JUSTICE AND HOME AFFAIRS COMMITTEE

Tuesday 11 January 2000
(*Morning*)

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JUSTICE AND HOME AFFAIRS COMMITTEE
1st Meeting (Committee Room 1)

CONVENER:

*Roseanna Cunningham (Perth) (SNP)

COMMITTEE MEMBERS:

*Scott Barrie (Dunfermline West) (Lab)
*Phil Gallie (South of Scotland) (Con)
*Christine Grahame (South of Scotland) (SNP)
*Gordon Jackson (Glasgow Govan) (Lab)
*Mrs Lyndsay McIntosh (Central Scotland) (Con)
*Kate MacLean (Dundee West) (Lab)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Pauline McNeill (Glasgow Kelvin) (Lab)
Tricia Marwick (Mid Scotland and Fife) (SNP)
*Euan Robson (Roxburgh and Berwickshire) (LD)

*attended

THE FOLLOWING MEMBER ALSO ATTENDED:

Tommy Sheridan (Glasgow) (SSP)

WITNESSES:

Peter Beaton (Scottish Executive Justice Department)
Councillor Willie Clarke (Association of Visiting Committees for Scottish Penal Establishments)
Mike Crossan (Her Majesty's Inspectorate of Prisons for Scotland)
Eric Fairbairn (Her Majesty's Deputy Chief Inspector of Prisons for Scotland)
Clive Fairweather (Her Majesty's Chief Inspector of Prisons for Scotland)
Brian Henaghen (Her Majesty's Inspectorate of Prisons for Scotland)
Bill Howat (Scottish Executive Development Department)
Deirdre Hutton (Scottish Consumer Council)
Hugh Love (Society of Messengers-at-Arms and Sheriff Officers)
Roderick Macpherson (Society of Messengers-at-Arms and Sheriff Officers)
Sarah O'Neill (Scottish Consumer Council)
Mrs Marjory Russell (Association of Visiting Committees for Scottish Penal Establishments)

COMMITTEE CLERK:

Andrew Mylne

SENIOR ASSISTANT CLERK:

Shelagh McKinlay

ASSISTANT CLERK:

Fiona Groves

Scottish Parliament

Justice and Home Affairs Committee

Tuesday 11 January 2000

(*Morning*)

[THE CONVENER *opened the meeting at 09:37*]

The Convener (Roseanna Cunningham): We had better move straight to item 1. I apologise for the fact that we are running a few minutes late.

Deputy Convener

The Convener: Item 1 on the agenda is the election—at last—of a deputy convener. As I understand it, under the D'Hondt principles our deputy convener will come from the Labour party. Who is being nominated from among the Labour members of the committee? I am informed that we do not need a seconder.

Scott Barrie (Dunfermline West) (Lab): I nominate Gordon Jackson.

The Convener: Gordon Jackson has been nominated. Are there any other nominations? If there are no other nominations, does the committee agree that Gordon Jackson should be the deputy convener of the Justice and Home Affairs Committee?

Gordon Jackson was elected deputy convener by acclamation.

The Convener: Welcome, Gordon. I can now go off and do what I intended to do for the rest of the morning. [*Laughter.*]

Adults with Incapacity (Scotland) Bill: Stage 2

The Convener: Item 2 on the agenda concerns the Adults with Incapacity (Scotland) Bill. This is a fairly short item. I move,

That the Justice and Home Affairs Committee consider the Adults with Incapacity (Scotland) Bill at Stage 2 in the following order: Parts 1 to 4, Parts 6 and 7, Part 5; and that each schedule is considered immediately after the section that introduces it.

Does anybody need an explanation? Part 5 is the most controversial part of the legislation. We thought it most appropriate to deal with it at the end because it will obviously take the most time.

Motion agreed to.

Abolition of Poindings and Warrant Sales Bill: Stage 1

The Convener: Item 3 is consideration of the Abolition of Poindings and Warrant Sales Bill, which is a member's bill. We are still taking evidence at stage 1, on the general principles of the bill. Today we have a number of individuals before us. Peter Beaton, the head of the civil justice and international division of the justice department of the Scottish Executive, is here with some colleagues. Perhaps he could introduce himself and his colleagues, so that we can move straight to hearing evidence from them.

Peter Beaton (Scottish Executive Justice Department): I am more than happy to do that. I wish members of the committee a happy new year from us all.

The Convener: Thank you.

Peter Beaton: As you said, convener, I am the head of the civil justice and international division of the justice department. My responsibilities include policy in relation to the law on procedure of the diligence system in Scotland. I act in that regard on behalf of the Deputy First Minister, who exercises the relevant ministerial functions within the Executive.

On my immediate left is my colleague Bill Howat from the local government and finance division of the development department. He deals chiefly with the recovery of council tax and local government revenue, and will answer questions on those specific issues, if raised. As we know, local authorities are one of the major users of the diligence of poinding and sale.

Our respective colleagues are, on my right, Laura Dollan, who is from my division and deals with diligence, and Frank Duffy, who is Bill's colleague and deals with matters relating to local authority finance.

Convener, I understand that, with your leave, I may make a short opening statement.

The Convener: As long as you keep it as brief as possible.

Peter Beaton: I am grateful.

We would like to assist the committee in considering the issues that arise from the bill. At present, we would not put forward specific arguments for or against abolition of the diligence of poinding and warrant sale. The Executive's position is set out in the memorandum that the committee has already received, particularly in paragraph 14.

I would like to sum up one or two things that have happened since the memorandum was

submitted. As members will no doubt be aware, there have been significant developments. On 30 November last year, the Scottish Law Commission issued a consultation paper after the Scottish Executive asked it to revisit the conclusion in its 1985 report on diligence and debtor protection that the diligence of poinding and warrant sale should not be abolished. The commission seeks responses by the end of this month. I pay tribute to the commission for the speed and expertise with which it has produced this highly expert document. The document is very comprehensive and detailed, and contains a great deal of information—factual, statistical and of a comparative nature. It would repay in-depth study and I commend it to members of the committee. I am happy to see that copies are available.

On 17 December last year, the development department submitted to ministers the report of a joint working group of the Scottish Executive and the Convention of Scottish Local Authorities entitled "It Pays to Pay". The report contains the recommendations of the working group in relation to the recovery of council tax; Bill Howat chaired the group and I attended its meetings as a member. At that time an important piece of comparative research was also published, which examined the arrangements for collection of council tax in England and Wales and in Scotland respectively. Ministers and COSLA are currently considering the report.

The additional documents that I have mentioned raise issues that are pertinent to the debate on poinding and sale and its place in the diligence system. Members may wish to take them into account fully. The committee may also wish to consider the extent to which it might avail itself of the opportunity to comment on the issues raised, bearing in mind that the report on the recovery of council tax is currently before COSLA and Scottish Executive ministers for consideration.

The diligence of poinding and sale is only one part of a complex system of debt enforcement, the different parts of which complement and depend on each other. The diligence system was last reformed by the Debtors (Scotland) Act 1987, following recommendations made by the Scottish Law Commission in its very thorough report in 1985 on diligence and debtor protection. Those reforms have been in place for 11 years. The aim then was to introduce reforms that would balance debtor protection with effective enforcement, and that remains the basic policy aim today. Subsequent work by the commission, as well as the central research unit's research, which was published in April last year, now enable further reform of the diligence system as a whole to be undertaken.

09:45

One issue raised by recent research that is of great concern to us as policy makers is that some of the protections for debtors that were introduced in the 1987 act do not appear to be being used as intended. It is not entirely clear from the research why that is the case, but we want to consider how debtor protection can be improved to reflect the policy intentions behind the 1987 act. Similarly, there is some concern about the way in which procedures are being carried out. Influencing creditor behaviour to take account of the individual circumstances of debtors is the other side of the coin. We are keen to hear views on how that might be achieved.

Convener, we are happy to assist the committee with consideration of those issues and any others that the committee may want to raise with us.

The Convener: Thank you. We will move straight to questions.

Maureen Macmillan (Highlands and Islands) (Lab): I want to pick up on what Peter Beaton said about debtors not accessing debtor support. Debtors may fill in a form to say that they want time to pay, but they do not fill it in. The Scottish Law Commission tome, which I read last night—I read the beginning and the end and hoped that the middle would take care of itself—said that part of the problem was that people are scared of the courts system and feel that it is far too official. I can imagine that. Any teacher will tell you that there are two or three kids in every class who will be badly organised and who will perhaps not be able to read official language terribly well. That is one area that must be examined.

Peter Beaton also mentioned that voluntary organisations such as the citizens advice bureaux are expert in offering advice to debtors, but need funding to do so. Local authorities can have service level agreements with voluntary organisations that work for them. Is the same possible in the courts system? I do not know what the administrative way round that would be, but would it be possible to allow voluntary organisations to offer advice and to be paid for fulfilling that role? That might be less threatening for people who are in debt, whom we should be supporting rather than penalising.

Peter Beaton: That raises a complex set of issues, which I will try to deal with one by one. The first point that Maureen Macmillan made was about what I would call the presentational value of the material that was put in place after the 1987 act came into force. At that time, the Sheriff Court Rules Council and those responsible for implementing the act were conscious of the need to produce material that was as accessible as possible to the sector of the population that was

most likely to come into contact with the diligence system. That was achieved through comprehensive work on the forms that were produced for use in the courts.

Maureen Macmillan referred to time to pay, which is one of the problems that we want to consider. Research shows that time to pay is not used as extensively as was intended. There are a number of reasons for that, one of which is—as has been borne out by some of the evidence taken on the bill—that people who are in financial difficulty and who have multiple debts often are not capable of thinking positively about what to do. We are very conscious of that fact. When the 1987 act was implemented, a leaflet was produced, which tried to explain in relatively simple language the point of the procedures and what people should do. At the end of the leaflet there is a red box headed "FINALLY". The first sentences in that box say:

"Remember, the worst thing you can do is to ignore any of the steps leading to enforcement of a debt. This will certainly make things worse."

There was, therefore, an attempt at the time—through the language used on the forms and publicity material such as the leaflet—to help people to see that there were ways in which they could cope with their predicament. All the forms for every stage of the diligence process end by calling on people to seek advice. When we come to consider possible reform, we intend to revise, update and review the material, because we believe that it is extremely important that people understand the process and the protections that are available to them.

The question of the advice that is available is a tricky one, which, as Maureen Macmillan has said, raises issues to do with the funding of advice services. With respect, the subject is rather beyond us, although we are actively funding a pilot scheme in Edinburgh sheriff court. One of the tasks of the adviser there is to advise people about matters relating to diligence, which is specifically included within the scope of the scheme. We are also very supportive of the idea, if possible, of a comprehensive network of advice centres. However, that raises all sorts of questions about organisation and resourcing. At some time, although perhaps not in this context, I dare say that we will get into examining policy on that.

We are supportive of the existing system, in that we commend it to people and commend the view that people should think about what they can do when they have multiple debts. We know that citizens advice bureaux are expert at considering how to agree with creditors across the board on behalf of debtors who have multiple debts in an endeavour to ease people out of a critical situation.

I hope that that deals adequately with the questions.

Christine Grahame (South of Scotland) (SNP): I am afraid that I have not read the Scottish Law Commission tome, but I have acted for creditors and debtors as a litigation lawyer. I have a great deal of sympathy with the evidence given by Tommy Sheridan and the chap from the Govan Law Centre that creditors use diligence as a sword of Damocles. Statistics show that it is local authorities and the Inland Revenue, who do not have to worry about the cost of enforcement when pursuing a debtor, who keep going to the bitter end until payment is made. What are your views on that? An ordinary creditor will stop, knowing the amount of the cost building up on the debtor as the charge goes through the sheriff officer's hands.

You may not be able to answer this, so I will raise it with the sheriff officers too, but I would also like to hear your comments on what Tommy Sheridan has said about the fact that sheriff officers do not adhere to the rules on exempt goods.

Will you also comment on the fact that, for ordinary council taxpayers, diligence is oppressive? Some self-employed people and traders are able to evade poindings and warrant sales by ensuring that goods are not around to be taken, so there are people who can break the system, but the majority of people simply cannot afford to pay.

I work once a week as an unpaid solicitor for Citizens Advice Scotland, whose problem is that it is underfunded. The Executive must consider that problem. The Executive also is not funding debt counselling agencies, to which I used to refer debtor clients. I am in favour of the abolition of warrant sales, but we must consider those other matters: debt counselling, funding of citizens advice bureaux and credit control. I would like your comments on those issues.

Peter Beaton: Thank you. That is a tall order. I will separate out the issues.

The bill deals with the specificity of the diligence of poinding and sale. However, as Christine Grahame has quite rightly said, that raises all sorts of complex issues, of which we are well aware, about the supply of credit and the way in which the consumer side of the credit industry operates. It also raises difficult issues about the marginalised population.

I, too, have experience as a solicitor in private practice of acting for creditor and debtor interests in relation to debt recovery, albeit some time ago. We should not underestimate the complexity of the problem. It was pointed out in earlier evidence that the abolition of poinding and sale will not solve

those problems. It may avoid the perceived problems and injustices on the rare occasions that poindings and sales are used, but it will not go to the heart of solving the difficulties of multiple indebtedness in the marginal sections of society, which is what is desirable.

