

**A GUIDE TO THE RECOVERY AND  
ENFORCEMENT OF COUNCIL TAX**

The statutory provisions covering the enforcement of Council Tax are contained in the Local Government Finance Act 1992 and the Council Tax (Administration and Enforcement) Regulations 1992.

The Billing Section determine who is liable to pay in relation to any chargeable dwelling.

No person is under a duty to pay the Council Tax until a demand notice covering that liability has been issued.

The Council Tax will normally be paid in 10 monthly instalments, unless the Authority has set up an alternative regime and has come to an agreement for the tax payer to pay by other than the statutory scheme. For example, those who choose to pay weekly.

It is necessary to give 14 days notice from the bill being issued to the first instalment becoming due. Failure to do so may prejudice enforcement action.

A schedule of recovery is determined in advance and is based on the date that the first instalment becomes due.

**REMINDER NOTICE (issued under regulation 23 of the Council Tax [Administration and Enforcement] Regulations 1992)**

Legally a reminder notice, or notice of overdue instalments, can be issued the day after the instalment becomes due. However, good practice suggest that we wait at least 7 days.

This Authority currently issues the notice approximately 14 days after the instalment becomes due, allowing a reasonable time for any payment delays within the banking system.

This notice requests that the instalment must be brought up to date within 7 days. It also advises the debtor of the consequences of failure to do so, i.e. it will result in the right to pay by instalments being lost.

Providing the arrears are brought up to date no further action will be taken.

**SECOND REMINDER NOTICE (issued under regulation 23 of the Council Tax [Administration and Enforcement] Regulations 1992)**

This is issued where, the charge payer has already had a first reminder, brought the account up to date and has defaulted on a second occasion.

Again, it details the consequences of failure to pay the arrears and also advises that no further reminder notices will be issued for any future default.

Throughout the statutory instalment scheme no more than two reminder notices will be issued.

Like the first reminder notice, the second notice requests that account be brought up to date within 7 days.

**CANCELLATION OF INSTALMENT NOTICE (FINAL DEMAND), (issued under regulation 33 of the Council Tax [Administration and Enforcement] Regulations 1992)**

This notice is issued when the debtor fails to bring the account up to date following the issue of either the first or second reminder notice. It is issued approximately 14 days after the reminder notice, although legally only 7 days are required.

The 1992 Regulations also provide that where it has been necessary to issue two reminders, the tax payer will become liable for the whole amount following a third failure to pay, without the need for another reminder.

The notice informs the debtor that he has lost the right to pay by instalments and payment in full must be made within 7 days otherwise a summons will be issued with the intention of obtaining a Liability Order at the Magistrates Court.

Providing the amount is paid in full, no further action is taken.

However, upon contact, the right to pay by instalments may be re-instated, i.e. if the debtor has a genuine reason for non payment and has a good payment history, or if he elects to pay future instalments by direct debit.

**SUMMONSES (issued under regulation 33 of the Council Tax [Administration and Enforcement] Regulations 1992)**

Where the debtor has failed to pay the amount owed in full, a summons is issued requiring the debtor to show good cause why a Liability Order should not be made at the Magistrates Court.

The summons is issued approximately 14 days following the issue of the Cancellation of Instalments Notice, and at least 15 days before the date of the Court hearing.

At this point, administration and legal costs totalling £40.00 are added to the outstanding debt, for which the charge payer is liable to pay. (These costs are agreed with the Clerk to the Justices in advance).

The summons is issued to each liable party. Information is also provided to the effect that the debtor's attendance is not required if:

- they do not dispute the amount owed
- they are the person liable to pay the Council Tax

**LIABILITY ORDER (issued under regulation 34 of the Council Tax (Administration and Enforcement) Regulations 1992)**

The following basic arguments are available to the tax payer against the making of a Liability Order:

- the amount has not been demanded in accordance with the 1992 Regulations
- the amount has been paid

- he is not the person named on the summons

Any matter, which could be the subject of an appeal to a valuation tribunal, may not be raised in liability order or committal proceedings (regulation 57(1) of the 1992 Regulations).

