FINANCE COMMITTEE

Tuesday 7 February 2006

Session 2

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FINANCE COMMITTEE
4th Meeting 2006, Session 2

CONVENER

*Des McNulty (Clydebank and Milngavie) (Lab)

DEPUTY CONVENER

Mr John Swinney (North Tayside) (SNP)

COMMITTEE MEMBERS

Ms Wendy Alexander (Paisley North) (Lab)
*Mr Andrew Arbuckle (Mid Scotland and Fife) (LD)
*Mark Ballard (Lothians) (Green)
*Derek Brownlee (South of Scotland) (Con)
*Jim Mather (Highlands and Islands) (SNP)
*Mr Frank McAveety (Glasgow Shettleston) (Lab)
*Dr Elaine Murray (Dumfries) (Lab)

COMMITTEE SUBSTITUTES

Janis Hughes (Glasgow Rutherglen) (Lab)
Alex Neil (Central Scotland) (SNP)
John Scott (Ayr) (Con)
Iain Smith (North East Fife) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Paul Cackette (Scottish Executive Justice Department)
Andy Crawley (Scottish Executive Justice Department)
Beverley Francis (Scottish Executive Justice Department)

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

Rosalind Wheeler

ASSISTANT CLERK

Kristin Mitchell

LOCATION

Committee Room 3

Scottish Parliament

Finance Committee

Tuesday 7 February 2006

[THE CONVENER *opened the meeting at 10:00*]

Bankruptcy and Diligence (Scotland) Bill: Financial Memorandum

The Convener (Des McNulty): Good morning. I welcome members of the press and the public to the fourth Finance Committee meeting of 2006. As usual, I remind people to switch off all pagers and mobile telephones before we start. We have received apologies from Wendy Alexander and John Swinney, and from Jim Mather, who will join us a little later.

The first item on our agenda is further consideration of the Bankruptcy and Diligence (Scotland) Bill. Last week, we took evidence from the Accountant in Bankruptcy and from the Scottish Court Service. This week, I welcome Scottish Executive officials Paul Cackette, head of the civil justice and international division, Andy Crawley, the bill team leader, and Beverley Francis, the bill team manager.

Our normal protocol is to allow witnesses to make a brief opening statement and then move on to questions. I invite Paul Cackette to begin.

Paul Cackette (Scottish Executive Justice Department): I am grateful for the opportunity to give evidence on the bill to the committee. On my right is Andy Crawley, the bill team leader, who will respond to questions about the general policy framework and the various interconnections between the different parts of the bill. He has overall responsibility for policy development and will deal with general questions on the bill's financial impact. On my left is Beverley Francis, the bill manager, who is the co-ordinator of the bill's financial memorandum. She is also involved in policy development regarding the Scottish civil enforcement commission provisions and proposals for information disclosure orders. She will deal with any questions on those areas.

It must be remembered that the financial memorandum is a large document, as there are many strands to the bill. If anything, we have tended to err on the side of caution on figures in the bill. In some cases, we have made worst case scenario assumptions to ensure that, as far as possible, we do not underestimate costs. In certain circumstances, the figures are based on several assumptions and estimates, which we will be happy to expand upon for the committee. This is a useful opportunity to build on the evidence that was given last week by the Accountant in Bankruptcy and the Scottish Court Service. We are happy to deal with the focus on the Scottish Executive's costs.

The Convener: In dealing with such a technical bill, the committee is fortunate to have two accountants in its membership. We have, therefore, invited Derek Brownlee and Jim Mather to lead for us. As Jim Mather will join us later, Derek Brownlee will hold the fort.

Derek Brownlee (South of Scotland) (Con): In the evidence from the Institute of Chartered Accountants of Scotland, I was struck by the concern that several significant areas in underlying policy have not yet been determined, so it is not possible to estimate the potential financial costs of the bill. What can be done around the broad range of outcomes that will come from the various options that are under consultation?

Paul Cackette: The financial memorandum is based on the bill as introduced to Parliament. Certain aspects of the Executive's proposals are not fully developed. In some cases, such as the proposals on protected trust deeds, they have been developed in tandem with the bill. That is the case as far as the financial memorandum is concerned. Andy Crawley will say more on the issues that were raised at last week's committee meeting.

Andy Crawley (Scottish Executive Justice Department): The main issue of concern to ICAS—and rightly so, given the context in which it has commented—is the parallel consultation on protected trust deeds. The bill provides only an enabling power—the proposal is to proceed by way of regulation. The financial memorandum, therefore, does not deal with our assessment of the impact and cost of protected trust deed reform, but we entirely accept that it must be addressed.

Yesterday, we published a regulatory impact assessment to accompany the consultation document on protected trust deed reform. Although it was circulated to the committee yesterday, members will not yet have had the chance to digest it. The regulatory impact assessment sets out our assumptions on the likely impact of trust deed reform on the insolvency profession in particular—they are assumptions; it is a draft document. We invite comments from stakeholders, most significantly ICAS, on the robustness of our assumptions. We will continue to work as closely as possible with insolvency practitioners to develop our thinking on the area and to address any concerns they have. My team and I will attend various workshops with insolvency practitioners in Aberdeen, Dundee, Edinburgh and Glasgow. We have an open shop

on impact and reform issues. We will hold a joint conference seminar with ICAS to explore those issues and to gain a firm grasp on their impact.

