JUSTICE COMMITTEE

Tuesday 19 February 2008

Session 3

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JUSTICE COMMITTEE
5th Meeting 2008, Session 3

CONVENER

*Bill Aitken (Glasgow) (Con)

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Nigel Don (North East Scotland) (SNP)
*Paul Martin (Glasgow Springburn) (Lab)
*Stuart McMillan (West of Scotland) (SNP)
Margaret Smith (Edinburgh West) (LD)
*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Aileen Campbell (South of Scotland) (SNP)
Marlyn Glen (North East Scotland) (Lab)
John Lamont (Roxburgh and Berwickshire) (Con)
*Mike Pringle (Edinburgh South) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Kenny MacAskill (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Douglas Wands

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Euan Donald

LOCATION

Committee Room 2

Scottish Parliament

Justice Committee

Tuesday 19 February 2008

[THE CONVENER *opened the meeting at 11:00*]

Declaration of Interests

The Convener (Bill Aitken): Good morning, ladies and gentlemen. I remind everyone to switch off their mobile phones.

We have apologies from Margaret Smith. In view of her absence, which I understand is a result of family bereavement, we are joined by Mike Pringle. I ask him to confirm that he is substituting for her.

Mike Pringle (Edinburgh South) (LD): I am.

The Convener: Thank you. In accordance with section 3 of the code of conduct for members of the Scottish Parliament, I am required to invite you to declare any interest that is relevant to the committee's remit.

Mike Pringle: I do not have any to declare.

The Convener: That is fine.

Subordinate Legislation

Criminal Procedure (Scotland) Act 1995 Fixed Penalty Order 2008 (Draft)

11:01

The Convener: Item 2 is consideration of subordinate legislation. The first instrument to be considered is the draft Criminal Procedure (Scotland) Act 1995 Fixed Penalty Order 2008. The draft order is subject to the affirmative procedure. To speak to it this morning, we have Kenny MacAskill MSP, the Cabinet Secretary for Justice. Good morning, cabinet secretary.

The Cabinet Secretary for Justice (Kenny MacAskill): Good morning.

The Convener: The cabinet secretary is accompanied by Gerard Bonnar, who is the head of the Scottish Government's summary justice reform branch.

I refer members to the order and the cover note, which is paper J/S3/08/5/1. I invite Mr MacAskill to speak to the order and to move motion S3M-1186.

Kenny MacAskill: The draft order is being made using an anticipatory exercise of power under section 302 of the Criminal Procedure (Scotland) Act 1995, as amended by provisions that are contained in section 50 of the Criminal Proceedings etc (Reform) (Scotland) Act 2007, which will come into force on 10 March 2008.

Section 302 of the 1995 act, as amended, will allow the Scottish ministers to prescribe a scale of fixed penalties to the maximum level of £300. The draft order prescribes the scale of fixed-penalty offers at £50, £75, £100, £150, £200, £250 and the maximum £300, as provided for in the act. The new scale will afford procurators fiscal greater flexibility in determining the most appropriate and effective offer of a penalty for an alleged offence. That will allow more cases of a less serious nature to be dealt with quickly and proportionately and will release the courts to deal with more serious offences. The new scale comprises an essential part of the overall aims of improving the summary justice system's efficiency and effectiveness.

Fiscal fixed-penalty offers have proved an appropriate and efficient way of dealing with low-level offending over the years, and prosecutors are experienced in their use. The extension of the scale will increase the usefulness and flexibility of fiscal fixed-penalty offers, and separate provisions in the 2007 act that come into force on 10 March will improve their enforcement. Taken together, the changes will ensure that they play a key role in our reforms to the summary justice system.

I move,

That the Justice Committee recommends that the draft Criminal Procedure (Scotland) Act 1995 Fixed Penalty Order 2008 be approved.

The Convener: Thank you. What steps will be taken to ensure that fixed penalties are paid?

Kenny MacAskill: I know that you have raised the matter previously—and correctly so—and we will monitor it. The fines enforcement system and other aspects of summary justice are changing. We seek to free up the system but, equally, we must ensure that it is not flouted. I give you an undertaking that we will monitor the matter to ensure that fixed-penalty offers are being dispensed and paid. They are not meant to be tickets that somebody can use to wallpaper their house; they are meant to register society's opprobrium, and we expect them to be paid.

