

**DEPARTMENT OF THE ENVIRONMENT  
WELSH OFFICE**

**COUNCIL TAX PRACTICE NOTE NUMBER 9**

**RECOVERY AND ENFORCEMENT**

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## 1 - INTRODUCTION

1.1 The statutory provisions covering the enforcement of the council tax are contained in the Local Government Finance Act 1992 ("the Act") and the Council Tax (Administration and Enforcement) Regulations 1992 (SI 1992/613). The 1992 Regulations have been amended by:

The Council Tax (Administration and Enforcement) (Amendment) Regulations 1992 (SI 1992/3008)

The Council Tax (Administration and Enforcement) (Amendment) Regulations 1993 (SI 1993/196)

The Council Tax (Administration and Enforcement) (Amendment) (No 2) Regulations 1993 (SI 1993/773).

1.2 Consolidated versions of the secondary legislation have been circulated by the Department. If you would like further copies please contact Nick Bestwick (details at the front of this practice note).

1.3 References in this Practice Note to a numbered regulation or Schedule are, unless otherwise stated, references to provisions of the 1992 Regulations, as amended. Deductions from income support are governed by the Department of Social Security's regulations, The Council Tax (Deductions from Income Support) Regulations 1993 (SI 1993/494).

1.4 The rules for determining who is liable to pay the council tax are set out in section 6 of the Act. Practice Note No. 2 on Liability gives more information. (See also Chapter 12 of this note on Joint and Several Liability).

1.5 No person is under a duty to pay an amount of council tax until a demand notice has been served on him or her (regulation 22). Practice note number 5 deals with billing.

1.6 The council tax enforcement procedures largely mirror the procedures established for enforcing the community charge.

## 2 - REMINDER AND FINAL NOTICES

2.1 Council tax is normally payable in 10 monthly instalments, unless the authority has set up an alternative instalment scheme for all its own tenants (Parts I and II of Schedule 1) (see Practice Note 5 on Administration for details). An authority can also come to an agreement with any taxpayer for payment other than by the statutory scheme (regulation 21(5)).

2.2 There must be at least 14 days between the day of issue of the demand notice and the first instalment becoming payable (para 4A of Schedule 1 as inserted by SI 1992/3008). In the case of a demand notice which is posted, the date of issue will be the day on which it is posted (regulation 17(4)). If the billing authority does not give the necessary 14 days the demand notice is not invalidated, but there is a possibility that enforcement action could be prejudiced. For further information on the service of a demand notice see Practice Note 5 on Administration.

### Reminder Notices

2.3 If an instalment is not paid in accordance with the monthly instalment scheme under Part I of Schedule 1, or a scheme for local authority tenants under Part II of that schedule, the billing authority is required to serve a reminder notice under regulation 23 requiring payment to be made within 7 days of the issue of the reminder. The reminder notice can be served any time after the instalment in question becomes due.

2.4 The reminder notice must state the instalments required to be paid, and must warn the taxpayer that if the instalments due before the end of the period of 7 days from the issue of the notice are not paid within that period, then the outstanding balance for the year will become due after a further seven day period (regulation 23(1)(c)(i) and (ii)). Authorities may want to point out at this stage that costs may be incurred if the authority has to seek a summons or a liability order. It is important to give very clear details of how payment of the outstanding amount can be paid and of how to make application for benefit. The address and telephone number of the section/branch dealing with the account at the billing authority should always be offered so that the taxpayer can discuss the matter if necessary to see if a manageable payment arrangement can be agreed. It is also good practice for a reminder to invite the taxpayer to query the amount on the notice if they believe it is incorrect.

2.5 If an authority has already issued two reminders in respect of unpaid instalments, and a taxpayer fails to pay a further instalment by the date due, then the whole amount becomes outstanding on the following day (regulation 23(4)). On any second reminder the taxpayer must be informed of the consequences of a third failure to pay (regulation 23(1)(c)(iii)).

### Final Notices

2.6 Before an authority can apply for a liability order, it must serve a final notice on the person against whom an application is to be made. The notice must state every amount in respect of which the authority is to make the application and is in addition to any reminder

notice required to be served; but it need not be served on a person who has been served with a reminder notice in respect of the amount concerned (regulation 33). A final notice is required in all cases where payment is not in accordance with a statutory instalment scheme (eg where payment is by agreement under regulation 21(5)).

2.7 A billing authority may agree an alternative payment arrangement with a taxpayer. This could be particularly helpful for those on low incomes who may find it difficult to budget for ten monthly payments but could manage to pay weekly. The costs of administering weekly payments may be offset against the benefit of a regular flow of payments and the increased likelihood that enforcement action will not be necessary.

### **Payment by agreement**

2.8 Reminder notice provisions do not apply to payments by agreement. Where a payment agreement is made, service of a final notice is required before an application for a liability order is made. A final notice can only be served in respect of an amount after it has fallen due. Unless an agreement provides for the full amount to fall due if an instalment is missed, then authorities may only be able to commence recovery proceedings for the missed instalment, and not the full year's tax.

2.9 As with the community charge and non-domestic rates a billing authority has six years within which to commence enforcement action beginning with the day on which the sum being recovered originally fell due (regulation 34(3)). An application for a liability order should not be delayed beyond 6 years after that day.

2.10 The chart at Annex A summarises the main stages of enforcement action.



### 3 - SUMMONSES, LIABILITY ORDERS AND COMPUTER EVIDENCE

#### Summonses

3.1 An authority may apply for a liability order if an amount which has fallen due under regulation 23(3) or 23(4) is wholly or partly unpaid, or, in a case where regulation 33 requires a final notice, the amount in the final notice is wholly or partly unpaid 7 days after the issue of the final notice (regulation 34(1)). Following the issue of the reminder notice, if no payments have been received after seven days, the authority can apply to the magistrates' court for a summons after a further seven days. To do this the billing authority lays a complaint before a Justice of the Peace or the Justices' Clerk identifying the debtor against whom they wish a summons to be issued and requiring the debtor's appearance before the Court to show good reason why a liability order should not be made. No application may be instituted in respect of a sum after a period of six years beginning with the day the sum being recovered originally fell due under Part V (see paragraph 2.3 to 2.5; where payment is by agreement, the agreement should provide for when an amount becomes due.)

3.2 In the case of hardship an authority should consider whether it is prepared to re-schedule payments eg in accordance with an agreement under regulation 21(5), or whether it could allow a taxpayer to withhold payment if he or she is likely to have the means to pay in the near future. In such cases authorities may decide either to defer the summons, or to proceed with the application so that the liability order provides security in case the agreement is not kept.

3.3 The form of the council tax summons is not prescribed and authorities should liaise with the Clerk to the Justices to agree an acceptable format. A summons may be addressed to one taxpayer; or to two or more joint taxpayers in joint names (regulation 54(3A) inserted by SI 1992/3008). Authorities are advised, in seeking to avoid disputes over whether a summons has been served on a particular individual, to send a copy of the summons to each of the persons named on it (otherwise courts may not be prepared to issue a liability order in the defendant's absence - check with the Clerk to the court). The summons should set out the sum outstanding for which the authority is applying for a liability order. It can also state the costs incurred to date and point out that if these costs plus the sum outstanding are paid then the authority will not proceed with the application for a liability order.

3.4 Regulation 35(2) provides that the summons can be served:

- (a) by delivering it to the person on whom it is to be served;
- (b) by leaving it at that person's usual or last known place of abode;
- (c) by sending it by post addressed to that person at his usual or last known place of abode;
- (d) in the case of a company by leaving it or sending it by post to its registered office;

(e) by leaving it at, or sending it by post to, an address given by the person as an address at which service will be accepted. (A person may specify an address other than his proper address as the one at which he or someone on his behalf will accept certain documents or notices (section 233(5) of the Local Government Act 1972.))

3.5 The officer representing the billing authority must be duly authorised under section 223 of the Local Government Act 1972 and this should be arranged for all appropriate staff at the earliest opportunity. A copy of the resolution authorising the officer should be available when the officer is conducting proceedings on behalf of the billing authority. It should be a properly endorsed extract within the meaning of section 41 of the Local Government (Miscellaneous Provisions) Act 1976 ie it should be certified by the proper officer of the authority.

3.6 The authority may be required to satisfy the court that the appropriate procedures have been followed. These may include the fact that :

(a) the council tax has been fixed by resolution of the billing authority and has been published in the local press as required by section 38 of the Act;

(b) the sums have been demanded in accordance with the 1992 Regulations (as amended);

(c) an amount has fallen due under regulation 23(3) or (4) and is wholly or partly unpaid; an amount stated in a final notice is wholly or partly unpaid 7 days after the issue of the notice; or the authority's costs incurred in making the application for the liability order have not been paid.

It may be helpful to discuss with the Clerk to the Justices the matters of which the court will generally require proof.

3.7 Following the making of the liability order the amount due could be adjusted for a number of reasons. These include for example the setting of a substitute tax by an authority because of 'capping'; a change in benefit entitlement; a change in discount entitlement. A full list of the circumstances in which a person's liability would fall to be adjusted is set out in paragraph 10 of Schedule 1. If there is a reduction in liability then the liability order will be for a greater sum than the amount subsequently due. In such cases the order will remain in force and the amount by which the order is more than the sum payable will be treated as paid and, accordingly, as no longer outstanding (regulation 57(2) amended by SI 1992/3008). If there is an increase in liability the authority can only enforce up to the limit stated in the order. If, after the taxpayer is notified that an additional sum is payable, there is a failure to pay by the due date, the authority must commence new proceedings in respect of the unpaid sum.

3.8 There are a number of defences available to a council tax payer against the making of a liability order. Some of the most obvious are:

- (a) the amount has not been demanded in accordance with the 1992 Regulations (as amended); or
- (b) the amount has been paid; or
- (c) the complaint for a liability order was made more than six years after the amount became due under Part V of the regulations.

