# SOCIAL JUSTICE COMMITTEE

Thursday 23 May 2002
(*Afternoon*)

Session 1

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# CONTENTS

## Thursday 23 May 2002



## SOCIAL JUSTICE COMMITTEE
**9th Meeting 2002, Session 1**

**CONVENER**

*Johann Lamont (Glasgow Pollok) (Lab)

**DEPUTY CONVENER**

*Mr Kenneth Gibson (Glasgow) (SNP)

**COMMITTEE MEMBERS**

*Robert Brown (Glasgow) (LD)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Linda Fabiani (Central Scotland) (SNP)
*Mrs Lyndsay McIntosh (Central Scotland) (Con)
*Karen Whitefield (Airdrie and Shotts) (Lab)

**COMMITTEE SUBSTITUTES**

Ms Sandra White (Glasgow) (SNP)

*attended

**WITNESSES**

Laura Dolan (Scottish Executive Justice Department)
Marieke Dwarshuis (Scottish Executive Development Department)
Richard Grant (Scottish Executive Development Department)
Roger Harris (Scottish Executive Development Department)
Hugh Henry (Deputy Minister for Social Justice)
Alisdair McIntosh (Scottish Executive Justice Department)
Dr Paul Stollard (Scottish Executive Development Department)

**CLERK TO THE COMMITTEE**

Jim Johnston

**SENIOR ASSISTANT CLERK**

Mary Dinsdale

**ASSISTANT CLERK**

Craig Harper

**LOCATION**

Committee Room 2

# Scottish Parliament

## Social Justice Committee

*Thursday 23 May 2002*

(*Afternoon*)

[THE CONVENER *opened the meeting at 14:03*]

## Items in Private

**The Convener (Johann Lamont):** I call this meeting of the Social Justice Committee to order and welcome everyone in attendance. Under item 1 of the agenda, I ask the committee to consider taking items 4 and 5 in private. Item 4 is consideration of a draft response and item 5 is further consideration of our approach to the Executive's response on houses in multiple occupation. Is it agreed that we take items 4 and 5 in private?

**Members** *indicated agreement*.

**The Convener:** I also note that apologies have been received from Linda Fabiani, who will arrive late.

## Houses in Multiple Occupation (Licensing)

**The Convener:** The committee will be aware that it agreed to take further evidence from the Executive on its response to the committee's interim report on the licensing of houses in multiple occupation. I welcome Hugh Henry to his first meeting with the committee as Deputy Minister for Social Justice. I am sure that we shall have a constructive dialogue on HMOs and other matters. I also welcome Richard Grant, Paul Stollard and Roger Harris. I invite the minister to make a short opening statement before we move to questions.

**The Deputy Minister for Social Justice (Hugh Henry):** Thank you for your welcome, convener. I, too, look forward to having a constructive discussion with the committee over the coming months. I am grateful for the opportunity to answer your questions and give evidence that follows on from the Executive's letter of 18 February, which set out our response to the committee's interim report on the licensing of HMOs.

First, I welcome the committee's conclusion that it strongly supports the Executive's policy on the need for statutory regulation of houses in multiple occupation. That echoes the response to our consultation before the scheme was launched, when a large majority of those who responded were in favour of licensing, in principle. That means that the debate is about the means rather than the ends.

It is not straightforward to create a fair, cost-effective and well-targeted HMO licensing scheme. Inevitably, there are difficult decisions to be made on what should count as an HMO for licensing purposes; what HMOs, if any, should be exempt; how HMO licensing should interact with other forms of regulation that may affect certain categories of HMOs; and how best HMO licensing should be implemented. However, that is a matter for the implementing bodies, which are local authorities in this case.

As members will know, the current scheme was designed on the basis that only HMOs that were already subject to an equivalent form of regulation or those for which licensing was clearly inappropriate should be exempt. That was in line with the views of bodies such as the Scottish Federation of Housing Associations when the initial consultation took place. However, some members of the SFHA now seek wider exemptions. We envisaged that local authorities would take a flexible approach to the standards required, recognising the diversity of HMO properties and landlords.

There is nothing in the legislative framework for the scheme or the guidance that was issued in 2000 that prevents local authorities from targeting effort on problematic landlords—who are, I think, a major concern of the committee. Nevertheless, we are prepared to consider amending the scheme, if that seems sensible. We commissioned independent research on the initial operation of the scheme and, in response to the committee's interim report, we have agreed to issue a consultation paper on possible extensions to the exemptions. That paper has been prepared and should be issued within the next few days.

For the longer term, the housing improvement task force is looking at the whole question of regulation of the private rented sector. We will consider carefully its recommendations, which may have implications for the HMO licensing scheme. We do not expect to see the task force's conclusions until early next year. It will inevitably take some time before they can be fully considered and, if agreed, implemented. Therefore, it makes sense now to look closely at the HMO licensing scheme and to make adjustments, if they are required, by introducing suitable amendments to the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000 and the associated guidance.

Members will appreciate that this is a fairly new subject for me and that I have been thrust in at the deep end. However, I hope that between the officials, with expertise on the technical areas, and me, with political responsibility, we will be able to answer your questions as fully as possible.

**The Convener:** I will start with general questions. When she launched mandatory HMO licensing, Wendy Alexander, who was then the Minister for Communities, stated:

"Good landlords have nothing to fear from this law, but bad ones have everything to fear."

Do you consider that that is still the case? What is your response to those who, in evidence to us, made it clear that they do not think that that is the case?

**Hugh Henry:** I am not sure that we have seen much evidence to suggest that that is not the case. There are clearly differences of opinion in certain organisations about emphasis. However, I believe that the fundamental switch that you described still pertains. Indeed, people in local government have said that the standard of housing has gone way up in their areas because of the licensing. They believe that that has resulted in considerable benefit to the public.

