A Proposal for a

Public Sector Debt Recovery (Scotland) Bill

Policy Memorandum in summary form

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aberlour
scotland's children's charity

Background

1. Low-income families face a significant debt crisis in Scotland.[1] Public debt, including council tax payments, water and sewage charges, arrears for social rented sector tenancies and school meal debt, traps families in poverty.

2. A joint report for Aberlour Children's Charity, One Parent Families Scotland and Trussell revealed that nearly half of all households on Universal Credit face deductions due to debt, amounting to £210 million annually in Scotland alone.[2] Lone parents and families with a disabled child are among those most at risk, particularly when it comes to council tax and benefit arrears, fuel debt and food insecurity.

3. The current public debt recovery processes are in need of reform to provide support rather than trap indebted families within cycles of poverty in Scotland. The primary policy objective of the proposed Bill is to alleviate the debt burden on disadvantaged families, enabling them to thrive and repay their debts without exacerbating child poverty. The Child Poverty (Scotland) Act 2017 establishes child poverty reduction targets to be met by 2030; the aim of the proposed Bill is to contribute to a reduction in Scottish child poverty.

4. Disjointed debt management among public bodies exacerbates financial instability for families. A public sector debt collection system that was joined-up and took into account all of a person's debts could help streamline debt repayment and ensure deductions were affordable and manageable. The proposed Bill would ensure local government public debt recovery policies were standardised to remove the current postcode lottery, so that every area of the country was part of a national effort to help eradicate child poverty.

5. The proposed Bill would facilitate a public sector debt collection system that supported families out of financial hardship. Such an approach would not only alleviate financial strain but also improve mental health, strengthen family well-being, and support at-risk families, including those facing homelessness or the potential loss of their children to care systems.

The proposed Bill would ensure public debt reform was a key focus of the Scottish Government's child poverty strategy and assist in driving down poverty levels for those on low incomes The evidence for doing this is substantial, including:

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[1] https://www.gov.scot/publications/understanding-cost-living-crisis-scotland/documents/

[2] https://opfs.org.uk/get-involved/news-and-events/news/public-debt-poverty-lone-parent-disabled-families/

- Joint research by Aberlour Children's Charity, One Parent Families Scotland and Trussell projects that more than £1 billion will be lost by low income households in Scotland over the next Parliamentary term due to Universal Credit deductions[3]
- 55% (approximately 80,000) of families with children receiving Universal Credit in Scotland have public debt[4]
- Families with children receiving Universal Credit in Scotland see their incomes reduced by nearly £1,000 annually due to deductions
- In 2023 30,000 children in Scotland and their families had school meal debt[5]
- Nearly 1 in 6 families supported through Aberlour Children Charity's Urgent Assistance Fund required help with unsustainable public debt
- More than half of the total amount of debt owed by people seeking help from Citizens Advice Scotland services is public debt[6]
- Women are disproportionately more likely to be impacted by public debt[7], in particular single parents and women living in a disabled household
- More than 1 in 5 children (22%) in Scotland live in poverty, with some areas experiencing rates higher than one in three[8]

6. In other devolved nations, work is ongoing to make council tax fairer. For example, the Welsh Government is currently reforming council tax with significant changes planned for implementation by 2028. The Local Government Finance (Wales) Act 2024 allows for more frequent, regular revaluations every 5 years beginning from 2028. This ensures valuations are kept up-to-date and are fair.

Other elements of Council Tax being examined in Wales include:

- reviewing all of the discounts, disregards, exemptions and premiums, to ensure these are fit-for-purpose and align with policy aims
- keeping and improving the Council Tax Reduction Scheme which provides essential financial support for low-income households
- undertaking regulatory work to embed best practice in the treatment of households struggling in Council Tax debt
- raising awareness of how Council Tax works and what it pays for, addressing common myths and raising awareness of the wide range of support for people undertaking regulatory work to improve the appeals process so that it is more effective and easier to navigate, improving transparency of information

[3] aberlour-disabled-households-lone-parent-families-public-debt-June2025.pdf
[4] Aberlour | New Report: Universal Credit deductions for households with children by Scottish local authority
[5] The Scottish Sun launches Sort The School Debt campaign to stop hard-up families being chased over unpaid meal bills
[6] Full report_Exploring public debts and arrears using Citizens Advice Scotland data.pdf
[7] https://www.aberlour.org.uk/publications/gendered-nature-public-debt
[8] Poverty and Income Inequality in Scotland 2021-24

Current legal framework

7. The recovery of council tax (including water and sewage charges) operates within the framework of the Council Tax (Administration and Enforcement) (Scotland) Regulations 1992. While enforcement methods have developed over time, the regulations create the rules for reminders, liability orders, and potential recovery actions under summary warrant procedure – an expedited recovery process via the court. The 20-year long negative prescription period for council tax debts enables authorities to recover long-outstanding debts; this long stop was not affected by the Prescription (Scotland) Act 2018.