3.9 A matter which could be the subject of an appeal to a valuation tribunal under section 16 of the Act, or regulations under section 24, may not be raised in liability order or committal proceedings (regulation 57(1)) amended by SI 1992/3008). This means that a defendant cannot raise as a defence any dispute with the billing authority:

- (a) that a dwelling is a chargeable dwelling;
- (b) that he is liable to pay council tax in respect of a dwelling; or
- (c) over any calculation of the amount which he is liable to pay (eg that a reduction in respect of a discount is applicable but has not been awarded).

Some defendants will seek to raise these excluded defences in court, in which case the officer representing the authority should draw the court's attention to the precise wording of regulation 57(1).

3.10 The Secretary of State has prescribed that section 16(1) (right of appeal) does not apply where the ground is that any assumption as to the future required to be made in the calculation of an amount of council tax may prove to be inaccurate (regulation 30). Nor can a defendant raise as a defence a proposal to the listing officer to alter the valuation list.

3.11 A liability order may be made notwithstanding that the taxpayer is disputing the amount of council tax benefit which has been awarded or the fact that council tax benefit has been disallowed. The billing authority should, however, as a matter of best practice check that there is no outstanding benefit claim and refrain from taking enforcement action where such bona fide benefit claims have been received and are unresolved. However, if a claim is received after a summons has been issued or on the day of the hearing, then authorities should proceed to the liability order stage but give an undertaking to the claimant not to enforce the liability order until the claim has been dealt with.

3.12 A billing authority may apply for a liability order whilst an appeal to a valuation tribunal is pending. It may not however seek to recover a penalty if there is an outstanding appeal against the imposition of the penalty (regulation 29(2)). The fact that there is such an appeal outstanding is not, in itself, a reason to refrain from enforcement proceedings in

respect of other amounts which are due. Authorities may, however, like to consider if it would be more appropriate to suspend further enforcement action until the result of such an appeal is known.

### Computer Evidence

3.13 Regulation 53(4) to (6) puts beyond doubt the admissibility as evidence of computer-generated documents in magistrates' courts for council tax cases. Authorities may tender in evidence any statement contained in a document, if

- the document constitutes or forms part of a record compiled by the authority;
- direct oral evidence of any fact stated in the document would be admissible; and
- where the document has been produced by a computer, the document is accompanied by a certificate.

3.14 Authorities will have to decide which documents to tender in evidence. These might, for instance, be an updated complaint list or a liability order list. But authorities may well want or need to produce other documents to support their case. Any document which satisfies the requirements may be tendered in evidence. A statement contained in a document can contain figures as well as words (regulation 53(6)).

3.15 A single certificate may cover one or any number of documents. Authorities will wish to arrange to group documents to minimise the paperwork involved. The certificate which must accompany any computer-generated document must:

- (a) identify the document containing the statement the local authority wishes to introduce and the computer by which it was produced;
- (b) include a statement that at all material times the computer was operating properly, or if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents. It would be advisable to indicate when the computer was not operating properly and what the nature of the problem was;
- (c) give such explanation as may be appropriate of the content of the document;
- (d) be signed by a person occupying a responsible position in relation to the operation of the computer.

Statements contained in a certificate should be expressed to be to the best of the signatory's information and belief. A very brief explanation might be appropriate where the layout and content of the document is not so straightforward as to speak for itself.



3.16 There is no official nomination procedure required for the person who will sign the certificate. The signatory must, however, have responsibility (though not necessarily sole responsibility) for the operation of the computer. A signatory can rely on evidence provided by another person on the operation of the system, eg. in respect of periods when the signatory was absent. For those authorities who have, for instance, a facilities management agreement for their computer services, the "responsible person" may not be employed directly by the authority but by the company running their computer services. A check list of matters to be included in the certificate is at Annex B.

3.17 If an authority wishes to use a computer in the court room, a certificate of the kind described above will be needed if the print-out is to be used in evidence. The Clerk to the Justices should be consulted beforehand about the use of a computer in court. If an authority wishes to take this course it may be possible to complete a certificate on the spot. The 1992 Regulations do not address the use of computers simply to refresh the memory nor the question of the admissibility of evidence of images appearing on a computer screen. These are matters for the individual court.

#### Liability orders

3.18 If the Magistrates are satisfied that the amount in respect of which the application has been made is payable by the person summonsed and has not been paid they are required to make a liability order (regulation 34(b)). The order will include the costs reasonably incurred by the authority in securing the order. Whilst it is likely that authorities will have discussed a scale of fees with the Clerk to the Justices it should be recognised that the Court may wish to be satisfied that the amount claimed by way of costs in any individual case is no more than that reasonably incurred by the authority.

3.19 The liability order is an all purpose order and once it has been obtained the billing authority may without any further recourse to the Court take further steps by way of enforcement. The options that are available to the authority are:

- (a) to obtain information about the financial circumstances of the debtor in order to assess the most appropriate form of enforcement action to be taken;
- (b) to make an attachment of earnings order;
- (c) to apply to the Benefits Agency for deductions to be made from Income Support payments;
- (d) to levy distress either through a firm of bailiffs or in-house staff;
- (e) to apply for a charging order against the dwelling in respect of which the debtor's liability arose;

(f) to make an attachment of allowances order (where allowances are payable to the debtor as an elected member of the authority itself or of another authority);

(g) to apply to bankrupt the debtor (if he is an individual) or to wind up the company (where the debtor is a corporate body).

3.20 It is for the authority to decide in each case which course to take. Separate chapters elsewhere in this practice note deal with each of the above options in more detail and suggest the circumstances in which it might be appropriate to use them.

3.21 An authority may resort to these remedies in any order, but it may not pursue more than one option at any one time. Further information on this is contained in chapter 11 of this note.

3.22 The form of the liability order is prescribed in regulation 35(1) and Schedule 2. It can, at the court's discretion, deal with one person and one amount (Form A), or it may deal with more than one person and more than one amount (Form B).

3.23 There are different rules in the case of a liability order granted against the taxpayer and someone who is jointly and severally liable with that person. Care needs to be taken in these cases as they are not the same provisions that applied for community charge. They are described in detail in chapter 12 of this note.

3.24 Once the court has granted a liability order the billing authority will want to notify the person concerned. Such notification should also include a brief description of the various enforcement powers available to the authority. Along with this notification the authority may wish to send a personal information form - see chapter 4 of this Note. This will enable the authority to identify the most appropriate enforcement option. Such a notification could include an invitation to the taxpayer to make contact to agree a manageable payment arrangement.



#### 4 - REQUIRING INFORMATION

4.1 Regulation 36 places a person who is the subject of a liability order under a duty to supply 'relevant information' if required to do so by the billing authority. In cases of joint and several liability, where a liability order has been granted in all the names of those jointly and severally liable, the authority can require this information from any or all of them.

4.2 Relevant information comprises:

- (a) the name and address of an employer;
- (b) the level of earnings or expected earnings;
- (c) information on statutory deductions from pay (which must be disregarded in calculating the amount to be deducted under an attachment of earnings order);
- (d) a work or identity number or other such identifier used by their employer;
- (e) information on existing attachment of earnings orders (whether for community charge, council tax or under the 1971 Attachment of Earnings Act) and deduction orders under the Child Support Act 1991.
- (f) information on other sources of income eg benefit, councillors' allowances; and
- (g) information about whether there is any person jointly or severally liable with the debtor.

A taxpayer is not under an obligation to provide this information if it is not in his possession or control or the authority has not requested it in writing.

4.3 It is a criminal offence to fail without reasonable excuse to supply information in response to such a request, or in supplying information to make a statement which is false in a material particular or recklessly make such a statement. The magistrates' courts are empowered to fine a person up to a current maximum of £500 (level 2) for failure to supply and £1000 (level 3) for supplying false information (regulation 56). Authorities will be aware that criminal proceedings may be time consuming and may not necessarily result in the information being provided. Such action is likely to be taken in exceptional cases only, but the threat of criminal proceedings may increase the number of debtors who do respond.

4.4 Up to date information about those against whom liability orders are obtained is an important first step in identifying which method of recovery is appropriate in each particular case. Under the community charge it has emerged as best practice to include the request for information with the notification that a liability order has been granted. The debtor must return the information requested within 14 days. Authorities should ensure that the debtor is

fully aware of the consequences if he fails to comply and in particular that distress may then be the only option open to the authority.

4.5 The completion of this form should enable the authority to see whether or not attachment of earnings is a possibility (see chapter 6). Such action will be feasible only if a person is employed by a third party - the self employed are not subject to attachment of earnings orders. If the earnings level is very low the authority will want to consider, in the light of the individual's circumstances, whether an AEO would be effective or whether an alternative method of recovery would be more appropriate.

4.6 The person may not be in regular employment and may be receiving income support, in which case a deduction from income support might be the most appropriate course of action (see chapter 8). If the person is a councillor then attachment of allowances may be the best way to proceed (see chapter 7).

4.7 In cases where two or more people are jointly and severally liable, the billing authority will want to consider carefully which of the liable people to enforce against. Clearly enforcement against a non-working spouse, an income support recipient or a student is less likely to yield results than enforcement against a person with a regular income (see also chapter 12).

4.8 The debtor is not under a duty to advise an authority of a change in the information he has supplied under regulation 36 (although debtors subject to AEOs are required to notify certain changes in circumstances - see regulation 40). The authority can, however, send subsequent requests at any time while the debt is still outstanding.

## 5 - DISTRESS

5.1 Authorities should note that the Lord Chancellor's Department is carrying out a wide ranging review of bailiffs and parts of this chapter may eventually have to be amended in the light of the outcome of that review.

5.2 The provisions governing distress are set out in regulations 45 and 46, and Schedule 5 as amended by SI 1993/773. The procedures are similar to those for community charge.