I accept that there are teething problems and that some anomalies need to be ironed out, but the principles are having a beneficial effect. The scheme is intended to ensure that bad landlords are targeted, but also to ensure that we afford considerable protection to a vulnerable section of the public that in the past was often left exposed. Generally, the approach is right and we would reinforce that. We do not deny that some things could be changed and improved.

**The Convener:** When the Executive set out on the road of licensing of HMOs, do you think that anybody envisaged that very sheltered housing would come within the ambit of what might be described as difficult landlords who have to be targeted? What proportion of licences have been issued to people in what might be loosely defined as the social rented, non-private sector? If it was perceived when the scheme was introduced that we were targeting difficult landlords in the private sector, have we succeeded?

**Hugh Henry:** I will ask the officials to answer the second question, on the statistics.

On the first question, I cannot claim to know what was in the minds of those responsible when they were thinking about who should be targeted. We are not identifying very sheltered housing provision as problematic; we are accepting that it comes within the scope of the scheme. Once such provision is licensed, in most cases there should be no further problem. There may be general concerns about the standards of very sheltered housing in one or two organisations. If such concerns exist, it is right that they are investigated. Very sheltered housing would not generally come within the definition of problematic, but because of the nature and structure of very sheltered housing, with which I am familiar, it is proper that certain safety issues be examined.

**Richard Grant (Scottish Executive Development Department):** The first statistics that we received on applications are now a little dated. We get annual returns, so we will get more recent statistics shortly. The first statistics suggest that about 20 per cent of the initial applications came from registered social landlords as opposed to private sector landlords.

**The Convener:** So 80 per cent of the licences issued have been issued in the private sector.

**Richard Grant:** I would not say that. The figures were for the initial applications. At that stage very few licences had been issued, as they were still being progressed.

**The Convener:** So there are no figures that prove or disprove the feeling that very sheltered housing and similar accommodation are getting caught up in legislation that was supposed to target problematic private sector housing.

**Richard Grant:** The figures suggested that applications had been received from a wide range

of landlords. The overwhelming majority of the applications were from private sector landlords. The applications were being progressed and moves were being made towards issuing the landlords with licences. It is bound to be the case that the more responsible landlords will apply of their own volition. Initially, a number of registered social landlords who realised that the scheme applied to them applied in the normal way.

**The Convener:** So there is limited capacity to target licensing at problematic, difficult landlords, who were the object of policy when the scheme was introduced. Those landlords are not being targeted.

**Richard Grant:** I do not accept that. It is very much for local authorities to seek to target. Local authorities are bound to have to spend more time and effort targeting the more difficult landlords. They are going to have to go to some trouble to do that. If they are aware of difficult landlords and know where to look, they can use the powers to seek them out and require licences.

**Hugh Henry:** We have evidence of local authorities actively seeking out the type of landlord that you describe—landlords who seek to avoid coming under the scheme. We do not underestimate the difficulty involved in that. It is always the case that those who have nothing to fear and those who are willing not only to abide by regulation but to encourage it will seek to ensure that they are included and do the right thing.

The problem is that there are always those who will seek to avoid that for whatever reason. Some local authorities are putting huge efforts into going out—almost close by close and street by street in certain areas—to identify the properties of such landlords. Some reports that the Executive receives suggest that such exercises have other beneficial effects. For example, local authorities have been able to identify other problems. At the same time as they have been trying to implement the scheme properly, they have also benefited from other work that is being done.

14:15

**The Convener:** I will ask a final question before I allow other members to come in. The committee has received correspondence from a particular group within what might be called the owner-occupier sector—I refer to people who live co-operatively, in that they share accommodation but are not a family. They have particular anxieties about the HMO scheme. It may not be appropriate to discuss their concerns in detail today, but would you agree to look at the correspondence and respond with your view of their concerns?

**Hugh Henry:** Yes, by all means. People in that category are exempt from the legislation if each has a heritable right to the property. However, there may be situations in which, for legal reasons, they decide to form a co-operative that has a legal structure. In those circumstances, they will be caught up in the scheme. We could consider adding that category of people to the list of exemptions—we would be happy to look at the correspondence.

**Mr Kenneth Gibson (Glasgow) (SNP):** Would the Scottish Executive introduce primary legislation if research proved that that would be the best way of improving the HMO licensing scheme?

**Hugh Henry:** If we felt that primary legislation was necessary to tackle a clear, long-term problem, we would consider doing that. However, we would prefer to take the matter forward by using, if necessary, the powers that are available to us in order to make the scheme work well—or better.

We would also consider legislating in the context of the housing improvement task force report, which I mentioned. The task force is due to report in March 2003 and once it has done so, we may reflect on whether there is a need for further primary legislation on housing in general. If primary legislation were required, we would want to make a case for considering such legislation within the Executive's legislative programme. It would be inappropriate of me to make a commitment about what that legislative programme might look like. Indeed, it would be inappropriate for me to comment on whether it is absolutely necessary for us to introduce primary legislation. We will review the situation in the light of the report on housing improvement.

**Mr Gibson:** What is the impact of the Community Care and Health (Scotland) Act 2002 on premises such as those run by the Abbeyfield Society for Scotland Ltd? What is the extent of regulation for such premises, regardless of HMO status? In other words, are such premises sufficiently regulated without bringing them into the HMO scheme?

**Hugh Henry:** That is another debate that you may need to raise with my colleagues in the health department. Notwithstanding the fact that, up until a couple of weeks ago, I shared responsibility for that matter, it would be wrong of me to make commitments on its behalf.