At that point, it will be a policy decision as to whether the impact can be justified or whether the reforms offer value for money. As the provisions will be introduced through regulations, the committee might wish to consider the matter in that context. The short answer on protected trust deeds is, "watch this space." The committee will have the opportunity to comment on the regulatory impact assessment and to feed those comments into its scrutiny of the bill.

On the other issues raised by ICAS, like Paul Cackette, my basic response is that the policy is not settled. Although there are issues that are part of the debate around bankruptcy reform, no decision has yet been made on them. ICAS feels that we should be discussing those issues. All the points raised by ICAS are being examined, but we are not yet in a position to say definitively what we will do on them. If we come back at stage 2 with amendments that will have a significant cost impact—which is possible, if ministers agree to it—we will look to revise the figures in the financial memorandum.

On reforming protected trust deeds, our position is that all associated costs for the Executive can be met from existing lines. New money will not have to be found because it is already budgeted for.

The Convener: If significant changes are made, the Executive will need to introduce a revised financial memorandum. It is somewhat disturbing that a regulatory impact assessment is published at this stage, given that substantial work has gone into the bill's drafting and the information around it. When proposed legislation is introduced, the Finance Committee wants financial parameters to be more clearly established, rather than rolled out in parallel with the bill. I recognise that that is not always possible, but it is not good practice to make detailed bill proposals when significant uncertainty remains about financial implications. We have made that point before about other bills, and it applies again to this bill. I refer you to the approach to financial memoranda that was agreed between the committee and the Executive, which sets out the financial information that the committee expects financial memoranda to contain.

Paul Cackette: Your comment is not unreasonable. The development of the protected trust deed proposals has tended to proceed in tandem with the development of the bill. A focus has been placed on getting the bill into a fit shape for introduction, but I fully understand your points and the need for a proper opportunity to scrutinise what is placed before the Parliament.

Derek Brownlee: I will pick up that point to an extent. What do you consider to be a significant change? In paragraph 698 on page 97 of the financial memorandum, a saving of £60,000 is called significant. Does that mean that an additional cost of £60,000 will be viewed as significant, or do you have another benchmark in mind?

Andy Crawley: Are you talking about cost to the Executive?

Derek Brownlee: Yes.

Andy Crawley: I repeat that we are consulting, so policy is not settled, but the figure that we are working with is about £400,000, which is accommodated in existing lines for the Accountant in Bankruptcy. To help the committee, we can confirm all that. However, we must scope the financial memorandum in the context of what is in the bill, which is just an enabling power.

In case there is any doubt, I will clear up one point: the regulatory impact assessment supports not the bill but the trust deed consultation that was published two weeks ago. The assessment is running in step with the regulations that it supports.

Derek Brownlee: Another concern in the ICAS submission, which those of us who are trying to scrutinise the financial memorandum share, is that when we do not understand precisely how assumptions have been built up, it is difficult to review them thoroughly. Can you provide more detail on the assumptions that underlie the numbers? I appreciate that you have given some reasonably detailed numbers, but can you give us anything else that will allow us to drill beneath the numbers and test the underlying assumptions?

Andy Crawley: In relation to what?

Derek Brownlee: In relation to any of the costs, such as those for additional staffing, training or information technology. Paragraph 692 refers to £925,000 for IT capital investment for the Accountant in Bankruptcy. Will you give us more detail on how that figure was reached and the benchmarking that has been done?

Andy Crawley: The Executive can give you much more detail on how the figures were calculated, but the bill team is not necessarily in a position to give you the figures today, because they were provided by the Accountant in Bankruptcy. I believe that the committee is to write to the AIB; we could easily respond to your points in writing.

Derek Brownlee: I simply highlighted the first number that I came across in the financial memorandum to illustrate the wider point that ICAS was getting at, which is that if we do not understand the assumption that is used to

generate the headline figure, it is difficult to scrutinise it. As Jim Mather said last week, although the bodies that are not in the private sector seem to be perfectly content with the assumptions, the private sector bodies are not. That point was the main bone of contention.

Andy Crawley: In relation to ICAS?

Derek Brownlee: Yes.

Andy Crawley: Of course, we do not necessarily agree with ICAS's take on the financial assumptions; those are its comments.

10:15

Derek Brownlee: The tenor of ICAS's evidence was that it could not really comment, because it did not have enough detail.

Andy Crawley: Obviously, that is a question of perspectives. ICAS has said that the bill is silent on four crucial topics that have a financial impact on its members. I read that as relating to its comment about the financial assumptions; the comment is not about the assumptions in the memorandum, with which ICAS has no difficulty, as far as we know—it has said nothing about that to us.

ICAS's point about other policy development is perfectly valid. The assumptions are just that, because we do not have settled policy on any of the matters, apart from protected trust deeds.

Derek Brownlee: The impact that the reform might have on the number of applications for bankruptcy is fundamental. The reform is not isolated; various related initiatives are happening worldwide. What benchmarking have you done to compare the impact that you model here with that which has occurred in other jurisdictions?