5.3 An authority will have to decide which course of action to take following the issue of a liability order. The personal information form, see chapter 4 of this Note, will help to determine the most appropriate method of recovery to adopt. If this form is not returned by the debtor (ie the person against whom the liability order has been made) and he or she cannot be contacted, distress may be the only option open to the authority. Whilst distraint action can be an effective way of proceeding, *authorities should consider other methods* (such as attachment of earnings or deductions from income support where these are considered to be possible) in preference to distress as an initial enforcement option. Distress must be attempted before a committal order can be applied for; and where a liability order has been made against two or more joint taxpayers, distress must be attempted against all of those named on the liability order (regulation 54 (8)).

5.4 There are three forms of possession in relation to distress:

(a) walking possession is where the debtor signs an agreement which enables the goods distrained to stay on the premises without physical supervision until payment is made or the goods are eventually removed for sale (paragraph 2(2) of Schedule 5).

(b) close possession is where the bailiff stays on the premises with the goods until payment is made or the goods are removed for sale (paragraph 2(2) of Schedule 5). Community charge experience suggest that this is unlikely to be a practical option for distress for council tax.

(c) removal of goods with a view to sale.

Authorities should note that the Courts have held that it is not possible to carry out a 'constructive levy' from outside a dwelling by looking through a window and levying on goods that can be seen by posting a notice of distress through a letter box. There must be an entry into the premises. (*Evans v South Ribble DC* in 1991 Rating Appeals p.191).

5.5 The billing authority should ensure that the bailiff is kept fully informed about the up-to-date state of the debtor's account. Those levying distress on behalf of an authority must carry with them written authorisation from the authority which should be shown to the debtor on request. If distress is levied, a copy of regulation 45 and Schedule 5 setting out charges for the levy, together with a note of the amount in respect of which the levy is made must be handed to the debtor or left at the premises. A copy of any close or walking possession

agreement entered into must also be handed to the debtor (regulation 45(5)). The notice of seizure should list the goods which have been made the subject of a close or walking possession agreement.

### Goods which may not be taken

5.6 The following goods may not be seized (regulation 45(1A)):

- tools, books, vehicles and other items of equipment necessary to the debtor for use personally by him in his employment, business or vocation;
- clothing, bedding, furniture, household equipment and provisions necessary for satisfying the basic domestic needs of the debtor and his family.

These goods mirror those set out in the County Courts Act 1984, and as such should be familiar to bailiffs. Guidance provided by the Lord Chancellor's Department is at annex C.

### Codes of Practice

5.7 The regulations empower an authority to levy distress. Authorities will want to ensure that bailiffs acting on their behalf do so within the regulations. Bailiffs' contracts and codes of practice will have an important role in this. Authorities may also want to ensure that any bailiff is certificated. This certification is from a county court in relation to distress for rent. It is, however, a good guide to the status of the bailiff that such a certification has been given.

5.8 It is the responsibility of the billing authority to decide the points that should be included in a code of practice. Experience with community charge and rates enforcement suggests that bailiffs should:

- (a) recognise potential benefit cases and refer these back to the authority;
- (b) carry their authority with them when levying distress and show it to the debtor when required (regulation 45(5));
- (c) give debtors the opportunity to query the amount outstanding and refer the case back to the authority if the debtor provides evidence of payment;
- (d) explain fully the opportunities for making payments and emphasise that payment will stop further proceedings;
- (e) hand the debtor standard documentation about how to complain to the local authority, or how to make a formal appeal to a court;
- (f) ensure that all reasonable efforts are made to contact debtors personally;

- (g) levy within the hours specified by the authority;
- (h) attempt to levy within the period specified by the authority - bailiffs should not retain warrants for an unlimited period of time;
- (j) not attempt to levy without entry (the South Ribble case on "constructive" distress will be relevant here - see 5.4 above);
- (k) supply the defaulter with a clear statement of the goods legally protected from distress.

In addition, there should be clear guidelines for bailiffs on seeking further instructions before proceeding in certain cases. These might include situations in which there is:

- (i) evidence of mental handicap or confusion;
- (ii) long term sickness, serious illness or frailty;
- (iii) a deaf or blind person;
- (iv) recent bereavement;
- (v) severe financial difficulties and/or receipt of Income Support;
- (vi) communication difficulties where an interpreter or advocate would be helpful.

5.9 Once a bailiff has been instructed to levy an amount under a liability order, it may be that a voluntary arrangement to pay is made without the need for a levy. Such an arrangement may not be adhered to in all cases and it will be necessary to recommence enforcement action. This could be by instructing the bailiff to levy distress or by using one of the other enforcement options available. The authority will need to decide the point at which such action should be restarted.

#### Charges for distress

5.10 Regulation 45 empowers an authority to levy by distress an amount which is the aggregate of:

- (a) any outstanding sum which is or forms part of the amount in respect of which the liability order was made; and
- (b) a sum determined in accordance with Schedule 5.



An authority may not aggregate additional charges, such as the cost of sending letters to debtors or making voluntary arrangements to pay. Where a bailiff carries out these tasks on behalf of an authority it will be for the authority to reimburse the bailiff by agreement.

5.11 Where VAT is chargeable to the debtor, it is not additional to the amount prescribed in the Schedule (see Schedule 5 paragraph 3(4)). So that where the Schedule specifies a fixed sum, for example, £15 for a first visit, then the sum of £15 includes any VAT chargeable, and no additional sum should be added to the £15 charge. Where the schedule specifies 'reasonable costs and fees incurred', then the amount charged to the debtor may include any VAT chargeable.

5.12 If, before any goods are seized, the outstanding sum plus charges arising up to that point is paid or tendered to the authority, then the amount shall be accepted and the levy shall not proceed (regulation 45(3)). Equally, if after goods have been seized but no sale has taken place, the outstanding sum plus charges arising up to that point is paid to the authority, then the amount shall be accepted, the sale shall not proceed and the goods shall be available for collection by the debtor (regulation 45(4)). There will clearly need to be close communication between the authority and the bailiff.

5.13 Where a liability order has been made against two or more joint taxpayers, regulation 54(11) ensures that a charge does not arise in respect of each person named on the liability order. Where a charge for a levy arises against a jointly liable person, then no further fee for any subsequent levy or visit with a view to a levy in respect of that amount may be charged against that person or any other jointly liable person. The regulation also provides that a charge for a first or second visit to one of the jointly liable persons shall be treated as a visit to all the others, and so separate charges for visits to other jointly liable people will not arise.

5.14 Previous experience of distress indicates that the occasions on which the sale of goods needs to take place are very rare. There are no prescribed requirements relating to the sale, but as a matter of best practice, authorities should ensure that they obtain the best price they can for the goods: therefore sale by auction is the preferred disposal method as this provides the best defence against a charge that the best price was not obtained. The sale should not normally take place within 5 days after the removal of goods. This gives the debtor a reasonable amount of time to raise the money and halt the sale. If a sale takes place, any balance remaining once the outstanding sum and costs have been paid should be returned to the debtor.

#### Appeals in connection with distress

5.15 A distress is not unlawful if a defect is found in the liability order (regulation 45(7)). However regulation 46 gives debtors who are aggrieved by distress the right of appeal to a magistrates' court. It is the authority which would be summonsed to court to answer the complaint of the debtor. If the court is satisfied that a levy was not in accordance with the Regulations it may order any goods taken to be returned and it may also award special damages for any goods distrained and sold. If the court is satisfied that the levy was irregular



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it may make an order requiring the authority to desist from levying in the manner in which the court found to be irregular.

## SECTION 6 - ATTACHMENT OF EARNINGS ORDERS

6.1 A billing authority which has obtained a liability order against a person ("the debtor") has the power to make an attachment of earnings order (AEO) - regulations 32 and 37 to 43. Council tax orders operate in much the same way as those for community charge.

6.2 Modern debt recovery practice is to put repayment onto a systematic footing by making arrangements for manageable instalments over a period. It is likely that many people who have fallen into arrears with their council tax would welcome the opportunity to pay off the debt in this way. AEOs are a practical and in many cases preferable alternative to distress and sale of goods. If practicable authorities should offer debtors the option of an AEO as an alternative to distress, before approaching the employer.

6.3 When considering whether to make an AEO the billing authority will wish to satisfy itself whether the debtor is in employment; whether he or she is already subject to a statutory deduction from earnings (ie a community charge AEO, an AEO under the Attachment of Earnings Act 1971, or a deduction under the Child Support Act 1991); and whether his or her earnings are sufficient for an order to be an effective method of recovery. If the debtor's earnings are substantial this remedy would be quick and cost-effective.

6.4 Many employers will be unfamiliar with AEOs and may be concerned about their method of operation, especially as failure to comply with the order could leave the employer open to criminal proceedings (see para 6.17). The DOE and the WO have produced some guidance for employers setting out their duties under the regulations, giving more information in question and answer form, and enclosing a consolidated version of the relevant regulations. This guidance is included at Annex D. The Departments strongly recommend that authorities send this information with every order issued to help to remove any possible confusion. The guidance contains a DoE helpline number for employers to ring with queries. In addition to each amount deducted under the AEO the employer will also be able to deduct a further £1 towards his administration costs.

6.5 Under regulation 36, the debtor has a duty to supply information requested by a billing authority about his or her employment once the authority has obtained a liability order and failure to do so is a criminal offence (see Chapter 4).

6.6 The form of the AEO for council tax is prescribed in Schedule 3. It must be accompanied by a copy of regulations 32 and 38 to 42, and Schedule 4. For Welsh authorities the AEO is prescribed bilingually. It must give the debtor's name and address, and is addressed to 'any person who has in his employment the person named'. It does not have to be addressed to an employer by name. The order specifies the outstanding sum; requires the employer to make deductions in accordance with regulation 38 and Schedule 4; and states that the deductions must be paid to the billing authority by the 18th of the month following the month in which the deduction was made. The order must be signed by the proper officer of the authority, but a facsimile signature will be acceptable.