A number of issues have arisen as a result of the legislation, and a number of organisations, including those in the private residential sector, have expressed concern about the standards that are now expected—in my view, reasonably expected. Some of those organisations may well have to make considerable adaptations or changes to the way in which they operate to meet

the standards that will be required by the Scottish Commission for the Regulation of Care. We are now seeking to raise to a completely new level of expectation things that may have been acceptable in the past. In the long run, once the changes are made, people will look back and ask, "Why did we ever accept anything less?" The example that I am thinking of is the right to a room of one's own. Why should people have to share a room just because they are elderly or infirm? That is causing problems for many care home providers and is an issue that the health department may need to look into.

There are specific issues in relation to Abbeyfield that bring it within the focus of HMOs. People who live in accommodation that is provided by Abbeyfield should have the right to the same standards of security and safety as others. There are two Abbeyfield facilities in my constituency. I know the sterling work that they do and the satisfaction that they give to the residents. However, there is evidence that some establishments need to raise the standard of the services that they are providing to what we would consider an acceptable level. Where it is appropriate, improvements need to be made. Other issues relating to the Community Care and Health (Scotland) Act 2002 need to be addressed elsewhere.

**Karen Whitefield (Airdrie and Shotts) (Lab):** You will be aware that the interim report of the committee recommended that there are classes of property—to which my colleagues alluded in earlier questions—that should be exempted from HMO legislation, which focuses particularly on the private sector. I understand that the Scottish Executive intends to consult on the possible changes to exemptions. What is the time scale for that consultation and when will the outcome be publicly available? What will be the time scale for any amendments to the legislation that are necessary as a result of the consultation?

**Hugh Henry:** As I said, I hope that the consultation process will start in the next few days. I ask the Executive officials to talk about the end process.

**Richard Grant:** As you know, the Executive is committed to three months of normal consultation. We will view the results of that in the context of the research that is being undertaken by Heriot-Watt University and the University of Glasgow—but principally by Heriot-Watt University. That research will be completed by the end of June or soon after. We will be considering the results of the consultation and the research together in early autumn, when we will ask ministers whether they want to make any changes to the scheme. If the changes to the scheme require legislation, we will have to bring a new order to the committee or the Parliament for approval.

**Karen Whitefield:** Does the Executive have any clear idea of the criteria that it will use in deciding whether properties are eligible for exemption?

**Hugh Henry:** We have set out a number of headings and ask a range of questions under those headings. I do not know whether the consultation will automatically come to members of the committee. I will ensure that it does, so that you can tell us whether you feel that any issues have not been covered. However, I do not know whether it is proper protocol for comments to be made before the consultation paper goes out. I do not want to start breaking rules while I am new in the job.

**The Convener:** Go on.

**Hugh Henry:** It would be helpful to know whether the committee felt that any topics had been missed out.

**Richard Grant:** We have taken our lead, regarding what we thought that you were looking for, from the committee's interim report. The draft consultation paper seeks to consult on the criteria. At the moment, the criteria mean that we should include HMOs unless they already fall into a comparable system of regulation. The paper consults on the criteria and then goes through various possible circumstances in which an exemption might be justified. However, if there were clear cases for exemptions, we would have made those exemptions already.

Judgments will need to be made about levels of risk in particular cases. We have seen a report that was prepared for the committee by the Convention of Scottish Local Authorities, which argues strongly against any extension of the exemptions, even to properties that local authorities might own. That seems to be the COSLA position in advance of the consultation, although it might want to reflect again when it sees our paper.

**Karen Whitefield:** I suppose that that is where the Executive's view differs from the committee's view. We think that organisations such as the Abbeyfield Society for Scotland and Scottish Women's Aid, and perhaps also the universities, need a partial or a full exemption. I hope that that will emerge during the consultation process.

**Richard Grant:** All the organisations that you mentioned will be covered—they are among the categories for which we are seeking views on possible exemptions. Particular organisations will not be identified, but the generic groups on which we are seeking views will cover all those categories.

**Hugh Henry:** There might well be views within local authorities that such organisations should be exempt. I am sure that that has helped to inform

the committee's conclusion. However, strong views are also coming from local government that some of the organisations that you mentioned should not be exempt. The consultation will be an opportunity for both sides of the argument to be put. We will reflect on the information that we get back.

**Karen Whitefield:** In your response to our interim report, you say:

"there may be a case for a time limited moratorium on the reduction in the size threshold due in October 2002"

to allow for an assessment of the research and consultation on exemptions. What progress has been made and, in particular, how have local authorities responded to that proposal?

**Hugh Henry:** I will ask Richard Grant to answer part of that. There are differences of opinion, because a strong view exists in certain sections of local government that we should push ahead. Although some people are slightly concerned about what is being proposed and think that, if possible, the time scale should be looked at, others think that we should push ahead vigorously. There is no one clear view.

**Richard Grant:** Our initial thought was that it might be helpful to have more time before the threshold was reduced—not necessarily to prevent the threshold from going down, but just to allow more time. I consulted Glasgow City Council and COSLA separately on that. I have not received a formal reply from COSLA. The reply from Glasgow indicates that it is opposed to any change. The informal message that I have received from COSLA is that there are differences of view: some local authorities would not mind, but others would be concerned.

One of the primary reasons why some authorities are concerned is the fact that they have already put quite a lot of work into planning for the reduction in the threshold. My view is that it is impractical to introduce a moratorium on the reduction in the threshold for this October. There is still a question as to whether it is appropriate in principle to move to the lower threshold that would come in the following October, or whether it would be better to postpone that.

**Mrs Lyndsay McIntosh (Central Scotland) (Con):** Existing legislation requires local authorities to recoup the cost of licence administration through fees that it charges to applicants. Given that that cannot be changed without primary legislation, what can the Executive do quickly to ensure consistent and reasonable levels of charging across Scotland?