Andy Crawley: We have worked primarily with the United Kingdom Insolvency Service because, as I am sure the committee appreciates, a large part of the policy drive is our view that Scotland should not be out of step with the rest of the UK on this important economic matter. We have worked closely with the UK Insolvency Service and we are aware of developments in New Zealand—England and New Zealand often seem to move closely in parallel. We are aware of developments in America and we have examined insolvency regimes there.

On financial benchmarking, we need to be cautious about drawing too readily parallels with other jurisdictions, because every legal system is different. Looking purely at bankruptcy figures rarely tells us anything useful about how insolvency overall is dealt with. For example, England has three or four insolvency measures, only one of which is bankruptcy, and we have three measures, only one of which is bankruptcy. Comparisons are useful for policy development, but financial benchmarking is rather more difficult. We have not done much of that, because we do not think that it is particularly helpful.

Derek Brownlee: I presume that you accept that if the increase in debtor applications were 50 or 75 per cent rather than the 25 per cent that you have modelled, it would have an impact on the costs.

Andy Crawley: Absolutely.

Derek Brownlee: In its evidence, the Committee of Scottish Clearing Bankers suggested that 25 per cent was a rather conservative estimate in the context of the reforms.

Andy Crawley: The clearing bankers' evidence is interesting—quite a lot could be said about it. Probably the most important point for me to make is that I take their evidence to be based on the assumption that we will in some way make bankruptcy softer, so numbers will increase. We do not accept that assumption; that is important in respect of how the statement in the memorandum is viewed and it represents a policy difference between us and the clearing bankers.

It might be useful for the committee to put some of the comments in context. The clearing bankers and some other creditor interests have made an assumption. It is right to talk about a possible divide between debtor and creditor responses to the committee. Our position is the same as that of the UK Insolvency Service. A document that it issued only last week says:

"There is no evidence that the changes brought in by the Enterprise Act have caused the … increase in personal insolvencies".

That reflects our position. The Insolvency Service's explanation is that the increase in bankruptcies is due to non-legal factors that contribute to personal insolvency, such as unemployment and the affordability of debt. Economic factors that drive people into insolvency are feeding through to the insolvency figures. Of course, it is right to say that that might have an impact on the Executive's spending on bankruptcy, but it is difficult to forecast exactly what that will be. We have not attempted to make such a forecast in the financial memorandum because this is, in a sense, as much an economic debate as it is anything else.

Derek Brownlee: Is it difficult to make such forecasts when you do not necessarily know what the outcome will be in relation to protected trust deeds and whether the debt arrangement scheme will become more popular than it is now? One of the fundamental difficulties is that all the measures have knock-on effects on one another. The route

that you go down on protected trust deeds will potentially have a significant impact on the debt arrangement scheme and on the suitability—it would be wrong to say "attractiveness"—or uptake of bankruptcy. Is not that one of the difficulties that all the people who have responded to the consultation have had and which we have, as a committee?

Andy Crawley: I accept that point. The issues are a difficulty not only for the committee and the respondents, but for us, which is the case essentially because it is hard to know how people will behave. In a sense, we are offering people various tools and they will choose from among them—having been guided by money advisers—as they see fit. We are not saying to people that they must choose this option or that option.

The context is important. Although the issue is perhaps more to do with policy than it is to do with finance, it will help the committee to understand why we have done what we have done. The point—as accountants will realise—is that many thousands of people are factually insolvent and are unable to repay their debts. The UK Insolvency Service estimates that 5 per cent of the population are insolvent. However, only a very small number of people in England go into bankruptcy, go into a trust deed or sign an individual voluntary arrangement. The problem is in determining the level of insolvency, so we must always treat the figures with a certain amount of caution. The system is essentially demand led and we are trying to provide a system in which flexible tools are available for all the different circumstances in which people who have debt problems find themselves. We cannot predict with complete accuracy which way people will go.

I accept that we should attempt to forecast how the changes will impact on numbers and what effect that will have on how demand is distributed through the system. We have done that in the regulatory impact assessment in respect of trust deed reform. Paragraph 71 of the regulatory impact assessment set out our assumptions about how trust deed reform might impact on take-up numbers. Although we think that those assumptions are well informed, we are seeking comments from stakeholders—in particular, from ICAS—about how robust they are. Many people would, in respect of the clearing banks' response to the committee, ask where the demand for insolvency is coming from. The clearing banks talk about debt write-off, but people might ask how it is that people have those debts in the first place. Should the Government underwrite the lending decisions of commercial organisations such as banks? It can be argued that it should not.

We are trying to strike a balance between creditors and debtors. The Executive supports the "can pay, would pay" principle and there are clearly issues about how people are able to acquire credit so easily. Why are bankruptcy numbers going up? One view is that consumer debt is becoming unmanageable. That is a much bigger policy issue.

Derek Brownlee: Perhaps I have picked this up wrong, but I thought that the policy thrust of the bill was to make society more entrepreneurial and to make it easier for people to pick themselves up and start again after business failure. What you have said, and much of the evidence in the submissions, suggests that in reality the biggest issue is consumer debt. Is that correct?

Andy Crawley: Yes—we accept that.