6.7 Once an AEO has been made, it will remain in force until the whole amount to which it relates has been paid or it is discharged by the issuing authority (regulation 37(2)(b)).

6.8 The earnings which may be attached are defined in regulation 32(1). They are sums payable to a person by way of wages, salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary or payable under a contract of service) or any sums paid by way of statutory sick pay. Certain payments are not to be treated as 'earnings'. The deduction is made from net earnings (also defined in regulation 32(1)). This is the amount remaining once the employer has netted off income tax, national insurance contributions, superannuation payments, and any deduction already being made for an earlier community charge AEO. The employer will calculate the council tax deduction by reference to the tables in Schedule 4, which specify varying percentage deductions depending on the level of net earnings. The employer should alter the deductions if the employee's net earnings change so as to make another deduction rate applicable.

#### **Payment periods (regulation 38)**

6.9 The deduction to be made will depend on the payment period. Where payments are regular, deductions should be relatively straightforward, but this will not always be the case. The regulations require the following deductions to be made:

##### **A. Payments at regular intervals**

- |   |  |
|---|--|
| (i) weekly paid                                     | table A, column 2  |
| (ii) monthly paid                                   | table B, column 2  |
| (iii) regular intervals of a whole number of weeks: | divide net earnings by whole number of weeks, calculate weekly deduction using table A, column 2, and multiply result by number of weeks in period                   |
| (iv) regular intervals of a whole number of months: | divide net earnings by whole number of months, calculate monthly deduction using table B, column 2, and multiply result by number of months in the period            |
| (v) other regular payments:                         | divide net earnings by the number of days since the last payment, calculate daily deduction using table C, column 2, and multiply result by number of days in period |

##### **B. Additional regular payments - bonuses, commission etc**

Paragraph A will apply as appropriate to the most frequent payments. As regards the less frequent payments, deduct in addition 20%. (regulation 38(7)(a)).

**C. Irregular payments**

Use daily deduction rate as described in paragraph A(v) above (regulation 38(8)).

**D. Irregular and regular payments payable on the same pay day**

Aggregate the payments and treat as earnings payable at the regular interval (regulation 38(9)).

**E. Irregular and regular payments payable on different days.**

Take the deductions as at paragraph A above from the regular pay each regular pay day, and deduct in addition 20% of the net pay on the pay day on which the irregular payments are made (regulation 38(10)).

6.10 Deductions from advances such as holiday pay should continue to be made at standard rate for the period covered by the salary and the advance. Holiday pay should not move the debtor up the deduction scale. (See Annex D for illustrative example.)

6.11 It is open to a charging authority to seek to come to an arrangement with the debtor if it does not wish to deduct the full amount set out in the table. Many employers are, however, wary of these arrangements as they are not backed by the statutory provisions. Such an agreement must be entered into by all three parties and the authority cannot insist that the employer makes deductions in line with this new agreement.

**Priority between AEOs (regulation 42)**

6.12 Regulation 42 sets out the priority to be applied when there is more than one deduction to be made. If an employer has to deal with one or more council tax AEOs and one or more orders made under the Attachment of Earnings Act 1971 or under the Child Support Act 1991, then he shall deal with the orders according to the respective dates on which they were made, applying later orders to the residue of the debtor's net earnings after deductions have been made to comply with the earlier orders (regulation 42(2)). However, an order made wholly or in part in respect of the payment of a judgment debt or payments under an administration order shall always, notwithstanding their date, be dealt with after other orders (regulation 42(3)).

6.13 An employer may have to deal with a council tax order while a community charge AEO is in force. In this case an employer should comply with the council tax AEO, applying the deduction to the residue of earnings after the community charge AEO, and any other deductions with a higher priority, have been dealt with (regulation 32 - definition of net earnings, as amended by SI 1993/773, and regulation 42). Full details of all priorities are given in Annex E.

**Duties of employer (regulation 39)**

6.14 When issuing the pay statement the employer must notify the employee in writing of the total amount deducted under the order to date, and the total amount remaining to be deducted (regulation 39(2) and (3)). The employer is also under a duty to notify the relevant authority within 14 days if the debtor is not in his employment or ceases to be in his employment (regulation 39(4)).

6.15 An employer must also notify the authority if someone enters his employment and the employer knows that person is subject to a council tax AEO (regulation 39(6)). In this case he must tell the billing authority either within 14 days of the date that the debtor entered his employment, or, if he does not find out about the AEO until later, within 14 days of the date on which he first knows an AEO is in force and which authority is concerned (regulation 39(7)).

**Duties of debtor (regulation 40)**

6.16 The debtor must notify the billing authority in writing within 14 days if he leaves an employment, and when he becomes employed once again (whether or not by the same employer). The latter notification must include details of his new earnings and any expected deductions; the name and address of the employer and any work identity or payroll number.

**Penalties (regulation 56)**

6.17 Failure on the part of either the debtor or the employer to comply with these duties is a criminal offence. The offences and related maximum fines are:

**Offences relating to an employer:**

(a) failure to comply with the order unless he can prove all reasonable steps were taken to comply. £1000 (level 3)

(b) failure without reasonable excuse to give all required notifications relating to the AEO. £500 (level 2)

(c) in giving notification the employer makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular. £1000 (level 3)

**Offences relating to the debtor:**

- (a) failure, without reasonable excuse, to make required notification £500 (level 2)
- (b) making a statement which he knows to be false in a material particular, or recklessly making a statement which is false in a material particular. £1000 (level 3)

6.17 Crown employees (eg civil servants) can be made subject to AEOs. For these purposes, the chief officer of the department, office etc in which the debtor is employed is to be treated as the employer and the earnings paid by the Crown to be treated as paid by that chief officer. If it is not clear what department etc is concerned or who is the chief officer, the Minister for the Civil Service has the power to determine the question (regulation 43).

6.18 AEOs cannot be made on the pay of armed service personnel. However service personnel may be liable for the council tax if they have a sole or main residence which may be in addition to the service accommodation provided for them. The Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 contain similar provisions which allow certain officers authorised by the Defence Council to make compulsory deductions from pay. Deductions need not be made at the same rate as set out in the 1992 Regulations. For Army officers applications should be made to the Director General, Personal Services (Army), PS4d(A), Room 1027, Empress State Building, Lillie Road, London SW6 1TR. For other Army ranks applications should be made to the Regimental Paymaster or Service unit. For Navy personnel applications should be made to DNPP(Accounts 2B1), HMS CENTURION, Grange Road, Gosport, Hampshire, PO13 9XA. For RAF personnel applications should be made to AIS(22C)(RAF), OSM Building, RAF Innsworth, Gloucester, GL3 1EZ.



## SECTION 7 - ATTACHMENT OF ALLOWANCES ORDERS

7.1 This enforcement option can be used where the debtor is an elected member of a billing or major precepting authority, with the exception of members of the Common Council of the City of London or the Receiver for the Metropolitan Police District. A major precepting authority for this purpose is a county council, a metropolitan county police authority, the Northumbria Police Authority, a metropolitan county fire and civil defence authority and the London Fire and Civil Defence Authority (regulation 44(1)). Attachment of allowances does not apply to the allowances of Members of Parliament in their capacity as MPs.

7.2 An authority in whose favour a liability order has been made can make an order directed to the authority of which the defaulter is an elected member. The order requires the recipient to deduct 40% from that member's attachable allowances, up to the amount of the outstanding debt (regulation 44(2) to (6)). The deduction must be made whenever the allowance is paid. This applies equally to those allowances which are paid in one annual amount ie at the beginning of the year.

7.3 Deductions must be made from basic, special responsibility and attendance allowances (paid in accordance with a scheme governed by regulations made under section 18 of the Local Government and Housing Act 1989), and conference attendance allowance (section 175 of the Local Government Act 1972) (regulation 44(7)(b)). (Deductions may not be made from travel and subsistence allowances.)

7.4 Regulation 44(7) applies some of the powers and duties of employers making deductions under attachment of earnings orders to authorities making deductions under attachment of allowances orders. The authority making the deduction can deduct an additional £1 to cover administrative costs. The authority making the deduction must notify the debtor in writing of the total amount deducted under the order to date, and the total amount remaining to be deducted (regulation 39(1) to (3) as applied by regulation 44(7)). That authority is also under a duty to notify the relevant authority within 14 days if the debtor is not an elected member or ceases to be an elected member (regulation 39(5) as so applied).

7.5 Authorities will also want to bear in mind the restrictions on voting by defaulting members set out in section 106 of the Local Government Finance Act 1992.

## SECTION 8 - DEDUCTIONS FROM INCOME SUPPORT

8.1 Where a liability order is made against a person who is receiving income support, the charging authority may apply to the local Benefits Agency office making the income support payments, for deductions to be made from that benefit. The regulations governing deductions from income support are The Council Tax (Deductions from Income Support) Regulations 1993 (SI 1993/494), and the references below are to those regulations. Income support recipients will normally receive 100% council tax benefit (unless there is a non-dependant deduction, or the recipient is on the benefit taper) and so deductions from income support will usually be to repay a debt from a period when the taxpayer was liable for council tax but not entitled to income support.

