COMMUNITIES COMMITTEE

Wednesday 24 March 2004
(*Morning*)

Session 2

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

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COMMUNITIES COMMITTEE
13th Meeting 2004, Session 2

CONVENER

*Johann Lamont (Glasgow Pollok) (Lab)

DEPUTY CONVENER

Donald Gorrie (Central Scotland) (LD)

COMMITTEE MEMBERS

Scott Barrie (Dunfermline West) (Lab)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Patrick Harvie (Glasgow) (Green)
Campbell Martin (West of Scotland) (SNP)
*Mary Scanlon (Highlands and Islands) (Con)
*Elaine Smith (Coatbridge and Chryston) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE SUBSTITUTES

Shiona Baird (North East Scotland) (Green)
Christine May (Central Fife) (Lab)
Shona Robison (Dundee East) (SNP)
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
John Scott (Ayr) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Andy Crawley (Scottish Executive Justice Department)
Hugh Henry (Deputy Minister for Justice)
Kay McCorquodale (Scottish Executive Legal and Parliamentary Services)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Gerry McInally

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 1

Scottish Parliament

Communities Committee

Wednesday 24 March 2004

(*Morning*)

[THE CONVENER *opened the meeting at 10:02*]

Item in Private

The Convener (Johann Lamont): I welcome members to the meeting. We have apologies from Scott Barrie and Donald Gorrie, although Donald Gorrie may arrive late.

Agenda item 1 is consideration of whether to take in private item 4, which is consideration of the committee's draft annual report. As it concerns a draft report, do members agree to take the item in private?

Members *indicated agreement*.

Subordinate Legislation

Draft Debt Arrangement Scheme (Scotland) Regulations 2004

10:03

The Convener: For agenda item 2, I welcome Hugh Henry, who is the Deputy Minister for Justice, and his Scottish Executive officials Andy Crawley, Kay McCorquodale and Paul Cackette, who are here to support him.

As members probably know, the Scottish statutory instrument is an affirmative instrument, so the deputy minister is required under rule 10.6.2 of standing orders to propose by motion that the committee recommends that the draft instrument be approved. Members have received copies of the regulations and the accompanying documentation.

I invite the minister to speak briefly to the instrument.

The Deputy Minister for Justice (Hugh Henry): As the committee knows, part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 provides a framework for a national statutory debt arrangement scheme and creates powers to settle the details by secondary legislation. The draft regulations are made in terms of section 2(3) and 2(4), section 4(5), section 6(1), section 7 and section 62(2) of that act.

The debt arrangement scheme will offer a positive opportunity and means for the managed repayment of multiple personal debts with protection against enforcement action and sequestration. It will provide a lifeline for debtors who cannot settle their debts as they fall due, but who could do so if they were given time. It will encourage social responsibility and appropriate debtor and creditor behaviour, as the debtor's ability to access unauthorised credit and the creditor's ability to recover such credit will be restricted.

It may be useful to run briefly over the details of how the scheme will operate. An approved money adviser will assess a debtor's financial situation and recommend a debt payment programme under the scheme if that is suitable. The adviser and the debtor will examine incomings and necessary outgoings and calculate how much income—if any—the debtor has over and above that which is required for reasonable needs and which they could apply towards debts. The adviser will negotiate repayment terms with creditors and then send a debt payment programme to the scheme administrator for approval.

A debt payment programme will be approved if it is fair and reasonable—if it strikes a fair balance

between the interests of the debtor and of the creditors. As members know, the scheme does not specify the amount of debt that can be included or the period over which debt must be repaid. It is intended to be flexible to allow the administrator to take proper account of circumstances, which will vary. Once a programme is approved, the debtor will be protected from enforcement action and from sequestration.

As well as specifying the amount of surplus income that is to be paid over, a programme will have conditions attached to it. Those are aimed at maximising a programme's success by ensuring that the debtor meets his mortgage or income tax payments as they fall due, for example. Failure to comply with any conditions without good cause could lead to revocation of a programme.

Once a programme is approved, the debtor will make a single periodic payment to a single point from which money will be distributed to creditors in agreed amounts. All the money that the debtor pays will go towards settling their debts. Creditors will meet the small administrative charge for distributing the money.

The scheme is intended to help all parties that are affected by multiple debts. Contrary to what some have claimed, it is not heavily weighted in the debtor's favour and does not give only scant regard to the creditor's interests. The scheme will create a win-win situation. Creditors will benefit, because they will not have to take expensive court and enforcement action. Having chased a debt, a creditor frequently finds that another creditor has acted before them, which leaves no way to recover the debt or the enforcement expenses.

We admit that, under the scheme, a creditor might have to wait longer to be paid, but unless they agreed otherwise, they would be paid in full. If creditors did not consider that they would benefit from a debt payment programme, they would not agree to it. However, our experience of existing voluntary repayment plans is that many creditors agree to or recommend such arrangements.

We are breaking new ground with the scheme, so it makes sense to review how it works in practice. That is why we intend to review the scheme's operation after it has been in place for one year. We are committed to making the scheme a success. If, after considering the review, amendments to improve the scheme's operation appear sensible, we intend to return to Parliament with them.

The debt arrangement scheme is a bold step forward in debt management. It responds to much of the widespread concern and criticism from not only many members of the public, but members of the Parliament. The scheme has been widely welcomed. If parliamentary approval is given, I estimate that the scheme will be in operation by the end of November 2004.

The Convener: The minister will know that, in responding to the Executive's consultation, the committee highlighted its concern that some people might be unable to access the debt arrangement scheme because they had insufficient surplus income. At that time, the Executive suggested that a pilot study might deal with that group of debtors. Do you have definite plans for a pilot scheme that is aimed at addressing the needs of debtors who can afford only small repayments?