The regulation of the credit industry is a matter reserved to the United Kingdom Government. However regrettable members may think that is, we, as officials of the Scottish Executive, cannot get into that. The issues go beyond our responsibility for the diligence system within the wider civil justice system.

The diligence system is designed to secure the enforcement of obligations incurred by people in our society and is based on the premise, which we presume is accepted by everybody, that society expects people to fulfil their obligations. It is therefore regrettably necessary to have in place some system whereby people who do not fulfil their obligations have their obligations fulfilled for them, essentially by enabling those in right of the obligation—the creditor interests—to take steps so that that can be achieved.

One of the things that has happened since the 1987 act reforms came into effect is that there has been a big swing in the use of poinding and sale away from private sector creditors to the particular creditors that Christine Grahame mentioned—public sector creditors—and, in particular, the councils. None of us around this table, nor probably in this room, carries any brief for the policies that lead to that; nevertheless it is a fact of life.

There is a big problem with the way in which the local authority creditor system in particular operates. The working group on which Bill Howat and I sat attempted to come to terms with that problem, albeit from a particular perspective. In considering diligence policy, our job—presuming that we must try to secure the enforcement of obligations—is to see how enforcement works on balance. That takes us back to the work that the commission did in 1985 and to the work that it will do now to consider, in the light of everything that has happened, whether the conclusions that were reached in 1985 are still valid.

We believe that the basic premises on which we operate are still valid: that obligations need to be enforced and that there must be a balance between debtor and creditor interests. As I said in my opening statement, we believe that that balance may have been slightly lost.

There are various ways in which to consider the problem. Christine Grahame mentioned the suggestion that sheriff officers are not observing the list of exempt goods when poinding in dwelling-houses. I cannot say whether that is the case, but sheriff officers are a profession regulated under the act and are subject to judicial control. To our knowledge, very few formal complaints have been made to sheriffs principal about the activities of sheriff officers. However, if there is an issue, we will have to examine it.

One way in which to tackle debtor protection is to consider the list of exempt goods. Things have moved on. For example, every household may now need a computer for education, basic communication and other purposes. There is provision under the 1987 act to alter the list of exempt goods, so we do not need new legislation on that. We will examine that issue once the commission has done its work.

10:00

On the suggestion that councils and the Inland Revenue should pursue people to the hilt, we must bear in mind the fact that they are supposed to act for the general population. Council tax is supposed to be used for the benefit of communities and—I think that we all assume this—to provide the services that we want. Therefore, in securing payment for those services, they act for the general population. We need to ask whether council tax debt recovery is targeted properly—in other words, whether the councils are taking the right decisions about the diligence methods that they use. There is some evidence to indicate that there are ways in which councils' decisions could be improved, about which Bill Howat may wish to say a word. It is unlikely that the Inland Revenue and the councils would throw good money after bad unless they felt that there was an obligation on them, in the name of the general public, to do so.

I am not sure whether that answers all Christine Grahame's questions. Bill, would you like to come in?

Bill Howat (Scottish Executive Development Department): As a point of fact, I remind the committee that councils, like the Inland Revenue and other organisations, are under statutory duties to collect money. Unlike councils south of the border, Scottish councils are also subject to a statutory duty to make arrangements to secure value for money, as the Debtors (Scotland) Act 1987 puts it. A balance must be struck between how far a debt is pursued and whether the cost of pursuing it will be more than what will be collected. Councils must judge what the cut-off point should be in the light of their statutory duties and of the views of their auditors. We have addressed that issue in the report "It Pays to Pay", in which we outline views and make a number of recommendations. As Peter Beaton said, research suggests that such areas would be worthy of investigation.

Christine Grahame: I have many other comments, but on that point, has there been a breakdown on a yearly basis—or whatever—of the cost of pursuing council tax debts and the amount recovered? Has there been any costing of the full legal costs, not just of the court costs? You do not seem to know whether such action is cost effective.

Bill Howat: We have no such detailed research, although I am happy to check with my colleagues at the central research unit to see whether such statistics exist.

Christine Grahame: I would like to see that research.

Bill Howat: We have made a number of recommendations to ministers and to the Convention of Scottish Local Authorities on the procedures, some of which would influence councils' decisions. The key issue that I draw to members' attention is that the availability of information is ultimately a matter for a council and its auditors. Is the right balance being struck while achieving value for money? However, I am happy to check the position and I will write to the committee.

Christine Grahame: Whether councils' money had been spent properly is also a political judgment.

Phil Gallie (South of Scotland) (Con): When we consider Tommy Sheridan's bill, we all tend to think that poindings and warrant sales affect domestic situations. However, the bill could also profoundly affect small business, for example. Paragraph 18 of the Scottish Executive's memorandum says:

"The immediate consequence of abolition of poinding and warrant sale would be to create an incentive to debtors to invest in moveable property and therefore escape meeting liabilities."

Would you expand on that, please?

Peter Beaton: The bill is indiscriminate, as it proposes the abolition of poinding and sale for every type of debt and for every type of creditor and debtor. In his evidence to the committee, Tommy Sheridan takes a principled position on this matter, which must be respected. In the Executive's memorandum, we said the least that we could say. The problem is that we do not have a model on which to work. It is clear from the work of the Law Commission, which considered a comparative study of other legal systems, that almost all legal systems that we know of have some system of attachment or diligence against debtors' movable property.

We do not know what would happen if poindings and sales were abolished, so we can only conjecture. First, it would become more difficult for creditors, in certain situations, to obtain payment. Secondly, an undoubted consequence would be the immediate creation of a loophole. The range of diligences available in Scotland serves to attach property in execution of obligations of all kinds, with one notable exception, so there is no way in which those who are minded to evade their obligations can do so. Such people may well be a minority but, in a well-ordered legal system, we must bear in mind the fact that such a minority exists. While it is difficult for us to say whether there would be much evasion if the bill were passed, there is a risk that there would be. The question for this committee, for the Parliament and for us all is: "Is the risk balanced correctly, or is there another way of attacking the issues?"

It is clear from the evidence given to the committee and from Tommy Sheridan's submissions that the main problem is that of poinding and sale used in dwelling-houses. As I said, there are issues about the shift to public sector use, particularly in relation to council taxation. The bill would leave behind the other people who would use this diligence and it could create a loophole in which poindable goods would not be poinded.

Our view is that there may be other ways in which to tackle those problems. As our memorandum says, the bill's sponsors have not made any suggestions about how those difficulties would be overcome. There is no proposal for an alternative diligence to close the loophole that would be created by the removal of the diligence against debtors' movable property. There is no suggestion about how people who use the diligence of poinding and sale as a last resort would be able to secure the fulfilment of the obligation incurred to them. That is a definite gap, but it is possible to envisage other solutions to the undoubted difficulties that have been documented both in evidence to this committee and elsewhere.

The Convener: If that is the case, why have no such alternative scenarios been worked on and suggested at any stage during the past two or three decades?

Peter Beaton: With the greatest of respect to you and to your position, convener, one of our concerns is that the protections available under the 1987 act, which has been in force for 11 years, are not being used properly. For example, it is possible to recall a poinding if it is clear that the appraised value of the poinded goods would be insufficient to meet the expenses of further diligence. That can be done by application to the court or at the stage where the warrant for sale is applied for, which is intimated to the debtor.

The Convener: I appreciate that the current system may contain built-in protections. In the past, say, 10 years, what work has been done to

establish why those protections are not being used and how that lack of use could be dealt with? One of the difficulties that the committee has to consider is that, although we are frequently told about such protection, it does not appear to be working. We cannot establish from anyone whether any attempts have been made to make existing practice fairer.

Peter Beaton: With respect, convener, immediately after the implementation of the 1987 act, my predecessors in what was then the Scottish Courts Administration initiated a research programme to evaluate the reforms introduced in the act against the objectives set out in the Law Commission's report. I believe that members are aware of that comprehensive piece of research, which was published in April 1999 and which includes seven separate papers, an overview and a lot of detailed material.

The intention of the Scottish Executive justice department was to use that research and the further work of the Scottish Law Commission—some of which has already been published in a report on diligence on the dependence and Admiralty arrestments and some of which, on attachments of land and other matters, is awaited—as the basis for proposals for policy that we would put before ministers. That remains our intention; I hope that that answers your question, convener.

Whether we deal with poindings and sale separately from the rest of the diligence system remains a live question, because Tommy Sheridan introduced his bill. Obviously, poinding and sale has been a controversial matter for centuries—it is a diligence of long standing in all legal systems. We propose to examine the diligence system across the board, taking into account what has happened since 1987, the work of the Law Commission and other research. We will have the benefit of the Law Commission's report that follows on from the discussion paper published last year.

Euan Robson (Roxburgh and Berwickshire) (LD): It seems that a lot of research has been done on how to make poindings and warrant sales more acceptable—how to make them work better. What work has been done in the department on alternative forms of debt recovery? As you rightly say, for many years poindings and warrant sales have been considered a rather draconian form of diligence. What effort has been made to examine what the energy industry did to reduce disconnections, where there are clear parallels?

Peter Beaton: The diligence of poinding and warrant sale is used in almost every case as a last resort. The number of warrant sales is very small relative to the number of liabilities incurred annually in Scotland.

Mr Robson raises a pertinent point. We must remember that the 1987 act introduced new forms of diligence, such as earnings arrestments, which, for people who are employed and earning, is almost invariably the first diligence to be used. The figures show—this is borne out by the recent comparative exercise on council tax collection—that arrestment, and earnings arrestment in particular, is used far more in Scotland than in England. In England, seizure of goods remains the standard method of enforcement and the protection available to debtors in England is much less than the protection available in Scotland. Work has been done in Scotland, in the 1985 report and in the 1987 act, and the Law Commission will undertake further work to examine other types of diligence, particularly in terms of diligence against movable property. I cannot say what the commission will recommend, but we will, of course, study its conclusions with great care.

An extremely important question is creditor behaviour. I sympathise with Mr Robson's point about disconnections. When I was a lawyer in Berwickshire, one of my clients in Coldstream was frequently the subject of disconnection—it happened with awful regularity—and I often had to advise her what to do.

However, creditor behaviour is to do less with the functioning of the diligence system than with the operational and practical arrangements that creditors make. In our view, diligence policy should be about proper targeting by creditors of the means of securing the fulfilment of obligations. As has been demonstrated in certain areas, formal diligence does not necessarily have to be used—there are other ways in which to secure payment. However, those ways are outside the diligence system and are not for us to regulate. We can consider whether any of the protections that we perceive are manifestly not functioning satisfactorily under the 1987 act should be reformed to encourage creditors to use methods of securing payment other than formal diligence where it appears that informal methods may be more efficacious.

10:15

The Convener: You have already referred to the fact that the control of creditors is reserved to Westminster.

Peter Beaton: I am sorry, convener. I did not make myself entirely clear. What I meant was that, before deciding about the methods—informal methods or formal diligence—to seek recovery of payment, all creditors must take certain steps. As Christine Grahame will know, there are various steps that private sector creditors always take as a precursor in trying to secure payment by

correspondence in some informal way.

The Convener: We are all aware of that, especially if we have received red bills from Scottish Power or British Telecom. The steps toward recovering debt that you are talking about are equivalent to those letters, and more such steps can be built into debt-recovery procedures, can they not?

Peter Beaton: In the normal diligence system—not summary warrant diligence—the first step that a creditor with a decree of payment in his or her favour must take is to serve a charge for payment. The charge for payment proceeds on a notice period of 14 days and effectively warns the debtor to pay up or risk diligence. That is the first step after all the steps involved in securing payment decrees have been taken.

In summary diligence, certainly in relation to council tax, many steps are taken before summary warrant is sought. Bill Howat may want to comment on that. The number of summary warrants sought is relatively small compared with the number of people who are liable to pay council tax, and various notices are served. Some of the material in the working group's report relates to the way in which the process should work. On Euan Robson's point, we are conscious of the fact that practical and operational things can be done to target resources more accurately. We would commend that to all creditor interests.

Tommy Sheridan (Glasgow) (SSP): I have a couple of short questions. I welcome Peter Beaton's refreshing honesty. I am glad that he used the word conjecture, because much of the evidence that has been brought against the bill has been, in my opinion, conjecture. I am glad that he recognises that. He mentioned some proposals to avoid the abolition of poindings and warrant sales but to improve the system. For instance, computers have been mentioned as an example of exempted goods. Would Peter Beaton care to conjecture whether televisions are an educational tool?

Peter Beaton: I hope that Tommy Sheridan is not characterising my interventions as being against his bill. I made it clear that we are adopting a neutral position at this stage.

There is a lot of room for considering the list of exempt goods. The Scottish Law Commission's discussion paper contains a number of interesting comparative studies. Some legal systems, such as Australia's, go even further than ours does, while ours goes a good deal further than some others, including England's. The question of television sets is an interesting one. In Germany, officers are allowed to substitute a black and white television for a colour set. I am not sure whether that is the way in which we should go, but we should certainly examine the exemptions list.

Existing protections are not being pursued by debtors—debtors are not taking advantage of the rights that they already have, both in ordinary diligence and in summary warrant diligence. That is a matter for concern, because it was one of the balancing factors that lay behind the commission's 1985 report.