8.2 The weekly deduction that can be made is 5% of the personal allowance for a single claimant aged not less than 25 (ie £2.20 from 1 April 1993) (regulation 7). This is the same as the standard deduction applying in the case of other household debts such as rent, electricity, gas and water. A deduction can only be made if an adjudication officer determines that there is sufficient entitlement to income support (regulation 5). There will be sufficient 'headroom' if, after making the deduction(s) there remains 10 pence or more income support in payment. In addition, the aggregate of deductions for council tax and other debts must not exceed 3 x 5% of the personal allowance of a single claimant aged not less than 25 (ie £6.60 from 1 April 1993). If there is not sufficient entitlement the priority to be applied is that set out in the Social Security (Claims and Payments) Regulations 1987, as amended by the Deductions from Income Support (Miscellaneous Amendment) Regulations 1993 (SI 1993/495). The Regulations specify the following priorities:

- i. direct payment of mortgage interest
- ii. other housing costs
- iii. service charges for fuel and rent arrears
- iv. fuel
- v. water
- vi. council tax or community charge deduction
- vii. fines
- viii. payments in place of child support maintenance

8.3 Billing authorities should make an application to the Benefits Agency office giving the following information (regulation 4):

- the name and address of the debtor
- the name and address of the authority making the application
- the name and place of the court which made the liability order
- the date on which the liability order was made
- the amount specified in the liability order
- the total sum which the authority wishes to have deducted from income support

8.4 Deductions will be made only where the income support claimant is named in the liability order. A copy of the liability order will normally not need to be sent with the application. The fixed amount will then be deducted every week until the specified sum has been recovered or until deductions cease, for example if the claimant's entitlement to income support ceases or higher priority deductions have to be introduced. In these circumstances the Benefits Agency local office will inform the authority of the change. The authority will be expected to inform the Benefits Agency office if the deductions are no longer required, for example if the debt is repaid in some other way. The Benefits Agency office will pass the money recovered to the authority at quarterly intervals.

8.5 A deduction for a council tax debt can only be made if no other deduction for either council tax or community charge is already being made (regulation 8(1)). If a request for a deduction is made before the existing deduction has ceased, the Benefits Agency will note the application and advise the billing authority that it is holding it in abeyance. Once the original deduction has ceased, the Benefits Agency local office will consider the next application in the queue for action in the normal way.

8.6 Authorities should note that once income support deductions for council tax are under way, then authorities may not take steps under the Council Tax (Administration and Enforcement) Regulations 1992 to recover amounts from that person in respect of any other council tax liability order (see chapter 11 for further details). This does not prevent an authority taking steps to recover community charge debts outstanding.

## SECTION 9 - INSOLVENCY

9.1 Regulation 49 provides that the amount due under a liability order shall be a debt for the purpose of sections of the Insolvency Act 1986 which are relevant to creditors' petitions and the winding up of companies.

9.2 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 section 267 of the Insolvency Act 1986 (regulation 49(1)). An individual may present his own petition for a bankruptcy order or it may be presented by one or more of his creditors to the local County Court. The current minimum limit for commencing bankruptcy action by a creditor is £750. There is no minimum limit for a debtor's petition.

9.3 If other remedies fail, authorities may want to consider bankruptcy proceedings in selected cases. The proceedings are however fairly complex. Before a petition can be made, a creditor must serve on the debtor a statutory demand in the form prescribed in the Insolvency Rules 1986 (SI no 1925). If the debt remains unpaid after three weeks, or the creditor has reasonable grounds for refusing an offer to secure or compound the debt, then the creditor may present a petition for bankruptcy to the County Court.

9.4 Once an order has been granted by the Court, a trustee (a qualified insolvency practitioner) will be appointed to administer the bankruptcy. The trustee will realise and distribute the bankrupt's estate. Council tax is not a preferential debt and can only be paid after any expenses of the bankruptcy and the payment of preferential debts. Once an order has been made, a creditor for a provable debt may not commence any action or other legal proceedings without the leave of the court.

9.5 The debts that are provable are those payable to the date of the bankruptcy order. This means that if a reminder notice has not been issued, only the outstanding instalments when the order is made can be payable. However if a reminder notice has been issued and the full year's tax has become payable then all the outstanding amount can be collected.

9.6 Ongoing liability will continue to fall on the liable resident(s), including the bankrupt person (who may qualify for income support). However, if the dwelling is empty, it will be exempt while a trustee has been appointed in relation to it (see SI 1993/150).



## SECTION 10 - CHARGING ORDERS

10.1 Where a liability order has been obtained and the council tax debt outstanding in respect of that liability order is at least £1000, regulation 50 enables an authority to apply for an order (a 'charging order') from the county court placing a charge upon the debtor's interest in the dwelling in respect of which he was liable to pay council tax at the time of the liability order application (the 'relevant dwelling'). Charging orders were available for community charge enforcement but only in respect of the collective community charge. Charging order procedures are relatively complex and it would be advisable for authorities to use solicitors if they are considering this option. The method of application (for the time being) is by way of originating application under Order 3 rule 4 (it is intended that the more usual procedure under Order 31 rule 1 should apply, but this requires an amendment to Order 31 which will be made at the earliest opportunity).

10.2 Enforcing a charging order by means of a forced sale is a separate step. Some of the issues that need to be considered are set out in 10.4 to 10.5 below. In most circumstances a charging order should be regarded as a long term method of enforcement (placing a charge on the debtor's home will not guarantee immediate payment). The debt will not usually be paid until the property is sold (whether voluntarily or by order of the court - see below) and then only if there is sufficient equity remaining once the costs of the sale have been paid and any prior charges, such as a mortgage, have been redeemed. In the meantime, no other recovery method may be used in respect of that debt.

10.3 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. The court also has the power to make a charging order subject to conditions, including the time when the charge is to become enforceable (regulation 51).

10.4 Once a charging order has been obtained, an authority can seek to enforce the order by sale of the property. This is a separate step commenced by application to the county court and the procedure is set out in Order 31, rule 4 of the County Court rules 1981.

10.5 The circumstances in which the sale of a dwelling would be allowed by the courts are limited. An application to enforce a charging order by sale can only be made where the debtor alone owns the beneficial interest in the property charged. This should not present a difficulty if the 'relevant dwelling' is jointly owned and the joint beneficial owners are joint taxpayers against whom a liability order has been made. However, it could preclude an order if one of the joint owners is not liable for the tax, for example, is not resident in the dwelling. The court will also seek to balance the interests of the creditor with those of the debtor's family and will also almost certainly take into account the size of the debt outstanding in relation to the value of the property to be sold.

10.6 There are likely to be few cases where an authority would consider it appropriate to seek a charging order. In the Department's view, other forms of enforcement should be

considered first, and charging orders should only be considered where other forms of enforcement have tried and failed or where the authority has good reason to believe that other forms of enforcement would be unlikely to succeed. Charging orders will only be an option in practice for those higher banded dwellings where the tax exceeds £1000, and at least that amount remains unpaid.



## SECTION 11 - RELATIONSHIPS BETWEEN ENFORCEMENT REMEDIES

11.1 Following the issue of a liability order, an authority may take the following steps against a debtor:

- attachment of earnings
- attachment of allowances
- income support deductions
- distress
- charging order
- bankruptcy (of an individual)
- winding up (of a company)
- committal (but only after distress has been unsuccessful)

11.2 In recovering an amount under a liability order, only one of the above recovery methods can be pursued at any one time (regulation 52). This means, for example, that if an amount of, say, £200 is being recovered under a liability order by means of attachment of earnings, then the authority cannot levy distress to recover that amount (unless it first withdraws the AEO). Or if bailiffs have been instructed to recover the amount through distress then there can be no deductions from income support.

11.3 If an income support recipient is paying off a council tax debt by means of deductions from income support, then steps may not be taken by way of attachment of allowances, AEOs, distress, commitment, bankruptcy, winding up or charging to recover amounts due under that or any other council tax liability order (regulation 52(2)(b)) while those deductions are being made. This does not prevent steps being taken to recover unpaid community charges by these methods, although income support deductions can only be made in respect of either council tax or community charge, and not both at the same time (see chapter 8).

11.4 Although they cannot be used simultaneously in respect of the same debt, any of the recovery methods can be used more than once for the same debt. So, for example, it will be possible for a billing authority to begin by using attachment of earnings. If the debtor then ceases to be employed before the full amount of the debt has been paid the authority can then seek income support deductions. If the person becomes employed again the authority can revert to attachment of earnings by the new employer, and so on.

## SECTION 12 - JOINT & SEVERAL LIABILITY

12.1 The rules governing joint and several liability for the council tax differ from those that operate under the community charge. Those who are married or are living together as man and wife are jointly and severally liable for the whole of the council tax on the relevant property. In addition those people who are on the same rung in the liability hierarchy are also jointly and severally liable, for example, joint tenants. (Practice Note No 2 gives the details.)

12.2 Before applying for a liability order in joint names an authority should ensure that those names are shown on the demand notice, and the reminder and any final notices.

12.3 If it wishes to recover an amount from a person or persons not named on the original demand notice, an authority will need to serve a 'joint taxpayers notice' (JTN) on that person or persons under regulation 28(1). If the full amount has become due under a reminder notice, and a JTN is issued, then the JTN may either demand the full amount due within 14 days (regulation 28(6)(a)), or it may specify instalments if the authority prefers (regulation 28(6)(b)). If an instalment specified in a JTN is missed, it is treated as an instalment missed under a Part I or Part II scheme and a reminder notice must be sent (regulation 28A(2)). If payment of the full amount is not made by the due date, then, subject to any need to serve a final notice, an application may be made to the magistrates' court for a liability order.

12.4 A summons may be addressed to two or more joint taxpayers in joint names (regulation 54(3A)). However, authorities are advised, in seeking to avoid disputes over whether a summons has been served on a particular individual, to send a copy of the summons to each of the persons named on it.

12.5 Once a liability order has been granted against two or more jointly and severally liable people ('joint taxpayers') then, at any one time, only one of the various recovery options mentioned in regulation 54(5) may be applied to recover that sum. So, if one of the joint taxpayers is made the subject of an attachment of earnings order, the authority could not distrain the goods of one of the other joint taxpayers (regulation 54(6)).

12.6 Where distress has been made against all the joint taxpayers named on the liability order, and, in relation to each of them, no or insufficient goods could be found, the authority may make an application for a warrant of commitment against one of them, or for different warrants against more than one of them (regulation 54(7) and (8)). If one joint taxpayer is committed, or a term fixed in respect of that person, then the authority cannot take steps, or further steps, by way of income support deductions, attachment, distress, bankruptcy or charging against any of the others (regulation 54(9) and (9A)).