8. The recovery of rent arrears for council and housing association tenants is subject to the requirements of the Housing (Scotland) Act 2001 ("2001 Act") and court rules for the recovery of debts. Actions for the recovery of heritable property are generally combined with a request (known as a "crave") for both payment of rent arrears and ejection using the summary cause sheriff court procedure for debts up to £5,000. Tenants with Scottish secure tenancies under the 2001 Act are able to defend such actions on the grounds of the reasonableness of granting a decree for eviction and payment; and generally, do so by entering into repayment agreements.

9. Other legislation relevant to public sector debt recovery includes the Debtors (Scotland) Act 1987. Before the Bankruptcy and Diligence etc. (Scotland) Act 2007 (the "2007 Act"), there was no ability to apply under the 1987 Act for time to pay against a summary warrant for council tax arrears. The 1987 Act was amended by sections 209 and 210 of the 2007 Act to enable time to pay orders for council tax arrears. The 2007 Act was followed by the Bankruptcy (Scotland) Act 2016 and the Bankruptcy and Diligence (Scotland) Act 2024.

10. The Debt Arrangement and Attachment (Scotland) Act 2002 established the Debt Arrangement Scheme, a statutory debt management tool that allows individuals to repay debts through a managed program while protected from enforcement actions by creditors, including public bodies. The act also introduced new methods for enforcing debt, including the attachment of moveable property, while abolishing the older, more socially damaging practice of "poinding and warrant sales" (which had been due to be abolished by the Abolition of Poindings and Warrant Sales Act 2001). Deductions from Universal Credit and certain other benefits for public and social rented sector tenancy debts operates under the UK-wide Social Security Administration Act 1992.

Policy objectives of the Bill

11. The primary purpose of the proposed Bill is to create a new consumer regulatory framework for debt recovery by public bodies in Scotland that has minimum standards of fairness and practice. As noted below (paragraphs 15 and 16), such standards already exist for private financial service product debts and there is no reason public sector debt recovery should not operate to minimum standards across Scotland.

12. The Code would help protect and prevent poorest households and those experiencing financial insecurity from being subject to aggressive public sector debt recovery. It would align public bodies' debt recovery practices with existing human rights and children's rights duties and help identify the "can't pays" from the "won't pays". The Bill would aim to protect the most disadvantaged and financially insecure households in Scotland, including specific protections for families with children. It would ensure that all aspects of public sector debt recovery practices were fully compatible with Scotland's human and children's rights duties. It would achieve this through creating legal rights for Scottish consumers that could be easily enforced without the need for a solicitor or adviser.

Proposed Bill content

13. The primary law reform proposition of the Bill is to establish a statutory Code of Conduct for public bodies regarding all forms of public sector debt recovery practice (the "Code"). The Code would include a duty to undertake an affordability assessment and an appropriate Child Rights Impact Assessment for households with children having regard to the United Nations Convention on the Rights of the Child (which is now incorporated into Scots law by the UNCRC (Incorporation) (Scotland) Act 2024). The Code would also set out how debt recovery should operate for victim-survivors of domestic abuse where debts were a result of domestic or financial abuse and coercive control . Minimum standards of good practice would be set out in the Code after consultation with all affected stakeholder groups.

14. The proposed Bill would include enabling provisions for the Code to be made by Scottish Ministers by way of secondary legislation, similar, for example, to section 14 of the Property Factors (Scotland) Act 2011. The property factor code of conduct has been successful where homeowners have disputes with their property factors.[9] A homeowner must first engage with the factor's complaint process to try and resolve any dispute,

[9] https://consult.gov.scot/housing-regeneration-and-welfare/code-of-conduct-for-registered-property-factors/results/consultationonadraftrevisedcodeofconductforregisteredpropertyfactors-analysisofresponses.pdf

with the right to make an application to the First-tier Tribunal in cases that cannot be settled between parties.

15. While the recovery of debts relating to financial service products (bank accounts, consumer credit and mortgages, for example) operates under Scots law rules and procedures generally they are also regulated by the Financial Conduct Authority ("FCA") under the Financial Services and Markets Act 2000 (the "2000 Act"). The 2000 Act empowers the FCA to issue legal rules and guidance to financial firms when it comes to how consumers are treated in relation to debt recovery.