**Hugh Henry:** That takes us back to the debate about how subsidiarity should be practised, which applies in a number of areas. Should we enforce standards across Scotland—whether in the present case, or in relation to fees that are charged in social work or to standards in education—or should discretion be given to local authorities to carry out their duties as they see fit in their area? You indicated that there is a problem about making changes without primary legislation. At the moment, all licences require to be self-funding under the Civic Government (Scotland) Act 1982.

We hope that local authorities will try to have a fair and sensible pricing policy. It has been suggested that some authorities charge far more than others charge. For example, Glasgow City Council appears to charge high fees. However, those fees cover a three-year period, whereas the fees that some other authorities charge cover only a one-year period. If such one-year fees are extrapolated over three years, they are not very different from the fees charged by Glasgow City Council.

I am not sure that fees are a huge issue. It is for local authorities to implement HMO licensing as well as they can in their areas.

14:30

**Mrs McIntosh:** Have you thought about assisting local authorities that have greater concentrations of houses in multiple occupation? I am thinking especially of university towns.

**Hugh Henry:** There is doubt about whether we have the powers to do that. Licences under the Civic Government (Scotland) Act 1982 are required to be self-funding. I am not sure that we have the power to make payments to local authorities. Even if we decided to make such payments, we would have to take the money from somewhere else. I recognise that there are differences between areas, but ultimately that is an issue for housing providers. Most authorities will seek to recover their costs and if that places particular burdens on the establishments that must fund them, we might want to reflect on that in future. However, although one or two people in one or two organisations have made complaints, fees are not generally the problem that they are sometimes perceived to be.

**Mrs McIntosh:** Have you received feedback from organisations that represent landlords or tenants about the effect that HMO licensing has had?

**Hugh Henry:** Local authorities would receive such feedback. I am not sure that we have received any.

**Richard Grant:** The research that we are carrying out involves collecting views from local authorities and other interested parties. We are

taking evidence directly from individual landlords, as well as from landlord organisations. Those are our major sources of information, but we are in touch with other bodies. The Scottish Association of Landlords is clear about its views and has communicated those to the committee and to us. Many of the representations that have been made to the committee have been made to us at the same time.

**Mrs McIntosh:** So you are taking a scatter-gun approach.

**Robert Brown (Glasgow) (LD):** I was surprised that you said that Glasgow City Council was not interested in a moratorium, because recently the relevant official, Brian Kelly, was reported in the newspapers to be blasting the legislation in general terms.

My question relates to standards and benchmarking. Are we trying to establish minimum standards for safety, are we trying to establish the best possible standards—an aspirational standard—or are we aiming for something in-between? The answer to that question is key in determining how we approach the issue. I say that against the background of the evidence that we received from the Abbeyfield Society for Scotland Ltd—one of the few organisations whose evidence was based on experience from throughout Scotland. That society indicated that the standards that it was asked by different councils to apply were substantially different and not altogether suitable to their interests, and that the standards that were imposed by different officials of the same council were often different. Would it be possible to examine the standards that are applied and to find out whether they are necessary for the establishment of a minimum standard?

**Hugh Henry:** In a moment I will ask Dr Paul Stollard to comment on the issue that Robert Brown raises. Clearly, there is not much that we can do to prevent different people in the same organisation from applying standards differently. Such organisations might want to address that issue themselves.

It is hard, without appearing to control local authorities absolutely, to issue a single directive that will allow them to do their jobs. For example, opinions differ about the overlap between HMO licensing and planning. Glasgow has a distinctive and, I would argue, effective approach in trying to protect certain communities. Edinburgh and other areas have for certain reasons decided not to adopt that approach. I do not think that we would say that either Edinburgh or Glasgow should do what the other city is doing. I hope that each will learn best practice from the other. I think that Glasgow is making considerable progress and others might learn from that.

**Robert Brown:** Best practice is different to minimum standards. There is a terminology issue there.

**Hugh Henry:** Yes. I will bring in Paul Stollard to deal with that point.

**Dr Paul Stollard (Scottish Executive Development Department):** The guidance that the Executive provided deliberately steers clear of giving precise standards. We stress several times that we are giving benchmark standards and that a risk assessment should be conducted on each HMO. The benchmark standards that we have provided are considerably less than the minimum standards that we apply to new buildings. We argue therefore that the benchmark standards are not aspirational—they are a minimum standard. We examined consciously what we would require of a new-build HMO; we considered what was not practicable and lowered the standard to what we thought would be achievable as a minimum. We were creating neither guidelines on best practice nor an aspirational standard.

One of the problems is that many local authorities are risk-averse. They think that the Executive has given benchmark standards and so they should ask for those plus a few extras. We emphasise that we provide benchmark standards and that it might be appropriate to achieve them through different mechanisms. That is what we are trying to encourage local authorities to do.

**Robert Brown:** Is there potential to re-examine the standards and guidance to local authorities in the light of the information that has been received? We are not experts in the detail and we cannot go into the assessment of fire doors and so on, but your officials can. Have you enough information and experience of what different local authorities are doing to reconsider the issue in some detail, review the guidance or even consult on it further?

**Hugh Henry:** We are reviewing the operation of the scheme and if information comes to light that requires further action, we will—where possible—initiate that by regulation. Given some of the difficulties and complexities, it is right that we reflect on the experience of local authorities. I cannot give any commitment as to exactly what we would do, but we will certainly give the matter further consideration.

**Richard Grant:** The benchmark standards were drafted in consultation with a range of organisations. I chaired a group, which involved the Executive, the Convention of Scottish Local Authorities, Shelter, the Scottish Council for Single Homeless, the Chartered Institute of Housing in Scotland and various professional bodies, which produced the guidance that includes the benchmark standards. We now have some evidence about how things work in practice

through keeping in touch with the local authorities that are implementing the guidance, and from research. We will probably want to reconvene that group, or something similar, before promulgating any changes to the guidance.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** Page 5 of the written response from the Executive indicates that it should be possible to identify problematic landlords in the current scheme. It goes on to say that

"staff effort should be concentrated on problem HMOs."