12.7 Joint and several liability applies to married and unmarried heterosexual couples when they are resident in the same dwelling. In most cases the couple will still be living together when enforcement action is taken. There will be cases however where recovery action has

to be taken in respect of a period when the couple were living together, even though they may now no longer do so.

12.8 Billing authorities will want to exercise care in these cases. The husband (for example) may leave the matrimonial home leaving arrears of council tax. Although the wife may then qualify for income support, and thus face a nil or reduced liability from the date of the separation, it may be difficult for her to meet the arrears relating to the previous period of joint liability. If the husband can be traced, then in these circumstances the authority should seek to recover these arrears from him. In these cases if the spouse cannot be traced, the authority will need to consider whether to recover the arrears from the remaining spouse - taking into account write off policy (see chapter 17).

12.9 There will of course be cases in which it is appropriate to recover the arrears from the spouse or partner remaining in the family home, for example if he or she has greater resources than the partner who has left.

## **SECTION 13 - COSTS**

13.1 The liability order will be made for the sum payable and the costs reasonably incurred by the authority in obtaining the order (regulation 34(7)). Whilst it is likely that authorities will have discussed costs with the Clerk to the Justices, the court may wish to be satisfied that the amount claimed by way of costs is no more than that reasonably incurred by the authority.

13.2 If, after a summons is issued, but before the application for the liability order is heard, the amount outstanding plus the costs incurred up to the time of payment is paid or tendered, then the authority must accept the amount and not proceed with the liability order (regulation 34(5)). It is good practice for authorities to advise taxpayers of this when sending the summons.

13.3 If, following the application for a liability order, the amount outstanding has been paid without the costs element, then a liability order can still be made for the costs alone if the authority so requests (regulation 34(8)).

## **SECTION 14 - TERMINATION OF PROCEEDINGS**

14.1 Regulations provide that at any point in the proceedings all recovery action will be terminated if the outstanding amount is paid (regulations 37(2), 44(5), 45(3)). A person who has been committed to prison will be released if the amount outstanding is paid (regulation 47(6)), and part-payment will reduce the term of imprisonment in proportion to the amount paid (regulation 47(7) to (8)).



## SECTION 15 - COMMITMENT TO PRISON

15.1 Regulation 47(1) provides that billing authorities may apply to the magistrates' court for a warrant committing a debtor to prison. Regulation 54(4) enables such an application to be made against joint taxpayers or an application for different warrants against more than one joint taxpayer (see 12.6 above). Authorities may apply for a warrant only if they have first attempted to levy distress and have received a report from the person attempting to levy that he was unable (for whatever reason) to find any or sufficient goods on which to levy the amount. This will include cases where the bailiffs have been unable to obtain entry. An authority which has not attempted any remedy other than distress should satisfy itself, by looking again at any information they hold on the debtor, that none of the other available remedies would prove more effective. Recent high court judgments have suggested that magistrates should only issue a committal warrant if they are satisfied that all appropriate avenues of enforcement have been considered - *Regina v Newcastle upon Lyme Justices ex parte Massey* (CO 1268/92). The debtor or joint taxpayer concerned must be over 18 years of age.

15.2 The court has to hold a means enquiry before issuing a warrant of commitment and a warrant will only be issued or postponed if the court is satisfied that failure to pay is due to a person's wilful refusal or culpable neglect (regulation 47(3)(a)). The maximum period of imprisonment is three months. The court may fix a term of imprisonment and postpone the issue of a warrant on conditions (regulation 47(3)(b)). These conditions will normally relate to payment. If payment breaks down, the authority can ask the court to issue the committal warrant. There must be another hearing, and the debtor must be advised of the date. If the debtor fails to attend court when the authority requests issue of the postponed warrant, the court can issue the postponed warrant in the debtor's absence (*R v Faversham and Sittingbourne Magistrates ex parte Ursell*). The court has the power to remit all or part of the amount due where no warrant is issued or term of imprisonment fixed (regulation 48(2)).

15.3 The court may, if necessary, issue an arrest warrant to enable it to carry out an inquiry into a person's conduct and means (regulation 48(5) and (6)). It is the duty of any person to whom a court directs a warrant to execute that warrant. If the warrant is directed to the police it is, however, for the Chief Officer of the Force concerned to decide what priority the warrant should receive in the light of other demands on the available resources. The decision to whom a council tax arrest or committal warrant should be directed by the magistrates court concerned must be for each court to decide in the light of the relevant circumstances.

15.4 The Home Office view is that in common with most other arrest or committal warrants for non-payment of fines there is no need for direct police involvement with a normal warrant. These warrants are commonly executed by those seeking the warrant or by their agents. A number of authorities use bailiffs for this work. The police will obviously need to be in attendance if a breach of the peace is anticipated.

15.5 The best approach is for each authority to discuss the handling of these matters locally with the police and court contacts, in particular to establish circumstances in which the police should be involved - for instances in cases where warrants have been issued without bail and secure premises need to be found or where there is likely to be a breach of the peace.

## **SECTION 16 - ENFORCEMENT FOR AMOUNTS COVERING MORE THAN ONE FINANCIAL YEAR**

16.1 Unless regulation 33(3) applies, an authority cannot apply for a liability order until it has taken the preliminary steps mentioned in regulation 33(1). This ensures that a taxpayer is reminded that he has failed to make a payment which is due under a relevant demand notice (see chapter 2 above).

16.2 Regulation 33 can be read as applying in relation to the recovery of more than one sum which has not been paid. In principle, an authority may, in accordance with regulation 34, apply for a liability order in respect of a sum which represents both an amount which has fallen due under regulation 23 and the amount stated in a notice served under regulation 33. If the application is made in respect of the aggregate amount, a summons will issue for that amount and, assuming that the court is satisfied, a liability order will be made in respect of the aggregate amount with costs.

16.3 Enforcement action for the community charge and the council tax should be undertaken separately.

## **SECTION 17 - WRITE-OFFS AND DEATHS**

17.1 There is no specific provision in the legislation for authorities to reduce or remit an amount of council tax on any grounds (although regulation 48(2) empowers a magistrates' court to remit all or part of an outstanding amount if a warrant of commitment is not issued). Authorities should, however, have provisions in their Standing Orders or Financial Regulations to enable amounts to be written off if they are irrecoverable or not economical to pursue. This may be dealt with by the Finance Committee, or they may delegate the decision to write off amounts up to a specified ceiling to the Chief Finance Officer or Chief Executive (this may be set out in the Standing Orders or Financial Regulations).

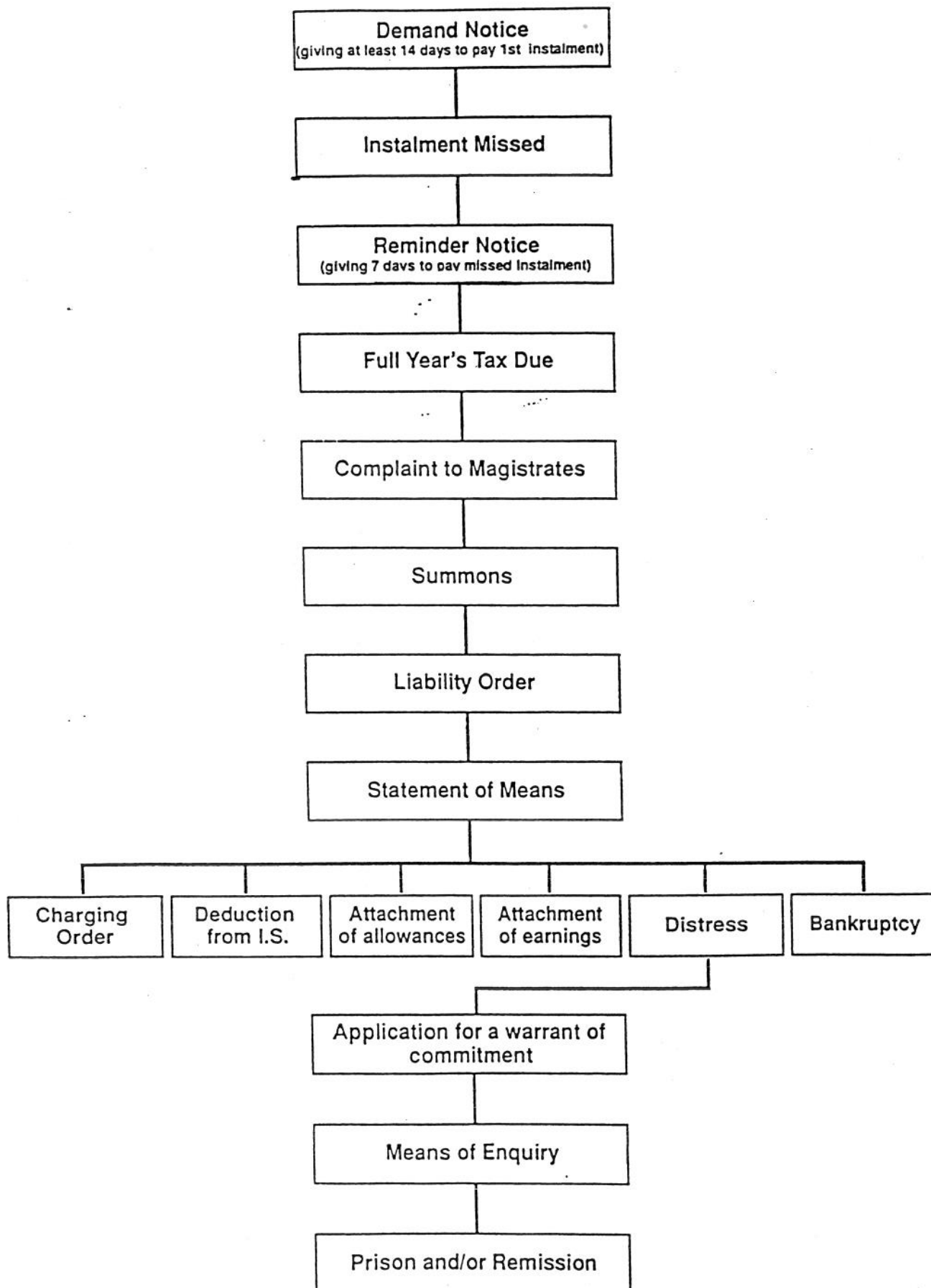
17.2 In each case, the following should be recorded for audit purposes: the name of the liable person; the address of the dwelling; the amount to be written off; the reason for the debt arising; the recovery action taken; and the reason why the debt has proved to be irrecoverable.