Hugh Henry: We recognise that such situations could occur. No limit has been placed on what might or might not be accepted. We are committed to trying out the debt arrangement scheme in a pilot study, and we are involved in continuing discussions with a number of organisations to see whether we can reach agreement on how that pilot study might be constructed.

Clearly, we are trying to strike the balance to which I referred earlier. We must always recognise the fact that there may be some people for whom a debt arrangement scheme is not a suitable or appropriate vehicle. Some people might never be able to repay their debts. In those situations, they would have to consider whether some of the other options that are available might be more suited to their particular needs. It is not for us to recommend that: the assessment needs to be made in each individual case. Deliberately to avoid creating unnecessary barriers to the scheme, we did not specify any minimum payment. We recognise the fact that some creditors may be prepared to be flexible, in which case even small amounts of money might be accepted. However, in some cases, creditors might prove a bit more difficult.

We are committed to looking at the pilot scheme. There are continuing discussions and, as soon as we can reach agreement with those organisations, I will write to the convener to inform the committee of what agreement has been reached.

The Convener: You will appreciate the committee's view that some of the most vulnerable citizens in our communities might not be able to get into a debt arrangement scheme; that is an issue on which we will continue to press the Executive. In your discussions around the pilot scheme, have you had any thoughts about how the scheme might differ from that which is set out in the draft regulations? Can you see how the pilot scheme might differ for people on very low incomes, who have a very low surplus to distribute?

Hugh Henry: No, we have not reached that stage of agreement yet. It is difficult to anticipate every potential problem. As I said a minute ago, there may be people who have such large debts and such low incomes that a debt arrangement scheme of any shape or form might not be suitable. Bankruptcy might be an appropriate solution for them, although it is not something that I would advocate without knowing the circumstances of the individual. We are not able to describe to you how the pilot scheme would work, but we will return to the committee on that.

The Convener: So you do not envisage the timescale for the pilot scheme matching that for the review that you mentioned.

Hugh Henry: If we can get an early agreement with the agencies that we are speaking to, we hope that the pilot scheme will be done within the timescale of the review. You are right to suggest that, if we are going to make changes in other respects, it makes sense for us to make a change in that respect as well. If there are any changes to be made, we will seek to bring them back together.

The Convener: Thanks very much.

Stewart Stevenson (Banff and Buchan) (SNP): Good morning, minister. I hope that it will be helpful if I say that I am not planning to oppose the regulations. Nevertheless, I have some questions. Several people have told the committee that court rules will need to be changed to allow money advisers, as laypersons, to appear before the courts. What are your plans in that respect?

Hugh Henry: I will have to take advice on that. [*Interruption.*]

The Convener: It is possible for Executive officials to speak to the committee, as long as they have received permission. Do you wish them to do so?

Hugh Henry: With your permission, convener, I will bring Andy Crawley in.

Andy Crawley (Scottish Executive Justice Department): We are aware of the need to adjust court rules. The exact form of court rules is a matter not for the Executive, as you will be aware, but for the Sheriff Court Rules Council and the Court of Session Rules Council. However, we expect to achieve the necessary changes in time for the implementation of the regulations in the latter part of this year.

10:15

Stewart Stevenson: Money advisers can charge a fee, provided that they have notified the debtor of people within a 10km area who will provide advice for free. I have two questions related to that. First, how will money advisers find such people, so that they can notify debtors of their existence? Secondly, is the provision that I have described a good one, especially in rural areas where the low density of population and settlements may mean that there are no such people? It is extremely unlikely that free money advice will be available within a 10km radius of the place where I happen to stay. That situation will be replicated across Scotland.

Hugh Henry: We have invested substantially across Scotland to create new money advice posts. I pay tribute to local agencies for how they have operated. We have invested an additional £3 million with effect from 1 April 2002. In some cases, local authorities have provided money advisers directly, whereas in others they have entered into partnerships with local voluntary organisations. The number of additional posts that the money has created has far exceeded our expectations. All concerned are to be commended on that. An additional 120 money advisers have been created across Scotland. Earlier this year the Minister for Communities announced that in 2005-06 another £2 million would be made available to meet rising demand. When we distributed the money, we ensured that a minimum of £40,000 was made available per local authority area, so that in every area there would be access to services. The exceptions were the island authorities, which have much smaller populations and were given £20,000 each. It is probably best left to local authorities to decide how to provide the service in their area.

I recognise the point that Stewart Stevenson makes. There are particular problems in rural areas, not just in the south of Scotland but in vast parts of the Highlands. Many money advice agencies are exploring new ways of giving advice and using telephone or internet communications, although some of those methods are still to be tried and tested. I am not sure that we can be entirely prescriptive about how the service should be delivered in a local area.

Stewart Stevenson: I am perfectly content with what you are saying, but I am concerned about the reference to 10km. It is likely that I live between 60km and 70km from the nearest citizens advice bureau. That will not be an uncommon experience. Have you considered the alternative formulation, that a money adviser charging a fee must identify the nearest free money adviser? For rural areas, that is a more practical formulation than the reference to 10km, which is pretty restrictive.

Hugh Henry: I agree. I refer Stewart Stevenson—

Stewart Stevenson: I have a feeling that you are about to tell me that I have missed the relevant provision.

Hugh Henry: Regulation 11 is headed "Functions and duty of a money adviser". I refer the member to regulation 11(2)(b)(ii).

Stewart Stevenson: Well done, minister. I am thoroughly in agreement with what you have done in that regard and stand corrected.

Mary Scanlon (Highlands and Islands) (Con): That is very impressive.

Stewart Stevenson: I move on to a couple of other questions that need not detain us for too long. You have made changes to the fees that the debt arrangement scheme administrator charges. The committee would be interested to know some of your thinking on that issue. What were creditors' views on the fees structure?