The Convener: I am just a little concerned that some houses are remarkably well wallpapered. Do you have any indications of how the present collection system is working?

Kenny MacAskill: Our understanding is that the present collection system is working reasonably well. It is changing because of measures that the previous Executive brought in and which we supported in opposition. Fines enforcement officers are being rolled out and other matters are coming through. They will help to provide focus. If people cannot pay because of a change in circumstances, we will have to consider and address that. However, we must equally remember that people who are given fixed penalties are expected to pay them and we must ensure that they do so.

That is why we will seek to monitor how the introduction of FEOs works out. That is the direction of travel that the previous Administration decided and it is the correct way to go. We are happy to review the matter but, at the moment, the system is not too bad and we need to consider how to make it better.

Mike Pringle: Do the fixed-penalty offers relate to bail orders that are imposed in court and those that are imposed by the police? I know that there has been some disquiet in the Glasgow Bar Association and the Edinburgh Bar Association. I believe that John Scott expressed some concern about bail orders being issued by policemen. Do the fixed-penalty offers relate to both?

Kenny MacAskill: They do not relate to bail orders. The police have fixed-penalty notice powers that the previous Administration introduced and which are now being rolled out. A review is under way to determine how effective they are, taking into account the matters that the convener raised, and to explore whether we should reduce the number of offences that fall within the criteria for the use of fixed-penalty notices or, indeed, whether we should bring in new offences. We will review and scrutinise those matters.

The order relates to a situation in which the procurator fiscal receives a report directly from the police, who have decided not to impose a fixed-penalty notice. In its wisdom, the Crown can decide whether to cite somebody for court or offer them the opportunity to make a payment at whatever level the fiscal thinks appropriate. That will be beneficial.

I am aware of some concerns from the bar associations, but the Government's view is that there is protection and that people are not required to accept the offer and can seek to have their day in court. However, to be frank, far too many cases go to court in which a plea of guilty is tendered, the sheriff simply rubber stamps it and the system grinds to a halt. I come back to proportionality and putting some trust and faith the Procurator Fiscal Service. The Government is satisfied that the Procurator Fiscal Service is not simply a prosecution service but acts in the public interest and has the skills and talents to make a judgment.

If somebody refutes an allegation, they can refuse to accept the fixed-penalty offer and the case will go to court, where it will be decided. If they do not feel that they have committed an offence—which is perfectly understandable—they can refuse to accept the offer and will have their day in court.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): What are the bar associations' concerns?

Kenny MacAskill: Their major concern is that there could be a significant drop in the number of cases that go to court and, accordingly, a considerable drop in the work that their members do and the income that they receive. I have a great deal of sympathy for anybody who finds himself in that position but, to be frank, the Government's task is not to be a job-creation scheme for those who are involved in the courts system but to ensure that that system works better for all our communities.

If the order frees up resources, it will allow the courts to concentrate on more serious matters. We have logjams in particular courts, and if matters are clearly in dispute—if people feel that they have been cited wrongly and did not commit the alleged offence—we must ensure that the courts can concentrate on those. When dealing with difficult people, we must give our sheriffs time to analyse what needs to go to court and what evidence needs to be brought. We must free up some space so that the courts do the things that they do best and which only they can do. It is not our job to create a system in which cases that do not need to go to court do so routinely.

Cathie Craigie: How many times could somebody be offered a fixed penalty? Should there be a limit on the number?

Kenny MacAskill: Those matters are best dealt with by the procurator fiscal. There is no limit, but we must trust the procurator fiscal's good sense. If someone routinely picked up a fiscal fine on a Friday or Saturday night, sooner or later we would find either that they were extremely rich and flouting the law with disdain—in which case the matter would be dealt with much more seriously—or that there was a significant problem, because they would not be able to pay the penalties that were imposed.

It is a matter of balance to some extent. Court remains appropriate for people who regularly offend and are much more serious offenders. Fixed-penalty offers are intended to deal with low-level cases that do not routinely need to go to court. It would be wrong to set a maximum number of offers. What number would we fix it at—two, three or something else? We have to leave it to the Crown Office to work with the local procurators fiscal, who deal with individual offenders.