What evidence does the Executive have of the scale of problem HMOs and of licence evasion?

**Hugh Henry:** My officials might be able to give the committee some statistical evidence. It is fair to say that certain problems are emerging about taking enforcement action; we will need to reflect on those.

**Roger Harris (Scottish Executive Development Department):** On problem HMOs and staff effort on that, I have been involved directly with the local authorities network group that brings together the officers who are involved in problem HMOs. It is clear to me that, as one officer commented, they have in a short period moved a long way towards implementing the system.

As the minister said, a number of authorities are methodically and thoroughly going about the initial task of identifying HMOs. They are also gradually improving the way in which they co-ordinate inspections in order to avoid duplication and to achieve consistency between different offices. Through those means, they are sizing up, identifying and concentrating on the problem HMOs. It is the staff's desire to do that, but a number of practical problems are involved in finding HMOs in the first place.

**Cathie Craigie:** The minister mentioned enforcement action. Is there evidence about the number of prosecutions of unlicensed HMOs that we have been able to carry through? The committee took evidence that suggested that different levels of success resulted depending on the court in which the case was heard. What feedback have you had on that?

**Roger Harris:** The information that I have includes patchy figures, which resulted from a discussion that occurred at a group meeting. We do not have a thorough survey of the information but, from the information that I have, I am aware that some authorities are having difficulty with the process in respect of the level of evidence. When enforcement action is taken, it is inevitable that the extreme cases—those that involve people who will try to evade enforcement if they can—are being dealt with.

Practical difficulties arise concerning the level of evidence that is required to pursue a criminal prosecution. The authorities concerned are in discussion with local procurators fiscal on how to manage the process most effectively. Other authorities have struck a balance between enforcement actions and the efforts that are required to identify HMOs. All that work involves substantial staff time, and judgments must be made as to which activity will be most productive at any given time.

Recently, we received comments from one authority about enforcement and the difficulties that are involved. That authority asked whether we could consider alternative routes; however, the alternatives that have been suggested involve primary legislation. We are happy to engage in discussion on the subject with the authorities concerned. It is worth considering whether better ways of achieving enforcement exist.

**Cathie Craigie:** We are all coming at the issue from the same angle. Our primary concern is the quality of properties that are available for rent and the safety of the people who live in shared accommodation. That is the evidence that we heard from local government and which the minister repeated today.

Everyone wants to give every tool and assistance to local authorities to help them in identifying problematic landlords. In a previous question, I asked about departments sharing information, including housing benefit information, with the department that deals with HMO licensing. The response that we received from the minister agreed that problems existed regarding data protection legislation.

Is it possible to assist local authorities in the time-consuming identification of problem HMOs? Is it possible to identify addresses where more than one application—say, three or half a dozen; who knows what the number would be—had been made for housing benefit? Could that be done instead of providing the names of people who might be applying for housing benefit? That would stop the staff who are involved in investigating HMO licensing having to undertake that sort of investigative work.

14:45

**Hugh Henry:** The information would have to rest with the local authority rather than with the Scottish Executive.

I have spoken to a number of local authorities about the potential for exchanging information. They are clear that the legal advice that they have been given is that such information cannot be exchanged in that way. They would therefore not transfer information on council tax benefit or

housing benefit in any way, shape or form. It would be inappropriate for the Executive to try to influence that.

Some local authorities have examined the electoral register, which, although it is imperfect, gives them some information with which to try to identify potential cases of multiple occupancy. Others have sent officers out to areas in which they think such multiple occupancy might exist and have attempted to identify such cases door by door and close by close. They have had some success, although that approach is also imperfect.

The Executive cannot bring about sharing of information. Most local authorities have probably taken advice on sharing information and have been advised that certain information cannot be exchanged, even within departments of the council.

**Cathie Craigie:** Perhaps, when we are talking about health and safety issues, we should consider enabling the exchange of that information.

Does the Executive believe that it has done enough to ensure that those who live in houses with more than two residents are aware of the licensing scheme? What level of awareness have you found among private sector landlords that they should be licensed? How are you promoting the need for applications to come in from private landlords?

**Hugh Henry:** I will leave the officials to answer the questions on awareness and promotion in the private sector. It has been reported to us that some tenants are reluctant to identify their landlords as working outwith the scheme because they fear that, by doing so, they might leave themselves open to eviction or harassment. That is clearly not acceptable and it is not a reason for our not doing something. In fact, it reinforces our views about why we should do something. There is anecdotal evidence of that concern from some areas.

**Roger Harris:** We have expected local authorities to promote the HMO licensing arrangements, particularly because authorities have different schemes. We are aware from our contacts with private landlords that those with whom we deal are very aware of HMO licensing; it is top of their agenda in many of their discussions with us.

The extent of local authority promotional activity varies according to the perception of the extent of the problem. Dundee City Council has done a leaflet drop of some 52,000 leaflets. That is an active way in which to pursue the issue. Other authorities have, as the minister said, taken a door-to-door approach including, in one case, ensuring that the authority makes contact with tenants wherever possible. There are a number of different ways of approaching promotion. The local authorities devise and then promote the schemes.

**Cathie Craigie:** We have also taken evidence that suggests that some smaller landlords are closing the door. They say that they will not apply for the licence because it is cost prohibitive and that they will rent out their house to a family or sell it and move on to some other form of business. Do you have any evidence that the level of private rental accommodation has fallen since the scheme was introduced?