Tommy Sheridan: I hope that our discussion will take the form of short questions followed by short answers. Peter Beaton has illustrated the difficulty of anyone understanding the exempt list or the legislation. Computers should already be exempt, because the existing legislation states quite clearly that items used for education should be exempt. Most people consider televisions to be educational items, but sheriff officers do not and regularly poind them.

Time-to-pay orders have been mentioned. Are you suggesting that greater use of time-to-pay orders would offer effective protection to debtors facing poindings and warrant sales?

Peter Beaton: That was the intention of the policy.

Tommy Sheridan: I ask because you will be aware that, of the 23,000 poindings last year, 16,000 were carried out by local authorities. Those 16,000 debtors do not even have the right to a time-to-pay order.

Peter Beaton: That point has been noted by a number of people, including ourselves, and is well taken.

Tommy Sheridan: Phil Gallie suggested that the abolition of poindings and warrant sales across the board would have a profound effect on small businesses. Your reply was that you did not know what would happen—again, I respect your honesty. What do you think would happen to the credit and debt-recovery system in Scotland if poindings and warrant sales were suddenly no longer accessible?

Peter Beaton: It is impossible to say; any comment would be purely speculative. The most that we could say is that there would be an immediate loophole, whereby movable property in the hands of debtors could not be obtained other than by sequestration. Whether it is satisfactory in terms of social policy to encourage more sequestration of property from people who may already be in difficult circumstances is a matter for discussion. I would rather see properly targeted diligence properly executed.

I take the point about the clarity of language, which we are considering for the reason that I have already mentioned—that we are aware that the existing protections are not working properly.

Tommy Sheridan: Thank you.

The Convener: I have a final question. You referred to an upcoming or on-going review of the whole question of diligence in Scotland, and you expressed concerns about examining aspects of the system in isolation. What is the time scale for the study of diligence? Are we looking at another 10 years?

Peter Beaton: I cannot give precise details, because the speed at which things should go is a ministerial decision. As departmental officials charged with the responsibility for diligence policy, we plan to produce a series of comprehensive proposals to put to ministers with a view to inviting them to bring a bill to the Parliament.

The Convener: Is that a five-year plan or a 10-year plan? Can we have some indication of the time scale?

Peter Beaton: We are ever optimistic that we will have the capacity to fulfil our obligations to our ministers, convener. Our optimism leads us to hope that we may even be able to produce something during the current Parliament. If so, we will be extremely pleased, because there is a lot of work to do.

We are waiting for one final report from the Scottish Law Commission. In my earlier responses, I mentioned the fact that the one item of property that cannot be attached at the moment is cash in the hands of the debtor. That is something that the commission is consulting on; its report should be available in the second half of this year. That is the final piece of the picture as far as we are concerned. If we have support, we will continue this work and will, I hope, complete it within the time scale that I have indicated.

Phil Gallie: I have a quick question, which I hope will receive a quick answer. You mentioned Germany's system of sequestration, which we tend to view as outdated. What other European countries use similar systems?

Peter Beaton: I refer members of the committee to the excellent memorandum produced by the Scottish Law Commission and also to the discussion paper. We have not found any system in Europe that does not have a diligence against movable property.

The Convener: Thank you very much. That concludes the evidence from the Scottish Executive team. Thank you for coming along this morning.

Our next witnesses come from the Scottish Consumer Council. Martyn Evans, the director, sends his apologies. I understand that he has broken his leg, so Gordon Jackson will no doubt sympathise with him.

Gordon Jackson (Glasgow Govan) (Lab): That is no reason not to be here. [*Laughter.*]

The Convener: It depends, I suppose, on how recently he broke it, Gordon.

I ask the remaining witnesses from the Scottish Consumer Council to introduce themselves.

Deirdre Hutton (Scottish Consumer Council): Thank you, convener. I am Deirdre Hutton and I chair the Scottish Consumer Council. On my right is Sarah O'Neill, the legal advisory officer. I apologise for Martyn's absence. His remedy for avoiding the committee meeting seems rather desperate. This morning he tried to persuade the hospital to let him attend, but to no avail.

The Convener: We are running a little behind, so I shall ask members to begin their questions. We have all seen the written evidence that the Scottish Consumer Council submitted. It is fair to say at the outset that we were all rather surprised at your view, so there may be questions about that. Tommy Sheridan, Phil Gallie and Christine Grahame want to ask questions.

Tommy Sheridan: Roseanna said that members would want to ask you about the view that the Scottish Consumer Council has taken on this matter. Can you clarify that view? You have said that you would like the abolition of poindings and warrant sales to be part of an overall overhaul of the debt-recovery system. If nothing else was available, would the Scottish Consumer Council still support abolition? Am I right in saying that, in the absence of an immediate overhaul, you support the abolition of this form of debt recovery because of the humiliation and fear caused by its use?

Deirdre Hutton: I am glad to have the opportunity to clarify our position. There have been some misunderstandings, partly brought about by our having to produce the evidence very quickly.

We agree that the current practice of debt recovery through poindings and warrant sales cannot be defended. There is compelling evidence that the procedure is needlessly distressing and increases the indebtedness of very-low income households. If absolutely nothing else were available, we would probably support the bill. Having said that, we are worried about some of the bill's unintended consequences, which have not been explored because of lack of time.

Our long-standing view is that part of the problem with the civil justice system in Scotland is that it has been reformed on a piecemeal basis. Those piecemeal reforms have led to unintended consequences. It would be better if legislation to abolish poindings and warrant sales were included as part of a formal, wide-ranging review of the civil

justice system.

10:30

Tommy Sheridan: I am grateful for that clarification. It seems that the Scottish Consumer Council fears that, if poindings and warrant sales were not available, there would be increased use of other diligence, in particular bank account arrestments. Given that bank account arrestments are not co-ordinated and regulated to the same extent as wage arrestments, would you regret such increased use? Do you accept—as all the evidence suggests—that the people who are being poinded and subjected to warrant sales are generally those who do not have a bank account anyway?

Deirdre Hutton: I do not have a huge amount of faith in the way in which banks deal with customers in hardship. Our research suggests that banks' policies for dealing with such customers are variable and, sometimes, deeply unsympathetic. I therefore do not see the banks' involvement as the solution.

Low-income consumers rely heavily on credit—they have to; they have no other way of buying the things that they need. Credit is very expensive for low-income consumers, but we are concerned that the absence of an ability to attach possessions may lead to credit becoming even more expensive.

Like many others, we do not know what the consequences of the abolition of poindings and warrant sales would be. In the interests of consumers as a whole, we have tried to work out some of the unintended consequences for other low-income consumers.

This issue is generally seen as one in which consumer debtors are jumped upon by business creditors, but we are also concerned about the interests of consumers who might need to use diligence to pursue, for example, small businesses that owe them money. How are they to do that in a way that gets them the resources that they need? Very often, such people are also people on a low income who really need the money that is owed to them.

Tommy Sheridan: I have one last question. Given that the overwhelming majority of poindings in Scotland are carried out by local authorities or by those with the ability to use summary warrant—such as the Inland Revenue or the Department of Social Security—do you have any evidence to suggest that creditors would make credit more difficult to obtain if poindings and warrant sales were not available?

Deirdre Hutton: To ensure that the proper systems of protection for debtors are in place, nobody should be allowed to use any process of attachment without having to go through the courts. We think that it is quite wrong that local authorities, and the other agencies that you mentioned, should be able to do that.

We have no evidence of the kind that you mentioned. We are aware of how difficult it can be for people on low income to get credit, and we are worried about the consequences for them, but we have not had time to get evidence.

Phil Gallie: You have demonstrated, once again, that thinking on this issue tends to focus on people on low income in domestic circumstances, but small businesses are also affected. What are your views on the way in which businesses will be affected?

I accept Tommy's comments on the number of local authorities that use poindings and warrant sales. When considering exemptions from that process, can you see any benefit in splitting up domestic and business consumers?

Deirdre Hutton: We accept that such a split is possible, and that poindings could be abolished for domestic consumers but retained for use against businesses. We could support that.

In response to your first comment, we are, after all, the—

Phil Gallie: I am sorry—I cannot hear. Could you speak a little bit louder please?

Deirdre Hutton: I am sorry—my voice is not terrific this morning. We are, after all, the Scottish Consumer Council, and we are here to represent the interests of consumers and not necessarily small businesses. I fully accept that we are partial—that is our job.

Phil Gallie: But consumers are obviously affected by the success or otherwise of small businesses—consumers depend upon them. You mentioned credit facilities. I suggest that, if small businesses were to lose those facilities, that would have an adverse affect on the people Tommy cares about so much.

Deirdre Hutton: That question is difficult to answer because we are not in that position, and most jurisdictions have some ability to attach possessions. To some extent, we are venturing into unknown territory. When he gave evidence, Mike Dailly talked about winners and losers, but we have no quantification of whom they might be.

Christine Grahame: Your submission says that your purpose

"is to promote the interests of Scottish consumers, with particular regard to those people who experience disadvantage in society."

From the evidence that we have received, it is

apparent that the majority of poindings and warrant sales—although the process tends not to go as far as that—are carried out by local authorities and the Inland Revenue, for council tax and revenue debts, rather than by shops.

The major shops do not sue people for debt. In most cases, shops such as Marks and Spencer and British Home Stores come to an arrangement with the debtor, because they regard going through the courts as a most inefficient way of getting payment. Do you agree with that, and that the kind of person they are chasing for a debt usually has a multiplicity of debts?

Deirdre Hutton: Yes. It is also important to remember that 92.5 per cent of credit agreements are honoured. We must not think that there are a hell of a lot of people who are not paying their debts; people on low income really struggle to pay their debts, and they do it.

Christine Grahame: So we are looking at switching this so that the legislation is operated by the state against individuals, and not by retailers.

Deirdre Hutton: That appears to be the case, according to the evidence. We must then consider whether having the legislation as—to use a phrase that I think was used before—a Damoclean sword is useful.

Christine Grahame: Do you agree that it is a great pity that resources are not being put into debt counselling agencies and citizens advice bureaux to assist people who have a multiplicity of debts and are in circumstances where they cannot begin to organise and structure their repayments?

Deirdre Hutton: I entirely agree with you. One of the things that we have done with funding from the Scottish Executive is to establish a pilot advisory service in the Edinburgh courts. That has been extremely successful. The evidence is that people who are faced with a summons to court do not even go, and that the provisions put in place by the Debtors (Scotland) Act 1987 that have to be initiated by the debtor are simply not being used. They are not being used because people do not understand the words and the forms, and because they find the whole system intimidating. When they get to the court, it is deeply confusing. Nobody gives them advice on how the procedure works, where they can go and what they can do. That is what our in-court advice service tries to do.

We would like the pilot to be extended throughout Scotland. We also believe—and this was included in our evidence in 1986 to the Law Commission—that there should be a debt arbitration service. That could be a way of putting in place something other than poindings and warrant sales. It could ensure that debts were paid wherever possible, without the unattractiveness of the present system.

Christine Grahame: I agree. The pilot scheme in Edinburgh is fine, but it assists people when litigation has already started. I was thinking of something in advance of court. Most retailers do not have the time to raise small claims proceedings, and do not want the trouble. If the abolition of poindings and warrant sales goes through, what we really want—in tandem with schemes such as the Edinburgh pilot—are properly funded debt counselling services and CABs to deal with problems at street level. People should not have to go to court, but should be able to get advice on structured repayment schemes on their own high street. Do you agree?

Deirdre Hutton: Absolutely. We were instrumental in the setting up of the Money Advice Service. This may be going off on a tangent, but one of the failures of that service is that it has been unable to persuade the credit industry that it should fund the service sufficiently to make it universal.

Euan Robson: I agree with Deirdre that the advisory service in the sheriff court pilot is immensely important. I also agree with Christine Grahame that personal contact in resolving debt issues is the way forward. The experience in the energy industry is that without contact, there tends to be a disconnection, but that when contact is made—especially personal contact—disconnection is usually avoided.

Do you think that alternatives to the last resort of poinding and warrant sales could be developed? I have in mind alternatives such as the fuel direct scheme, in which structured deductions are made from benefit—deductions that are not excessive, but are sustainable given the level of benefit. Do we have enough experience to develop such alternatives?

Deirdre Hutton: I am sure that alternatives could be developed. I do not have any in mind at the moment, and I do not think that enough thought has been given to what they might be. We believe that some form of attachment has to be found, because, on the whole, it is in the interests of society that debts are paid. Other jurisdictions may have experience that could be considered. If jurisdictions exist that do not have attachment to possessions—although we have not yet identified one—it would be interesting to know how they handle the question.

It is interesting to reflect that, in England, it was thought for years that it was absolutely essential for the water industry to retain the power to disconnect, whereas in Scotland we had not had that power for years, and yet seemed to be able to manage. There are clearly other ways of handling debt and its repayment. Much more thought has to be given to the alternatives to poindings and warrant sales. That is why we want to consider the

proposed legislation in a broader context and not just as a one-off.

The Convener: The water industry is an example in which the prophecies of doom and gloom turned out not to be justified. Is it possible that the prophecies of the horrors that might happen if warrant sales were abolished may also turn out to be unjustified?

