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Welsh Government
Consultation Document

Removal of the sanction of imprisonment for the
non-payment of council tax

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg
This document is also available in Welsh

Overview	The Welsh Government is seeking views on the removal of the sanction of imprisonment for non-payment of council tax.
How to respond	Responses can be emailed or sent direct to: Council Tax Policy Branch Cathays Park Cardiff CF10 3NQ Email: LGF1Consultations@gov.wales
Further information and related documents	Large print, Braille and alternative language versions of this document are available on request.
Contact details	For further information, or queries regarding this consultation, please email: LGF1Consultations@gov.wales Council Tax Policy Branch Cathays Park Cardiff CF10 3NQ
Data protection	<p>The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations.</p> <p>In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.</p> <p>Names or addresses we redact might still get</p>

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CF10 3NQ

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FOREWORD BY THE CABINET SECRETARY FOR FINANCE

The Welsh Government is committed to working with local government to review council tax to make it fairer.

We all pay taxes because we all receive the collective benefits which these taxes pay for – the services which educate our children; care for the elderly; dispose of our waste; light our streets and protect our communities. To maintain these services, it is right that those who are able to should contribute their fair share and that the greatest burden should fall on those with the broadest shoulders, while ensuring those who are less able to contribute are treated fairly and with dignity.

I recently launched a campaign to increase awareness and uptake of our Council Tax Reduction Scheme and other discounts which are available to people who need help paying their council tax. We are working with local authorities and third sector organisations, such as Citizens Advice and Age Cymru, to make sure households in Wales understand all help which is available to them.

We are also working closely with local government to explore opportunities to adopt more proactive and citizen-focused approaches to help prevent council tax debt occurring and escalating. These initiatives will provide support to vulnerable households in Wales and ensure that those who need support receive it.

Alongside this work, I believe it is right we consider the appropriateness of enforcing the non-payment of council tax by way of committal to prison.

My view is that getting into debt is not a crime. The sanction of imprisonment is an outdated and disproportionate response to a civil debt issue. There is significant additional cost to the public purse of imprisoning individuals and such action does nothing to address the reasons for the debt owed to the local authority or to reduce the debt. In many cases, it makes the situation worse.

We must also consider the longer term impact on the wellbeing and future prospects of people who are committed to prison and the effect on their families. There is also a knock-on impact on other public services, as more support is often needed by someone who is committed to prison and their family.

Sending someone to jail for unpaid council tax is not a sanction which is used frequently. However, the recent judicial review involving a resident from Bridgend¹ highlighted that, in some cases, people are being sent to prison unlawfully.

The Welsh Government cannot take action in respect of the operation of the courts, as responsibility for this is not devolved. But we do have powers to amend the existing enforcement regime to remove the power to commit people to prison in Wales for non-payment of council tax. I believe this is the right thing to do at this time. There are other, more appropriate, enforcement actions which local authorities can use to seek payment of civil debts.

¹ <http://www.bbc.co.uk/news/uk-wales-42725514>

Introduction

1. In *Taking Wales Forward* and *Prosperity for All*, we commit to working with local government to review council tax to make it fairer. There are a number of ways in which we are delivering on this commitment, including our recent campaign to raise awareness of the different types of financial support for low income and vulnerable households.
2. Last year, the Welsh Government published research on *Local Authorities' Approaches to Council Tax Debt Recovery*. This was part of the work to support local government reform and to help inform the delivery of our commitment to make council tax fairer.
3. A number of other research reports have also been published in recent years, highlighting the growing problem of council tax debt, including the Citizen's Advice Cymru report *Fairness For All - Improving council tax debt collection in Wales*² and the Money Advice Trust report *Stop the Knock – mapping local authority debt collection practices in England and Wales*³.
4. The Welsh Government is committed to working closely with local government to implement some of the recommendations included in these reports. This will allow us to adopt more proactive and citizen-focused approaches to help prevent council tax debt occurring and escalating.
5. The Welsh Government believes that getting into debt is not a crime. We believe that the sanction of imprisonment is an outdated and disproportionate response to a civil debt issue. There is significant additional cost to the public purse in imprisoning individuals and such action does not have a positive impact on the debt owed to the local authority.
6. We are therefore launching this consultation to seek your views about the removal of the sanction of imprisonment in relation to council tax debt.