Ms Craigie's point is valid. If someone was routinely picking up fiscal fines like some people seem to pick up parking tickets, there would be cause for concern. I have faith that no fiscal would allow that to happen: they would ratchet it up by bringing the person before the court so that the full majesty of the law could be imposed.

Cathie Craigie: If someone with two or three fiscal fines was reported to the courts, would the court be able to consider the fiscal fines?

Kenny MacAskill: They are recorded for up to two years, so they would be before the court. A pattern of behaviour that needed to be dealt with would be seen—presuming that there was a conviction.

The Convener: The fiscal penalty requires an admission of guilt, so at that point there would technically be a conviction, which could be referred to in subsequent proceedings.

Mike Pringle: The cabinet secretary suggested that some members of the legal fraternity were worried about the amount of work that they would get, but that was not the concern expressed by John Scott of the Edinburgh Bar Association. I quote from a magazine called *The Firm*, in which he stated:

"We are putting more power into the hands of the police, and it is not clear that sufficient safeguards are there".

He also said that

"the new measures are reversing centuries old principles of the criminal law."

His concern is about someone who is given a bail order by a policeman, who has not taken the issues into consideration properly. Are you prepared to comment on that?

Kenny MacAskill: You are getting mixed up with a separate matter. Fixed-penalty notices are dispensed by the police; fiscal fines are a different matter, and some members of the bar have complained that fiscal fines impinge on justice.

My view is that, first, anybody who does not accept the position that is suggested by the fiscal has the right to reject the fiscal fine and the matter can go to court—they will get their day in court if they so wish. Secondly, we are dealing with summary justice. There must be an element of proportionality. Not every case in Scotland can go before a High Court, a sheriff or a jury. We must recognise that some matters have to be freed up. The maximum level of fine is set at £300. That was debated, because it was suggested that it should be £500, but we decided that it should be £300. It can be reviewed and put up or down, depending on how matters are viewed—a system is in place to allow calibration.

We must recognise that some offences that are not heinous have to be dealt with fairly summarily. They are not acceptable and must be punished, and the person's card is marked through a fiscal fine. If the person objects to the allegation, the case goes to court. We must get matters in proportion. If we want to use our court, police and fiscal services appropriately, we must ensure that they are not weighed down by fairly mundane matters that could be dealt with by the offer of a fiscal fine.

I come back to the point that the Procurator Fiscal Service is there, always has been there and—under our Administration—always will be there to act in the best interests of justice and to do so without fear or favour. It is not there to be a prosecution agency; it is there to consider whether a crime has been committed, whether it can be proven and whether it is in the public interest to prosecute. We should have some trust and faith in the Procurator Fiscal Service, which in Scotland deals not only with prosecution but with fatal accident inquiries and an array of other appropriate matters.

Nigel Don (North East Scotland) (SNP): I return to the point made by the convener. I seek clarity from the cabinet secretary as to whether the acceptance and payment of a fiscal fine is an admission of guilt. My understanding is that it is not. Is it effectively a double-or-quits cop out?

Kenny MacAskill: It is not technically a conviction, but it can be brought to the court's attention. The fiscal fine would not appear on a list of a person's previous convictions—if they had

previous convictions. For a period of two years from the date on which it was issued and accepted, it could be brought to the court's attention, but it is not on the person's criminal record.

Nigel Don: Two years later it is washed out with the tide and gone for ever.

11:15

Kenny MacAskill: Yes. We think that that is reasonable. We are happy to review how the system works out but, given that we accept that the fiscal fine is for more minor matters, after two years some people seem to be capable of rehabilitation. Even for more serious matters, there is a period after which offences no longer have to be recorded. Two years is the current threshold. If, in due course, it seems that the two years is either excessive or—perhaps more likely—inadequate, we can review it, but it is accepted that a fiscal fine is not a criminal conviction, because the case has not gone through the courts. Criminal convictions arise from offences that have been dealt with in the court system.

John Wilson (Central Scotland) (SNP): Will fixed fines show up for two years in any Disclosure Scotland checks?