Deirdre Hutton: That is certainly possible, but it would be responsible to give more thought to the way in which debt would be handled if poindings and warrant sales were abolished.

Pauline McNeill (Glasgow Kelvin) (Lab): I noted the interesting—

The Convener: I am sorry to interrupt, but could people at the sides speak very clearly into their microphones. For some reason, the sound system is very bad today and it can be difficult to hear.

Pauline McNeill: Of course. I noted the interesting statistic that 92.5 per cent of credit agreements are honoured. That is an important premise to start from.

Another important premise is that most people who get into debt difficulties want to pay their debt. It is only the minority who refuse to pay.

You have been questioned this morning on court procedures and so on, but I want to talk about what happens prior to any formal procedures. I feel that there are not enough steps that people can take when they know that they have lost the place, are in debt and cannot manage. Crossing the threshold of a citizens advice bureau is a big step for most people. They have to queue up and admit that they have lost the place. Can provision be made to look at what steps can be taken—through either public support or diligence provision? I am thinking particularly of when someone has a debt and wants to pay a small part of it, but is not allowed to. It seems to be all or nothing in some cases. Have you had any thoughts on that?

10:45

Sarah O'Neill (Scottish Consumer Council): We would much prefer creditors to take a small amount than to take nothing—I know that evidence on that point has been given to the committee. We are in favour of allowing people to pay the small amounts that they can afford, and are against the all-or-nothing approach. Everybody loses if matters are taken to court and decrees are issued against people, as there is more expense for them and the creditors.

What Pauline McNeill says about CABs is true: it is difficult for people to go to them. Generally, there needs to be much more information for debtors at every stage of the process. People should be more aware, even before they get into debt, of the provision that is available to deal with debt. That is part of the whole review that needs to be carried out into the debt and court collection system. As we have said, many issues are at stake.

Christine Grahame: I did not know that it was so difficult for people to go to CABs, but if it is, it might be worth considering a debt hotline—I know that that is the current thing. People could take the first step anonymously and be put in touch with various agencies, if a strategy were in place to manage debts against a background of removing the punitive Damoclean threat of a poinding and warrant sale. What are your views on that?

Deirdre Hutton: That is an interesting idea, which would be worth trying.

I guess that being in debt is like being addicted to drugs: the most difficult thing is to admit that one is in trouble. If people find CABs intimidating, it will also be the case that they find it difficult to go to some official body. The emphasis should probably be on systems that are seen to be in, and of, the community, rather than on doing something official—I suspect that that would not be a good use of public money. Supporting CABs and the sort of debt hotline that Christine Grahame suggested might be a good way of dealing with the problem.

Sarah O'Neill: It is important that people get help earlier, but the experience of debt workers is that people tend to leave things to the very last minute. That is why the in-court advice project is so important. However, we would prefer that people sought advice before matters reached the court.

The Convener: There are no further questions. I thank the witnesses from the Scottish Consumer Council. We are a long way from concluding stage 1, especially as we are not the only committee involved, so I cannot say when there will be a report on stage 1. You may wish to comment later.

The next witnesses are Hugh Love and Roderick Macpherson, from the Society of Messengers-at-Arms and Sheriff Officers. A paper from the society was circulated some time ago. Other members may be in the same position as I am: it is difficult to go trailing back to discover papers that might have been sent out a month or six weeks ago, but we must all get into the habit of doing that.

We do not have much time, but you may wish to take two quick minutes to outline your organisation's position on this issue. A written submission has been received, which, as usual, some members but not others will have with them.

Roderick Macpherson (Society of Messengers-at-Arms and Sheriff Officers): Good morning. I am Roderick Macpherson, a messenger-at-arms in Glasgow, and my colleague is Hugh Love, a messenger-at-arms in Edinburgh. We are both past presidents of the society and bring additional experience that, we hope, will be useful for your discussion. Mr Love is a member of the committee of examiners of the society, which is the body statutorily authorised to admit all entrants to our profession. He is also a member of the advisory council on messengers-at-arms and sheriff officers, which was established by the Debtors (Scotland) Act 1987. I am one of the Scottish representatives on the permanent council of the Union Internationale des Huissiers de Justice et Officiers Judiciaires.

As Mr Beaton told you, there have been important developments since we made our submissions, with the publication of discussion paper 110 by the Scottish Law Commission, and of "It Pays to Pay". We believe that the detailed factual information provided by those documents reinforces many of the points that we made in our submission.

In light of those and other reports, we maintain our view that the committee should recommend to the Parliament that the general principles of the bill to abolish poindings and warrant sales be rejected. We fully recognise that in debating the principles of the bill the committee will want to consider the balance between protecting the most vulnerable members of society and the importance of giving creditors effective remedies to recover debts that are lawfully due to them. Against that background, I will give three reasons why the general principles of the bill should be rejected.

First, Scotland should not be out of step with the international community. Other legal systems provide for the attachment of movable property. The Scottish Law Commission has given details of its research into 41 other European and Commonwealth jurisdictions. The commission's conclusion is:

"The proposition that moveable goods as a class should not be attachable by creditors outside insolvency proceedings is not precedented in any other modern legal system of which we are aware."

Secondly, the ability to attach movable property is an essential component of any effective system regulating the rights of creditors and debtors. That is perhaps best recognised by the Law Commission's discussion paper, which states:

"We take it to be evident, and we hope it is agreed on all sides, that none of the other diligences (as distinct from insolvency proceedings) could perform the realisation, identification, and deterrent roles of poindings and sale."

It has to be recognised that without an effective sanction such as that provided by the poinding procedure, more people would not pay their debts.

Thirdly, the interests of vulnerable members of society should, and could, be protected without the abolition of the poinding and warrant sale procedure. The Parliament could reduce substantially the number of summary warrant poindings that are carried out by extending the protection that local authority debtors currently receive under the 1987 act and by implementing procedures that were identified by the Law Commission. Section 25 of the Law Commission's memorandum states:

"The method adopted by modern legal systems to protect debtors from the harsh consequences of attachment and sale of articles of moveable property is invariably by providing exemptions from that form of enforcement rather than by its abolition."

I will be delighted to answer any questions.

Tommy Sheridan: Do you have personal experience of carrying out poindings?

Roderick Macpherson: Yes.

Tommy Sheridan: While you were an acting sheriff officer, roughly how many poindings do you estimate that you carried out?

Roderick Macpherson: In terms of personally executing poindings, I should say that I have been a partner in my firm for a good many years and therefore would not present my experience as that of a sheriff officer daily on the road.

Tommy Sheridan: How many poindings have you been involved in?

Roderick Macpherson: I could not tell you how many poindings I have been involved in. I have been a sheriff officer since 1986 and, as messenger-at-arms, an officer of the Court of Session since 1987. Notwithstanding the limits of my experience of being out poinding, I will have completed quite a few, but I cannot tell you how many.

Tommy Sheridan: I have probably stopped more than you have completed.

One of the complaints that I often hear from sheriff officers is that there are very few items that can be poinded, but you seem to suggest that the list of exempted goods should be extended. Do you think, for instance, that a three-piece suite in someone's home is a reasonably necessary item of furniture?

Roderick Macpherson: With regard to the general principles of the bill, the statement that there are insufficient items to poind requires us to divide the subject up. The question of carrying out poindings in dwelling-houses, which may involve people who are vulnerable and poor and who may be can't-pay or won't-pay debtors, is not the same as the question of the diligence of poinding against

commercial debtors or, indeed, against individual debtors with substantial and valuable articles that could be pointed.

In 1985 the Law Commission made the interesting point that the abolition of the diligence of poinding against commercial debtors had never been raised as an issue. Interestingly enough, the research by the central research unit into poindings and warrant sales, to which Mr Beaton referred, showed few people would dispute the argument that debtors who can pay and have property should be liable to poinding. The difficulties in striking the balance between a system that is effective for creditors, but that includes a proper amount of debtor protection, arise in the third category, which is largely the dwelling-houses of people who may be vulnerable and may not have very much property.

You asked whether I thought that a three-piece suite should be pointed. Section 16 of the 1987 act, which gives the list of exempt items, is complicated: subsection (1) gives a list of all items that should be exempt, but subsection (2) gives a list of items that should be exempt if they are reasonably required. The test of what is reasonably required is difficult. In its discussion paper, the Law Commission points out that there is limited reported case history. I believe that there was a case where parts of a three-piece suite were poinded, but one chair was not. On that occasion, the sheriff was persuaded that the test of reasonable requirement had been satisfied.

I cannot give you a blanket answer on whether a three-piece suite is always required, as it depends completely on the circumstances.

Tommy Sheridan: Your second stated reason why warrant sales should be retained is:

"It has to be recognised that without an effective sanction such as that provided by poinding procedure, more people would not pay their debts."

What is the basis of that statement?

Roderick Macpherson: The Scottish Law Commission's discussion paper makes the point, which, I think, is widely recognised throughout the country, that common experience shows that debt recovery cannot be left to debtors' consciences. In our paper we point out that the majority of people scrupulously pay their debts, but we all know that there are some people—albeit a minority—who require to know that a sanction exists if the debt is not paid. Of course, that is a matter of long experience.

If it were the case that the diligence of poinding allowed one to recover little or nothing from the process, the general principle of the bill would have strength, but research shows that poinding and warrant sale continues to be a highly effective remedy in certain circumstances. The Institute of Revenues Rating and Valuation report states that in Scotland, from the information given, local authorities with a higher level of poindings and warrant sales have a significantly higher level of collection overall.

Also, the Scottish Law Commission's discussion paper says that it was informed by the Board of Inland Revenue and the board of Customs and Excise that poinding and sale is an effective—indeed, an essential—means of enforcement, on which they rely heavily.

In "It Pays to Pay" we are told that one of the key points to note is that the abolition of poinding and warrant sales would have a major effect on council tax collection levels, and therefore council services, unless an equally effective mechanism could be substituted.

11:00

Tommy Sheridan: I am grateful for your references to the other documents. I believe that they are conjecture, and that your statement is conjecture, because you do not have statistics or facts to prove that the number of people who would not pay their debts would increase greatly. However, in respect of the process of poindings and warrant sales, I have a letter from the chair of Citizens Advice Scotland, an organisation which deals with hundreds of thousands of people who are in debt, as you are aware. It states:

"It is our experience that poinding and threatened poindings mainly affect the poorest clients who are either not working or do not have bank accounts."

Do you think that that is an accurate statement?

Roderick Macpherson: It is the case that when Parliament sought to revise the diligence in 1987, it was on the basis that there would be a balance between what has always been recognised as the obligation on those who have lawful debts to discharge them and the need for effective debtor protection, which is in line with the social policy of the country.

The principle of the bill is a simple one: it is to abolish poinding; it is not to abolish poverty. Although it has the laudable aim, which we recognise, of extending what Parliament may think is much-needed debtor protection to the poorest and most vulnerable, the bill is still to abolish poinding. The Society of Messengers-at-Arms and Sheriff Officers was involved closely with the Scottish Law Commission during the 13-year period of its researches, which led to the publication of its "Report on Diligence and Debtor Protection" in 1985. We have worked to develop a system of debtor protection. The Society of Messengers-at-Arms and Sheriff Officers and its members daily provide a level of debtor protection.

Mr Beaton was telling you that those elements of the act that rely upon the proactive attempts of the debtor to avail himself of the measures of debtor protection have not worked as well as Parliament had hoped. The fact remains—and it is a matter of fact, not a matter of conjecture—that between 1987 and 1998, the number of poindings carried out on court decrees has declined by 44 per cent.

Tommy Sheridan: Thank you for that figure, because it illustrates that in the commercial sector the use of poinding and warrant sales is on the decline, whereas in the local authority sector it is on the increase. From my experience, Roderick, I have never viewed sheriff officers as debtor protectors. Credit enforcers would be a more appropriate description. How much money does a sheriff officer make from the process of poinding?

Roderick Macpherson: To answer your first point, that you were under the impression that we are in some way an arm of the creditor, it is important to realise the nature of our appointment, which is a public one. We are officers of the sheriff, bound to uphold the law without fear or favour, and to give effect to the warrants of the court. To that extent, the perception of us being on the side of the creditor is not fair. We have to strike a balance and operate the Debtors (Scotland) Act 1987, which has the aim of giving debtor protection, through our daily practice.

Tommy Sheridan: Sheriff officers have often been described as rottweilers in suits. The question I asked was how much money you make from the process.

Roderick Macpherson: The basic poinding fee is £63.25.

Tommy Sheridan: Do you agree that the process of poinding and warrant sale is a profitable one for sheriff officers?

Roderick Macpherson: There are several points to make about cost. Whether value for money is obtained from the diligence system has already been raised. There will still require to be a remedy if the bill is accepted, and if the remedy is to be sequestration, the Law Commission has shown that the cost to the public purse will increase considerably. It has been suggested that the existing alternative modes of diligence, such as earnings arrestments and the use of inhibition, would be sufficient to resolve the absence of poinding. However, the cost of the number of arrestments that would be required to gain the equivalent level of protection for a creditor would be considerably more expensive to him than proceeding with a poinding. A prescribed fee is allowed in the Act of Sederunt for poinding, and it is obvious that the only people who can poind are sheriff officers; therefore of course there is a level of income associated with poinding.