16. The FCA's handbook contains high level business standards and specific rules in relation to different types of financial products.[10] Ultimately, these rules enable consumers to be treated fairly by creditors with consumers having formal rights to complain against poor or unfair treatment, with a right to pursue a complaint to the Financial Services Ombudsman (the "FOS"). The FOS has very wide powers under the 2000 Act in relation to redress.[11] No such regime operates for public sector debt recovery and the Scottish Public Services Ombudsman (the "SPSO") has very limited powers to make recommendations to public bodies.[12]

17. The Bill would include provisions to create a right of appeal against a failure to adhere to the Code to the First-tier Tribunal, akin to sections 17 to 24 of the 2011 Act but for a First-tier Tribunal (Public Sector Debt) Chamber. This would ensure the Code had means to be enforced where it had been breached by a public body in relation to debt recovery. It would follow a rights-based approach to redress.

18. The Tribunals (Scotland) Act 2014 (the "2014 Act") created a new, simplified statutory framework for tribunals in Scotland, bringing existing tribunal jurisdictions together and providing a structure for new jurisdictions. The 2014 Act created two new tribunals, the First tier Tribunal for Scotland and the Upper Tribunal for Scotland, known collectively as the Scottish Tribunals. In some cases, appeal functions were transferred to allow the first-tier tribunal to hear Scottish cases instead of using a sheriff.

19. Examples of the issues that tribunals handle include the compulsory care and treatment of people with mental health disorders; disputes between tenants and private sector landlords; disputes involving land and property; and cases concerning children and young people with additional support needs.

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[10] https://handbook.fca.org.uk/handbook
[11] https://www.financial-ombudsman.org.uk/decisions-case-studies/ombudsman-decisions
[12] See for example, https://www.spso.org.uk/decision-report-search

Advantages of a Tribunal:

- like courts, tribunals find facts, apply the law and make independent, reasoned, binding decisions;
- cheaper (less formal, speedier proceedings);
- more accessible (don't need legal representation; no fees);
- freedom from technicality (simpler procedures);
- take a more investigative approach (will help to draw out the key issues from unrepresented parties to get to the correct outcome);
- specialist decision makers – tend to comprise a legally qualified chair and lay experts.

Disadvantages of a Tribunal:

- can be costly and time consuming to establish (will require legislative change and a statutory basis; statutory rules of procedure; may require appointment of judiciary if an existing jurisdiction cannot deal with the matter; development of case management systems etc.);
- legal aid is generally not available at first instance which can deter people from submitting a claim;
- the lack of fees may result in ill-founded or speculative claims.

20. A proposed First-tier Tribunal (Public Sector Debt) Chamber ought not to be complex as it would be dealing with a Code that set out basic standards of fairness and practice in relation to debt collection. The ability for a consumer to apply to the tribunal would ensure that the Code was adhered to by public bodies in Scotland.

Other proposed Bill provisions

21. Other Bill measures would include:

- Reducing the statute of limitations for public sector debt recovery in line with rest of UK. This would require amendments to the Prescription and Limitation (Scotland) Act 1973 to limit public sector debt recovery within devolved powers to 5 years and not 20 years.

- An equivalent to section 13A of the Local Government Finance Act 1992. Section 13A currently only applies to England and Wales, as Part 1 of the 1992 Act relates solely to those jurisdictions. It was introduced in 2012, post-devolution, and no equivalent provision exists for Scotland. A new discretionary relief power would allow Scottish councils to operate their own local discretionary schemes to provide council tax relief in circumstances that fall outside the scope of existing discounts, exemptions, or the Council Tax Reduction Scheme. Such a power could be used, for example, to support: people subject to domestic or financial abuse, where a partner has failed to pay the bill and they remain jointly and severally liable; individuals who are terminally ill (supported by a BASRiS form); households affected by flood damage or other emergencies — similar to England, where government funding enables councils to remove council tax liability for a defined period (often six months). Councils would be empowered to remove or write off council tax debt in other exceptional cases where there is clear justification

- A provision to review the Water Charges Discount Scheme. The current maximum relief of 35% would be increased to align with the levels available under the Council Tax Reduction Scheme, given that a large proportion of council tax billing in practice relates to water and sewerage charges for households already receiving full Council Tax Reduction and accounts for many summary warrants and diligence executed, including the 10% surcharge and sheriff officer fee.

- A provision to enable local authorities to serve their own Charge for Payments, by post, rather than relying on personal service by Sheriff officers charging £96 to consumers. The same would be included for bank account and earning arrestments, that currently have to be sent via Sheriff officers and result in tens of millions in fees being added to peoples' bills. Councils can already do this for Direct Earning Arrestments for overpayment of Housing Benefits (Welfare Reform Act 2012). Ninety-eight percent of Bank Arrestments fail and only result in fees being added by Sheriff Officers and Banks.

- A provision to ensure the Arrestment of Benefits can be released quick when held in bank accounts.

- Consolidated debt recovery measures.

- Prohibit 3rd party deductions by Scottish public bodies via the Department of Works and Pensions.

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