Kenny MacAskill: They would not appear in the basic disclosure check, but they would be recorded in an enhanced disclosure check for particular types of employment.

The Convener: Does the cabinet secretary feel the need to wind up?

Kenny MacAskill: No. I will decline that kind offer.

Motion agreed to.

That the Justice Committee recommends that the draft Criminal Procedure (Scotland) Act 1995 Fixed Penalty Order 2008 be approved.

Criminal Proceedings etc (Reform) (Scotland) Act 2007 (Supplemental Provisions) Order 2008 (Draft)

The Convener: This draft order is also subject to the affirmative procedure. I refer members to the order and the cover note, J/S3/08/5/2. I invite the cabinet secretary to speak to the order and to move motion S3M-1185.

Kenny MacAskill: The draft order is being made under section 82 of the Criminal Proceedings etc (Reform) (Scotland) Act 2007. Section 82 allows the Scottish ministers to make supplemental provision that is necessary or expedient in connection with the act.

The order makes provisions that are supplemental to the 2007 act's provisions in relation to the failure of an accused to appear during solemn proceedings and to conditions imposed on persons liberated on an undertaking. In accordance with the act's core objectives of improving the efficiency and effectiveness of the justice system, those supplemental provisions clarify the provisions of the act to ensure, beyond any doubt, that the original policy intentions will be met. They will assist the courts in dealing effectively with persons who fail to attend court and will bolster the undertakings process. Each of the modifications made by the order is clearly within the scope and intention of the 2007 act and is intended to secure the original policy aims and the effective operation of the act's provisions.

Article 2 of the order makes two minor and technical modifications to the Criminal Procedure (Scotland) Act 1995 to ensure that the original policy objectives of the 2007 act are upheld.

The first provision ensures that when a court grants a warrant for a person who fails to appear in court during solemn proceedings, it will not be precluded from granting a warrant for the offence of breaching bail in respect of that same failure to appear.

Article 2 also clarifies the procedure for granting warrants for failure to appear in solemn proceedings. The article supplements the provision specifying that an indictment falls once a warrant is granted, to place beyond any doubt that the provision applies only to pre-conviction cases. The provision was never intended to apply post-conviction, as there is no reason why an indictment in such circumstances should fall. The clarification is therefore provided to ensure that the original policy intention is effected by the legislation.

The provisions of the 2007 act relating to undertakings will enter into force on 10 March, extending their use to aid the enhanced flexibility, speed and effectiveness of the summary justice system. A person giving an undertaking will be subject to a number of conditions similar to the standard bail conditions. Article 3 supplements the provision related to those conditions, to put it beyond doubt that if an individual commits an offence while released on an undertaking, that individual will also have committed the offence of breaching the undertaking. That clarification will ensure the effective operation of the provisions on their entry into force and give effect to the original policy intentions.

I move,

That the Justice Committee recommends that the draft Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Supplemental Provisions) Order 2008 be approved.

The Convener: I am intrigued as to why the issue was not picked up previously.

Kenny MacAskill: Such matters relate to the law of unintended consequences. Parliamentary drafting is extremely complex and difficult and the issues were simply not picked up at the time. We are trying to deliver the 2007 act's ethos and intention. In an ideal world, the order would not be needed, but parliamentary drafting is extremely complicated and such matters were not anticipated.

The Convener: No case has arisen to prompt a review.

Kenny MacAskill: No. Clarifications are being made. It is arguable that they are unnecessary, but rather than running the risk of a defence lawyer going to court to argue the point and a judge deciding in his wisdom that we had erred in the drafting, we are taking a belt-and-braces approach to making clear what Parliament intended. Drafting is complex. To some extent, the situations are covered but, to avoid doubt, we will ensure that what we intended is there for all to see.

The Convener: That decision is very wise.

Motion agreed to.

That the Justice Committee recommends that the draft Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Supplemental Provisions) Order 2008 be approved.

Bankruptcy (Scotland) Act 1985 (Low Income, Low Asset Debtors etc) Regulations 2008 (Draft)

The Convener: Agenda item 4 is regulations that are subject to the affirmative procedure. The cabinet secretary is now supported by Gillian Thompson, who is the chief executive of the Accountant in Bankruptcy. I refer members to the regulations and to the cover note, which is paper J/S3/08/5/3.