Hugh Henry: One of the things that we have been trying to do is to get a balance between the interests of debtors and creditors. If creditors see that we are moving in the direction of recovering some of the money, they will be fairly content with what is being proposed. We have tried to avoid the introduction of barriers that are so substantial that the scheme will not work. A reasonable balance must be struck.

Stewart Stevenson: I accept all of that, but the point that I was making was a rather simple one. The bottom line of my question is whether the Executive is aware that creditors are relatively content with what is proposed.

Hugh Henry: We think so. We see no reason why creditors should incur all the costs. We are not aware of particular problems.

Stewart Stevenson: That is fine, minister. Thank you.

The Convener: I want to take you back to Stewart Stevenson's question. You reassured him on the point that he raised about having to find an adviser within a 10 km geographical area. How will the person who is to give advice about where to find free money advice know where to find those money advisers?

Hugh Henry: Clearly, one of the difficulties is how to ensure that people have access to information. If people ask local agencies, such as a social work or other local authority department, where they can get information, the agencies should have some of that information. The local agencies would have access to the Scottish Executive website.

The Convener: Bearing it in mind that it is not hugely in the interest of the person who is going to charge a fee for advice to find out about the free advisers, how can you make the process so simple that those people cannot plead ignorance as a defence? Surely those people have to be able to advise debtors that free advice is available so that the debtor can make an informed decision about whether to use the adviser who is charging a fee.

Hugh Henry: I am not sure that I would be able to give you an answer that would take away those concerns in every case. We think that the information is widely available. All local agencies and operators have the information. It is available on our website. That said, I know that not everybody has access either to a computer or to the internet.

The Convener: The issue concerns the person who wants to charge for advice. It is they who must be able to satisfy the system that they have given information about where free advice is to be found to the person who is looking for that advice. How do we ensure that that requirement means something? If money advisers cannot find the information easily, they will be able to say that they did not know that free advice was available. They could say that the information was difficult to access.

Hugh Henry: Can I bring in Andy Crawley to answer the question, convener?

The Convener: Yes.

Andy Crawley: It is a fair question. The answer is that, as well as the areas that the minister has spoken about, information is also available in the Executive's debt advice and information package, which requires to be served before an attachment is made. The package is widely available in all sorts of different agencies. It comes in two parts: the first of which contains general advice about financial matters. The second part, which is relevant to the convener's question, contains information about local money advice. The package is widely available and widely used. We would expect any money adviser to have a copy of the package in their office.

To the extent that it is necessary, all the information is backed up on the Scottish Executive website. It is widely known that the information can be downloaded from the website. We do not anticipate that there will be any difficulty in respect of people not being aware of the availability of free money advice.

The Convener: The obligation to give that information, however, is on the person who wants to charge a fee. Surely you do not want to allow those people the get-out clause that the information was difficult to access and that it was not collated in a simple form. The person who is in debt and who is looking for money advice is a different matter. I am talking about the person whose interests are served by the person who is in debt coming to them and not going to a free money adviser. Surely you do not want to be in the position that the bit of the system that tells advisers where free advice is to be found is vague.

Hugh Henry: Is it your concern that the adviser might not have given out the advice in order to be able to charge a fee?

The Convener: Presumably the purpose of the regulation—which requires that a money adviser tells a person whom they hope to have as a client where that person could go at no cost to themselves—is that you do not want money advisers to charge for their advice unless people are actively making the choice to pay in the knowledge that other choices are available to them.

Hugh Henry: If someone was deliberately not providing such information to be able to charge a fee, they would be in breach of the regulations.

The Convener: What if the money adviser said, "I don't know. I couldn't get the information, so how was I to know?" You say that the information will be held in a social work department; it is not possible for somebody to give information that they do not have.

Hugh Henry: The regulations say that

"A money adviser shall not charge a fee to a debtor … unless the adviser has informed the debtor—

(a) that money advice is available without any fee"

and has gone on to give further information. The adviser has to do that.

The Convener: What if the adviser does not know? What if they say that they do not have any information that tells them where the nearest free money advice is within a 10km radius and can only assume that it does not exist?

Stewart Stevenson: May I come in on that? The dispensing power in regulation 4 allows the debt arrangement scheme administrator to

"relieve any person from the consequences of any failure to comply with a provision of these Regulations that is shown to be due to mistake, oversight or other reasonable cause."

I take it, minister, that it is your clear intention that that not be a get-out clause under the circumstances that the convener is pursuing.

Hugh Henry: No, not at all. If a money adviser was being deliberately obstructive, that would not be a mistake or an oversight. There would be no reasonable cause for the adviser to say that they did not know about free money advice. We would expect any money adviser to know that the Scottish Executive website exists and where to access the relevant information; there is a requirement on them to provide the information because they have it. Training is also available for money advisers. For a money adviser to say that they did not know would not be a reasonable excuse for failure to comply. Regulation 11 requires money advisers to provide the information, and regulation 4 would not apply in those circumstances. We do not anticipate that any money adviser would have reasonable grounds for saying that they did not know, because the information is available. To be frank, if a money adviser did not have access to that information or to computer facilities, I would want something to be done about that, and they would risk losing their status as a money adviser.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): The draft regulations that were published for consultation provided that fees would be payable to the debt arrangement scheme administrator, but no figure was mentioned. The draft regulations that are before us now provide that a money adviser does not have to pay a fee to inspect the debt arrangement scheme register, and also that fees can range from £5 to £500. That is a change from the original consultation draft. Will you explain to the committee the reason for the change and why the Executive felt that it was necessary?

Hugh Henry: In the consultation draft, the figures were not specified; we have simply added the figures to give some clarity. Andy Crawley will expand on that, if there is anything else to add.

Andy Crawley: I cannot add much to that. As the minister says, we had not fixed on an appropriate level of fees for accessing the register at the time of the consultation. Partly in light of the consultation response, we have now fixed on the figures that appear in the draft, which are comparable with the fees for consulting other, similar Government registers. We have pitched them on that basis.