The Convener: But your evidence to us today is that even if this bill went through, we would not see sheriff officers signing on the dole the following month.

Roderick Macpherson: It is no part of our evidence to seek any level of sympathy from you, convener.

The Convener: But I was intrigued by the final paragraphs of your written evidence about the cost of abolition. While you talk about a number of organisations, you do not talk about the cost of abolition to your organisation, although as Tommy said, you make a living out of poinding and warrant sales, as well as being officers of the court. You are saying that regardless of whether this legislation comes into force, it will not have an effect on your position. You are not arguing from the point of view of job losses or anything like that.

Hugh Love (Society of Messengers-at-Arms and Sheriff Officers): It is up to this Parliament to consider the value or otherwise that the country receives from sheriff officers. At this time, we have no public support for the service that we provide. Generally, we do not derive our income wholly from poinding and warrant sale. That is merely a part of our duty. Our scope in service of citation and diligence is widespread.

The Convener: You misunderstand me. I am saying that it cannot be suggested that your evidence is biased because you make money from this procedure, as you are saying that you would continue to make money from whatever procedure was in place.

Hugh Love: Yes, assuming that there was an alternative to poinding and warrant sale, which presumably there would be.

Roderick Macpherson: Perhaps I could clarify that our visit here is to address the general principles of the bill, which we urge you to reject. It is not for us to make any special pleading about the effect that the bill will have on our profession.

We call to your attention the fact that a vital remedy, as we regard it, that has always been available to holders of court decrees in Scotland, will be removed. We are concerned about the effect that that may have, because the Law Commission report indicated that certain categories of debt, which at present might only be recoverable on the basis of movable property, will only be recoverable through sequestration or liquidation, and that certain values of debt—those of less than £1,500—will become irrecoverable. We perceive that the bill will cause a mischief to creditors in this country. That is the basis of our approach to the general principles of the bill.

The Convener: I have quite a list of people who have piled in at the last possible minute and who

want to ask questions at the point when matters ought to be coming to a close. I ask members to keep their questions brief and confine themselves to one or two questions at most.

Christine Grahame: I come from a background of more than a decade in litigation. I have instructed HM Love & Co and Rutherford & Macpherson, so you can take as read my background to this subject. You say poinding and warrant sales are a highly effective remedy. You and I know that ordinary creditors would not use it as a diligence, so it is not a highly effective remedy for them. You and I also know—please stop me if you disagree—that anyone who is determined to avoid diligence, and who knows how to do it, can do so, and they can avoid poindings and warrant sales. We are looking at a regime that generally is used by statutory bodies such as the Inland Revenue and local authorities. Is that correct?

Roderick Macpherson: I cannot accept your comments in their entirety, because it cannot simply be accepted that poinding and sale is not an efficient remedy on court decrees. There may be certain categories for which it is not the appropriate diligence to choose, but it can be useful. The central research unit's overview tells us about those cases that fall out of the filter system, which means that once the stage of diligence is carried out, many fewer cases require to go on to the next stage. Although occasionally the statistics point in different directions, the unit said:

"Such information is not readily available from statistics and it is therefore necessary to look beyond the figures at the views and experiences of creditors and their agents."

The CRU carried out detailed research on this matter. In its survey of poindings, it said:

"On a case by case basis, business poindings were estimated to recover all expenses and some of the principal sum in 96% of business poindings compared to 76% in domestic poindings."

We have to accept that if poinding is being used as a last resort, there are still cases where creditors on court decrees feel that it is a necessary remedy.

Christine Grahame: I accept that, but my point is that if I were a solicitor pursuing a debt for an ordinary creditor, generally I would not select poinding and warrant sale as my first port of call. I would look for arrestment of bank accounts, inhibitions or some other means.

You say that poinding and warrant sale is cost-effective. We heard evidence this morning from the Executive that it does not know that cost of taking out summary warrants and proceeding through diligence or poindings or whatever stage you stop at along what I see as a bullying road—which I have used myself in some circumstances as a sword of Damocles against debtors. The Executive has not costed the process. I do not mean the cost of court proceedings, but all the costs that are involved, for example, the cost of administration, from opening the file at the beginning to getting some of the council tax or tax arrears back. In that case, how can you say that the process is effective?

Roderick Macpherson: My point regarding ordinary creditors was that they choose to follow that line and meet the necessary costs, and in 96 per cent of business poindings they get a result. In terms of the question of public bodies, it is a matter for them to satisfy the committee on any issues of public expenditure connected with their employment of messengers-at-arms and sheriff officers. We all know, because it is in the public domain, that the Accounts Commission called attention to the disparity in collection rates between Scotland and England, and we know that in many ways that was the catalyst that led to the report "It Pays to Pay".

Christine Grahame: I have heard that.

Roderick Macpherson: One of the many pieces of advice in the report is that in some ways, poindings and warrant sales are not being used enough in the local government sector. The Accounts Commission will be in a better position to tell you whether the public is getting value for money out of the system. The Inland Revenue will tell you whether the payments are satisfactory.

Christine Grahame: I will stop you there. The point is that we do not know the cost to the public purse of pursuing that route. Do you agree that on many occasions, poindings, warrant sales, charges and the various stages through diligence are used as threats, in the hope that at some point the debtor will cave in and make a payment? In most circumstances, it is obvious that the recoverable assets, if put on the market, would not be equal to the debts and the expense that has mounted.

11:15

Roderick Macpherson: Even in cases where substantial assets can be found, creditors will do anything to avoid the necessity of completing the next stage of the diligence. You used the word "threat", which has the same origin as "urge" and "entreaty". In certain cases, however, in spite of entreaties being made, the diligence has to be completed. It is evident that if it were not possible to complete the diligence—by the use of the ultimate sanction of a warrant sale—the service of a charge threatening a poinding would lose its efficacy in the filtering process that I spoke about earlier.

The Convener: Christine, I would like to bring this to a close.

Christine Grahame: The point is that, during that filtering process, the amount owed by the debtor increases all the time. Someone who starts off genuinely unable to make a payment ends up with a much more substantial debt at the end—a debt that will not be covered by the proceeds of a warrant sale.

Roderick Macpherson: The costs of litigation are regarded as a cause for concern in many sectors. Access to our justice system is often dependent on the ability to pay to make good one's remedy. Anything that makes it more expensive for creditors to enforce their lawful debts is a matter of concern.

Phil Gallie: Do you agree that the deterrent factor of poindings could be an invisible cost benefit?

Roderick Macpherson: The IRRV report confirms that. It points out that areas that have an effective use of warrant sales have higher collection rates.

Phil Gallie: Could we persuade your society to give approval to the bill if the domestic element were separated from the business element and it included a guard against transference of assets?

Roderick Macpherson: While Mr Beaton earlier expressed a neutral position, we ask you to reject the general principles of the bill. Our reading of the bill is that it has one purpose: to abolish poinding and warrant sales. We are not in favour of the loss of that remedy.

We have said that we are committed to debtor protection and we want a system that has widespread public approval and will allow debts to be recovered within the court system. Mr Beaton told the committee that the 1987 act means that the list of items that are exempt from poinding can be varied. The discussion paper—

Phil Gallie: We are going over old ground. You say that you want the most vulnerable members of society to be protected. If the domestic side of the poindings and warrant sales procedure were separated from the business side, would you support Mr Sheridan's bill?

Roderick Macpherson: I will answer as briefly as I can, Mr Gallie.

We agree that greater debtor protection might be desirable. It could be achieved within the regulations of the 1987 act: the Scottish Law Commission has said that extending the rights of the debtor and the list of exempt items would be tantamount to abolition of warrant sales in certain sectors of society.

It would not be possible to separate the issue of commercial debt from that of private debt. While some companies—

Phil Gallie: I said that there should be a guard against transfer of assets.

Roderick Macpherson: A fundamental difficulty is that some commercial debt relates to limited companies and other commercial debt relates to partnerships. It would be difficult to categorise those two items. The Law Commission suggests that exemptions should be extended to focus the remedy on the most vulnerable and disadvantaged in society.

Phil Gallie: Of the actions that are taken by Customs and Excise, how many occur in the domestic community as opposed to the business community?

Hugh Love: I do not think that we have figures for that. The tables that were contained in the memorandum from the Scottish Law Commission made no distinction between the two areas. In our experience, the majority of poindings that were carried out are against business premises, although a number are against small traders, in which circumstance the poinding is extended to their dwellings.

Kate MacLean (Dundee West) (Lab): I do not know whether you have already given the information that I want. If you have, I apologise for not picking it up. How many poindings result in warrant sales in domestic circumstances?

Roderick Macpherson: The Law Commission has published a huge amount of data on that. However, the number that are to do only with dwellings is not expressly stated.

Hugh Love: Does your question relate to warrant sales?

Kate MacLean: I want to know how many domestic poindings result in a warrant sale.

Roderick Macpherson: Figures are available regarding the number of warrant sales. The Law Commission gave estimates of the number of sales against private individuals. I doubt that we would be able to relate those figures to the original poindings.

Kate MacLean: I was not happy with the answer that you gave to Christine Grahame's question. She said that she believed that poindings were a form of threat. Earlier, you said that they had a role as a deterrent, which implies an element of threat. In answer to Christine's question, you said that poindings were an entreaty to come to terms. That sounds pleasant but I do not think that it is true.

Most people on whom poindings are carried out do not have assets available but manage to find money to pay their debt because of the

intimidation that they feel. Do you believe that poindings are a form of intimidation, particularly in domestic situations?

Roderick Macpherson: The Social Inclusion, Housing and Voluntary Sector Committee took evidence from debtors about their experiences. We acknowledge that people occasionally feel traumatised by the process. As the Law Commission has said, the procedure is necessarily coercive.

Technically, "coercive" means to confine together. The goods are confined together for the security of the creditor. The process impinges on the privacy of the home and initial statements that were made about the procedure's being in breach of the European convention on human rights will have caused much concern.

It is therefore reassuring that the Scottish Law Commission has demonstrated that, if properly executed, poindings and warrant sales are not in breach of the convention.

Those who genuinely cannot pay must be able to take advantage of the many remedies that are available to them under the 1987 act. However, it is widely acknowledged that, were the final sanction of poindings and warrant sales not available, some people who can pay and who have assets would seek to evade their bills.

Kate MacLean: Would you say that that includes the majority of people on whom poindings are carried out?

Roderick Macpherson: In 1985, the Law Commission said that it found it impossible to establish a system that could distinguish, at the start of the procedure, between those who can pay and those who will not pay. The enforcement review of the Lord Chancellor's department in May 1999 said the same. The problem is that means inquiries would lead to non-attendance in court and an apprehension to appear there.

It is not possible to say at the outset who can and who cannot pay. The filter effect means that many people who are served with a charge come to terms. We do not know whether people who are poinded can pay, but if they cannot, they can seek advice and challenge the poinding.

Kate MacLean: Common sense suggests that most people would not go through the trauma of having their belongings poinded if they could pay.

Hugh Love: Parliament must accept that the won't-pays will not pay until some action is taken, be it a poinding, an arrestment of wages or some other form of pressure. The procedure is coercive; that is its purpose. A great majority of people will not pay until action is taken against them. Creditors must be able to take action to enforce a court decree.

The Convener: Maureen Macmillan, do you have a quick question?

Maureen Macmillan: It has been said that people avoid warrant sales by getting into debt elsewhere. Do you have any statistics that show how many people are threatened with poinding again and again because they cannot stop robbing Peter to pay Paul?

Hugh Love: We cannot give those statistics, but the subject has been discussed in the review. We are considering debt arrangement schemes that will allow people who cannot get out of that trap to seek assistance. We have experience of dealing with people in that situation and we try to help them, despite what might be said about us.

It is important to remember that we have been instructed to enforce warrants by creditors and that it is not for us to question the instructions, provided that they are lawful.

11:30

Maureen Macmillan: Do you have any statistics or percentages for that?

Hugh Love: Not for multiple debtors, I am afraid.

The Convener: Thank you very much. That concludes this part of the committee's proceedings. I thank the witnesses for coming. They will, no doubt, follow the remainder of the bill's progress with interest. I remind them that that process involves two other committees—the Local Government Committee and the Social Inclusion, Housing and Voluntary Sector Committee.

Roderick Macpherson: Thank you very much, convener.

The Convener: Before we move on to the next agenda item, I remind members that those two other committees are involved in taking evidence at stage 1 of this bill. The Local Government Committee will meet on 18 January to hear evidence from both the Scottish Law Commission and the Federation of Small Businesses.

I encourage members of this committee to attend those other committee meetings and to take part in the debates on the bill. If Justice and Home Affairs Committee members do so, they should let the other committees' clerks know that they want to attend. That will help the clerks to plan in advance.

I hoped that we would have time for a five-minute break, but we are already running half an hour behind schedule. Members may have a five-minute break if they agree to stay in the committee until about 1 o'clock. That is how long it will take us to get through the agenda. Are members agreed?

Members *indicated agreement.*

The Convener: We will take a break for five minutes and no longer.

11:31

Meeting suspended.

11:38

On resuming—

Scottish Prisons

The Convener: I ask committee members to take their seats so that we can start.

