

COUNCIL TAX AND COMMUNITY CHARGES RESTRICTIONS ON VOTING

1. Reason for Report

This is a procedural report presented in accordance with the provisions of the legislation, the Local Government Finance Act 1992, which came into force with effect from 6 March 1992 and which may affect Member voting rights on Council Tax matters.

2. Recommendations

Members are asked to note the provisions of Section 112 of the Local Government Finance Act 1992 which removes a Member's voting rights on Council matters in certain specified circumstances and places the onus of disclosure on individual Members.

3. Considerations

3.1 Section 112 of the Local Government Finance Act 1992 stipulates that any Member who is two or more months in arrears of Council Tax shall be required to disclose the fact that Section 112 applies to him as soon as practicable after the commencement of any meeting where any matter affecting the level of Council Tax or administration of Council Tax is being discussed. Thereafter the Member is prevented from voting on these matters.

3.2 The requirement of disclosure and loss of voting rights arises if a sum due by the Member in respect of Council Tax or Council Water Charge, either as an instalment or as a lump sum, and whether he or she is solely liable or jointly and severally liable to pay it, has become payable and has remained unpaid for at least two months.

3.3 Members will be aware that the provisions had also applied to Community Charges. Since 2015 the Community Charge Debt Collection (Scotland) Act 2015 is in force and section 1 provides that as from 1 February 2015 all community charge liabilities and associated liabilities are extinguished – with any summary warrants and decrees relating to such liabilities becoming unenforceable.

3.4 Section 112(1)(b) of the Local Government Finance Act 1992 provided that if certain sums falling within Schedule 2 or Schedule 5 had become payable and had remained outstanding for at least 3 months, then a restriction on voting would apply. The sums referred to were those relating to community charges and community water charges. However, reference to both charges in both Schedules was repealed on 26 March 2015.

3.5 Disclosure is required and the voting rights are lost at meetings in respect of -

- the setting of the Council Tax;
 - the substitute setting of the Council Tax; and
 - a reduced or deemed setting of the Council Tax.
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3.6 Disclosure is also required and voting rights are also lost at meetings in respect of the exercise of functions for -

- administration, including collection of Council Tax; and
- enforcement of recovery of Council Tax or Council Water Charge;

3.7 Section 112 is expressed so that it applies to a Member if a sum of Council Tax under the Scottish provisions of the 1992 Act is in arrears to the extent specified. It would appear to follow that a Member is subject to the disclosure requirement and loses voting rights if the appropriate arrears of Council are payable by him or her to any levying authority in Scotland. Arrears due to a Council in England or Wales do not appear to affect a Member's voting rights on a Scottish Local Authority.

3.8 If a Member to whom Section 112 applies fails to comply or to forebear from voting on affected matters, they are guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

3.9 A possible further consequence of a failure by a Member to comply with Section 112 of the Act is that in the case of any resulting injustice to an inhabitant of the area, the failure to comply may amount to maladministration by the Council even if the other Members and officers were not aware of the failure at the time.

4. Governance Assurance

This is a procedural report and complies with the legislative requirements of the Local Government (Scotland) Act 1973 and supervening amendment legislation.

5. Impact Assessment

As this report does not propose a change in policy/strategy/plan/project it is not necessary to complete an Impact Assessment.

Approved by

NAME	DESIGNATION
Lorna Meahan	Director Corporate Services

Appendices: None

Background papers: Local Government Finance Act 1992 at <http://www.legislation.gov.uk/ukpga/1992/14/contents>