Cathie Craigie: If the fees were based on the consultation responses, are creditors happy enough with the suggested fees?

Andy Crawley: We have had no suggestion of any difficulty with the fees. As I said, they are broadly comparable to those for other, similar registers.

Cathie Craigie: As the minister will know, the committee has taken a particular interest in fuel debt and in the arrangements for installing pre-payment meters in the homes of people who have fallen into debt. Many committee members are concerned that such meters might impose an additional cost burden that might make it harder for the individuals concerned to pay off their debts. I know that Scottish Executive ministers and officials have been in discussions with suppliers and I understand that there are technical issues in that the relevant powers are reserved to Westminster. Is the minister in a position to update the committee on the outcome of those discussions?

10:30

Hugh Henry: Cathie Craigie describes the situation very well. I preface my remarks by mentioning that the number of disconnections has dropped, so the discussions to which she referred are having a beneficial effect.

Cathie Craigie is right that the supply of energy is a reserved matter and that there are limits to what we can do, but we have had good discussions with the energy companies on the treatment of energy debt arrears. Generally—but not in every case—the energy companies have agreed not to install pre-payment meters if there is a debt payment programme in place so that debt can be recovered in an agreed way. We have still to resolve some outstanding issues around treatment in respect of pre-payment meters that have been in place before a debt payment programme was agreed, but officials will meet representatives of the energy companies to see whether we can make further progress on that.

Cathie Craigie: It is good that there is a spirit of co-operation between the Scottish Executive and suppliers, especially if the energy suppliers agree voluntarily not to install pre-payment meters. I welcome that. However, with so many different companies entering the energy supply sector, how would a company that did not want to be part of that general agreement be persuaded that it was going down the wrong road by installing pre-payment meters? I accept that the number of disconnections has fallen, and the problem may not be as dramatic as we thought, but I do not want people to be disconnected because one organisation has not joined the general agreement that has been reached. How will we deal with that until such time as Westminster introduces legislation to cover such situations?

Hugh Henry: We have no legislative sanctions but we would liaise, as we have been doing, with our colleagues at Westminster to make them aware of the problems and issues.

Over the past few years, we have noticed that the major fuel companies are very sensitive to the effects of bad publicity. Although not all energy companies respond quickly, they are generally anxious to avoid being labelled as bad suppliers or as being unduly harsh. I acknowledge that such businesses still have obligations in their capacity as companies, but they have generally been willing to engage in discussion. I suppose that our only sanction is that, if a company got a name for taking harsh measures against the poorest people in our society, such publicity might have an adverse effect on their business. We will certainly take the matter up with our Westminster colleagues at every opportunity, as well as in letters to the companies concerned. I am sure that the committee would take a keen interest in any companies that were behaving in such a way.

Cathie Craigie: I have a question about people who are paying back fuel debt through a pre-payment meter now, before they have entered a debt payment arrangement. You mentioned that discussions continue in that regard. Are you hopeful that they might lead to the sort of outcome that we seek?

Hugh Henry: I could not anticipate what those discussions will lead to, to be honest. When we have concluded the discussions, however, I will inform the committee of their outcome through a letter to the convener.

The Convener: Thank you for that.

Mary Scanlon: I will move on to freezing of interest and composition of debts—I understand that you have already stated that those are outwith Parliament's legislative competence. I draw your attention to a point that was made by Citizens Advice Scotland. CAS stated:

"If the fundamental issues concerning composition of debts and freezing of interest were addressed, we would consider that this scheme would be of major benefit to our clients in terms of debt management."

CAS went on to say that it

"is therefore disappointed to note that the Draft Regulations 2004 do not contain such a provision, other than voluntary agreement. Debtors could thus enter into an agreement for years and still not manage to repay their debts due to interest and other charges."

You mentioned a review in your opening remarks. Do you have any plans for monitoring the impact of leaving composition of debts and freezing of interest to be dealt with under a voluntary agreement?

Hugh Henry: Any review will examine a range of issues, including how the scheme is working and any particular problems and concerns on the part of debtors, creditors or money advisers. We will ascertain what we could improve on. Notwithstanding its outcomes, a review would not resolve the question of what are reserved matters and what are devolved matters. Some of the issues that have been raised by Mary Scanlon are clearly reserved to Westminster. Issues relating to the Consumer Credit Act 1974, which could have an impact, are reserved.

Voluntary agreements can already be made to reduce or freeze interest. I do not mean to say this in a pejorative manner, and I recognise that this will not be possible in every case, but a good money adviser will seek to achieve that. With training and experience, people will seek to achieve that outcome early on. It would be wrong of me to suggest that, even if we reviewed the scheme and found that there was an issue, we would come back and change it, because we would not necessarily be able to change every aspect of it.

We raised other issues when the matter was debated in Parliament. There might be human rights issues, there might be issues over the confiscation of property and there might be concerns that the proposals do not strike a fair balance between debtors and creditors. To return to an earlier point, other mechanisms are available in some cases, where the composition of debt is appropriate, for example in the case of bankruptcy and trust deeds for creditors.

We will keep our eye on the situation. Where we have the power to act to improve arrangements, we will; where there are issues for our colleagues at Westminster, we will refer matters to them.

Mary Scanlon: I was a citizens advice bureau volunteer in a previous life. One of my duties was to phone people, including sheriff officers. I found that, when people approached citizens advice bureaux to say that they were willing to address repayment of a debt, that was a serious statement and I found people to be co-operative. I am sure that you are aware that many people pay interest for years and years, without addressing the debt itself.

I think that you are saying that if there is an adverse impact, for example if the money advisers are not sufficiently persuasive or if creditors are not willing to co-operate, you will reconsider the matter and discuss it with your Westminster colleagues in the light of experience.