The press and commentators have perhaps run with the idea—to a greater extent than we have suggested there is a foundation for—that the policy thrust of the bill is to make society more entrepreneurial. We are saying that the bill will be essentially good for business, but that is different from saying that it is the key to creating an entrepreneurial economy. That would be a heavy burden to lay on a bankruptcy bill and it does not reflect what we have said. However, the bill will have an important benefit in that it will make it easier for people who fail in business to restart—we think that it should—but we are not saying that that will have a magical effect on the Scottish economy. That would be ridiculous, so we have not said it.

Paul Cackette: It is important to bear in mind the broader context. A range of measures seek to rebalance the respective interests of debtors and creditors. Andy Crawley commented on the context of the different strands of the reforms. Those different strands certainly make estimating future costs and implications difficult. We feel that the different strands of reform are justifiable in their own right, but the difficulty is how we will give effect to them in one package when there are uncertainties.

The alternative is a linear reform package in which we would change one thing, two years later change another thing and at some later time change another thing. At each point, we would wait to see the impacts of the changes. There are drawbacks to that approach, not the least of which is its uncertainty. It is difficult, in unpredictable circumstances, to strike the right balance and to achieve the best outcomes because behaviour will respond to changes. Those behavioural changes are, to a certain extent, unpredictable.

The Convener: I return to a point that I made earlier. The guidance that the Scottish Executive issues on bills whose detail will be contained in subordinate legislation is that the financial memorandum should contain a broad indication of

the likely financial implications. Simply to say that the matter is not part of the bill but will be included in regulations and so we do not have to count it is not in line with the Scottish Executive's guidance.

Paul Cackette: I accept that. One of the reasons for having a consultation on the protected trust deeds at this time—in tandem with the bill's progress—is that we accept that all the measures will, when viewed in the round, have an impact on the profession and on debtors.

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD): I will move on to the proposal to set up a Scottish civil enforcement commission. It is estimated that it will, after start-up costs, cost more than £500,000 per annum. What will we get for that money? Will there be savings in comparison to current systems? Are the current systems inefficient?

Andy Crawley: Both. I will pass on to my colleague, Beverley Francis, who takes the lead on the policy.

Beverley Francis (Scottish Executive Justice Department): The savings to the current system will be fairly modest—about £15,000 a year. The proposal to establish the commission is very much policy led. We believe that it is an appropriate response to the historic and current circumstances under which court enforcement is and has been undertaken. We consulted on the proposal for a commission early in our deliberations, prior to the introduction of the bill. There was unanimous agreement in the consultation responses that a commission is an appropriate policy response. Clearly, the Executive accepts that that will have cost implications and that those costs are obviously a significant part of what is being proposed.

The commission will appoint, regulate and supervise the conduct of the court enforcement profession. That is currently done in a fairly haphazard and ad hoc way through the courts system and through a professional body called the Society of Messengers-at-Arms and Sheriff Officers.

10:30

Most important, in addition to that supervision, enforcement and regulation role the commission will have a broader remit to increase awareness about enforcement. Part of the difficulty that we and respondents to the consultation have recognised is that there is a lack of knowledge and understanding among debtors—and among creditors, to some extent—about how the enforcement system works. The commission will have a significant public information role in research, evaluation and impact assessment, in providing information and advice, and in mounting publicity campaigns to make people aware of their rights and responsibilities in relation to taking on debt and in relation to the recovery of debt through the formal court system or informal recovery.

Mr Arbuckle: So, there will be no savings in relation to the messengers-at-arms, but the commission will have the overriding responsibility for the whole process.

Beverley Francis: That is correct.

Mr Arbuckle: I would like to jump back to a question that Derek Brownlee asked about clearing banks. In response, Andy Crawley referred to increasing consumer debt. The Executive may have to pick up the costs that arise from that—Andy Crawley said that that was a policy view—but should not the banks bear the burden of those costs?

Andy Crawley: That is certainly a point of view, but the banks should answer that question. Many banks accept that they have a role in financial education. We are working as closely as we can with them on developing policy around the bill. For example, banks provide financial support to Money Advice Scotland. There are shades of view around the matters with which the bill deals, but the key question is probably one that the banks, rather than the Executive, should answer.

Jim Mather (Highlands and Islands) (SNP): I would like to pick up on a point that Andy Crawley made. You said that there was no evidence that the legal changes were causing increased insolvency down south. Does that mean that you anticipate that the bill will have a neutral effect on the rate of insolvency?

Andy Crawley: I am wary of saying that that would be the outcome, simply because of the discussion that we have had about the difficulty of forecasting how the economy will move and what the overall context will be. However, we are robust in our view that there is no evidence to suggest that the introduction of one-year discharge in England is feeding through into higher numbers of insolvencies. Figures are available to show that. Insolvency measures that are not affected by the one-year discharge, which in England include individual voluntary arrangements and in Scotland include sequestration, are going up by comparable rates. Whatever else is going on, the one-year discharge in England is not feeding into increasing numbers of bankruptcies.

On the longer-term effect, our intention is to review the policy and to ensure that we keep an eye on how things are progressing. Again, I return to what Paul Cackette said: our view is that such things are good in themselves and that it is good to have an earlier discharge period because it will enable people who experience business failures to restart more quickly, for example. Analogous with

what has happened in some American states, we think that there is evidence to suggest that there is a link between early discharge and entrepreneurial activity in general.

We have set out our stall: we believe that the proposals are good, and we come to Parliament hoping that Parliament will agree with us.

