INTRODUCTION

1. This document relates to the Abolition of Poindings and Warrant Sales Bill introduced in the Scottish Parliament on 24 September 1999. It has been prepared by Tommy Sheridan, who is the member in charge of the Bill, to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

BACKGROUND

2. The Bill has a single purpose: to abolish the form of Scots law diligence known as poinding and warrant sale. To do this, the Bill repeals certain provisions of the Debtors (Scotland) Act 1987 which permit and regulate the diligence; and abolishes the power of creditors at Scots common law to carry out a poinding and warrant sale.

3. The Scottish Executive Justice Department hold judicial statistics for the number of poindings and warrant sales granted in Scotland (Civil Judicial Statistics, Court Group, Scottish Executive Justice Department; see also Poinding and Warrant Sales, Scottish Parliament Research Note 99-37). In the year 1998, there were 23,067 reports of poindings carried out in Scotland (10,260 by way of summary warrant for council tax; 747 by way of summary warrant for poll tax; 5,778 by way of other summary warrant; 4,114 by way of court action for debts under £1,500; and 2,168 by way of court action for debts over £1,500).
4. Of the 23,067 reports of poinding in 1998, 513 proceeded to an actual warrant of sale (37 for council tax; 3 for poll tax; 79 for other summary warrants; 178 where decree was pronounced for over £1,500 and 216 where decree was pronounced for under £1,500).

5. Research instructed on behalf of the Scottish Office into the use of poinding and warrant sales in Scotland revealed that creditors recovered little or nothing from poinding and warrant sales (Scottish Office Central Research Unit, Legal Studies Research Findings No.14, Evaluation of the Debtors (Scotland) Act: Survey of Poindings and Warrant Sales). This was particularly so when one took into consideration the costs of carrying out a poinding and warrant sale (sheriff officers’ fees etc.).

6. For warrant sales carried out against private individuals, the Scottish Office research found that no sale recovered the whole of the outstanding debt and 82% of sales made no contribution to the original debt and only partly met the expenses of the case. For warrant sales against businesses, researchers found that 46% of sales made no contribution to the debt and only partly met the expenses of the case. Accordingly, the costs of this Bill are expected to be negligible.

7. A Scottish Office study of debtors published in April 1999 (Scottish Office Central Research Unit, Legal Studies Research Findings No.10, Evaluation of the Debtors (Scotland) Act 1987: Study of Debtors) found that 39% of debtors subject to a poinding or warrant sale had suffered personal distress. Many debtors found the experience frightening and intimidating and some had reported mental health problems which they attributed to the experience. The study concluded that debtors were “unable rather than unwilling to pay their debts” and continued to “suffer economic hardship and distress” from being subjected to a poinding or warrant sale.

COSTS ON THE SCOTTISH ADMINISTRATION

8. No costs expected.

COSTS ON LOCAL AUTHORITIES

9. No costs expected.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

10. No costs expected.
PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

11. On 24 September 1999, the Presiding Officer (Sir David Steel) made the following statement:

“In my view, the provisions of the Abolition of Poindings and Warrant Sales Bill would be within the legislative competence of the Scottish Parliament.”
This document relates to the Abolition of Poindings and Warrant Sales Bill (SP Bill 3) as introduced in the Scottish Parliament on 24 September 1999

ABOLITION OF POINDINGS AND WARRANT SALES BILL

FINANCIAL MEMORANDUM

(AND PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE)

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