Hugh Henry: We will certainly keep our Westminster colleagues advised of any problems that we identify in the operation of the scheme. I emphasise again that in situations such as those that Mary Scanlon described, other arrangements might be more suitable for the individuals concerned. Again, it will depend on the individual case.

Mary Scanlon: I will make a final point. When you review the scheme after 12 months, will you ask money advisers for their comments and will you include those in your consultation? We will want to hear about their experience of the scheme.

Hugh Henry: Yes. We will take advice from Money Advice Scotland and Citizens Advice Scotland and we will talk to local authority money advisers. We will seek the fullest range of information.

Patrick Harvie (Glasgow) (Green): Regulation 35(1)(b) outlines the situations in which further credit can be given to someone who is on a debt payment programme. The earlier draft of the regulations included two such situations, but the draft that is in front of us now includes four more. Will you explain those changes and the reasons behind them?

Hugh Henry: To which regulation are you referring?

Patrick Harvie: I refer to regulation 35(1)(b). Subparagraphs (b)(i) and (b)(ii) of regulation 35(1) were in the previous draft, but subparagraphs (b)(iii) to (b)(vi) have been added.

Hugh Henry: Do you want to know why they have been included?

Patrick Harvie: Yes.

Andy Crawley: When we reviewed the regulations after the consultation, we were aware of the need to provide some flexibility in what might be a long-running debt payment programme. There is no upper time limit on how long a programme can run, so creditors might agree on a programme that would run for many years. During such a period there will inevitably be occasions when debtors need some form of limited credit and we did not want to create a risk that a programme might fail because the scheme had insufficient flexibility to allow debtors to use minimum credit when appropriate. We anticipate that larger-scale credit will still be approved by variation, but the additional categories in regulation 35(1)(b) are intended to cover what might be called day-to-day credit needs, by which I mean the small credit needs that arise. It would be inappropriate to force debtors to apply to the DAS administrator every time they need a small amount of credit.

We have tried to balance that with creditors' interests by providing in regulation 35(2) that creditors must be aware of the debt payment programme, so that they can make an informed decision about whether or not to give credit. In essence, the purpose of including the additional categories was to make it more likely that a debt payment programme will survive throughout its agreed period.

Patrick Harvie: I take it that there was no reason not to include those categories in the earlier draft of the regulations.

Andy Crawley: No. We listened during the consultation and we have tried, by amending the regulations, to take account of concerns that were expressed.

Elaine Smith (Coatbridge and Chryston) (Lab): I want to explore some of the issues around secured debts and mortgages. I am not quite clear about the matter, so please forgive me if I am slightly vague. In its response to the consultation in September 2003, the Govan Law Centre stated:

"Where a creditor calls up a secured loan the entire debt becomes due",

rather then just the arrears of periodic payments. The law centre stated that that would mean that

the whole outstanding amount, often a relatively large sum, would then be covered by the definition of debt, which could impact on the likelihood that the DAS administrator would be able to dispense with the consent of a creditor in setting up a debt payment programme.

I find all that to be rather confusing. However, I note that the definition of debt in the draft regulations has been altered to include specific provision in relation to a sum that is secured by a standard security. What is the reasoning behind that? Furthermore, will you give us more information about how secured debts, such as mortgages, now apply as far as the scheme is concerned?

10:45

Hugh Henry: People had expressed concern that the amount of debt that is outstanding on a mortgage could inadvertently be included in the overall amount to be repaid. However, on reflection, we do not think that that could happen because of regulation 3(b), which has been inserted since the draft that went out for consultation. Regulation 3(b) excludes

"any sum due by a debtor … to the extent it is secured by a standard security, other than where that sum is included under paragraph (a)(ii)"—

which refers to arrears—and any sum that is due

"as a liability for the purpose of section 17(2B) of the Legal Aid (Scotland) Act 1986."

As a result, we think that the regulations address concerns that the full amount of a mortgage might be included for consideration.

Elaine Smith: When we dealt previously with the matter, I recall asking a question about how the regulations would fit in with the Mortgage Rights (Scotland) Act 2001. I notice that, in paragraph 3 of schedule 3, there is a consequential amendment to the 2001 act. What does that amendment seek to do?

Hugh Henry: The amendment seeks to require that they have regard to the act.

Elaine Smith: It seeks to require that who has regard to which act?

Hugh Henry: When discussions about developing a debt arrangement scheme take place, regard must be had to the Mortgage Rights (Scotland) Act 2001.

Elaine Smith: Right.

Hugh Henry: There was a worry that, for example, if someone had a debt of £10,000 and a mortgage of £40,000, the mortgage itself could be landed on top of the £10,000 debt. We now believe that the steps that we have taken and the requirement to have regard to the 2001 act will mean that the mortgage could not be added in to the £10,000 debt for calculation purposes.

Elaine Smith: The monthly arrears could be added, however.

Hugh Henry: Yes, but not the full outstanding amount. If someone missed four months' repayment, that amount could be considered. However, the remaining 15 years, or whatever was left of the mortgage, could not be added.

Elaine Smith: That seems to be quite clear.

Stewart Stevenson: I want to develop this point, because although the inclusion of that provision is welcome, it raises other concerns.

Let us say for the sake of argument that a gentleman has been living with his wife south of the border and therefore has a mortgage that is not secured by a standard security, which is a form of mortgage that is available only in Scotland. The man and his wife separate and he comes to live in Scotland, which means that, although he still supports his estranged wife, he falls under the new provisions. Because the initial mortgage debt is not secured by a standard security, it is not covered by the regulations. Would that amount be included in the total debt package?