Jim Mather: I note your diffidence about the neutral impact question that I asked. A degree of disquiet has been evident in the input that we have received from the private sector, the Institute of Chartered Accountants of Scotland, the Credit Services Association, the SMASO and the clearing banks. Most of those entities have cross-border nervous systems and are plugged into what is happening down south. In the light of that, do you have any plans to sit down and meet all of them?

Andy Crawley: We have met all of them and would be happy to meet them again. We are having a continuing discussion with all stakeholders on the issues that surround the bill. The policy team met representatives from the clearing banks last week and I fully expect that they will meet them again in the next few weeks.

Jim Mather: To what extent will those meetings result in a more complete—albeit high-level—macro model of the cost implications for and the impact on the Scottish economy?

Andy Crawley: Those are two different issues. As far as the cost to the Executive is concerned, we hope and believe that we have bottomed all that out. As far as cost to the economy is concerned, the key answer to that question is the one that I gave earlier, which is that we do not agree with the banks' assertion about the cost of the reforms. I am not sure that I can expand further on that.

Jim Mather: That is where disquiet arises. We are aware of the disquiet of other organisations. The CSA is talking about a lack of focus on the cost implications, the ICAS response is one of quiet disdain and the SMASO response was one of virtual disengagement. What do you intend to do to overcome that and to get those bodies round the table so that we can get a financial memorandum that comes with some imprimatur of support from those entities?

Andy Crawley: We intend to continue our dialogue with all those bodies, but I cannot say right now that we will deliver agreement from them, because they are stakeholders that have particular perspectives and interests, including financial interests. Their comments centre on the assumption that we are making bankruptcy softer or too soft, and that bankruptcy numbers and debt write-off will therefore go up. We do not agree with that assumption. They say that it is true, but our response is that there is no evidence to support that assumption. The evidence that we have, and the basis on which we are making our financial assumptions, is that there will not be the impact that those stakeholders are suggesting.

Other than that, it is a question of getting out the crystal ball. We do not know what the economy will look like in five years' time or 10 years' time. We can say only that, as the Government, we will do our level best to ensure that we have a handle on those trends and that we will respond to them appropriately. We certainly accept the basic point that we should be doing what we can to put together assumptions and forecasts about how the figures will develop, and we are doing that in relation to the regulatory impact assessment around trust deeds.

Jim Mather: Has any attempt been made down south to disaggregate the impact of the new legislation and economic movement over the period, to try to identify cause and effect more rationally?

Andy Crawley: The UK Insolvency Service would need to answer that question. My impression, if it is helpful, is that the Insolvency Service treats the issue seriously, not least because of concerns that were expressed during the passage of the Enterprise Act 2002. The service is well aware of the concern that the change would lead to an increase in sequestrations, so it is tracking the impacts as best it can. Given the latest figures, which were released last week, it came to the conclusion that there is no evidence to support the assertion that one-year discharge has led to an increase in bankruptcies. That is also our view.

Jim Mather: I have one final question relating to that. Have you gone back to look at the financial memorandum that accompanied the UK Enterprise Bill, and reviewed it in the light of post-implementation consideration of the Enterprise Act 2002?

Andy Crawley: Not to that level of detail.

Jim Mather: Do you think that doing so would be worth your while?

Andy Crawley: I am happy to consider doing so, but I cannot say whether it would be worth while—I am not sure how helpful it would be. It is important for the committee to understand that the structure of the UK Insolvency Service is different from that of the Accountant in Bankruptcy. Comparisons are useful, but we are really talking about policy comparisons, not financial impact comparisons.

For example, one of the concerns that ICAS raised with the committee related to apparent insolvency. Our Westminster colleagues are doing a lot of work around what they call "no income, no

asset" debtors. In our view—I emphasise that it is our view—all that work is driven by the costing models that are used at Westminster, which we do not use. Therefore, what appears in the financial memorandum for a UK bill will be of limited use to us in our projection of the costs that fall on the Accountant in Bankruptcy. That is why I am a bit hesitant about agreeing with Jim Mather. We have considered the suggestion, but in our view it is not particularly helpful because we use a completely different financial model, which appears in the figures in the financial memorandum.

Jim Mather: Do you anticipate that that model will change in the light of future meetings with the private sector entities primarily, and the clearing banks, ICAS, CSA and SMASO?

Andy Crawley: No, we do not, because we are not satisfied that there is any evidence to show that one-year discharge will have the kind of impact that they are suggesting. We have to be clear about that. If the banks and those other organisations were to come back to us with evidence that suggested that we had made some kind of wrong assumption, that would be different, but they have not done that. We will continue to meet them and to keep everything under review but, as matters stand, we are confident that we have a grasp of what will happen. That is the basis on which we have prepared the financial memorandum.

Jim Mather: What plans do you have for keeping a finger on the pulse of the bill, post-implementation?

Andy Crawley: If I can put it crudely, the standard review period would be three years but we will be having a continuous review of the legislation. We in the policy teams have worked closely with the Accountant in Bankruptcy for the past two years on the development of the bill. We have regular meetings with that department and we will continue to do that.