A Liability Order may be made notwithstanding that the tax payer is disputing the amount of Council Tax benefit which has been awarded or the fact that Council tax benefit has been disallowed. However, where bona fide benefit claims have been made and are not resolved it would be best practice to withhold recovery action or indeed withdraw the application for a Liability Order.

If the Magistrates are satisfied that the amount in respect of which the application has been made is payable by the person summonsed, and, it has not been paid, they are required to make a Liability Order. This order will include reasonable costs, usually discussed and agreed with the Clerk to the Justices in advance.

This is an all purpose order and once it is obtained the billing authority without any further recourse to the Court may take further steps by way of enforcement.

### **FURTHER RECOVERY ACTION**

To obtain information about the financial circumstances of the debtor in order to assess the most appropriate form of enforcement or recovery action.

Following a the Liability Order hearing, a 'Request for Information' is issued with the ' Notice of Issue of Liability Order' to the debtor, accompanied by a self addressed envelope, to be completed and returned.

This asks for income and employer details.

It is a criminal offence to fail, without reasonable excuse, to supply information to such a request, or knowingly supply false information. The Magistrates Court are empowered to fine a person up to a current maximum of £1000 for failure to supply or supplying false information.

The debtor is obliged by law to return the request for information within 14 days.

The completion of this form should enable the Authority to assess whether deductions from earnings is a possibility. The self employed cannot be subject to an attachment of earnings order.

The person may be receiving Income Support, in which case a deduction from those benefits may be appropriate.

In cases where there are two or more people liable the Authority will need to assess whether enforcement against one person is more likely to yield results.

### **DISTRESS**

Once the billing authority has obtained a Liability Order there are a number of courses of action available. One of these is distress. Whilst distraint action can be an effective way of proceeding other methods, such as attachment of earnings/benefits, should be considered first.

A letter warning of impending bailiff action is issued with the Notice of Liability Order, where that action may be appropriate, stating that the debt may be issued to the Council's bailiff in 14 days unless either payment is made in full or a repayment arrangement is agreed. A schedule of bailiff costs is also issued.

After 14 days has elapsed the debt is assessed and in the event that no other course of action is suitable, there is no benefit pending, and the debtor has failed to make contact and discuss repayment the debt is issued to the Council's bailiff for collection.

A bailiff must carry their authorisation and identification with them and show it to the debtor when required.

Bailiffs should give the debtor an opportunity to query the debt and provide any evidence of payment before taking any action. They should explain the opportunities for making payment and emphasise that payment will stop further proceedings. The bailiff should be notified of any changes in the amount outstanding immediately.

Bailiffs must contact the Council in the following circumstances and cease action until otherwise informed:

- evidence of mental handicap or confusion
- long term illness or frailty
- people with profound disability
- recent bereavement
- severe financial difficulties/Income Support
- communication difficulties where an interpreter is required

A levy or first call bailiff will make every effort to contact the debtor personally and seek to gain entry and obtain what is called 'Walking Possession'. The bailiff will require details of income and expenditure where a reasonable repayment offer is not made.

(Walking possession is where the tax payer signs an agreement which enables the goods which are levied upon to stay on the premises until either payment is made or the goods are eventually removed for sale.)

For making a visit to the premises with a view to levying distress, walking possession etc., costs are incurred and added to the amount that the debtor owes.

In order for the bailiff to ascertain a reasonable level of repayment, within the guidelines, paperwork is left with the debtor for completion, where necessary. Upon return of that documentation, the bailiff company will make an assessment and offer a repayment arrangement to the debtor.

Currently the Authority uses Jacobs Certificated Bailiffs who provide for payment using Post Office payment slips.

Where no agreement is reached, or, a repayment arrangement is defaulted upon, Jacobs will issue a letter warning of a visit by the enforcement or van bailiff as he is sometimes called.