I want to highlight a number of other aspects that are also related to standard security. For example, other sources of debt that are associated with a standard security that is falling into default include the cost of serving calling-up notices and notices of default, valuation fees, advertisement costs and a range of other matters. Would those costs be included in or excluded from the overall amount of debt? The consequential amendments do not really address such matters, which could prove to be considerable burdens.

Hugh Henry: I will answer the first question first. My understanding is that a person who has liability for a mortgage in England who moves to Scotland would not be covered by the scheme.

Stewart Stevenson: Do you acknowledge that that could constitute a significant proportion of the indebtedness of the individual who happens to be living in Scotland?

Hugh Henry: It could, but payment of the debt would have to be enforceable elsewhere.

Stewart Stevenson: Indeed, it would be likely to be enforceable elsewhere, but not necessarily. I am sorry to be building such a large example but it is perfectly possible that a Scottish institution could lend the money and that the contract could be written under Scottish law even if the lending had to be secured under English provisions because of the location of the building. There are many difficulties; I could go on at great length, although I do not intend to.

Cathie Craigie: Is the minister saying that if a man who lives in Scotland and has a mortgage with the Royal Bank of Scotland—albeit south of the border—falls into arrears, those arrears could not be part of a debt arrangement scheme?

Hugh Henry: Stewart Stevenson went on to describe another scenario. There are two potential scenarios—

Cathie Craigie: Can we deal with the debt arrears?

Hugh Henry: There are two potential scenarios for that debt. First, when a person takes out a mortgage with the Royal Bank of Scotland or any lender under English law, and moves to Scotland, there is still a debt.

The other situation that Stewart Stevenson went on to describe is a loan that is taken out under Scots law for a property in England, in which case the debt would be a debt under Scots law.

Stewart Stevenson: The contract could be under Scots law, but the—

Hugh Henry: Those are two potentially different legal issues. To be honest, convener, I would have to take advice on such technical issues, which we would not normally face.

Cathie Craigie: By asking the question, Stewart Stevenson has raised my concern that such debt arrears would not be part of a debt arrangement scheme, which is not—I am sure—the Executive's intention.

I am sure that any lawyer would be able to argue that a standard security and a mortgage are the same thing. Stewart Stevenson might shake his head, but if he looks at the Mortgage Rights (Scotland) Act 2001, which I took through Parliament, he will see that it covers standard securities in Scotland. There was an argument at the time about the title of the bill and we took on the lawyers because people who go to the high street, whether to the Halifax or to the Bank of Scotland, do not chap on the door and ask for a standard security. Building societies and banks do not advertise standard securities at discounted rates—they advertise mortgages.

The Convener: There is a danger that we will end up rehashing the arguments around the Mortgage Rights (Scotland) Act 2001. I know that it was Cathie Craigie's bill, but my expertise does not stretch far enough to know whether we are wandering too far off the point. I ask Stewart Stevenson to finish his line of questioning, then we can move on.

Stewart Stevenson: I will be of assistance and say that Cathie Craigie is absolutely right. However, including the term "standard security" in the regulations deliberately limits them to Scotland. I understand why you have done that, minister. However, I will close the discussion, because you have said that you will come back to us on the matter.

I invite you to reflect on some of the wider issues about debts that are incurred outwith Scotland. It is possible, for example, that someone might buy a holiday home in Spain from a Spanish lender. A variety of similar cases could arise. The question is relevant not only in relation to England; for example, we could be talking about the Isle of Man, the Channel Islands, Spain or even somewhere outside the European Union. It would be useful to know how we can ensure that people in such situations will not be denied the benefits of the regulations. That is the bottom line.

We will have a debate offline, over a cup of coffee, about mortgages and standard security.

Hugh Henry: Some of those issues have been raised by the Council of Mortgage Lenders. Frankly, I am not sure whether one would say that it is a matter of splitting hairs or clutching at straws—if you allow mixed metaphors.

The Convener: They are not allowed here.

Hugh Henry: There are technical issues on which I am not in a position to give a definitive answer just now. Clearly, if the situation to which Stewart Stevenson refers becomes an issue, we will examine it and come back to Parliament on it. We do not envisage that the issue that he raises will be a major problem. If it becomes a major problem, we will have to address it.

Elaine Smith: The Council of Mortgage Lenders' primary concern in its response was that, if secured debts were included, that would

"adversely affect both the cost of borrowing and the broad range of customers who currently aspire to homeownership."

It thinks that there should be no distinction between arrears and payments, because both form part of the debt secured by the standard security. I understand that the Executive has been in discussion with the Council of Mortgage Lenders. What progress has it made in agreeing guidance that will encourage secured creditors to adopt a policy that is against calling in a loan where the debtor is meeting the current liability and is making a contribution towards arrears?

Hugh Henry: That relates to some of the points that we discussed earlier. Our view is that mortgage payments should be treated as continuing liabilities. There is a difference between the arrears that build up when that liability has not been paid and the amount outstanding on the mortgage. We would worry about going too far in the direction of some of the comments of the mortgage lenders. We understand the difficulty

that lenders are in, but we would not want to jeopardise the scheme by giving them some sort of advantage in relation to the whole mortgage, which would then jeopardise other creditors and the debtor's ability to see through any arrangements. The right balance has been struck. We know that some people are not entirely happy, but the issue is another one on which, if there is a major problem, we will reflect in the light of experience. However, I am sure that we will hear arguments in the other direction.

Elaine Smith: Absolutely. So you do not think that there will be the adverse effect on the cost of borrowing to which the Council of Mortgage Lenders refers.

Hugh Henry: It would be foolish of me to say that there will be no effect. We do not anticipate that the problem will be as great as the Council of Mortgage Lenders envisages but, if there is a major problem, we will reflect on it.

Elaine Smith: You cannot say fairer than that. Finally, I am not clear about where rent arrears fit in.