Jim Mather: Those meetings sound very mutually supportive; there tends to be a great deal of agreement. The classic comment from Toyota is that if you have two executives who constantly agree, you have one executive too many. Where is the contention between you and the Accountant in Bankruptcy? Are there areas of disagreement?

Andy Crawley: Yes. We have robust discussions about the costs, because the Accountant in Bankruptcy will have to pay for it. The Accountant in Bankruptcy is concerned to ensure that our models are accurate because it does not want to have to ask for more money to deliver our policy. I reassure the committee that it is not a kind of patsy arrangement in which we all clap one another on the back and say, "Well done." There is vigorous discussion.

Jim Mather: I am pleased to hear that.

Mark Ballard (Lothians) (Green): The rather strange table 4 on page 105 of the memorandum lays out the total cost of the information disclosure scheme, starting at £193,500 per annum for 1,000 applications a month and going up to about £2 million for 10,000 applications a month. However, it mentions that when demand exceeds 50,000 applications per annum, there will be a one-off infrastructure cost. I presume that means that if applications were to exceed 50,000 applications a month, the scheme would cost more than £10 million per annum. There seems to be a huge variation in costs and in the number of applications per month. Will you explain the thinking behind including such a wide variety of potential costs and numbers?

Andy Crawley: Yes—we can explain why we took that approach. I shall pass the question over to Beverley Francis, who has done a lot of work on the matter with UK colleagues.

10:45

Beverley Francis: The challenge in providing costings for information disclosure is simply due to the fact that discussions and dialogue on the detail of any scheme or proposal are at a very early stage. The bill will provide Scottish ministers with powers to develop and implement the necessary regulations, which are part of an overall UK jigsaw. It will give Scottish ministers the power to work with colleagues at Westminster to introduce a scheme at some point in the future. As a result of development time and costs, we envisage that a scheme will not be operational until 2008-09.

It is difficult to predict how many people will use information disclosure orders. We have attempted to give the committee a sense of the various potential volumes of applications and what their cost implications might be. A number of factors will determine whether a creditor will seek an IDO. Our policy view is that not every court enforcement or every application for recovery through the court will need an IDO. We see IDOs as a last resort. We have made it clear on the record that we would expect creditors already to have pursued, perhaps unsuccessfully, an application for recovery. It is on the basis of that lack of success that they would seek additional information to assist them with a successful enforcement.

The bill will make a number of changes to diligence to make it easier for creditors to seek recovery and to bring about successful recovery. We have built in a number of debtor protections, thereby creating greater opportunities for those who genuinely can pay when given time and some support to do so, thus reducing the number of legal actions that are taken for debt recovery. All

those issues have to be balanced out. As has been alluded to, this is a matter of choice. Creditors do not need to go for a court-based system of recovery. Debtors do not necessarily need to involve themselves in a final court decree. Through the various reforms of the debt arrangement scheme, Money Advice Scotland and so on, and with the proposed commission on wider education, we are trying to minimise the number of cases that come to court and allow people to settle before things get to that stage.

I apologise for giving such a long, roundabout answer, but all those factors are difficult to predict and we are trying to be sensible about the volume of information disclosures that may happen. We anticipate that, in developing the scheme with our colleagues in the Department for Constitutional Affairs, we will put a lot more detail into it.

We expect the scheme to be self-financing, in that the creditor costs for taking out an application will meet the costs of administering the scheme. It would probably be foolish of me to say that we will not get more than 50,000 applications per annum, but that is quite a generous number and I would be surprised if the numbers are in that kind of ball park. Having said that, the numbers that come in will be a test of the success of the policy. If our aim is to make court enforcement better and to enable information disclosure of the sort that we are describing, and the take-up is significant and positive, in essence that will mean a policy success. It is a difficult call. We do not want to be a victim of our own success but, having said that, if the proposal does what it is designed to do, it will provide a much better enforcement system.

Andy Crawley: In the context, that is an important point. A more effective enforcement system will have the important benefit of removing cost in other parts of the system, particularly for creditors, who will not need to chase debtors in ways that waste money. It will reduce costs for debtors, who will not have the costs of enforcement added on to the debt. I accept entirely that the question is a sensible one to ask, but again it is a matter of context. We are setting up projections.

Of course, things depend on where the threshold for entry to an IDO is pitched. For example, a larger number of applications might be expected if we said that an IDO is the first stop, but if we said—as we may well do—that another kind of enforcement must first have been tried and failed, a much smaller number of IDOs would be expected to go through the system. We propose to discuss such policies with the banks, for example, because they have concerns about the number of what might be called fishing arrestments that run through the system. The key point about such arrestments is that the creditor does not know where the money is. If they have a better idea about where it is, they will not waste time by serving an arrestment on every bank in Scotland and the banks will not have to waste time on processing arrestments when they do not have an account for the debtor.

We must set out our stall on the basis that we will develop the scheme further. We are giving the committee ideas about how the costs might develop. We accept that members will naturally have questions about such matters, but we cannot do any more than that. We think that the policy is good and we hope that we can progress it, but that does not mean that we can give final figures for costs.

Beverley Francis: We can certainly provide members with a detailed breakdown of what is behind the figures, if that would be helpful. We have had to take into account staff and court time, and we have made an assumption about the number of IDO applications that would be challenged, given that a defence will have to be built into the system so that someone can challenge a disclosure order. I would be happy to provide such information to the committee, although it would simply explain how the figures were derived—it would not provide any more information than that.