I invite the cabinet secretary to speak to the regulations and to move motion S3M-1230.

Kenny MacAskill: The Bankruptcy and Diligence etc (Scotland) Act 2007 contains the power to make regulations to introduce a new route into bankruptcy. That power is intended to extend access to bankruptcy to people who are burdened by debts that they have no prospect of repaying and who are excluded from seeking debt relief through bankruptcy under current law.

Present legislation relies on creditors to take legal action against people who owe them money, and some actions establish what is technically known as apparent insolvency, which a debtor must demonstrate when applying for bankruptcy. However, many creditors are unwilling to incur the cost of pursuing a debt when they see little prospect of recovering that cost and the debt, so debtors in such a situation have no proof of apparent insolvency and cannot access debt relief through bankruptcy. Information from the money advice sector supports the belief that a substantial number of Scottish debtors are caught in that situation.

The regulations provide the framework for an alternative route into bankruptcy, on the basis that a debtor has low income and low assets—LILA for short. Debtors who use the new route will no longer have to prove apparent insolvency. The regulations define low income and low assets.

All debtor applications will be made to the Accountant in Bankruptcy. The application fee will be £100 and no exemptions or waivers will be given. The fee could be seen as a barrier to some people, but we believe that it will not be insurmountable and that applicants will benefit from the debt relief. We have discussed the LILA scheme with Money Advice Scotland and Citizens Advice Scotland and have taken the view that it is important to have a constraint, to ensure that people consider carefully the implications of becoming bankrupt. Collecting fees will also minimise the burden on the public purse.

Debtors who become bankrupt through the LILA route will be subject to the normal bankruptcy rules. The Accountant in Bankruptcy will become the trustee in the administration of all LILA cases. That will require minimum administration, and the cost will be covered by the application fee. If an asset or income subsequently comes to light or the debtor's circumstances change, the AIB will review the administrative requirements. The AIB will also select a random sample of cases for closer scrutiny to ensure that the LILA route into bankruptcy is not abused.

Low income means gross weekly income of no more than the standard adult national minimum wage for a 40-hour working week, which equates to £220.80. People will be treated as meeting the low-income condition if they receive income-based benefits, including working tax credits. Any other income from benefits and any income that a family member receives will be disregarded.

Having low assets means that the debtor has no asset that is worth more than £1,000 and that their total assets are worth not more than £10,000. Essential items for day-to-day living, such as household appliances, medical equipment and children's toys will be disregarded.

Regulation 4 will modify the Bankruptcy (Scotland) Act 1985 to ensure that a debtor's family home is not returned to them automatically after three years if a legal ruling on who owns the property is pending.

I move,

That the Justice Committee recommends that the draft Bankruptcy (Scotland) Act 1985 (Low Income, Low Asset Debtors etc.) Regulations 2008 be approved.

The Convener: How many applications are expected in a normal year?

Kenny MacAskill: We are not exactly sure. CAS has given the provisional figure of 5,500 debtors whom it expects to apply in the first year of the scheme's operation. It is expected that 3,000 debtors will apply each year thereafter.

Nigel Don: I understand the scheme's purpose and the category of folk at whom it is aimed, but I am slightly concerned that the law of unintended consequences might operate. Students who run up considerable debts might find themselves exceedingly impecunious at the point when they should be starting work and they might find the scheme an extremely useful route to becoming bankrupt and getting rid of their debts before they start work. Forgive me if I seem a little cynical about those who are around me, but can you confirm that people will have to have received benefits for a while before they can benefit from such bankruptcy, so it will not be in somebody's interest to manufacture that position?

Kenny MacAskill: The Parliament and the Government are constrained by a growing problem. Part of it is cultural—it relates to how people view ready credit—and part of it concerns consumer regulations over which we have no control. The Government cannot prevent people from getting into financial difficulties; we can only deal with the problems that that causes, which we seek to deal with elsewhere.