Hugh Henry: Rent arrears would be regarded in the same way as mortgage arrears. Regulation 2(1), on definitions, states:

"'continuing liability' means a payment due by a debtor, other than arrears of such a payment, in respect of … rent".

So there would be a continuing liability—that is, a payment would be due by a debtor. However, if there are arrears of such a payment in respect of rent, that will be considered under the regulation.

11:00

Mary Scanlon: I want to clarify a point that relates to what Elaine Smith has said. The Council of Mortgage Lenders has the benefit of being able to repossess a property and to sell the security to clear arrears on the principal sum. Given rising house prices in Scotland, if there is a surplus left after repossession and sale, can that be used by the money adviser to pay off other debts under the debt arrangement scheme?

Hugh Henry: The surplus would be considered as an asset available to the debtor. If necessary, the debt arrangement scheme could reflect the availability of that asset. If a house is sold to recover a debt, the person concerned recovers their property and any surplus falls to the person who owns the house. If a debt arrangement scheme is still in place, the availability of that surplus will need to be considered and the scheme amended, where appropriate.

Mary Scanlon: Would that make repossession of a house attractive not only to mortgage lenders—for whom it acts as a security—but to other creditors?

Hugh Henry: The other creditors would not be able to enforce repossession.

Mary Scanlon: I appreciate that.

Hugh Henry: Whether the mortgage lender will move to enforce recovery is another matter. Some of the issues that Cathie Craigie raised are relevant here. We are not aware of any pattern that is developing in this respect. I am not sure that I want to anticipate such a development.

Mary Scanlon: It crossed my mind that, because in Inverness house prices are rising by about 25 per cent a year, it could be an attractive option to some creditors to put pressure on mortgage lenders to sell houses. That would provide access to surpluses of money that might not otherwise be available.

Hugh Henry: Forgive me, but I am not entirely familiar with the subject. Cathie Craigie may be in a better position to explain what would happen in situations where someone with a mortgage is faced with repossession. I do not anticipate that what Mary Scanlon has described would happen.

Mary Scanlon: I am sure that you will review the matter after a year.

Hugh Henry: We will do so if necessary. To be honest, I would be appalled if we started to find that mortgage lenders were forcing repossession simply to get back mortgage arrears. That would fly in the face of everything that we have attempted to do in the Parliament. I am sure that the Parliament would want to act on that if there were evidence that it was happening.

Mary Scanlon: I was not really thinking about the mortgage lenders. I thought that the surplus from repossession would be a pot of money that was attractive to other creditors.

Hugh Henry: I do not see how the other creditors would be in a position to enforce repossession.

Mary Scanlon: It has fallen to me to raise the issues that were raised previously by the Subordinate Legislation Committee. I refer to regulation 7(4), which states:

"A money adviser shall assist the debtor to appoint a replacement adviser".

I am not sure whether I can state clearly the concerns of the Subordinate Legislation Committee, but it says that the drafting of the regulation is "obscure" and that it

"doubts how effective it will be in practice."

The committee goes on:

"Leaving aside the situation where a money adviser has died, if a money adviser has been suspended or had an approval revoked it seems odd that that money adviser should be entrusted with the task of recommending a successor."

I wonder whether you can provide some clarification on whether the regulations will be amended to prevent any potential ambiguity.

Hugh Henry: We have responded to the committee—I could quote all our responses to the Subordinate Legislation Committee—and we do not see any need to amend the regulations in the way that has been suggested.

The Convener: We have the Executive's responses, which were part of the Subordinate Legislation Committee's report.

Mary Scanlon: Is the Subordinate Legislation Committee satisfied with the minister's most recent response?

The Convener: It has continued to express its concern and has brought the matter to our attention, as we are the lead committee.

Hugh Henry: We will review the scheme and address the points that have been raised. We think that we have addressed the Subordinate Legislation Committee's concerns. If there continue to be concerns, they will be addressed in the review.

Cathie Craigie: The Subordinate Legislation Committee has expressed concerns about the lack of an appeals mechanism for people who have applied to be money advisers but have been refused approval; the committee wonders whether that might be in breach of article 6 of the European convention on human rights. I am sure that the committee will have raised the matter with the Executive, but I seek the minister's comments on it.

Hugh Henry: I ask Kay McCorquodale to address that issue.

Kay McCorquodale (Scottish Executive Legal and Parliamentary Services): We have considered the matter and, as we said in our response to the Subordinate Legislation Committee, we consider judicial review to be the most appropriate remedy. We have also taken into account the further concerns that have been raised, which are apparent in the committee's papers. We are still of the view that, because the decision is essentially an administrative one, as long as it is taken lawfully and fairly, it is ECHR compatible, even though the review grounds based on judicial review are limited compared to those based on a review of the merits of the individual case. We are satisfied that judicial review is sufficient and that there are no ECHR problems.

Stewart Stevenson: I think that this is the last of our questions, minister. The Subordinate Legislation Committee has engaged in exchanges with the Executive on the subject of revocation and completion. Regulations 45(3)(b) and 49(2)(b) use the phrase

"to each creditor known to the adviser",

whereas regulation 45(4)(b) uses the phrase

"to each creditor taking part in the programme."

One can see why the different phrase is used in regulation 45(3)(b), because, regardless of whether there is an adviser, creditors who are not in the programme need to know what is going on. Despite all the exchanges with you, the Subordinate Legislation Committee has been left uncertain why there is not greater consistency in the use of those phrases. Do you have any more to say on why those different phrases are used at different points?

Hugh Henry: I ask Andy Crawley to comment on that.

Andy Crawley: The general answer on the points of consistency and the concerns that the Subordinate Legislation Committee has mentioned is that, because we intend to review the whole operation of the scheme at an early stage, we will take on board all the Subordinate Legislation Committee's comments at that time and will make changes as part of an overall package of adjustment. I confess that I struggled a bit with the Subordinate Legislation Committee's question on the matter; I did not entirely understand what it was asking.