Our current approach to supporting fairer council tax

7. Following the UK Government's decision to abolish council tax benefit from April 2013, the Welsh Government developed and implemented a national Council Tax Reduction Scheme (CTRS) for Wales. This continues to protect those households which need support with their council tax bills. In England, individual local authorities must instead develop their own schemes.
8. Our CTRS scheme provides financial assistance to almost 300,000 households. Of these, almost 220,000 pay no council tax at all. The Welsh Government provides £244m every year through the local government settlement to fund the scheme.

² <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Wales/Fairness%20for%20all%20-%20September%202016%20-%20Google%20Docs.pdf>

³ <https://www.stoptheknock.org/storage/app/media/downloads/money-advice-trust-stop-the-knock-2017-report.pdf>

9. The number of CTRS recipients fell from 323,000 in May 2013 to 290,000 in June 2017 with little evidence locally to suggest household circumstances have significantly improved. Evidence shows that many eligible households are not aware of the support to which they are entitled and that they do not take up support for a number of complex reasons. For example, our recent assessment of eligibility suggests uptake of CTRS for low-income households in Wales could be between 55% and 65%⁴. Low uptake of CTRS affects the progressivity and fairness of council tax.
10. To encourage increased uptake of CTRS by eligible households, we are currently undertaking a campaign to raise awareness of the different types of support available to households. This campaign includes posters in relevant settings, content through Welsh Government digital channels and targeted social media.
11. A key aspect to the awareness-raising work is about referring enquiries to refreshed information on the Welsh Government website. This includes an 'eligibility checker', which helps households identify whether they are already receiving a council tax discount or support or to contact their local authority if they think they might be eligible for support.
12. We are working with local authorities and debt advice agencies to make sure households understand and receive all the council tax reductions and discounts they are entitled to. The campaign also includes awareness-raising material with reminders, summonses and final notices issued by local authorities.
13. Alongside our promotional activity, we are working with local authorities and debt advice agencies to identify and share good practice to ensure action taken on council tax arrears is proportionate, fair and consistent.
14. We have some concerns about the potentially negative impact of the current council tax collection process and the use of enforcement agencies on vulnerable individuals. We are working with local authorities and debt advice agencies to ensure all local authorities take their responsibilities to protect vulnerable households seriously, ensuring people in debt are treated with fairness and dignity.
15. We know many households are struggling to cope with the effects of the UK Government's welfare reforms and ongoing austerity and we are committed to ensuring we explore all avenues open to us to mitigate the consequences for those affected.
16. The Money Advice Trust report *Stop the Knock – mapping local authority debt collection practices in England and Wales 2017*⁵ recommended six steps it believes local authorities should take to improve their practice:

⁴ Analysis of Department for Work and Pensions and Office for National Statistics Family Resources Survey.

⁵ <https://www.stoptheknock.org/storage/app/media/downloads/money-advice-trust-stop-the-knock-2017-report.pdf>

- Make a clear public commitment to reduce bailiff use over time.
 - Review signposting to free debt advice, including phone/online channels.
 - Adopt the Standard Financial Statement to objectively assess affordability.
 - Put in place a formal policy covering residents in vulnerable circumstances.
 - Exempt Council Tax Support recipients from bailiff action [this applies to England only, where reduction schemes are run by local authorities].
 - Sign up to the Citizens Advice/Local Government Association Council Tax Protocol and examine the Money Advice Service Working with Debt Advice Agencies toolkit.
17. We want these recommendations to be implemented as a key part of our work with local authorities and debt advice agencies. Any use of enforcement procedures for council tax arrears should be proportionate and considered in light of an individual's ability to pay.

The current arrangements for the enforcement of council tax debt

18. The framework for the enforcement of council tax is set out in Schedule 4 of the Local Government Finance Act 1992 and the detailed process is primarily provided for in the Council Tax (Administration and Enforcement) Regulations 1992 (the 1992 Regulations).
19. Crucially, the enforcement framework exists to enforce the payment of council tax, not to punish non-payment. For this reason, it incorporates tests to establish whether people *can* pay and whether non-payment is due to wilful refusal or culpable neglect.
20. Where a person fails to pay their council tax after having been served a demand notice (bill) by the local authority, the local authority must serve a reminder notice on them which explains the consequences of failure to pay. If the person still fails to pay, the local authority must normally serve a final notice. After serving this final notice, the local authority must wait a further seven days before applying to the magistrates' court for a liability order in respect of the sum outstanding.
21. If the magistrates' court is satisfied that the sum claimed is payable and has not been paid, it must make an order for the aggregate amount of the sum(s) due together with the local authority's reasonable costs.
22. Regulations⁶ were made in Wales in 2011 imposing a maximum amount which could be allowed for billing authorities for their costs in connection with an application for a liability order. This maximum amount was set at £70 to prevent the excessive escalation of debt. There is no such provision in England.