We must change the culture as well as make the position clear. Student loans will not be written off from 1 April 2008, so instead of suggesting that a laissez-faire attitude will develop, we must spread the message that bankruptcy is not an easy way out. However, we cannot allow to linger in limbo people who cannot obtain the benefit of bankruptcy because creditors who have allowed them to incur debt—for understandable reasons, in many instances—see no point in throwing good money after bad. Such people have debt that they cannot get rid of—they cannot go forward or back—so we are giving them a way out.

As for your suggestion about students and others, we must drive a change in the cultural attitude, but the scheme will address a specific problem.

Nigel Don: I remain concerned about the creative capacity of folk to make themselves bankrupt. I am not sure that an immediate solution to that exists, but I am concerned that the scheme looks like a route for some people to—dare I say it—maliciously get rid of their creditors.

Kenny MacAskill: I have much sympathy with your point. The solution is not simply to deal with getting people out of being impecunious and bankrupt, but to target how people get into debt. Unfortunately, consumer credit is reserved to Westminster, so the Government, the AIB and others cannot act. Until we change not only the culture but how people get into such situations, we will be constrained. The Government faces the problem of the people who are in such situations and we need to provide a way out. Your point is valid, but the solution is to address not simply bankruptcy and diligence provisions, but how people access consumer credit, how it is suggested and promoted to them, and the rates that people are charged.

Nigel Don: I do not have a crystal ball and I would not use one if I did, but I wonder whether we are opening a little box and whether lawyers will charge in and find ways of using an admirable mechanism—I understand why we want it and I have nothing against the basic principle or its purpose—to drive a coach and horses through the consumer credit industry. As the scheme stands, there is a real possibility that consumer credit as we know it will disappear, because it appears that a debtor could quite quickly manufacture a situation from which they could become bankrupt and get rid of their debts.

11:30

Kenny MacAskill: We are happy to review the position after four months and we will review it again after 12 months.

If you speak to some of those who are involved in consumer credit, you will find that they already write off substantial amounts of debt, which is why the rates that they charge anticipate that 40 per cent or more of cases will go sour. That is a problem not just for Scotland but for the global economy, because of the sub-prime lending market, in which people were encouraged to borrow money and acquire things when they clearly did not have the resources to meet the payments. That is a matter for the consumer credit industry and it is beyond the constraints that are on the committee, me and the Parliament. However, we have to alleviate the situation. We make it clear, and we will always reiterate, that bankruptcy is not an easy option. It affects a person's credit rating for many years and it can affect their job, because some jobs cannot be held by people who have been bankrupted or sequestrated.

It is appropriate for legislation to provide a mechanism for people who have no prospect of repaying their debts to obtain debt relief. Nigel Don is right to flag up a problem that could be exacerbated by what might happen with the global

economy. However, the balance that he seeks is dealt with by making it clear that bankruptcy is not an easy option. It should not necessarily carry the stigma that it had centuries ago, when people committed suicide because they were bankrupt or impecunious, but, equally, we have to get across to people, especially the younger generation, that they cannot just go out and run up debts without facing penalties, sanctions and other problems.

We have to face the situation where a substantial number of people are in debt limbo and do not have the same opportunity to get out that exists for others who have some assets. The regulations will give them the same benefit as people whose businesses are in difficulty, perhaps through no fault of their own.

Cathie Craigie: I notice that the Executive note for the regulations states that it will cost £186,000 to set up the scheme. Cabinet secretary, has any budget allocation been made for extra support for CAS and money advice centres, for example? Like Nigel Don, I believe that a number of people will seek advice on this law. Has that been included in the budget for the coming year at least?

Kenny MacAskill: That is a legitimate question, but we are talking about the cost of setting up the scheme and dealing with the cost to the AIB. Most of the costs of the scheme will be soaked up by the AIB because it will deal with the scheme.

Cathie Craigie is correct to say that we have a growing problem with indebtedness. However, my department does not deal with organisations such as CAS, Money Advice Scotland and many others; they are dealt with under the social inclusion heading. There are funding mechanisms for them, although I do not know the precise amounts that they have been given to deal with debt problems. That is more to do with the issue that Nigel Don raised. The cost will be soaked up by the AIB because it will deal with the scheme.

