system must also be seen to operate reasonably.

We propose that where a debtor is the subject of more than one AEO from a single billing authority, the total number of AEOs actionable by a single authority at one time should be restricted to two.

We are aware of cases where authorities have reached a voluntary agreement with debtors and their employers for deductions to be made at different rates to those prescribed in regulations. There have understandably been concerns that these "orders" do not have any legal force.

We propose to amend the regulations to give authorities discretion to vary the rate of deduction to a fixed percentage of take home pay (within the maximum set out in the regulations), by agreement with the debtor.

Charging Orders

Where a single liability order is for an amount of £1000 or more the council may apply to the county court for a charge against the debtor's property. However, the limit is currently too high for local authorities to use this remedy for anything other than exceptional cases. In order to make the charging order a more useable enforcement tool, we have considered whether to reduce the qualifying limit. However, we are concerned that an application for an order for sale of the property to recover the debt following the grant of a charging order absolute, may be refused on the grounds that the debt is too small.

We therefore propose to allow liability orders to be aggregated to meet the £1000 limit on charging orders. Primary legislation will be required before an amendment to regulations may be made.

Commitment to prison

Where a billing authority has failed in its attempts to recover unpaid sums, provided that it has tried unsuccessfully to levy distress, it may apply to the magistrates' court for a warrant committing the debtor to prison. The purpose of this option is to coerce payment rather than to punish an individual, and in most cases is effective in eliciting payment before a person is actually committed to prison.

Magistrates have no power to recall those who have appeared before them in committal proceedings. This can give rise to difficulties. An example is when new advice was issued to the courts that they should ensure that legal representation was available to those appearing before the bench in committal proceedings. Where this has not happened at the original hearing, decisions may have been subject to legal challenge. The logical course in these circumstances would be to recall the debtor and reconsider whether the court's original decision should be reviewed.

We propose to introduce a power for magistrates to recall those who have appeared before them in committal proceedings as soon as an opportunity arises to amend primary legislation.

Community Service Orders (CSOs)

Many people believe that a term of imprisonment is an inappropriate sanction for a failure to pay council tax. A person who has failed to pay his share towards the cost of local services is placed in prison where he imposes an additional cost on society. Community service orders are often suggested as an alternative which would ensure that those who fail to pay their taxes in support of their local community are punished, but at the same time are made to contribute in another way.

The Crime (Sentences) Act 1997 makes provision for a community penalty - either a community service order or a curfew order - to be imposed for fine default. The provisions of the Act are to be piloted in two areas of the United Kingdom from January 1998 for a period of 18 months, following which the impact of the provisions will be assessed.

CSOs are not considered an easy option. A person is required to undertake between 20 and 100 hours of demanding unpaid work within 12 months of the order being made by the court. It is supervised by the Probation Service, who arrange placements locally. Part payments can be made to reduce the debt after the CSO has commenced with the number of hours outstanding reduced accordingly. Failure to complete the CSO can be punished with a custodial sentence.

If CSOs were to be introduced as an enforcement option, the intention would not be to replace committal; this would remain an option for the courts where they consider committal a more appropriate method of enforcement, as well as a further sanction if a debtor fails to comply with his CSO. As with committal, authorities would have to attempt other enforcement methods, including distress, before making an application to the court. If the court is satisfied that the failure to pay was the result of the debtor's wilful refusal or culpable neglect, the court could then either

- i) impose a community service order; or
- ii) issue a warrant of commitment, or fix a term of imprisonment and postpone the issue of the warrant.

We intend to give careful consideration to the introduction of community service orders and would welcome views. A firm proposal to introduce community service orders would be the subject of further consultation and primary legislation would be required.