⁶ The Council Tax and Non-Domestic Rating (Amendment) (Wales) Regulations 2011

23. The local authority can choose to enforce the liability order in a number of ways, including by:
- An attachment of earnings order (instructing the debtor's employer to make a deduction from the debtor's earnings);
 - Taking control of goods;
 - A charging order on the council tax debtor's property;
 - Petitioning for bankruptcy;
 - Applying to the relevant Secretary of State for deductions from amounts payable to the debtor in respect of income support, universal credit and various other types of government support and allowances.
24. The local authority may only use one method of enforcement at any one time but, subject to this constraint, it may use a number of different methods to seek to enforce the liability order and may also seek to use the available measures more than once. In practice, local authorities use a variety of different methods and it is not currently known which is the most effective in which circumstances.
25. However, it is only after having sought unsuccessfully to enforce the liability order by *taking control of goods* that a local authority may apply to the magistrates' court for the issue of a warrant to commit the debtor to prison.
26. A magistrates' court is prohibited from issuing a warrant of commitment to prison until it has made inquiries of the council tax debtor, who must be present. The inquiries must be about:
- The debtor's means to pay; and
 - Whether the failure to pay was due to the debtor's wilful refusal or culpable neglect.
27. If – and only if – the court considers the failure to pay is due to the debtor's wilful refusal or culpable neglect, the court may issue a warrant of commitment against the debtor or fix a term of imprisonment and postpone the issue of the warrant until such time and on such conditions as the court thinks just. For example, imprisonment may be postponed on the condition that the debtor pays a set amount to the local authority each week.
28. The maximum term of imprisonment is three months. The legislation – both the Act and the Regulations – also requires the period of imprisonment to be reduced by a prescribed amount in respect of part payment of the debt.
29. If a term of imprisonment is postponed, and conditions are imposed on the debtor with which the debtor fails to comply, the matter should be returned to the court for consideration of whether the warrant should be activated. The Judicial College's *Adult Court Bench Book* (the Bench Book⁷) states that "the defaulter is required to attend court for a further means enquiry" before the decision about whether to activate a committal warrant is taken:

⁷ See paragraph 68 (page 126) <https://www.sentencingcouncil.org.uk/wp-content/uploads/Adult-Court-Bench-Book-April-20161.pdf>

“Before the warrant is issued the court must still be certain that the defaulter has:

- i. The means to pay forthwith, or
- ii. Has wilfully refused or culpably neglected to pay, and other methods of enforcement have been tried or are inappropriate.”

30. The legislation in relation to the enforcement of council tax is not wholly devolved to Wales. Welsh Ministers do not have powers to issue guidance for magistrates. The Lord Chief Justice is responsible for arrangements for training the courts’ judiciary in England and Wales⁸ and these responsibilities are exercised through the Judicial College⁹.
31. The Bench Book provides guidance for magistrates, intended to help them undertake the task of decision-making in a fair and structured manner. It contains guidance¹⁰ about committal to prison for default. The guidelines about the steps to be taken by magistrates where a debtor fails to comply with payment terms are detailed and include a requirement for a debtor to return to court for a fresh means enquiry before a warrant is issued. However, if the Judicial College concluded it would be appropriate, the Bench Book could be further amended to include more detailed guidance about dealing with the committal of judgment debtors.

Enforcement Agents (Bailiffs)

32. The framework regulating the taking control of goods is contained in the Tribunals, Courts and Enforcement Act 2007 (the 2007 Act) and the Regulations made under it by the Lord Chancellor. Welsh Ministers do not have power to make regulations under the 2007 Act in respect of enforcement agents.
33. Since April 2014, there has been a carve out¹¹ from the Welsh Ministers’ powers to make regulations under the Local Government Finance Act 1992 in relation to the recovery of council tax. This means Welsh Ministers are not able to make provision in relation to the recovery under Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods).
34. To coincide with the implementation of the new framework for regulating the taking control of goods, on 6 April 2014, the Ministry of Justice issued guidance on minimum standards. These contain the key responsibilities and behaviours expected in respect of enforcement agents. The guidance is described as “not legally binding” but as a “helpful tool for the industry and for creditors... against which they may benchmark their professional standards”.