Mark Ballard: We are considering not the cost of the scheme per se, but the total impact on the Scottish public purse. That is why, in working out the bill's effects, your point about the scheme being—we hope—self-financing is important.

In that context, I am slightly confused. The cost per application is given as £16.13, the total cost of the scheme appears to be £193,500 per annum for 1,000 applications per month, and paragraph 733 of the financial memorandum suggests that an individual information request might

"cost in the region of £100 to £150",

which is much more than a cost per application of £16.13. Why is there such a big jump between the cost per application and the proposed cost of information requests?

Beverley Francis: If I may, I will write to the committee with a helpful breakdown of the figures. In essence, the difference is the result of the varying assumptions that we have made about the types of information disclosure that will be sought. For example, we think that there will be a slightly different cost if someone is looking for information to support an earnings arrestment as opposed to a bank arrestment. We had to make a number of assumptions about the cost per 1,000 or 5,000 applications and how the infrastructure might work. However, my colleagues in the Scottish Court Service have provided me with fairly detailed and robust figures that might shed light on the matter, which I am happy to share.

Mark Ballard: Are you concerned that a potential cost of £100 to £150 might act as a disincentive to people? You talked about IDOs being a last resort. If a local authority was chasing up council tax, water or sewerage money, a cost of £100 to £150 for an information request would seem to make the option unattractive if that cost were more than the potential recuperable cost. Therefore, the potential usefulness of the new measures for local authorities or similar bodies would be undermined.

Beverley Francis: You make a number of points. We do not want the scheme to be so expensive that people do not use it because the cost is prohibitive. In designing and developing the scheme, we want to consult fully everyone with an interest—financial or otherwise—in how it might operate, but we do not want to make it too cheap and easy to use because we think that that might lead to lazy enforcement and encourage people to go for an IDO before they try another form of diligence about which they have information. For example, a local authority will have information about and records on council tax payers in its area that may or may not help with an enforcement. We want to avoid lazy diligence whereby people see the scheme as a quick and easy option that will save them a lot of time and effort. We understand that that happens with the banks in relation to fishing arrestments, which cause a lot of time and resources to be wasted in the system.

We have estimated a cost of £100 to £150 for an individual information request, which we think is reasonable. At the end of the day, it will be for a creditor to decide whether incurring such a cost is worth while and whether doing so will increase the chances of successful enforcement. If the chances of successful enforcement are increased, the price is clearly worth paying, but the creditor may think that the price is not worth paying and that other, more cost-effective, enforcement options are open to them in the court system and informally.

Paul Cackette: The plus point is that IDOs will allow a much more focused form of debt recovery than the current fishing diligences, which four or five main banks have to manage. If a fishing diligence is served on four banks, three of those banks might have none of the money because the person might have an account with only one bank. The banks spend quite a lot of time searching their accounts, although in the majority of cases the person in question is not their customer. The Committee of Scottish Clearing Bankers recognises in its submission that there will be a benefit to the clearing banks as a result of the reduction in their administration costs.

Mark Ballard: It is important that creditors choose the most effective route rather than the most cost-effective route. If cost becomes the primary determinant, less effective routes might be chosen. I am still concerned about that.

Given what I said about the apparent gap between the cost per application and the suggested costs, is there scope for variability in the cost structure to meet the needs of certain institutions or organisations, such as local authorities that are seeking to recover council tax moneys? Will the legislation be flexible?

Beverley Francis: We would be happy to consider that. The figures in the financial memorandum are, of course, generic and are based on the scheme's principles and current structure. As we develop the details, we will be happy to take into account the needs of various stakeholders to ensure that the outcome that you suggest is reached.

Dr Elaine Murray (Dumfries) (Lab): I have a simple question. In the first parliamentary session, the Executive introduced legislation to rationalise the number of non-departmental public bodies, but the bill aims to establish yet another quango that will have a seven-member board with two ex-officio members, a chief executive and 10 further staff. Staffing costs would be £400,000 per annum. Are there any alternatives to establishing another quango, or is that the only way of achieving the bill's aims? Were those alternatives considered? If so, why were they discounted?

Paul Cackette: It is true that there is a general reluctance to establish new NDPBs, unless the case for doing so is well made. However, the main issue to note about scrutiny and regulation in the area that we are discussing is the need to respond to concerns that arose following difficulties that were identified—or which were believed to exist—in how sheriff officers and messengers-at-arms carried out their debt enforcement functions. It is clear that a suitably independent and transparent means by which their conduct can be scrutinised is important, so that public confidence in what they do is maintained.

There were a number of alternatives and consideration was given to other options that would create a degree of independence from the court system. The feeling was that scrutiny should be separate and independent from the judicial level of scrutiny that exists at present and from the Scottish Court Service, which could be seen as being somewhat analogous to that. The option of having an NDPB was thought to be the most efficient and effective one, in terms of ensuring that the public would have confidence in the effective scrutiny of this part of what is, in effect, the court enforcement system.

11:00

Dr Murray: Given the existence of the Freedom of Information (Scotland) Act 2002, could not the

sort of thing that we are discussing have been done in-house by the Scottish Executive?