17.3 If a person dies leaving a small balance outstanding, it may be appropriate to consider writing-off such a debt. The authority will want to bear in mind the burden this places on other taxpayers. A death may also mean that a single person discount is applicable and an adjustment is necessary. In either case, a sympathetic letter should be sent with all notices relating to death, whether cessation of liability, or discount entitlement.

17.4 Liability for an unoccupied dwelling forming part of the estate of a deceased person would fall on the administrator or executor, in his or her capacity as such. But such dwellings are exempt if no grant of probate or letters of administration have been made, and for six months following the grant of probate or making of letters of administration.

17.5 If a person dies leaving debts which are not written off, his executor or administrator is liable and may pay the sum due from the assets and effects of the deceased person. The executor is not liable until a notice has been served on him requiring payment (regulation 58(3)). Such a debt is enforceable in the administration of the deceased's estate and no liability order need be applied for.

# Council Tax Billing and Enforcement - The Statutory Timetable (action can be stopped at any time if amount is paid in full)





## **COUNCIL TAX ATTACHMENT OF EARNINGS ORDERS QUESTIONS AND ANSWERS**

### **1. WHAT IS A COUNCIL TAX ATTACHMENT OF EARNINGS ORDER?**

Where there is non-payment of council tax the local authority can apply to a magistrates' court for a liability order against the defaulter. If a court grants a liability order an authority has a number of options for recovering the outstanding amount. One of these is an attachment of earnings order. The order itself is in a form prescribed in regulations (copy at Annex C). It contains the name of the debtor, his payroll number (if known) and the local authority reference. It confirms that the named person is liable to a council tax and specifies the amount of charge that has still to be paid. Deductions in line with the order should be made as soon as possible after the order has been received.

### **2. WHAT DUTIES DOES THIS ORDER PLACE ON AN EMPLOYER?**

This order is a legal document and places certain duties on an employer, so it is important that you know the governing principles. Details of your statutory duties are set out at paragraph 13 below.

If the person who is the subject of the order is in your employment you should make deductions from his or her earnings as explained below. These deductions should begin as soon as possible after the receipt of the order. The amount deducted should then be forwarded to the authority by the 18th day of the month following the month in which the deduction was made.

As well as the amount to be deducted and paid to the authority you may also deduct £1 per transaction from your employee towards your administrative costs. With each deduction made a written statement of the cumulative amount deducted, including your administrative costs, should be supplied to your employee. This can normally be done when a pay statement is issued, but, if this is not convenient, may be done as soon as possible after the deduction is made.

If the employee has moved on or has never been in your employment you should inform the issuing authority within 14 days and your liability to do anything under the order will cease.

### **3. HOW LONG DOES THIS ORDER LAST?**

Deductions should be made each pay day until the total amount specified on the order has been paid over to the authority; until the person has left your employment, or until the order is discharged by the authority. When the employee leaves your employment and you have notified the local authority nothing further is required of you. The local authority will have to serve a copy of the order on the new employer which will state the amount remaining to be deducted.

#### **4. HOW MUCH SHOULD BE DEDUCTED?**

The amount to be deducted is dependent on the total net earnings received by the employee. For the purposes of these orders net earnings means earnings after the deduction of income tax, primary Class 1 national insurance contributions, superannuation contributions and any deduction with a higher priority. Annex C includes a full statutory definition of 'earnings' in regulation 32 and also includes tables which specify the percentage to be deducted according to the amount of net earnings and the frequency of pay period. If an employee receives holiday pay, deductions should be made as detailed below.

#### **5. WHAT ARE EARNINGS?**

Earnings are defined as:

- sums payable by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary payable under a contract of service).

Earnings do not include:

- sums payable by public departments of the Government of Northern Ireland or of a territory outside the United Kingdom;
- pay and allowances of members of the armed forces;
- benefit or allowances payable under any enactment relating to social security (this includes maternity pay);
- allowances payable in respect of disablement or disability; and
- wages payable to a person as a seaman, other than as a seaman of a fishing boat.

#### **6. WHAT ARE NET EARNINGS?**

Net earnings are defined in regulation 32 as the amount payable after deduction of income tax, national insurance, superannuation payments and amounts deducted under any CCAEO made before the CTAEO is made.

#### **7. ARE YOUTH TRAINING ALLOWANCES EARNINGS ?**

No.

## 8. HOW DO I USE THESE TABLES?

Column 1 of each table details pay bands which correspond to net earnings. Column 2 details the percentage of earnings to be deducted. Locate the earnings band in column 1 and then read across to column 2 to find the percentage and then calculate the amount to be deducted.

## 9. HOW DO I KNOW WHICH TABLE TO USE?

Since the majority of people are paid at regular intervals this should normally be straightforward but there will be cases of irregular payment. The examples listed below may help you to decide which deductions should be made.

### Weekly

If the person is paid weekly then deductions should be made in line with Table A.

### Monthly

If the person is paid monthly then deductions should be made in line with Table B.

### Other weekly intervals

If the person is paid at intervals of a whole number of weeks then the net earnings should be divided by the number of weeks in the pay period. Table A should then be used to work out the appropriate weekly deduction and the resulting amount multiplied by the number of weeks in the period.

### More than one month

If a person is paid at intervals of a whole number of months the net earnings should be divided by the number of months in the pay period. Table B should then be used to work out the appropriate monthly deduction and the resulting amount multiplied by the number of months in the period.

### Regular intervals - not whole weeks or months

If a person is paid at regular intervals, but not at intervals of a whole number of weeks or months then net earnings should be divided by the number of days. Table C should then be used to work out the appropriate daily rate, which should then be multiplied by the number of days in the period.

### Two or more series of payments at regular intervals

If the person is paid in two or more series and payments are made in regular intervals, then select the series with the shortest interval between payments and use the tables as described above. In addition, deduct 20% of the net earnings payable in every other series. If the person is paid in two or more series and all the intervals are the same length, then select one of these, make deductions as described above, and in addition deduct 20% of the

net earnings payable in every other series.

### Example

An employee's net pay is £100 weekly and £500 monthly.

A deduction of £7 is made for the weekly pay and £100 for the monthly pay (ie 20% of £500).

### Irregular intervals

If the person is paid at irregular intervals the net earnings should be divided by the number of days since the last payment and Table C should be used to work out the appropriate daily deductions, which in turn should be multiplied by the number of days in the period.

### Example

An employee's net pay:

- (a) £75 (from 1 April to 9 April - 9 days)
- (b) £90 (from 10 April to 19 April - 10 days)
- (c) £110 (from 20 April to 30 April - 11 days)

The deductions to be made would be:

- (a)  $75/9 = £8.33$ . Daily deduction =  $£8.33 \times 3\%$  ie £0.25. Deduction to be made for period =  $9 \times 0.25 = £2.25$ .
- (b)  $90/10 = £9$ . Daily deduction =  $£9 \times 3\%$  ie £0.27. Deduction to be made for period =  $10 \times 0.27 = £2.70$ .
- (c)  $110/11 = £10$ . Daily deduction =  $£10 \times 5\%$  ie £0.50. Deduction to be made for period =  $11 \times 0.5 = £5.50$

### Regular and irregular and intervals

If on the same pay day the person is to be paid regular period earnings and irregular period earnings these amounts should be added together and treated as earnings payable at the regular interval, the appropriate table being used.

### Example

An employee receives £200 as normal net weekly pay. In addition £300 is received every 15 days for a different task. The deductions to be made would be for weekly earnings (table A) of  $£200 + £300 = £500$ . The deduction rate for £500 is 17% of the first £250 plus 50% of the remainder ie  $£42.50 + £125 = £167.50$ .

## 10. WHAT DO I DEDUCT IF THERE IS AN ADVANCE FOR HOLIDAY PAY?

The amount to deduct is the aggregate of:

- (a) the amount that would have been deducted on the pay day if there had been no advance of pay; and
- (b) the amounts that would have been deducted if the amount advanced had been paid on the normal pay day or days.

### Example

An employee receives £650 on the pay day. This comprises £250 for the week in which the pay day falls and includes overtime of £50; and £400 for 2 weeks holiday advance ie two weeks of standard pay at £200 per week. The amount to be deducted is:

$$(17\% \text{ of } £250 = £42.50) + (17\% \text{ of } £200 \times 2 = £68) = £110.50.$$

## 11. HOW SHOULD I DEAL WITH LOANS MADE FOR OTHER PURPOSES?

Loans made, for example, for the purchase of a season ticket or for helping with moving house, are not advances of pay and should not be counted as earnings. Where an amount is deducted for the repayment of such advances net earnings will be as calculated in the normal way less the amount of this deduction.

## 12. WHAT DO I DO IF THERE IS AN ATTACHMENT OF EARNINGS ORDER ALREADY IN FORCE OR I SUBSEQUENTLY RECEIVE ANOTHER ORDER BEFORE THE FIRST ONE IS DISCHARGED?

If there is an order of any type in payment and dated before 1 April 1993, then a later community charge order cannot be actioned. Any other type of order can be actioned, and should be applied in date sequence, with the later orders being applied to the remaining earnings.