⁸ Under the Constitutional Reform Act 2005

⁹ <https://www.judiciary.gov.uk/about-the-judiciary/training-support/judicial-college/>

¹⁰ See paragraphs 69-74 (pages 126-128) and the flow chart on page 129 <https://www.sentencingcouncil.org.uk/wp-content/uploads/Adult-Court-Bench-Book-April-20161.pdf>

¹¹ Since 6th April 2014 – see the Tribunals, Courts and Enforcement Act 2007 (Consequential, Transitional and Saving Provision) Order 2014 (SI 2014/600)

Comparison with other civil debts (including Scotland)

35. The enforcement of most civil debts and fines is dealt with under the Magistrates' Court Act 1980 (for example, parking fines and utility bills). The Court does have a power to commit to prison but that power is limited where the non payment of the fine concerned does not result from a criminal conviction.
36. The maximum term of imprisonment for non-payment of sums enforceable as civil debts under the Magistrates' Court Act 1980 is six weeks¹².

Non-domestic rates

37. The enforcement regime in respect of non-domestic rates mirrors that for council tax in many respects. For example;
 - The procedure for taking control of goods must be followed before a warrant of commitment to prison can be applied for;
 - There must be an inquiry (in the debtor's presence) as to means and whether the failure to pay is due to wilful refusal or culpable neglect; and
 - The maximum term of imprisonment is three months.
38. It is not clear why the maximum term of imprisonment for non-domestic rates and council tax is three months when the maximum term of imprisonment for other civil debts is six weeks. It may be that following the introduction and subsequent abolition of the Community Charge (poll tax), non-payment of council tax was regarded as a significant problem and having the option of a harsher sentence was intended to send the message that non-payment was a serious matter. Additionally, local taxation debts are likely to be larger than those for other civil debts and to mount up more quickly. As such, a longer period of detention may have been considered proportionate.

Devolved taxes

39. The Tax Collection and Management (Wales) Act 2016 deals with the enforcement of devolved taxes. It provides that where such tax is owed (and the amount does not exceed £2,000), it is to be "recoverable summarily as a civil debt". This means that the regime set out in the Magistrates' Court Act 1980 applies.
40. Under this regime, it is not possible for someone to be committed to prison for non-payment of devolved taxes.

Scotland

41. In Scotland there is no provision for council tax debtors to be sent to prison.
42. If council tax is owed following both a demand notice and a reminder notice, a local authority can apply to the Sheriff for a summary warrant detailing the

¹² Paragraph 3 of Schedule 4 to the Magistrates Court Act 1980

amount due and details of where payments are to be made. The sums owing may be recovered in various ways including:

- An attachment (seize goods from debtor's premises);
- A money attachment (seize money from debtor's premises);
- An earnings attachment (instruct debtor's employer to make deduction from debtor's earnings);
- An arrestment and sale (this allows money to be seized from the debtor's bank account, as well as funds or goods held in storage);
- Where the debtor is entitled to universal credit or various other government support or allowances, the local authority may apply to the Secretary of State asking him to deduct sums from that credit, support or allowance, in order to secure the payment of the outstanding sum.

The case for removing the sanction of imprisonment

43. The Welsh Government believes that getting into debt is not a crime. The sanction of imprisonment is an outdated and disproportionate response to a civil debt issue. There is significant additional cost to the public purse in imprisoning individuals and such action does not have a positive impact on the debt owed to the local authority.
44. The Welsh Government must also consider the longer-term impact on the wellbeing and future prospects of individuals who are imprisoned; the impact on families and children, alongside the effect on other public services which are often needed to support those individuals who are imprisoned and their families.
45. A number of charities and campaign groups have been calling for the removal of the use of imprisonment.
46. In their joint report, *I can't believe we still do that: the case for ending imprisonment for council tax debt in England and Wales*, published on 27 November 2017¹³; PayPlan and the Institute of Money Advisors (IMA), highlight the negative impact of court action on families and individuals.

Robert Wilson, chief executive of the Institute of Money Advisors, said: "Imprisonment serves little purpose because the debt still remains at the end. Instead of being supported with realistic payment plans, our members report that too often people are being penalised with court fees and harsh collection activity by their local council.