We will now hear from Mrs Marjory Russell, the convener of the Association of Visiting Committees for Scottish Penal Establishments. A short written paper was circulated to committee members yesterday, in a package that they will have received either last night or this morning. It is a brief paper outlining the background to the association.

Mrs Russell, you have brought somebody with you. Would you like to introduce that individual?

Mrs Marjory Russell (Association of Visiting Committees for Scottish Penal Establishments): Yes, thank you. We are delighted to have the opportunity to speak to the committee. I am the convener of the Association of Visiting Committees for Scottish Penal Establishments. On my right is Councillor Willie Clarke, who is the vice-convener.

Members will be aware that every prison must have a visiting committee. The committees are appointed for adult prisons by the local authorities, and at least one third of their members must be non-councillors. There are about 200 members, and about 84 of them are non-councillors. The committees for young offenders institutions have, in the past, been appointed by the Secretary of State for Scotland. I assume that those appointments will, in future, be made by the Minister for Justice. The current term of office for visiting committee members runs out at the end of this year. I presume that new appointments will then be made by the Minister for Justice.

As I said, every prison must have a visiting committee. We have great responsibilities and statutory obligations. We have access to all prisons at all times and to all parts, and we must be allowed to speak to every prisoner. Obviously, we use discretion when requesting such access. Nevertheless, it is a big responsibility to represent the outside world inside prisons, and to ensure that the prisoners know that, in their closed community, there are independent people who answer only to the Secretary of State for Scotland. We are in no way accountable to the Scottish Prison Service and we try hard to make that clear.

Every prison must be visited by two committee members every fortnight, so there is regular visiting. Our association was formed 10 years ago to help committee members to work out what they

were supposed to be doing, as their remit was initially quite vague. It organises training and tries to help people to determine best practice. Because of the changing identity of visiting committee members—committees that are appointed by local authorities change at every local authority election—it has been difficult to establish a general purpose. None the less, that is what our association tries to do. We provide leaflets and meet each month in the different prisons.

Should members of the committee want to ask detailed questions, we are quite knowledgeable about every prison. I represent the young offenders prison in Cornton Vale and so I base my knowledge mainly on young people and women. Councillor Willie Clarke is the chairman of the visiting committee at Glenochil prison, so he is the person to ask about adult males.

The point that we are trying to put across is that prisoners are not at all homogeneous; a prisoner cannot simply be stuck wherever there is a space. There is huge variety among remand prisoners, women prisoners, young prisoners, and the prisoners who fall into the strange gap between having a personality disorder and having a mental illness. The prisons must accept everybody who is sent to them, but those of us who act as visiting committee members are conscious of the fact that prison is definitely not the right place for many of those people. It is difficult to tell what would be the right place for many of them. However, we suggest that when cuts are made in the prisons budget, the Parliament should listen to the visiting committees, which have ideas on ways in which that money might be better spent.

The cost of maintaining prisons is enormous—nearly £28,000 per prisoner per annum. That money is not spent on luxuries for prisoners. The amount that is spent on food per prisoner is about £12 a week. There is a huge disparity between those figures. When people hear of £28,000 being spent, they think that prisoners are living in some sort of luxury, although I assure you that they are not. I hope that people will think before they spend that kind of money on something that is possibly a waste of money.

The Convener: Thank you, Mrs Russell.

I shall explain briefly the background to the reason for our inviting you here. At the beginning of the parliamentary year, we anticipated that we would have a quick look at the report by Her Majesty's inspector of prisons. While we were doing that, the announcements were made about the budget cuts and potential job losses and prison closures. Our initial inquiry was, therefore, extended to take those issues into account and to examine more specifically the impact of those decisions on the Prison Service. I anticipate that most of the questions that committee members will ask you will relate specifically to that and to your impressions of the situation. You are in a particular position, as you are lay people in the Prison Service, rather than professionals. You might, therefore, view prisons with eyes that are more like ours, rather than with the eyes of prison officers or of those who are otherwise involved in the Prison Service. From that point of view, we look forward to your input. However, I hope that your input will be confined to the area that we are investigating at this stage, which is the likely impact of the closures that have been announced.

11:45

Scott Barrie: In your introductory remarks, Marjory, you said that you had some ideas about where budgets could or should be spent. Perhaps you could give us some indication of that.

Following on from what the convener said, I would be interested to know your views on the proposed closures of Dungavel and Penninghame prisons. You said that prisoners are not a homogeneous group—that there are different categories and types of prisoner. In previous evidence, we were told that there is a mismatch between prison provision and the type of prisoner who is likely to be in the system. Can you comment on that?

Mrs Russell: There are things that we would like money to be put into. Bail hostels are essential to divert people from prison, especially young women—or any women. There are few women's places in bail hostels and the number of women on remand is ridiculous.

People awaiting deportation, who are not criminals and have not been sentenced should—as happens south of the border—be properly housed, although not at the expense of the Scottish Prison Service. Something more cost-effective could be found for people with a personality disorder—as distinct from mental illness, as there is no clear line between the two. Most prison governors agree that the heavy security that is required for some prisoners is required only for a relatively small number of prisoners. That, after all, is what is putting the cost up.

Penninghame and Dungavel have carried out their work well. We will not go into how valuable they are to their communities, as that is not relevant here, but we feel that it is dangerous to assume that a person on, say, a 32-year sentence—one was released from Penninghame recently—can be put out of the door at Perth or Barlinnie. There have to be good, open prison facilities for people on long sentences, so that the world that they come back into, which will be

different from the world they left, can be properly introduced to them. That will give them a much better chance of success.

Councillor Willie Clarke (Association of Visiting Committees for Scottish Penal Establishments): The Scottish Prison Service's strategy needs to be looked at in depth. The current approach does not do that; it is reactive, and I wonder what the reaction is based on. We feel that it is not just a case of employment at Penninghame. It is a disgrace that Scotland has the highest prison population in western Europe.

It is obvious that people who are a danger to the public should be locked up, but many facets should be addressed. Penninghame is very saleable. I hope that the prison is not part of this strategy, because there is land that can be sold on. I am not saying that that is a certainty, but it is a concern. There has not been what I consider crucial consultation, involving all the bodies associated with the government of prisoners, of which visiting committees are a part. That is very worrying.

The Scottish Parliament was intended to be open and accountable, but situations such as this cause concern. Sometimes the perception of what is happening does not relate to the facts. A lot of money could be spent n the service. We want people to be rehabilitated into society so that they do not return to prison or at least to minimise the number who reoffend.

A lot of money should be spent on education in prisons. Education is a key issue outside prisons, but it is also important for people in prison, to equip them for their release. Some tremendous work is done in prisons, but there is a shortage of contracts. I appreciate that that is not an easy problem to solve, because it involves discussion with the trade unions.

Work in prisons needs to be considered, as many prisoners are spending their time idle and are not being rehabilitated. That needs to be considered in depth.

We still have slopping out in prisons, which is a Victorian situation. We are in a new century—a new millennium—yet slopping out still goes on. It is a disgrace and an indignity to anyone. Working jointly, there could be development on quite a few aspects, including a reduction in the prison population and perhaps even the number of prisons. However, there have to be other facilities.

There should be an overall strategy, with full consultation, which in our opinion does not exist at present—we are just jumping in. We want to be part of such a strategy. We ask that we should be consulted about anything appertaining to the Prison Service. There will be times when we are right and times when we are wrong but, like other organisations, it is important for us to express our point of view. That will be beneficial to the service as a whole.

Maureen Macmillan: Willie has answered the question I had intended to ask, which concerned slopping out and how important prison visitors consider phasing it out to be. We hear that ending slopping out will now be put back by five or so years from the original plans. A prison chaplain in my constituency has been very concerned about that. I heard Willie say how concerned he is too, so there is no need to answer the question again.

Mrs Russell: The loss of liberty is supposed to be the punishment. People are not supposed to be punished in prison. We find that the people who are entering prisons, particularly the under-25s, have had a chaotic lifestyle. Most of them have ended up in prison by default and many of them live in a fantasy world. When we speak to them, we realise that neither their expectations, nor their tales of the past nor their relationships have any basis in reality. The main job is to build up some kind of self-respect. If people do not have respect for themselves, they will not have respect for anybody else.

Prisons should try to build up prisoners' self-respect. That cannot be done by denying night sanitation. Crowded, two-tier cells with stupid little pots in them do not build up anybody's self-respect. We agreed with all the aims in the plan for 2000, which we received around the time we heard of the closures. It is disappointing to find that the aims have been put back.

Christine Grahame: Will you now make formal submissions to the Executive about alternatives to custody? You have touched on that—it was very interesting. I see that Jim Wallace's evidence was that the prison population is projected to stabilise, partly due to the fact that alternatives will be considered. Will you make formal submissions, based on your practical visiting experience?

Mrs Russell: It was immediately before Christmas that we heard that we were coming here. The association has not met since. I hope that we will make some suggestions that seem to us to be viable.

Christine Grahame: We heard that additional bunk beds may be purchased, which would indicate an increase in doubling up in cells. Can you advise us of the effect that that might have on individual prisoners and on the prison community at large?

Mrs Russell: Unless cells are also doubled in size, doubling up is disastrous. Cells would be far too cramped. That would reduce people's chances of being dealt with as individuals and therefore the chances of their building up a feeling of self-respect.

It beggars the imagination to think what it would be like for an ordinary person to be locked in a cell for hours at a time with somebody with severe behavioural disorders. Recently, for example, someone sprayed her hair with hair lacquer and set fire to it.

Christine Grahame: I hope that doubling up does not take place, but would you go so far as to say that it might lead to disturbances in, or destabilisation of, prisons?

Councillor Clarke: We do not want to be alarmist, but there is always the possibility of friction. A lot depends on the relationship between staff and prisoners, because staff have to deal with everyday events. That is an important relationship. Crowding people in, when some of them have problems, will incite them. How much more friction there will be is open to question, but one thing is certain: if prisoners are doubled up, there is more chance of problems.

Christine Grahame: I want to ask about the special unit at Barlinnie, which the chief inspector of prisons refers to in his note. It is Barlinnie, is it not? Have I got the wrong one?

The work that the unit has been doing, and the fact that it has been mothballed—

Phil Gallie: Peterhead.

Christine Grahame: Sorry. Peterhead. I knew by the blank looks that I had got the wrong name.

The chief inspector commented that there has been no evaluation of the very costly work at Peterhead. Do you have comments about that, as it tries to deal with very difficult prisoners as individuals?

Mrs Russell: The main problem is that the unit has a small capacity.

Christine Grahame: It is about 10.

Mrs Russell: Those in the unit will have to be returned to the prisons from which they came, which is a worry. The prisoners will be disappointed, because they have been working towards better things. When privilege or perceived opportunity is withdrawn from prisoners, they become bolshie; they feel that the system has let them down and that there is no point trying any more. That happens in a long sentence, when prisoners have made good progress but there is no further for them to go. If they are not then given open prison or parole conditions, they tend to revert. That aspect of the closure of the Peterhead unit would be a worry.

Councillor Clarke: That is also true of Penninghame. I have visited the prison often. There is no doubt that it did a tremendous job of bridging the gap for people leaving prison. When it was first set up, the locality was totally opposed—I can understand that—but over the years the locality learned and worked alongside the prison and opposed its closure.

Other problems arise from the changes at Peterhead. Protected prisoners have been transferred to Glenochil, for example. That in itself creates certain problems, depending on the prison populations.

We are not opposed to change, accountability and monitoring, but we feel that that has not been achieved and that not enough discussion or thought has been put into this matter.

12:00

Christine Grahame: The chief executive of the Scottish Prison Service said that there is hostility among the local community. I lived close to Penninghame, in Newton Stewart, for 15 years, and I concur with what you have said: the community largely endorses the prison and the prisoners who work in it. It has had no difficulties over the years and I was pleased to hear your comments.

Kate MacLean: I was interested in what you said about consultation, Willie. I have not been a member of a visiting committee, but I am aware of the time-consuming and onerous aspects of visiting because of my local government background—I know that it requires a great deal of commitment. I would have thought that visiting gives people a unique insight into prison life and that they have no axe to grind.

Can you expand on the matters on which the Association of Visiting Committees for Scottish Penal Establishments has been consulted? Are you suggesting that there should be a statutory right to consult you about what is happening in the Scottish Prison Service? That would be an interesting matter to explore.

Mrs Russell: We have a statutory obligation to write up all our visits and to make an annual report to the Scottish Executive—formerly to the Secretary of State for Scotland. We are also available to be consulted and to do any research that needs to be done, although I should say that we have not been used in that way.

We talk to people and try to represent them. We are there in the outside world—but by the grace of God, many of us would be inside. It is amazing how distorted the views of people who have never been in prisons are about the population inside.

Councillor Clarke: I would like to draw a comparison with the English set-up. We struggle in Scotland; I appreciate that England, being a larger nation, has more prisons, but it has a large secretariat for back-up, whereas we have a—very capable—part-time secretary. We struggle to get

any accommodation in prisons for visiting committees because of the lack of space. I think that there is only a small boxroom in Perth prison. Apart from that, we have no facilities for storing our confidential documents. With that in mind, there should be an examination of how we can play a more effective role.