If there is no earlier order already in payment, or if an order dated after 1 April 1993 is in payment, then all further orders can be applied in date sequence, with later orders being applied to remaining earnings. (NB Any 1971 Act non-priority orders are to be applied (in date order) after all other orders.)

(If a later order is blocked by a CCAEO made prior to 1 April 1993, it is possible that authorities will seek to cancel and remake the earlier order to eliminate the block.)

## 13. STATUTORY DUTIES PLACED ON EMPLOYERS

A CTAEO is a legal document and places certain duties on employers and debtors. A



summary of these legal duties is below.

An employer could be liable for a fine if he:

- (a) fails to comply with the order unless he can prove all reasonable steps were taken to comply;
- (b) fails to give all required notifications relating to the Council Tax Attachment of Earnings Order;
- (c) in giving notification makes a statement which he knows to be false in a material particular or recklessly make a statement which is false in a material particular.

#### **14. STATUTORY DUTIES PLACED ON DEBTORS**

Debtors could be liable for a fine for:

- (a) failure, without reasonable excuse, to supply information;
- (b) making a statement which they know to be false in a material particular.

**CHECK LIST FOR COMPUTER CERTIFICATE**

Name of authority.

Identity of document or documents.

Identity of computer.

A statement that the computer functioned properly at all material times, or if not, that any respect in which it was not operating properly had no effect on the production of the document or the accuracy of its contents.

Explanation of contents of the document(s) if required.

Certification that statements are given to the best of the signatory's information and belief.

Name of signatory and position in relation to computer.

## Exemptions From Seizure and Sale

The following goods are exempt from levy and seizure for council tax debts:

- (i) such tools, books, vehicles and other items of equipment as are necessary to the defendant for use personally by him in his employment, business, or vocation;
- (ii) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the debtor and his family.

The definition is worded in broad terms without any monetary limit, and allows bailiffs to exercise their discretion in ensuring a proper balance between the interests of the debtor and his family, and those of the authority. The following guidance is given to help with this process.

### Necessary Items

An item should be regarded as **necessary** if it is so essential that without it there would be no way a debtor could continue his existing employment, business or vocation.

### Motor Vehicles

It should be the exception rather than the rule that a defendant is allowed to retain a motor vehicle as a **necessary** item. It is for the defendant to satisfy the bailiff where it is claimed that a vehicle is necessary to allow him to continue his employment, business or vocation. The fact that a defendant claims to need a vehicle to get to and from his place of work should not by itself be considered grounds to exempt the vehicle. The bailiff must be satisfied that no reasonable alternative is available.

### Household Items

Items such as stereo equipment, television, videos, or microwave ovens where there is also a conventional cooker, are **not** considered to be necessary for satisfying the basic domestic needs of the defendant and his family.

## **COUNCIL TAX ATTACHMENT OF EARNINGS ORDERS GUIDANCE FOR EMPLOYERS**

### **Introduction**

1. The Department of the Environment has prepared this note to help employers with the administration of Council Tax Attachment of Earnings Orders (CTAEOs). CTAEOs may be issued by local authorities following the granting of a liability order in respect of a council tax debt in accordance with the Council Tax (Administration and Enforcement) Regulations 1992 (SI No. 613) as amended by the Council Tax (Administration and Enforcement) (Amendment) Regulations 1992 (SI No. 3008) and the Council Tax (Administration and Enforcement)(Amendment)(No. 2) Regulations 1993 (SI No. 773). The note outlines the procedures involved and the roles of the employer, the debtor and the local authority. Some more detailed advice, in the form of questions and answers, is given in Annex A.
2. A CTAEO is a legal document and places certain duties on the employer and the debtor alike. These duties are expanded in the note. Failure to carry these out could lead to a fine.
3. The administration of CTAEOs will be similar to that for Community Charge Attachment of Earnings Orders (CCAEO). If this is the first CTAEO or CCAEO that you have received you will note that while they follow the broad principles of AEOs arising from the Attachment of Earnings Act 1971 in that a regular deduction is to be made from net earnings, there are, however, a number of important differences. For instance, with CC and CTAEOs the deduction is calculated by the employer rather than specified by the court. Annex B outlines the action to take when more than one such order has been served. Although the advice that follows is specific to CTAEOs, much of it will be familiar to employers who have already operated CCAEOs.
4. The Government recognises that CTAEOs will involve employers in extra work, however, employers are empowered to deduct £1 each time in respect of their administrative costs.

### **An Outline of the Procedure**

5. The sequence of events leading to the issue of a CTAEO is as follows:
  - (a) when a local authority issues a council tax bill and a reminder but does not receive payment, it may apply to a Magistrates' Court for a summons directing a person to appear before the court to explain why the council tax has not been paid;
  - (b) if non-payment is proved, the court issues a liability order for council tax payable, plus the costs incurred by the local authority in obtaining the liability order. Once it has obtained a liability order, the local authority has a number of options, including attachment of earnings, for recovering the unpaid amount;
  - (c) if it considers attachment of earnings is the appropriate course the authority

information must be given within 14 days of the change of employment. Debtors could be subject to a fine if they fail to notify local authorities in this way.

#### What the authority must do

10. An authority must tell the employer when the whole amount to which a CTAE0 relates has been paid, including when the payment was not made by means of an AEO.

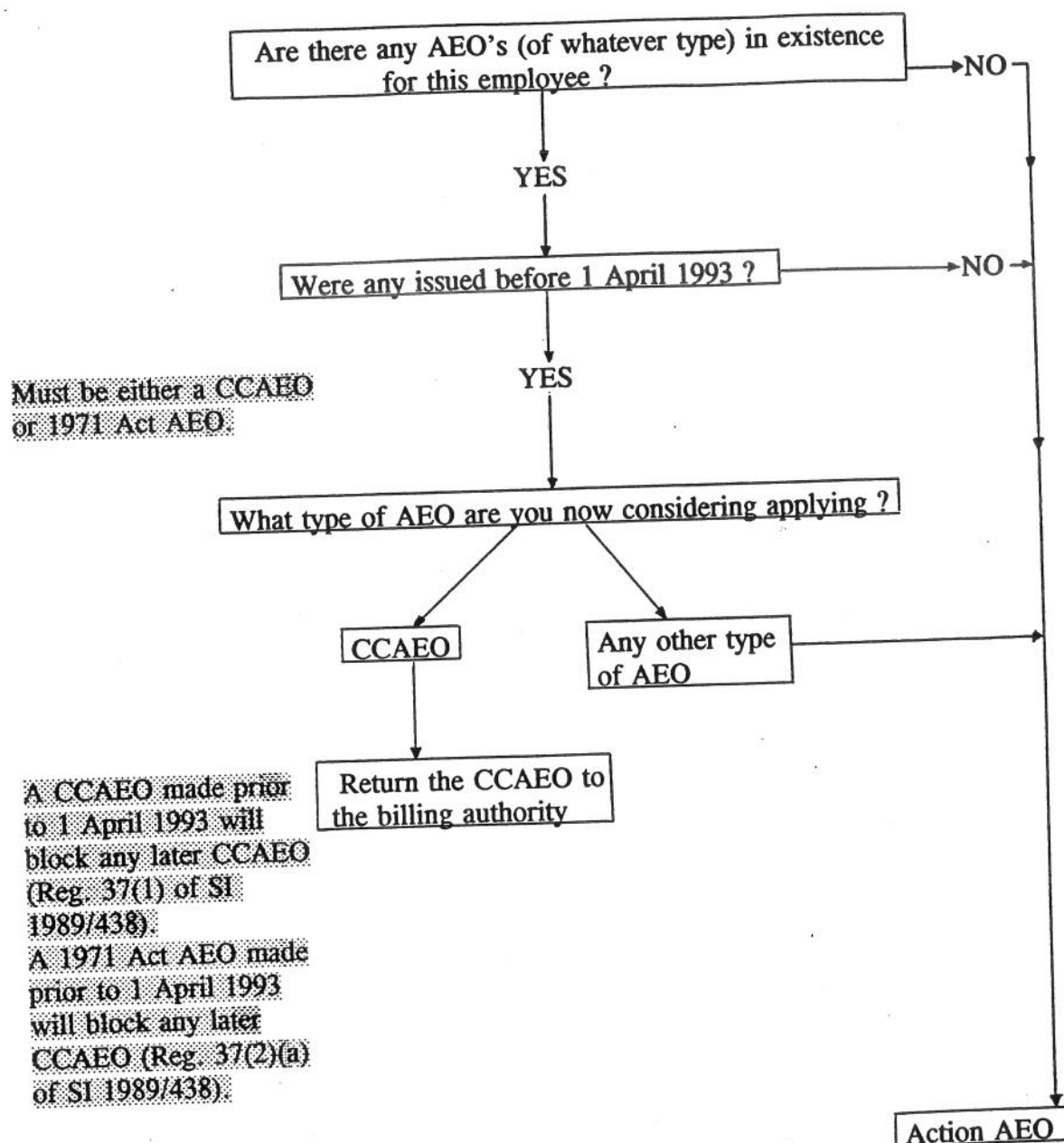
11. An authority may, on its own account, or on application by the debtor or the debtor's employer, make an order discharging the AEO. Where a CTAE0 is discharged the authority should notify the employer.

#### More detailed advice

12. Annex A sets out some questions and answers which cover the handling of attachment orders in more detail. If you have difficulties which cannot be resolved by the authority which has made the order, further advice can be obtained from Frank Arrojo, Department of the Environment, 2 Marsham Street, LONDON, SW1P 3EB (tel 071 276 3023.)



# QUESTIONS AN EMPLOYER MUST CONSIDER BEFORE MAKING A DEDUCTION



If you need to action more than one AEO you must apply them in date order to residue of earnings. However 1971 Act non-priority AEOs should not be dealt with until after all other types of AEOs.