Should that action be necessary, further costs will be incurred in accordance with the Regulations (regulation 45(2)). It will be his intention to obtain payment in full, including costs, or at worst, remove goods to the value of the debt. (Removal of goods can only be undertaken by a certificated bailiff, and, certain domestic items cannot be levied upon/uplifted)

### **ATTACHMENT OF EARNINGS ORDERS**

Once an attachment of earnings (AEO) has been made, it will remain in force until the whole amount to which it relates is paid or, it is cancelled by the Authority.

If a debtor changes his employment, he is under an obligation to inform the Authority of his new employment. Likewise so has the employer if a debtor becomes their employee and they know the debtor has an attachment to earnings in force.

The net earnings, which may be attached are defined within the Regulations, regulation 32(1). Guidance notes are issued to the employer. The tables, which are based on percentage deductions within salary bands, are contained in Schedule 4 to the 1992 Regulations.

In addition to each amount deducted under the AEO the employer may also deduct a further £1 towards administration costs.

Two AEOs can be run simultaneously.

### **ATTACHMENT OF ALLOWANCES ORDERS**

This enforcement option relates to elected members of a billing or relevant precept authority. It does not apply to the earnings of Members of Parliament in their capacity as MPs.

The authority of whom the defaulter is an elected member can make an order under which they can deduct 40% from that member's allowances.

This means that all councillors' attendance basic and special responsibility allowances can be attached.

### **DEDUCTIONS FROM INCOME SUPPORT/GUARANTEED PENSION CREDIT/JOB SEEKERS ALLOWANCE**

The Authority may apply to the Department of Work and Pensions to have deductions made from a debtor's Income Support/Guaranteed Pension Credit/Job Seekers Allowance.

There is a fixed weekly amount deducted. Deductions may only be made from the income support claimant named in the Liability Order.

An order is issued usually detailing the name, national insurance number and date of birth wherever possible.

The deductions are usually passed over on a monthly basis.

Deductions may only be made in respect of one Liability Order at a time.

## **INSOLVENCY**

An individual may present his own petition for a bankruptcy order or it may be presented by one or more of his creditors. An order is made following a hearing of the petition.

When a petition has been presented the Court may restrain the billing authority from proceeding with any legal action until the Court has considered the petition. The current minimum limit for commencing bankruptcy is £750 there is no minimum limit for a debtor's petition.

Where a Liability Order has been obtained and where the debtor is an individual, the amount due is deemed to be a debt for the purposes of bankruptcy proceedings under the Insolvency Act 1986 (regulation 49). Where the debtor is a company the amount due is deemed to be a debt for the purposes of winding-up proceedings. In the event of bankruptcy or winding-up proceedings occurring no other recovery action can be taken. This does not affect the individual's ongoing Council Tax liability.

The debts that are provable are those payable at the date of the order. This means that if a reminder has been issued, only the outstanding instalments when the order is made can be payable.

## **CHARGING ORDERS**

This is an additional enforcement option that enables the Authority to take effective action to recover large amounts of outstanding Council Tax.

A billing authority can apply to a county court for a charging order against the defaulter's dwelling that gave rise to the Council Tax if it has obtained a Liability Order and debt outstanding is at least £1,000 (regulation 50).

In deciding whether to grant a charging order the county court will consider the personal circumstances of the debtor and whether any other person would be unduly prejudiced if an order was granted (regulation 51).

An order can give the Authority a charge on the property so that if sold it is automatically entitled to receive the outstanding amount from the proceeds of the sale, provided that there is sufficient equity remaining when any charges having priority are redeemed – such as a mortgage.

## **RELATIONSHIPS BETWEEN ENFORCEMENT REMEDIES**

At any stage in the recovery process only one of the enforcement methods can be used at a time.

This means, for example, if deductions are being made from a debtor's income support, the authority cannot levy distress. Or if the bailiff has been instructed to levy distress, an attachment of earnings cannot be issued.

Any of the procedures however can be used more than once in respect of the same debt, for example if a debt is subject to an attachment to earnings and the debtor ceases to work for the employer, the debt could subsequently be issued to the bailiff for collection.

## **JOINT AND SEVERAL LIABILITY**

Those who are married, live together or are joint tenants may be jointly and severally liable for the whole of the Council Tax on the relevant property.