Paul Cackette: It could have been. The question would concern the extent to which a modern system involving a regulatory body that can be seen to be separate from the way in which the Executive operates would be the best way of achieving that. The feeling was that a separate structure would maximise the confidence of the profession and the members of the public who are affected by enforcement and diligence.

Dr Murray: It is a more expensive option, is it not?

Andy Crawley: Not necessarily. If the work were to be done in the Executive, we would still have to employ the people to do it. Added to that under the proposal is the cost of the degree of independence that the commission would have, as it would involve outside interests and people other than civil servants. In our view, that is an important piece of added value.

The decision comes down to value for money and whether it is worth spending such an amount on a new commission. To return to the comments that were made about the overall context in which the process of reform is taking place, it might be helpful to consider that a great deal of money is spent on debt in various ways. I am thinking not only of the hundreds of adverts that we see on the television, but of the social cost of debt in terms of lost employment, education and health issues. Those things add up to many millions of pounds and our view is that a commission that will provide more benefits than the other options represents good value for money and can be justified on that basis.

The Convener: Members of the Finance Committee are becoming increasingly concerned about the number of bodies such as commissions and NDPBs. It would take some pretty heavy persuading—well beyond what you have given us so far—to make us believe that such expenditure is justified when other methods are available. I am sceptical about whether the spending is justified. I know that independence is desirable, but it could be argued that NDPBs are not independent of Government and that, if you wanted to achieve true independence, you would need to use a process involving a parliamentary commissioner. I am not urging that on you—in fact, I am almost going in the other direction.

Why does not the industry pay for the required regulation either through the banks, which are the initial source of the debt problem and the ultimate beneficiaries of the system, or through instruments such as the sheriff officers and other agencies? Why should the public purse pick up the cost for the required legislation when, ultimately, the beneficiary is not Government?

Paul Cackette: The beneficiaries are those people who are affected by diligence and require adequate protection. When one thinks back to some of the concerns that have arisen in the past and to the difficult circumstances that are encountered by people who have their bank accounts arrested and other diligence steps taken against them—

The Convener: My question is, why cannot the banks and the financial institutions pay to regulate themselves against the bad practice that they pursue? Why should the general public pay for that?

Andy Crawley: I think that the banks' response to the committee's inquiry gives you the answer to that. Their response has been along the lines of, "How terrible it is that more debt will be written off." Banks do some work in this area, but we do not consider asking them to pay for this particular piece of work to be a realistic option. That just will not happen.

The Convener: Why not? Legislation could force the banks to do that, if we wanted to take that route. Why should the general public pay to set up a commission to regulate an industry that is making significant resources out of its own activities?

Andy Crawley: Because the public already pay for the costs of debt in various ways. I mentioned earlier the context in which this needs to be seen. We are not talking about no-cost alternatives. Our proposal is part of a much wider Executive strategy that is designed to improve understanding of debt, financial management and financial education. All those elements will deliver important benefits. In that context, our view is that there is a need for a high-profile body to front this aspect of debt management in Scotland.

There are a few alternatives, the first of which would be to do nothing. That would leave regulation to the courts. However, that has demonstrably not worked, which means that we need to try something else.

Self-regulation would be a cost-effective option, but problems would arise because the enforcement profession is small and, therefore, has a low economic base from which to support such work. Further, the enforcement profession is split—there is no consensus within it on how to deal with these issues. We have to provide that for the profession, in a sense.

The third option would be to use the civil service. That would have a cost and would not deliver the benefits that a commission would, because it would have no profile at all; it would simply be part of the great mass of Government work.

The final option would be to have a public body. We did an options analysis around whether that should be an NDPB, a commissioner or some other form of public body and concluded that the proposals that ended up in the bill were the best.

The Convener: Did you consider attaching the function to an existing regulatory or inspection system, rather than setting up a new independent commissioner for that purpose?

Paul Cackette: Yes. At one point, we considered whether it would be appropriate to combine the functions with those of the Accountant in Bankruptcy. We reached the decision that the sets of functions did not have sufficient consistency with one another. They provided different services and related to differing sorts of functions, which meant that the option would result in a slightly odd hybrid.

Andy Crawley: We are still considering whether we can house the commission in the most effective and cost-effective manner by sharing offices and resources. Obviously, we know that there are concerns about value for money around the setting up of any new commission and, once we had decided that that was the best policy option, we did a lot of work to ensure that the costs were robust and that we could deliver the proposal in the cheapest possible way. We can provide more information on that if the committee would find it helpful.

The Convener: I would need a lot of persuasion that we need to spend the £1 million. From what I have heard, I am not convinced—in terms of cost as well as policy—that an overwhelming case has been presented in favour of the chosen option rather than the other options. You might want to give us some more detail with regard to how you assessed the various options and, in that context, review whether there are better and cheaper options. Speaking personally, however, I am sceptical about whether we need another commission to perform the function that you have identified and I wonder whether it could not be performed in a more cost-effective way.

Andy Crawley: We accept that that is your view.

The Convener: Thank you for coming. We will consider our report at our meeting on 28 February and will probably produce it on 1 March.

As previously agreed, the committee will now move into private session to discuss the Executive's response to our stage 2 budget report and our deprivation inquiry.

11:11

Meeting continued in private until 12:23.

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