Mary Scanlon: Neither did we.

Andy Crawley: There is sometimes a two-way process.

If there is any ambiguity about regulation 45, I think that I can explain it. There is a policy reason for the distinction between the arrangement in regulation 45(3) and the arrangement in regulation 45(4). In regulation 45(4), the DAS administrator is sending intimation only to creditors in the programme. The reason for that is simple: the DAS administrator will not know who the other creditors are. I do not think that the explanation is more complicated than that.

Stewart Stevenson: I understand that point in relation to regulations 45(3) and 45(4). That is pretty clear, because the DAS administrator is not an adviser and so will not necessarily know all the creditors. However, regulation 49(2)(b) provides both for circumstances in which there is a money adviser and for circumstances in which there is not a money adviser, but it nonetheless uses the phrase

"each creditor known to the adviser".

The use of that phrase, rather than

"each creditor taking part in the programme",

seems inopportune. It appears that there is still a drafting difficulty, particularly in regulation 49, which the Subordinate Legislation Committee is reasonable in continuing to pursue.

Andy Crawley: My view on regulation 49 is that completion is different from revocation and that information about completion, even if it is only in a negative sense, will appear on the DAS register. What is important is that people are aware that there is no longer a diligence stopper. That information will be available from other sources, regardless of whether there is intimation under regulation 49.

I come back to the answer that I gave earlier and the answer that the minister has given on the more general points that the Subordinate Legislation Committee raised. We are hesitant about making changes to a small part of the scheme at this stage, because we want to see how it all hangs together in operation. That is why we have been so willing to give an undertaking to review the situation. We intend to have a thorough review and to make all the appropriate changes, some of which may be the ones recommended by the Subordinate Legislation Committee. At this stage, however, we feel that it would be premature to make such changes; we want to see how the scheme works in practice.

Stewart Stevenson: I will just close the question off by saying that regulation 49(2)(b) seems to suggest that, in the absence of an adviser, creditors who are taking part in the programme will receive no advice of the notice of completion.

Andy Crawley: I accept that there may be some force in some of the Subordinate Legislation Committee's comments, but we will review the situation. The practical point is that we do not expect that any programmes will be completed a year after the start of the debt arrangement scheme; in practice, the issue that we are discussing is most unlikely to be a problem. That is a factor that we took into account in deciding whether to make partial changes now or whether it might be more appropriate to review the whole programme after a year.

Stewart Stevenson: The bottom line is that you believe that you will be able to fix any defect in the regulations that the Subordinate Legislation Committee has latched on to following the review after a year without there being any practical impact.

Andy Crawley: Yes.

The Convener: Thank you very much. I thank the Deputy Minister for Justice and invite him to move the motion.

Motion moved,

That the Communities Committee recommends that the draft Debt Arrangement Scheme (Scotland) Regulations 2004 be approved.—[Hugh Henry.*]*

Motion agreed to.

The Convener: I thank the minister and his officials for attending. I ask members to agree that we report to Parliament on our decision on the order today.

Members *indicated agreement*.

Fire Sprinklers in Residential Premises (Scotland) Bill

11:14

The Convener: Agenda item 3 is on the Fire Sprinklers in Residential Premises (Scotland) Bill and relates to correspondence from Michael Matheson, who is the member in charge of the bill. The committee may wish to note that there is an amendment to the recommendation in the cover note, COM/S2/04/13/2, which has been circulated to members. The paper seeks the approval of the Parliamentary Bureau to extend the deadline for the completion of stage 1 until 15 October 2004. As some members will be aware, that date falls in the recess. It is therefore proposed that we seek the extension until 8 October 2004. Is that agreed?

Members *indicated agreement*.

The Convener: Although we are parking the matter in the meantime, we obviously want to thank those who have come to give us evidence. We also extend our thanks to Strathclyde fire brigade for its presentation on fire sprinklers, which I certainly found useful. I am happy to take any further comments on what has happened.

Mary Scanlon: I questioned the City of Edinburgh Council's evidence on whether the introduction of fire sprinklers could be covered under the Building (Scotland) Act 2003 and I noticed that, in a press release last week, Mary Mulligan was recommending that fire sprinklers could indeed be covered under that act. I just wanted to put that on record. I think that the press release referred specifically to care homes and multistorey flats, but my point is that the measures proposed in the bill can be implemented through the technical standards under the Building (Scotland) Act 2003.

The Convener: I think that you are also referring to the correspondence that Mary Mulligan has sent to Michael Matheson on that point. I presume that the press release was issued as a consequence of that correspondence.

Stewart Stevenson: I simply put on record my view that that is a mature and reasonable response on the part of the Executive to the committee's investigations into the bill. I very much welcome it and think that it is an appropriate way forward. A change in building regulations could not be secured through a member's bill, so I think that what has been proposed should speed up the delivery of an improvement in fire safety. I welcome the move and I hope the position is that the bill has been parked simply for technical reasons. I hope that the Executive is able to make good speed and I have every confidence that it will.

Cathie Craigie: It was clear to me before we started our discussions last week that, if we are to have sprinklers in residential properties or family homes, that will come about within the scope of the existing legislation that governs building regulations. I know from discussions with Mary Mulligan that she has been doing a bit of work on the matter and now seems to be quite an expert. We should therefore see building regulations change so that fire sprinklers become a standard item that people expect in new-build properties. I recognise that there are some difficulties with retrospective standards, but that is something that we need to try to work towards solving. The legislation exists to allow the minister to do that, so it is now just a question of working with the professionals to get the changes through.

The Convener: Do members agree to the recommendation, as amended, in the paper?

Members *indicated agreement*.

11:18

Meeting suspended until 11:20 and thereafter continued in private until 11:26.

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Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178