All notices are issued to each party. Once a Liability Order has been granted the recovery options again may only be applied one at a time, however the authority can determine against which party action may be taken.

## **COMMITMENT TO PRISON**

The 1992 Regulations provide that the billing authorities may apply to the Magistrates Court for a warrant committing the debtor to prison. They may apply for a warrant only if they have attempted to levy distress and have received a certificate from the bailiff attempting to levy that he was unable to find any or sufficient goods. This will include cases where the bailiff was unable to gain entry.

Failing all other recovery methods, a summons is issued for the debtor's appearance at the Magistrates Court. At that hearing, the Authority will make an application for a warrant of commitment.

At Court, a means enquiry is conducted, from the relevant period (the date that the first instalment relating to the debt became due) to the present date. If the court is satisfied that failure to pay is due to a person's wilful refusal or culpable neglect, a prison sentence is imposed (of up to 90 days per debt, but no more than 6 months in total for more than one debt), and, the warrant of commitment postponed upon conditions. The prison sentence is usually suspended upon an order of payment.

The role of the Magistrates is predominantly concerned with the debtor's ability to pay. If he has no ability to pay, a judgement may not be made and all or part of the debt can be remitted by the Magistrates.

Therefore, before taking this route, the size of the debt must be considered, whether there is ongoing liability and the debtor's ability to pay. These proceedings can be expensive as they are most time consuming and should it be necessary to obtain an arrest warrant, the fact that this may be unexecuted for some time must also be a consideration. Some thought must be given to case law and the fact that payment orders cannot extend beyond two to three years and the fact that it is unreasonable to take committal proceedings against a debt that is more than 5 years old.

## **SPECIAL ARRANGEMENTS**

Special arrangements may be given at any stage of the recovery process.

It is expected that in cases where a Liability Order has not been obtained, there is some justification for these to be given to a tax payer with arrears, i.e. financial hardship, illness.

Each arrangement is confirmed in writing to the tax payer. A contact telephone number and employment details should be requested and obtained where possible.

After having obtained a Liability Order however, special arrangements are indeed encouraged. These should be made with a view to clear by the first week in January, or, if that is not possible, by the year end.



Any arrangements where payments extend beyond 31<sup>st</sup> March, for in year debts, must only be made with the manager's authority.

They can be made on a weekly, monthly, 4 weekly, fortnightly basis.

A special arrangement stops any further recovery action from taking place, unless a summons has been issued, in which case it does allow proceedings to Liability Order stage.

### **RECOVERY INHIBITS**

In some cases it may be necessary to inhibit recovery, using a relevant recovery inhibit code (stop code). This can be applied to the whole of the account or to just a particular year.

Each of the recovery staff have their own personal code and use it where necessary, i.e. if benefit is pending and there is a likelihood of a substantial award, or, if there is a bereavement, etc.

Every account with one of these inhibit codes will have a diary note detailing the justification.

They are also used for monitoring purposes, i.e. to denote an account where we are pursuing bankruptcy proceedings.

These codes are checked twice a month and signed off by the manager, in the case of the Recovery Section.

The code will stop recovery action but it will not prevent a bill from being issued.

### **BENEFIT PENDING FLAGS**

May be input manually where a benefit award is pending, but they are also automatic once a benefit claim is logged. Again, these inhibit recovery.

### **BILLING FLAG**

Automatically input when an amendment has been made to an account. These also inhibit recovery.

### **SECOND RECOVERY CYCLES**

Where recovery action has taken place on a particular debt (from a cancellation of instalments stage), and there is an increase in charge, the original debt cannot suddenly be increased. In that instance a further and separate debt is created, known as a second recovery cycle.

New instalments are given for the second debt only and recovery action continues on the first debt. The only alternative is to go back to billing stage (as long as a Liability Order has not been obtained).

## **SMALL BALANCES**

Where accounts have a balance that is less than the amount of summons costs (currently £40), it is not economical to take recovery action.

Therefore, if no other recovery document is suitable, a small balance letter is issued.

Failure to provoke a response/payment usually means that the debt will be written off.