Annex A

Attachments of Earnings Orders: Proposed New Weekly Earnings Bands

<i>Current band</i>	<i>New band range (1)</i>	<i>Deduction rate % (2)_</i>
<i>Not exceeding £35</i>	<i>Not exceeding £55</i>	<i>0</i>
<i>Exceeding £35 but not exceeding £65</i>	<i>£55 to £100</i>	<i>3</i>
<i>Exceeding £65 but not exceeding £90</i>	<i>£100 to £135</i>	<i>5</i>
<i>Exceeding £90 but not exceeding £110</i>	<i>£135 to 165</i>	<i>7</i>
<i>Exceeding £110 but not exceeding £175</i>	<i>£165 to £260</i>	<i>12</i>
<i>Exceeding £175 but not exceeding £250</i>	<i>£260 to £370</i>	<i>17</i>
<i>Exceeding £250</i>	<i>Exceeding £370</i>	<i>17 in respect of first £370 and 50 in respect of the remainder</i>

Proposed New Monthly Earnings Bands

<i>Current band</i>	<i>New band range (1)</i>	<i>Deduction rate % (2)_</i>
<i>Not exceeding £152</i>	<i>Not exceeding £220</i>	<i>0</i>
<i>Exceeding £152 but not exceeding £260</i>	<i>£220 to £400</i>	<i>3</i>
<i>Exceeding £260 but not exceeding £360</i>	<i>£400 to £540</i>	<i>5</i>
<i>Exceeding £360 but not exceeding £440</i>	<i>£540 to £660</i>	<i>7</i>
<i>Exceeding £440 but not exceeding £700</i>	<i>£660 to £1040</i>	<i>12</i>
<i>Exceeding £700 but not exceeding £1000</i>	<i>£1040 to £1480</i>	<i>17</i>
<i>Exceeding £1000</i>	<i>Exceeding £1480</i>	<i>17 in respect of first £1480 and 50 in respect of the remainder</i>

Proposed New Daily Earnings Bands

<i>Current band</i>	<i>New band range (1)</i>	<i>Deduction rate % (2)_</i>
<i>Not exceeding £5</i>	<i>Not exceeding £8</i>	<i>0</i>
<i>Exceeding £5 but not exceeding £9</i>	<i>£8 to £15</i>	<i>3</i>
<i>Exceeding £9 but not exceeding £13</i>	<i>£15 to £20</i>	<i>5</i>
<i>Exceeding £13 but not exceeding £16</i>	<i>£20 to £24</i>	<i>7</i>
<i>Exceeding £16 but not exceeding £25</i>	<i>£24 to £38</i>	<i>12</i>
<i>Exceeding £25 but not exceeding £36</i>	<i>£38 to £53</i>	<i>17</i>
<i>Exceeding £36</i>	<i>Exceeding £53</i>	<i>17 in respect of first £53 and 50 in respect of the remainder</i>

- (1) *Current weekly earnings bands inflated by increases in average pay (national male earnings) from 1989 (£239.7 a week) to 1996 (£351.7) - 46.7% and rounded to next £5.*
- (2) *Deduction rates are unchanged.*

Annex B

Attachments of Earnings Orders: Effect of multiple orders

Current earnings bands

Net Weekly Earnings	Number of AEOs - (Total deduction - cumulative)							
	1		2		3		4	
£300	68.50	23%	108.86	36%	142.35	47%	162.27	54%
£400	118.50	30%	177.75	44%	216.53	54%	248.72	62%

Effect of proposed new bands without restriction

Net Weekly Earnings	Number of AEOs - (Total deduction - cumulative)							
	1		2		3		4	
£300	52.00	17%	82.76	27%	109.76	36%	33.58	45%
£400	78.90	19%	134.49	33%	167.35	42%	196.27	49%

Effect of proposed new bands and proposed new restriction

Net Weekly Earnings	Number of AEOs - (Total deduction - cumulative)			
	1	2 (proposed maximum)		
£300	52.00	17%	82.76	27%
£400	78.90	19%	134.49	33%

Note: deductions assume £1 administrative fee is deducted by employer each time.