I agree with Marjory Russell. We should be consulted. We do not claim to have all the answers, but we are part of the system and are offering our services. We want to be involved. Unfortunately, we have not been called to become involved until now.

Phil Gallie: I am a bit surprised at that. Are you saying that, in the past, when the plans for the Prison Service were considered, the chief executive or other members of the SPS never approached you to ask for your views on the way forward for prisons?

Mrs Russell: Yes, we are saying exactly that. We were never approached to my knowledge, and I have been involved for 20 years.

I will tell you who is very good at consulting us: the chief inspector of prisons. We have a very good relationship with him. I am not creeping, honest. [*Laughter.*]

Phil Gallie: The chief inspector has referred to the fact that the prison closure programme is probably unique. All your objectives and the matters that you have raised today seem to have been sacrificed to the immediate requirement to save £13 million. How do you feel about that?

Mrs Russell: I feel really bad about it. The only way in which I could feel better about it would be if that money were used to divert from prison people who need not be there now.

Phil Gallie: I think that the explanations of how that money will be used are different—but I will move on.

I would like to ask you about Penninghame. You referred to the importance of open prisons and the need to have somewhere where people who have been in prison for many years have the chance to break back into society. It seems that Penninghame was ideal: it is now accepted in the community and there is contact between prisoners and the community. One of the reasons for selecting Penninghame for closure seems to be its remoteness—it is around 50 miles south of Ayr. Do you think that is a good reason? During your visits, were there complaints from prisoners and their families about the remote location, or is that a non-issue for the prisoners?

Mrs Russell: That matter has not been raised with us by prisoners who spoke to us about conditions in Penninghame. The one thing that they were not too keen on was the dormitory accommodation. They were impressed, however, by the way in which the community accepted them and by the fact that they could go out.

When an ex-prisoner, especially one of long standing, is sent out into the community where the trouble happened, there is no chance for them, particularly if the press gets hold of the story. Taking people out of their home area is not a bad idea for open prisons. The other open prison is at Friarton, which is much further north.

One of the reasons open prisons are not full is the feeling in the Prison Service of a threat to other institutions. At least one governor has been honest enough to say that more prisoners could have been processed to go to open prisons, but that each governor was holding on in the hope that their institution would not get the chop. I think that much more time could be spent examining the categorising of prisoners.

It should be realised, for example, that young women who have been put on a life sentence at the age of 15 and have done eight years are absolutely no risk to society. I would take them home. We must consider alternatives: ways for such women to serve sentences in the community without being harried and pilloried by the press, and given no chance.

Phil Gallie: I take that as an issue apart, while recognising the sincerity with which you have made your comments. I wish to ask further about the location of Penninghame. The message that seems to be coming from the chief executive of the SPS, and the inspector of prisons, who is probably listening to this, is that we should put all our prisons in the central belt. Is that reasonable?

Mrs Russell: I do not think that that is reasonable at all. Come on: we all know about "not in my back yard" attitudes. Open prisons must be somewhere where open prisoners have a chance to make a living and be respectable people.

Councillor Clarke: There is a fight to go to Penninghame: prisoners want to go there because it is a stage before getting out of prison, and part of the process. It is indeed 50 miles away from Ayr, but let us be realistic. It is perhaps because we live on a small island, but 50 miles is not a long way; 500 or 600 miles might be considered a long way in America. Most people either have a car or can get a car for visiting the prison. Taking into account the views of prisoners, who will want their families to visit them and to get out at the weekends, it was found that the location of Penninghame was highly desirable.

I asked someone to produce facts to prove that people from visiting committees were reluctant to go to Penninghame because it was too far away. You will find that they have not produced any such information.

The Convener: That appears to be all the questions that we have for you. We are grateful for your evidence and we are particularly interested in the fact that there has been absolutely no consultation with your organisation. The Justice and Home Affairs Committee may wish to return to your situation as a separate future issue. Thank you for coming and giving us your views.

I now ask Her Majesty's inspector of prisons—himself—to come forward. Good morning, Mr Fairweather—no, good afternoon. Sorry, we are, as usual, running rather later than we had hoped.

You are accompanied by Eric Fairbairn, your deputy chief inspector, Mike Crossan, an inspector, and Brian Henaghen, a staff officer. Although we are struggling a little, I know that you have been following what the committee has been trying to do. You will realise that, because of the announcement made some months ago, our original interest in your report metamorphosed into a discussion of the likely effect and impact of the closures, job losses and so on.

I think, Mr Fairweather, that you were our first witness, since our investigation began with the report that you produced last year. It is apt, therefore, at least as far as this phase of the justice committee's investigation into prisons is concerned, that you will lead our final group of witnesses. We have, however, made a decision to examine the issue of female and young offenders, so we are not leaving the issue of prisons entirely. Thank you, Mr Fairweather, for coming to the committee again. I suspect that most of this afternoon's questions will focus on your response to the announcement made on the budget cuts and closures.

Pauline McNeill: This was not going to be my first question, but I was surprised at what Marjory Russell had to say, and at Councillor Clarke's saying that prisoners are fighting to get into an open prison. That is at odds with evidence that we have heard up to now: we were told that prisoners did not want to go to Penninghame. Do you have a comment on that?

Clive Fairweather (Her Majesty's Chief Inspector of Prisons for Scotland): I think that most prisoners on long sentences would want to get into an open prison, because it is a progression. Of the two open prisons that I have visited—plus Castle Huntly—I would say that the majority would prefer to go to Noranside or Castle Huntly, rather than Penninghame. The reason given is that it is so far away. That is before they go; once individuals are there, there is not quite the same problem, although the matter is raised from time to time while they are there. It is not an overwhelming piece of evidence.

Pauline McNeill: How do you view the loss of the Peterhead unit? On a technical point, is it the same type of unit as previously existed at Barlinnie, before it closed?

Clive Fairweather: The Peterhead unit was spawned from the Barlinnie special unit. There are three units: the national induction centre, Shotts unit and Peterhead unit. Members have the report that we produced on Peterhead unit. When we were carrying out the inspection, I asked my team, "Do we need three units?" Peterhead unit is some distance away. We ended up in two minds—I am still in two minds about Peterhead unit. In an ideal world, I would like it to continue, but its location skews matters: it is a long way to go for most family members to maintain contact, and we are not talking about 50 miles down the road, but about a two or two and a half hours' journey. That is an important factor for the individuals concerned.

If there have to be cuts—forced upon the SPS—the unit could be considered, but I am glad to see that it has been mothballed; in other words it will be possible, depending on the future situation, for something like the unit as it was to continue.

The evaluation of the units at Peterhead and Shotts still needs to proceed. Much will depend on prisoner numbers: the more people come into the prison system, the more likely it is that there will be difficult individuals. The effect of the national induction centre will also be a factor. Over the years, the centre has prepared more people for longer sentences. That preparation has not been evaluated, and there may be fewer troublesome individuals in the system. Nobody knows—we are taking a step in the dark, losing around 20 staff.

12:15

Pauline McNeill: I hear what you are saying.

My final question is on a different subject, but it is one about which I have some concern, given that the Scottish Prison Service is about to enter a fairly turbulent period. We have heard from the staff through the trade union and the Prison Staff Association—you may have seen their views recorded. I worry that some hostility is breaking out between management and prison staff, and I want some reassurances that you are mindful of that.

John Reidy of the Prison Staff Association has submitted a letter to us on the Scottish Prison Service information network rules, which govern what can and cannot be transmitted via e-mail. Do you know about John Reidy's suspension from the network? It suggests to me that all is not well between the management of the Prison Service—particularly in this area—and prison staff. That cannot be good for managing what will amount to some closures in the future.

Clive Fairweather: I am not aware of the problem. I have spoken to Mr Reidy a number of times and am not aware of the specific case to which you refer.

We are touching on the impact of closures on morale. It is impossible to get something for nothing. Since the cuts were announced, we have continued our inspection programme and I detect a slightly different mood—not just among staff, but among prison management and governors. The speed and extent of the closures have led to the sort of decline in morale that would occur in any organisation that is faced with such a situation. There are worries about why management was setting aside money when prisons were struggling to make ends meet.

Pauline McNeill: I do not know whether you can give the reassurance that I have requested, but the committee thinks that it is important that we have it from someone. I have only John Reidy's letter to go by, and there is always another side to the story, but I would like some reassurance that members of the Prison Staff Association and the trade unions may communicate with one another about this debate. If business is relevant to the interests of the staff, they should be able to communicate with one another freely, without being subjected to this kind of petty treatment.

The Convener: In fairness, Pauline, Clive Fairweather has not seen the letter, which makes it difficult for him to comment on this case. You are referring to a situation in which an individual working for the Prison Service has been banned from putting the minutes of this committee on to the service's internal network. Obviously, Clive Fairweather does not know enough about the detail of individual cases to deal with them.

Clive Fairweather: I do not.

The Convener: However, do you agree that morale would be affected by that sort of rule?

Clive Fairweather: I do. I do not know how long the cuts will impinge on morale. During the time in which I have been responsible for inspecting prisons, the staffing structure review had the greatest impact on morale prior to this, but the impact of the cuts has been just as great.

Phil Gallie: Mr Fairweather, you talk about cuts being forced on the Prison Service. In your submission, you refer to the four prison closures being most unusual. Should such a major change not have been thought out over a period of time, and should not all the relevant parties have been involved in discussions—particularly groups such as the Association of Visiting Committees for Scottish Penal Establishments, from which we have just heard?

Clive Fairweather: There should certainly have been more time. The annual report that I submitted stated that, if numbers steadied, the closure of one or two isolated or less cost-effective establishments could be considered. I thought that Longriggend would certainly close this year and that Penninghame might close next year. Beyond that, I foresaw other closures, depending on the prison population.

With the loss of £13 million, however, the Scottish Prison Service had few options. The only place in which significant savings can be made is on staff. Once one has run through the figures, one might come up with a figure of 400. In an ideal world, there would have been more time for consultation all the way down. However, to achieve those cuts in the time scale that we are discussing, the Prison Service did not have much choice. I was not consulted—not that I needed to be—and nor were the visiting committees.

In defence of the Prison Service, I must mention the fact that the estates review team is coming to talk to me on Thursday to discuss how the next stage will be managed. In November, there was not enough time.

Phil Gallie: You have said that the process was based on financial considerations and had nothing to do with logic, objectives or the Prison Service's programme.

Clive Fairweather: I think that there was a parallel logic about alternatives to custody. I have not seen any of the papers, but I think that logic was used in making those decisions.

It has taken me five years to arrive at my current position. When I started out as chief inspector of prisons, I thought, as a former layman, that the more prisons there were, the better. I have changed my opinion over time. Having seen the reality of the Prison Service, I am now of the school of thought that says, "Open a school; demolish a prison."

Phil Gallie: That is an opinion with which all members can sympathise. However, you have voiced your concerns about overcrowding and slopping-out. All the proposed programmes have been put back, and I am sure that you do not feel that we should be closing prisons at the expense of ending overcrowding and slopping-out.

Clive Fairweather: Much will depend on future prison population figures. If alternatives are adopted and the population goes down to around 5,000, we will save money. If the population stays where it is at the moment—at around 6,000—money can be saved and it may be possible to carry on with all the improvement programmes, although there will be some delays. Nobody knows whether the population will rise but, if it were to rise to something like 6,700, that would be a different ball game.

The Convener: Allow me to interject at that point, Mr Fairweather. At the Justice and Home Affairs Committee meeting on Tuesday 23 November, the chief executive of the Scottish Prison Service stated quite baldly that the service was operating on an expected population increase to 6,700 by 2003-04.

I asked him:

"Do you expect the prison population to increase, rather than decrease?"

He answered:

"Absolutely."

I went on to ask him:

"So you intend to close establishments in the face of an expected increase in the prison population?"

He answered:

"Yes."—[*Official Report, Justice and Home Affairs Committee*, 23 November 1999; c 451.]

All the evidence that the committee has heard suggests that the prison population will increase, notwithstanding the alternative-to-custody approach, which most of us endorse.

Your comments on the closures were predicated on there not being overcrowding. In view of the bald statements made by the chief executive, do you have any comment on the likely impact of the cuts?

Clive Fairweather: No one really knows how the population will change. The figure of 6,700 is a projection. I have been watching the situation for five years; each year I have been looking at figures and so on. I am still not sure what will happen. The figures are projections, and a whole lot of imponderables lie up ahead.

As I understand it, the estates review is looking at three options—5,000, 6,000 and 7,000. If we are to avoid overcrowding, some decisions, based on projections, will have to be made this spring or summer. That review is circulating among prison management; it considers possibilities such as whether new house blocks should be built, or even a prison on a new site.

Phil Gallie: A few moments ago, you said that the closure of one or two isolated or less cost-effective prisons could be considered. You also acknowledged that Penninghame was in your mind. The figures that I have seen suggest that Penninghame is one of the most cost-effective units. The argument that the prison is somewhat isolated concerns me, as it brings us back to the issue of prisons being located only in the central belt. We have heard from witnesses that prisoners have not complained about Penninghame being remote—indeed, there has been demand to go there—so how can you justify considering the closure of Penninghame?