**Hugh Henry:** No, but I will ask my officials about the statistical information that might be available. However, we have certainly heard anecdotal evidence from some local authorities about concerns that certain types of properties might be relatively costly to adapt and might therefore not be available for letting in future. However, the local authorities and I feel that such properties can exist only by leaving residents to face a fairly vulnerable future. As much as I do not want any reduction in available accommodation, we have collectively perceived the need to take action in light of some horrific incidents. It would not be right to turn a blind eye to private landlords who might be reluctant to invest in providing safe and secure accommodation.

**Cathie Craigie:** Although we have not taken any evidence on this subject, there has definitely been talk that some hostel-type accommodation, particularly in Edinburgh, is not covered by the scheme. Young people who, because they are travelling about, stay for only two or three nights at a time are living in quite horrendous conditions because they are not protected by the scheme. Will the Executive be able to address that problem as part of the review?

**Hugh Henry:** I will ask Richard Grant to answer that question in a moment. I am extremely concerned about the situation that Cathie Craigie mentioned. Fire regulations should apply to many of these establishments; however, beyond that, it seems that the transient nature of the population that Cathie Craigie described allows landlords to get around the HMO licensing scheme. I have asked for that matter to be examined. Notwithstanding the protection that is afforded by fire regulations, clearly other things are happening out there that none of us would find acceptable.

**Richard Grant:** When we drafted the scheme, it was designed to apply to accommodation that provided the main or principal residence for a specified number of persons. In other words, the accommodation was their home. We did not intend to include property that was purely for visitors; if we had done so, we would have had to bring all sorts of hotels, guest houses and bed-and-breakfast accommodation into the scheme's

purview. As a result, it is a matter for local consideration whether the hostels are being used either as a form of low-priced hotel for visitors or as people's principal accommodation. If the latter were the case, the local authority would be able to insist that a licence must be applied for.

**Hugh Henry:** Notwithstanding those comments, I was concerned to hear about this development and will certainly seek more information about it. If we know that young people are being left in particularly vulnerable or potentially dangerous situations, it is not acceptable simply to say that there is nothing we can do about the matter because it falls between different schemes. We have heard stories from all over the world about the horrific consequences of young people on their travels seeking out cheap accommodation. I do not want to have to come back—or see someone else come back—in a year or two to say that a particular problem should be looked at because a horrendous incident has happened. We will take Cathie Craigie's comments seriously and find out whether we can do anything.

**The Convener:** I thank the minister and his officials for their attendance and for answering our questions. We look forward to the consultation document and to contributing to it.

14:54

*Meeting suspended.*

14:59

*On resuming—*

# Debt Arrangement and Attachment (Scotland) Bill: Stage 1

**The Convener:** We come to item 3. I ask Robert Brown to declare an interest.

**Robert Brown:** Because of the nature of the bill, I declare my membership of the Law Society of Scotland and my consultancy with Ross Harper and Murphy solicitors in Glasgow.

**The Convener:** Thank you. I remind members that we are questioning Scottish Executive officials, so our questions should focus on technical aspects of the bill. I say to our visitors that if any questions stray inappropriately into matters on which they cannot respond, it is enough simply to say that. I will ensure that such matters are raised with the minister. We are not in the business of putting officials in a difficult position. We are happy to transfer questions to those with responsibility for answering them. We will not argue about your responsibilities; we will take them as read.

I welcome Alisdair McIntosh, the head of the access to justice division, Laura Dolan, the bill team leader, and Marieke Dwarshuis, from the financial and economic inclusion branch. I invite the officials to make a short opening statement.

**Alisdair McIntosh (Scottish Executive Justice Department):** I will say just a few words to set the bill in context.

When the Scottish Parliament decided to abolish poindings and warrant sales, it asked the Executive to produce proposals for a humane and workable alternative. The bill is intended to fulfil that remit.

The bill must be considered against its wider background. The first element of that was the working group on a replacement for poinding and warrant sale's report, "Striking the Balance: a new approach to debt management", the key recommendations of which the bill implements. The report was the subject of wide consultation and received widespread support.

Other elements were ministers' decision, as announced in December 2001, to invest an additional £3 million a year in front-line money advice, and the announcement earlier this year that the Executive would support the new telephone debtline project in Fife. Ministers are also considering options for giving the money

advice sector additional support. The Executive is also undertaking a range of wider action on debt and financial exclusion initiatives, with the aim of tackling problems at their roots.

Last month, the consultation document on the enforcement system as a whole, "Enforcement of Civil Obligations in Scotland", was published. It makes a wide range of proposals, the most significant of which is a detailed proposal for a debt arrangement scheme, which would allow people to repay multiple debts in a managed way, over time and free from the threat of enforcement action. The document also proposes new arrangements for the regulation and oversight of the enforcement process, including the creation of a new independent watchdog.

The bill should be considered as part of a comprehensive and—as ministers consider it—holistic approach to the problem of debt. Ministers' overall policy aims are to ensure that people have access to information and advice as early as possible to help them to tackle their money problems; to provide new avenues for negotiated settlement of debt; to ensure that the most vulnerable people have effective protection; and to ensure that enforcement action is taken only as a last resort against those who can pay their debts but refuse to do so.

The bill will embody that approach. It establishes the foundations for the debt arrangement scheme and creates two new procedures for enforcement when that is necessary. The first is a relatively streamlined procedure for commercial cases, and the second is a more tightly controlled procedure for domestic cases, which may be used as a last resort, but only against those who can pay but refuse to do so. The bill introduces into the court process the provision of user-friendly advice and information for debtors and creates new protections and safeguards for debtors.

Crucially, the bill is intended to establish an effective mechanism for domestic cases, to filter out from the enforcement process everyone who cannot pay, and to create a new way out for everyone who can pay and is prepared to do so, but over time. That should remove entirely from the enforcement process the vast majority of debtors and leave to face enforcement action only the few who can pay but refuse to do so.

We are happy to explain the bill in more detail and to answer members' questions.