The only additional cost might relate to information that requires to be made available to CAS or Money Advice Scotland about how the regulations provide a route into bankruptcy. We are happy to consider that possible additional cost, but the AIB sends information to such organisations regularly, and all that they have to do is suggest that contacting the AIB might be the solution to their debt problems.

The broad issues around bankruptcy and the voluntary sector are dealt with by another Government department. The costs of the scheme will be met by the AIB. The additional costs to the voluntary sector will be marginal.

Cathie Craigie: You said that there will be an early review of the scheme and that it will be kept under review. Will the justice department liaise with the department with responsibility for social inclusion on monitoring the new arrangements? I have a feeling that local citizens advice bureaux might become busier. You are right to say that people will be referred to the AIB, but staff and volunteers will have to take time to advise individuals, and I am sure that CAS will want to ensure that its volunteers are trained in aspects of the new system.

Kenny MacAskill: There is an implementation group, with which the AIB is working closely, and I am more than happy to undertake to review the situation.

I was a lawyer for 20 years and I ran advice surgeries and worked closely with CAS in Wester Hailes, Pilton and elsewhere. Given that 5,500 debtors are expected to use the new system in the first year and 3,000 people annually thereafter, I think that the new arrangements will lead to great savings for CAS, whose staff face considerable difficulties in trying to help people and who must phone numerous creditors to work out debt arrangements.

You are right to suggest that nothing is cost free. There is the law of unintended consequences, as Nigel Don said. However, CAS currently deals with people who are in debt and the new arrangements should generate cost savings for the service, because staff will be able to advise people that if they go to the AIB and pay the £100 fee, the problem will be solved. I know from experience that advice workers currently have to write to 10, 12, 15 or 100 credit card companies to ask them to leave a debtor alone because they have a sick granny or are out of work and can pay only 50p a week or whatever. We will monitor the situation, but there are swings and roundabouts, and when the new system is in place CAS will probably be able to do more for other people who need considerable help.

The Convener: If there are no further questions, I invite the cabinet secretary to wind up the debate. Perhaps you will reflect on the degree of unease that members have expressed. There might be justification for promising to review the situation in six months' time and report further to the committee, when your department has had the opportunity to ascertain how many applications have been processed.

Kenny MacAskill: I happily give that undertaking. We said that we would review the situation in four months' time. We can write to the committee after that and I will gladly give evidence again if you want me to do so. We will review the situation again after 12 months.

The committee is right to be concerned. Debt is faced by individuals not only in Scotland but throughout the world, and the global economy could have a significant bearing on what happens.

As a result of cultural shifts and attitudinal changes, there are levels of indebtedness in Scotland that are of significant concern to everyone, including the Government and every member of the Parliament.

There is no single, easy solution. Some solutions must be dealt with elsewhere. The Government argues that powers to address such matters should be given to us. I do not doubt that that will be considered—whether as part of the national conversation or through commissions—because ultimately we must not only find solutions to problems but address the causes. Currently, the Government cannot deal with the causes of the problems, because consumer credit is reserved to Westminster. We must deal with the current situation, whereby thousands of people in Scotland are in financial difficulty and cannot benefit from the opportunity to apply for bankruptcy.

Members are right to say that bankruptcy should not be regarded as an easy option—it will never be an easy option. Bankruptcy should not necessarily carry the stigma that was attached to it in the Victorian era, but it must be made clear that bankruptcy will always have consequences, not all of which will be benign. However, we must get people out of the morass that they are in.

I am happy to undertake to review the situation and come back to the committee at an appropriate juncture, when we have more information. As I said, we will review the situation in four months' time and in 12 months' time. To some extent, we are in unknown territory, so we must find out what works, but the status quo is not an option. Time will tell whether the new arrangements alone are adequate, and we will be more than happy to work with the committee on the issue. Debt is a problem that we face as a community. We must find a solution.

Motion agreed to.

That the Justice Committee recommends that the draft Bankruptcy (Scotland) Act 1985 (Low Income, Low Asset Debtors etc.) Regulations 2008 be approved.

The Convener: I thank members for their attendance.

Meeting closed at 11:39.

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The deadline for corrections to this edition is:

Tuesday 26 February 2008

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