"Imprisonment does not clear their debt – in fact, it usually increases it further. Putting people in prison makes it harder for them to make payments and can cause chaos in their work and family life. On top of that, taxpayers also have to meet the costs of prison."

¹³ <https://www.i-m-a.org.uk/other-services/social-policy/ima-payplan-council-tax-imprisonment-campaign/>

47. Last year, there was a judicial review of a case involving a resident from Bridgend who was wrongly imprisoned for non-payment of council tax. The claimant in that case sought to challenge the legality of the system of council tax enforcement that applies in England and Wales.
48. While the court did not find fault with the system itself, in examining the data presented by the claimant, the case highlighted that, owing to way the relevant law was applied by particular magistrates' courts, perhaps between 9.5% and 18% of people against whom enforcement proceedings were brought were committed to prison unlawfully.
49. Angela Rafferty QC and 57 others wrote an open letter¹⁴, published in The Guardian on 26 March 2018, calling on the UK Government to take action to remove the power of imprisonment and stating they believe this is likely to be one of the largest mass miscarriages of justice in British history.
50. The Welsh Government believes the other sanctions available to local authorities are sufficient and proportionate for those with the means to pay.
51. As the Payplan/IMA report notes "Case law has established that people with council tax debt should not be imprisoned if there is an alternative and that they cannot be sent to prison as a punishment or as a deterrent to others. The powers of the magistrates to imprison are for the (rare) cases when the person in arrears can clearly pay the debt, but has failed to do so".
52. We recognise that the enforcement system has not always operated as intended – in particular in establishing whether someone has the means to pay their debt – and that the consequences of imprisonment are very serious for those concerned. While the use of imprisonment to enforce the payment of council tax is infrequent and the risk of unlawful imprisonment is low, we believe the risks are too high and consequences too great and that they are disproportionate to the scale of debt involved.
53. We also recognise that local authorities may raise concerns about the possible impact of the removal of the sanction of imprisonment on their ability to raise revenue. There is limited evidence to support or contest the impact of imprisonment as an enforcement action on collection rates.
54. Council tax collection rates in Scotland (where the enforcement regime does not include imprisonment) are similar to those in Wales. The average council tax collection rate for Scotland in 2016-17 was 95.8%. This compares with an average for Wales of 97.4%. However, the difference cannot simply be attributed to the difference in the enforcement regimes. The range between the lowest and highest rates for authorities in the two nations was similar, 93.8% to 98.1% for Wales and 93.4% to 98% for Scotland, indicating that local factors also have an effect.

¹⁴ <https://www.theguardian.com/money/2018/mar/26/taking-action-for-those-jailed-over-unpaid-council-tax>

Conclusion

55. The Welsh Government recognises that local authorities have a duty to collect council tax arrears to support the delivery of the essential services we all rely on. We believe it is equally important this is done proportionately, fairly and consistently.
56. The work we are undertaking collaboratively with local authorities and debt advice agencies will ensure that local authorities in Wales adopt the best practice available to support individuals who are in arrears with their council tax.
57. We believe the sanction of imprisonment is outdated and disproportionate for a civil debt issue and agree with the recent research and campaign evidence. It is on this basis that the Welsh Government wishes to use its powers to remove imprisonment as a sanction for non-payment of council tax.
58. This will align the position in Wales with that in Scotland and Northern Ireland.
59. We want to hear your views on this important matter, including what alternative approaches might be taken to ensure that local authorities are able to collect council tax efficiently and effectively from people who are able to pay.

Next Steps

60. The consultation is open for a 12-week period. During this time, we will continue to work with stakeholders and engage them in implementing the approaches set out in this document.
61. Once the consultation has closed, all responses will be analysed and will be used to inform a decision about whether to proceed with the proposal to remove the sanction of imprisonment for non-payment of council tax.
62. Subject to the outcome of the consultation, it would be our intention to bring forward new regulations in early 2019 and those regulations would come into force by April 2019.

CONSULTATION RESPONSE FORM

Your name:

Organisation (if applicable):

Email / Telephone number:

Your address:

QUESTIONS

Q1: Do you agree that the sanction of imprisonment for non-payment of council tax should be removed?

YES / NO

Please provide supporting comments

Q2: Do you have any other comments regarding this consultation?