Clive Fairweather: Of all the places that I have looked at, I still think that Penninghame is a bit out on a limb for most prisoners from the central belt. However, another factor may get us around the difficulty. Depending on the prison population in about April or May of this year, it may be possible to consider mothballing Dungavel. That would leave some options for contingencies and for the unexpected. Depending again on the populations of different categories of prisoners—and on, for example, whether long-termers are silting up the system, which is a possibility—Dungavel could even, in due course, become an open prison again, as it has been in the past. Although still not an ideal location, Dungavel is 50 miles closer to the central belt than Penninghame is. I have mentioned that possibility to the chief executive, and we will study it a little bit further.

I have to watch out here, because I am in the business of inspecting prisons, not managing them. However, I am trying to find some way of not boxing ourselves in.

Christine Grahame: I have to declare a sympathetic interest in Penninghame because, as I have said, it is in my own—

The Convener: Christine, can we avoid thinking about the local press releases please?

Christine Grahame: No, no—it is not for those. I want to come back to what Mr Fairweather wrote about Penninghame. He said:

"This open prison has served a very useful purpose in the past, in preparing long term prisoners for release into the community and also testing them prior to release."

Does that distinguish Penninghame from other open prisons?

Clive Fairweather: No, it does not. The consideration of Penninghame for closure does not surprise me, but I am by no means against open prisons. We need to consider things very carefully; we do not want to lose all the value of open prisons. Now that we have a little more time, another possibility may be to mothball Dungavel and have it as a category C contingency location—it has been a category C prison in the past. Beyond that, it could be considered as a possibility for an open prison.

Christine Grahame: Do you feel that the Prison Service is not using open prisons enough? I gathered from the evidence that we heard from the Prison Staff Association that open prisons were not an easy option for prisoners, as there had to be an educational element.

Clive Fairweather: It is possible that open prisons are not used enough. They are not an easy option for the Prison Service, which runs the risk of being criticised if individuals abscond. There have been difficulties in the Penninghame

area. I have had a lot of correspondence on that—a lot of people are pro, but others are anti. An open prison is a hostage to fortune for the Prison Service, so the service is feeling its way very carefully.

12:30

Christine Grahame: I have another question about Peterhead's special unit. I do not have the paper that you wrote in front of me, but I get the feeling that you were ambivalent and that your view was that there was no proper evaluation of the work being done at the unit as against the costs. Is that a fair summary?

Clive Fairweather: Yes.

Christine Grahame: Such an evaluation could show that a unit such as the one at Peterhead should exist for all its costs. That is why you are careful to hedge your bets and to say that it must be mothballed rather than closed.

Clive Fairweather: Yes.

Euan Robson: I want to ask about the categories of prisoners who are likely to become involved in alternatives to custody. Might they end up in open prisons?

Clive Fairweather: No. Those who end up in open prisons are usually long-termers whose category changes as they come through the system. Originally, they may have been category A or B; they may then be deemed to be category C and finally category D—for open prison. Alternatives to custody do not really fit into that equation.

Euan Robson: If there were a significant reduction in the prison population as a result of the development of alternatives to custody, where might we see the impact on prisoner categories and the prison population?

Clive Fairweather: The impact would be on category C and local prisons. Alternatives to custody include alternatives to remand for alleged offenders.

Euan Robson: Why, then, do we hear evidence that there are too many places in open prisons? It has been suggested to the committee that the population of open prisons is such that just two open prisons are justified, rather than the existing three.

Clive Fairweather: That relates to some of the issues on categorising prisoners raised by the witnesses from the visiting committees. I am sure that if the categories were to change more rapidly—one cannot will that, as the prisoners must meet the standards required—more prisoners could be in open prisons. In the past, there have not been enough of them.

Eric Fairbairn (Her Majesty's Deputy Chief Inspector of Prisons for Scotland): One of the other difficulties with open prisons is that they are isolated. Low-security prisoners serving short sentences typically come from the central belt. Barlinnie has a number of prisoners who could be category D prisoners and who could serve their time in an open prison. However, if they come from Garthamlock, it is not attractive for them to be told that the open prison is Castle Huntly, near Dundee. They prefer the advantages of staying locally, and travelling to Dundee is not a viable option for them.

We then face the question of whether the Prison Service would move those prisoners to Castle Huntly, as it would be taking a risk if the prisoner said, "I don't want to be here." As soon as he got there, he would say, "I'm going to run away." The Prison Service would have to say, "Okay, you are security category B or C and you are returned to Glasgow or Edinburgh or wherever, close to your home."

Trying to force a prisoner to be somewhere where he does not want to be, without security, runs an extreme risk. If the money has to be spent on security, that negates the point of an open prison. The Prison Service cannot take the risk that a prisoner will run away from an open prison if he does not want to be there. If he runs away, will he steal a car? Will he break into a house to acquire money to pay for his bus fare or a train ticket? The Prison Service has to be conscious of those difficulties when it says to a prisoner, "You're a D cat. You're serving only a short sentence. Go to Dundee." That is particularly the case if the prisoner feels that there are compelling reasons for staying locally.

Euan Robson: Clive Fairweather suggested that long-term prisoners ended up in open prisons, so why did you give a short-term example?

Eric Fairbairn: Castle Huntly and Noranside have a number of short-term prisoners.

Euan Robson: Who are those people? I understood you to say that they are not people who would be open to alternatives to custody. That is the key point. If we embark on alternatives to custody, where will the impact on the sheer number of spaces in prisons be? Where will there be empty cells as a result of alternatives to custody?

Eric Fairbairn: I would expect the greatest impact to be on local prisons. Typically, fine defaulters end up in local prisons and serve 10, 14 or 20 days. By the time they are assessed, sending them to Castle Huntly is not an option. It is interesting to note that the latest prison statistics show a 22 per cent drop in the number of fine defaulters received into prisons. Such a drop

would be most keenly felt—or rather, not felt—by local prisons. People get lifted in Glasgow or Edinburgh and typically go to Barlinnie or Edinburgh prison. Those people would not feature.

The Convener: Are there any other questions? If not, I thank the witnesses again for coming today. As I indicated at the beginning, we will probably now move towards producing a report on the work that we have done so far before tackling other aspects of prisons. I anticipate that we will have you back again, Mr Fairweather, and I hope that that will not be too onerous. I am sorry for the delay this morning—our time scale slipped. [*Interruption.*] If people are wondering what the noise is outside, there is a farmers demonstration.

Petition (Carbeth Hutters)

The Convener: We move to item 5 on the agenda, which is petition PE14 by Carbeth Hutters Association. We need to have a brief discussion about how we want to proceed. People will have received among their papers a note from the clerk, which gives a summary of what we have done so far, the evidence that we have taken and one or two other matters.

For those who have not yet read the note, I point out that the estate has suggested that committee members might want to visit Carbeth before reaching a final view and has offered to host such a visit. For the record, the timetable for meetings between now and Easter is very heavy and it is difficult to see how we could arrange such a visit as a committee. However, if individual members are interested, the estate may be prepared to host visitors informally rather than formally. I would encourage those who are particularly interested to approach the matter from that perspective.

We must now decide on the next stage. We must report on what we have done with the petition so far and on our recommendations. The clerk effectively has outlined two options. The more wide-ranging option is to produce a fairly substantive report on the merits of the case. We would then have to make a decision about whether we want to proceed with our recommendations on the proposals put forward by the Carbeth hutters by way of a committee bill. That has severe timetabling implications for the committee, but is certainly a possible way forward.

The second option is to produce a shorter report, which would pull together the issues that have been raised with us and would summarise the evidence, in effect drawing the committee's work to the attention of the Executive, but passing it over to the minister to consider what he wants to offer as a way forward. The Executive could either issue a stand-alone Executive bill or include the provision in the forthcoming land reform bill.

The clerks need to know which of those things we want to do, as the work load is different for each of them. The first option is a much bigger undertaking. The second option can be more easily encompassed in a short space of time. My own feeling is that we should choose the second option, simply because the matter could possibly be incorporated into the land reform bill. I think that all committee members would want to keep that live at this stage. However, I would appreciate members' views.

Scott Barrie: I do not think that we can do otherwise than choose the second option. I am not sure what we would say or what, as a committee,

we could do if we chose the first option. We took evidence on a specific issue as it affects the hutters at Carbeth. We have not addressed the fact—and it is something that we would have to investigate—that there are similar situations in other parts of Scotland; not on the same scale, but involving people in similar circumstances. We should return to the whole issue and discuss it in much greater detail, as what we would be doing for the hutters could have dramatic repercussions on other people.

At the moment, I am not sure about the ins and outs of the situation. There are points to be heard from the other side of the argument. My initial sympathies lay solely with the hutters. However, having taken evidence, I now understand that the picture is much more complicated than was first imagined. I do not think that we have any alternative to choosing the second option, leaving it to the Executive to decide whether it wants to redress the situation in the forthcoming legislation.

The Convener: Certainly, for the reasons that you outlined, Scott, option 1 would involve a longer and much more complex process for both the clerks and the committee. Option 2 is the briefer option, which has the advantage, from the Carbeth hutters' point of view, of pointing the Executive and Parliament in the direction of the land reform bill as a means of dealing with this situation.

Phil Gallie: I agree entirely with what Scott Barrie said. However, it is a reflection on the work load of this committee that one of Scott Barrie's reasons for our not dealing with the issue properly is the fact that we do not have the time to analyse the evidence and arrive at proper conclusions.

The Convener: We could choose to do so. I remind members that this is not the Westminster Parliament. When we get to the summer recess, the business of this Parliament does not fall as the business does at Westminster. It is possible for us to choose option 1, knowing that a much longer time scale would be involved and that the business would extend into next year. We sometimes think that we are like Westminster, but our work does not fall as it does there.

Scott Barrie: I hear what Phil Gallie is saying. What I was saying was not based solely on the fact that we might not have sufficient time. There are other reasons for which we should choose the second option.

The Convener: Phil, did you want to come back on that?

Phil Gallie: Yes. I fully appreciate what you said, convener, about extending the time scale. However, there is a range of issues that we have said that we will pick up in April, and their consideration will also have to be extended.

The Convener: With respect, Phil, that overstates the case slightly. We will discuss a range of issues at the first meeting after the Easter recess. How many of them we will add to our work load is another story entirely.

Maureen Macmillan: Is it possible that, if the Executive did not want to introduce a stand-alone bill, or did not want to include the issue in the forthcoming land reform bill, we could revert to option 1 at a later date?

The Convener: We can do whatever we choose to do. Some of Scott Barrie's comments were right. A lot of us were of one view when we started to hear evidence. However, as the evidence was produced, some of us began to wonder whether we had jumped the gun in taking that view of the situation. The clerks might draw together the evidence that we have heard and produce for us a summary of that, which would be part of the report anyway. We would not be asking the clerks to do anything unnecessary. It would be useful for all committee members to see that summary before we return to discussion of our future handling of the issue. I agree with Scott Barrie that some of us were beginning to puzzle over our views.

12:45

Pauline McNeill: I endorse what has been said, for all sorts of reasons. Quite a bit of contradictory evidence was produced, which this committee will not get to the bottom of. That would require more resources.

I have constituents who are Carbeth hutters. I am supportive of them, and believe that they are doing the right thing. However, there are some details that I would like to have clarified. For example, is the situation unique? It is important to know that before we legislate, as that could affect the direction that we take. The issue may not end up within Jim Wallace's remit, but within that of another minister. We need the Executive's resources to sort out the wood from the trees. Nevertheless, Maureen Macmillan is right: the issue may return to this committee eventually, and this is an important filter for it to go through. I support that view.

I have been to Carbeth twice. Once I went to meet my constituents. The other time I accompanied Sylvia Jackson to a meeting, as the issue concerns her constituency and she did not want to go alone. It is clear that the two sides are entrenched, and it is a difficult situation. We have established that there is much hostility. However, the prospect of future legislation resolving the situation for them might help to reduce the hostilities. That prospect might help in the negotiations that are taking place between the two sides, which I hope will be positive. That is

undoubtedly the right option to choose.

Mrs Lyndsay McIntosh (Central Scotland) (Con): Picking up on Scott Barrie's point, I do not see the timing aspect as posing a particularly significant problem. Pauline McNeill asked whether this was a unique situation. I think that it is a unique situation. It cannot be duplicated anywhere, because of the scenery, the surroundings and all the rest of it. That may be why the two sides have become so entrenched. The possibility of future legislation is the route down which we ought to go, on which basis I would plump for option 2.

The Convener: I shall ask the clerks to begin on option 2, but also to let the committee have a summary of the evidence that we have heard and the questions that we have asked, when that is available. It would be useful if we could hold the report at that stage, so that we could have a quick look at it. We may then identify specific issues and questions that we would like the Scottish Parliament information centre to consider before we make a final decision about what we will do. That might be the best way in which to proceed, so that we do not feel that the matter has got away from us.

Are members happy with that action at this stage?

Members *indicated agreement.*

The Convener: I am not quite sure when we will reconsider the report, but we now have experience of dealing with reports and know that we can get through them relatively quickly.

That concludes the item on the Carbeth hutters. We will now move into private session, as was agreed at the previous meeting. I ask non-committee members to leave the committee room.

12:48

Meeting continued in private until 13:18.

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