**The Convener:** I will kick off with a couple of general questions. The policy memorandum states that the bill

"implements the central recommendations of the Working Group … in its report *Striking the Balance: a new approach to debt management*".

That was mentioned. Which recommendations are implemented in the bill, which have been taken forward by other means and which, if any, are not being taken forward at all?

**Alisdair McIntosh:** Ministers are committed to taking forward all elements of the working group's report. The bill makes a substantial contribution to the recommendation on the provision of user-friendly advice and information for debtors, but that recommendation is also addressed by the additional investment to which I referred. As I have said, the foundations of the statutory debt arrangement scheme are taken forward in the bill, as are the reform of enforcement procedures, which the working group called for, the recommendation for an effective and proportionate sanction of last resort and a faster-track procedure for commercial cases.

Issues relating to wider reform and regulation of the enforcement process and the detailed proposals for the debt arrangement scheme to supplement the basic architecture in the bill are taken forward in the consultation. Subject to approval of the bill, regulations on those will be introduced as soon as possible.

**The Convener:** In addition to providing for a debt arrangement scheme and a new form of diligence, the bill provides for the abolition of poindings and warrant sales and repeals the Abolition of Poindings and Warrant Sales Act 2001, which currently provides for the abolition of poinding and warrant sales by 31 December 2002. The policy memorandum states that the bill abolishes the 2001 act

"in order to avoid complicating the statute book to no practical effect".

Will you expand on the problems that would be created by not repealing the 2001 act? Are there examples of such clearing out? Has that been done with any other legislation that has gone through the Scottish Parliament?

**Alisdair McIntosh:** The Parliament agreed to defer entry into force of the 2001 act specifically to allow the Executive to propose a humane and workable alternative for the longer term. The bill is intended to be that and supersedes the 2001 act.

Technically, there are three ways to deal with the matter. The first option is that the 2001 act could enter into force for a symbolic period and immediately be replaced by the bill once it becomes law. Ministers did not think that that was necessary or desirable because, as the convener said, it would clutter up the statute book without any practical effect.

The second option is for the 2001 act and the bill to enter into force at exactly the same time. If the bill is to work, it would need to make a series of

complex consequential amendments to the provisions of the 2001 act. Again, that would be to no practical effect in the outside world.

The third option is for the bill to repeal the 2001 act while preserving the abolition of poinding and warrant sales. Ministers thought that that was the most straightforward and transparent approach and was consistent with their general obligation not to complicate the statute book without practical effect.

I am informed that it is common practice to take the opportunity to simplify. I can consult colleagues and come back to you with a note on previous examples if you would like us to do so.

**The Convener:** I am interested specifically in legislation that has come through the Scottish Parliament. I mentioned cluttering the statute book, which exists in our imagination. What would be the effect of the 2001 act's doing nothing other than sitting there? People would know that it was there. What would be the practical effect of its remaining on the statute book?

**Alisdair McIntosh:** The practical effect of its remaining on the statute book would be that anyone who sought to know exactly what the law was on the issue would have to examine the two acts side by side. There would be no difference to the outside world. Ministers are under a general obligation not to complicate the statute book unnecessarily. I am afraid that I do not have examples to hand of recent precedent, but we can certainly examine that and come back to the committee.

**The Convener:** Thank you; that would be helpful.

What alternatives were considered before the Executive decided to introduce a new form of diligence against corporeal moveable property in domestic cases?

**Alisdair McIntosh:** That is covered briefly in the policy memorandum. In essence, the working group concluded that an approach with no sanction of last resort would not work for a number of reasons. First, it would result in a significant decline in the collection of council tax and other liabilities, which could damage local services. Secondly, it might encourage a non-payment culture for debts below £1,500 and, for debts above £1,500, it would encourage creditors to pursue debtors by way of sequestration, which the working group thought was much harsher in many respects.

The group also considered that the approach would encourage less scrupulous creditors to have recourse to informal methods of debt collection, which could involve unacceptable intimidation. This was difficult to quantify, but the group thought that there was a risk that a perception of a gap in the enforcement system could reduce the availability of credit from reputable sources, which would leave the field open for less reputable lenders—to put it crudely, loan sharks.

Having concluded that there needed to be a sanction of last resort, the group considered whether any other form of enforcement could deliver that. Having examined the systems in a range of other countries, it concluded that the only other possibility was enforcement by way of civil imprisonment, which it ruled out as totally unacceptable in modern Scotland. Although ministers shared that analysis, with the working group's support, they put the matter out to consultation but no alternatives were proposed. Ministers' key concern was to ensure that enforcement against moveable property in domestic cases was genuinely a sanction of last resort. That is what the bill seeks to achieve.

**Mr Gibson:** There was a fourth option, which was to retain the Abolition of Poindings and Warrant Sales Act 2001 and not introduce the Debt Arrangement and Attachment (Scotland) Bill. However, we are here, so I would like to discuss part 1 of the bill, on the debt arrangement scheme. Which main aspects of the scheme are still to be finalised, following consultation?

**Alisdair McIntosh:** As I said, the basic architecture of the scheme is established in part 1 of the bill. Issues that will need to be addressed in the light of the consultation include specific arrangements to deal with situations in which most but not all of an individual's creditors agree to the proposals that a money adviser draws up on their behalf. Arrangements for dealing with default and the need to vary repayment programmes in the light of the changing circumstances of the person who is making the repayments will also have to be addressed. Practical details, such as forms, procedures and setting up a register of programmes that are in force to ensure that enforcement action is blocked, will have to be addressed. There are a number of other specific points in the consultation document, which Laura Dolan might want to mention.

**Laura Dolan (Scottish Executive Justice Department):** The consultation paper covers quite a few detailed areas and gives options. It would take quite a while to go through them all.

I refer members to part 4(D) of the consultation paper, which sets out the options that have been considered and asks which of those people prefer. At the end of part 4(D), there is a list of questions on which the Executive particularly seeks input from consultees. Part 4(D) also sets out the Executive's ideas and preferences. Of course, none of that is set in stone. It is hoped that people will give their views and tell us about their practical

experience of current similar voluntary arrangements, which will help us to see the way forward.

15:15

**Mr Gibson:** Why was it thought necessary or desirable to set out much of the scheme in regulations?

**Alisdair McIntosh:** There is a straightforward reason for that. The establishment of a debt arrangement scheme has considerable support; indeed, some bodies, notably the Scottish Law Commission, proposed the idea some time ago. The working group and ministers considered that the scheme could make a major contribution to dealing with the problem of debt. Ministers wanted to get the scheme up and running as quickly as possible, but only on the basis of consultation on the practical aspects of the scheme. That is why ministers decided to seek approval from Parliament for the basic architecture, which is in the bill, and to set up a fast-track process for regulations to settle the fine print, again with Parliament's approval. That process will begin as soon as possible after the bill is approved. It would not have been possible to establish the debt arrangement scheme as quickly with any other course of action.

**Mr Gibson:** Who will administer the debt arrangement scheme and the debt payment programmes that it establishes? What qualifications will they require?

**Alisdair McIntosh:** Different roles are involved in the debt arrangement scheme. The first area of activity involves an adviser assessing the individual's circumstances, such as their incomings, outgoings and debts, and what would be a manageable repayment over a specified period. The adviser will then take the proposals to the creditors and negotiate with them a debt repayment programme.

The second area of activity is the procedure for registering the agreed programmes, so that they act as an effective block on the enforcement process. That will be done by a centrally located administrative unit. The intention is that the proposed civil enforcement commission, on which the Executive is consulting, will carry out the function. In the interim, it will be necessary to set up a small unit, attached to the Executive, to perform the largely mechanical functions of registration.

The third area of activity is the distribution of payments. The intention is that the debtor will make a periodic payment to a single person, who is known in the bill as a payments distributor, who will distribute the amount among the various creditors by bank transfer or other automated means.

All those functions will be specified in more detail in the regulations. They will be subject to the approval of ministers, although ministers will not approve individual advisers or payment distributors. Ministers will establish by way of regulations and rules the standards by which participants will have to abide. My colleague Marieke Dwarshuis has worked closely with the money advice sector on quality standards and training and development for money advisers, who will have an important role in the process. She may want to add something.

**Marieke Dwarshuis (Scottish Executive Development Department):** I do not want to add anything at this point, unless members have specific questions on that aspect of the bill.

**Laura Dolan:** There will be a further role for the sheriff court. It is envisaged that applications will be dealt with administratively because, for the most part, they will be fairly straightforward. We know from the way in which some voluntary arrangements work that that is possible. However, in some cases there will be quite significant disputes and it will be appropriate for a sheriff to deal with them and reach a decision on how they should be determined. Such cases will be remitted to the sheriff court by the administrative body that will deal with the majority of cases.

We do not want to burden the courts with every application. Members may be aware that the Scottish Law Commission made proposals for a debt arrangement scheme many years before the automated processes that are now available were being used. At that stage, the Scottish Law Commission suggested that sheriff clerks should run the scheme. That would have placed a considerable burden on the courts so we do not propose to do that. We are trying to build on and make best use of practices that have been developed since then. However, there will still be a need for the sheriff court to be involved where there is an element of dispute.

**Mrs McIntosh:** What measures are planned to ensure that, where appropriate, debtors make use of the scheme? Existing measures are designed to assist debtors, but time-to-pay orders have not always been widely used in the past.

**Alisdair McIntosh:** A number of measures have been taken, chief among which is the integration of information and advice for debtors into the court process where enforcement action is initiated. More significantly, there is additional investment in money advice for early intervention. Where that has not been taken up, the provision of information and advice for debtors is an integral part of the proposed procedure. Such information includes: first, information about the procedures, the options

available and the possible consequences of one choice or another; secondly, more general advice and information about getting to grips with financial problems; and thirdly, and most crucially, details of local outlets for advice about money and of sources from which people can seek more detailed and expert help. The procedure has been designed to allow people a window of opportunity before there is any question of a court hearing.

In the event that people still do not take advice and do not take advantage of the opportunities available to them, and a hearing happens, the sheriff has discretion to order a money adviser to visit the debtor's home—bringing the advice to the debtor rather than encouraging the debtor to go to the advice.

Taken together, ministers believe that the measures represent a significant improvement in awareness and in the tools available to the debtor.

**Mrs McIntosh:** So rather than waiting for all the bills behind the mantelpiece clock to go away, which they will not, a person should be able to get advice early.

**Alisdair McIntosh:** Absolutely.

**Mrs McIntosh:** Is there a timetable for putting the scheme into operation?

**Alisdair McIntosh:** There is.

**Mrs McIntosh:** What is it?

**Alisdair McIntosh:** There are several different elements. First, the information and advice pack—which is to be a new part of the court procedure—will be commissioned from money advisers and legal experts and will be available as soon as the Parliament enacts the bill. The investment in additional front-line money advice has already been channelled to local authorities with clear guidelines on what they must do to recruit money advisers. The new advisers should be coming on stream while the bill is being discussed so that they are ready when the bill is enacted.

We hope to be in a position to bring forward regulations on the debt arrangement scheme soon after the bill is enacted. That will depend in part on the responses to the consultation exercise.

**Linda Fabiani (Central Scotland) (SNP):** Is the money that is being and will continue to be channelled to local authorities ring fenced, or do local authorities have discretion in how they use it?

**Alisdair McIntosh:** It is not formally ring fenced, but the allocation has been accompanied by clear guidance to local authorities, and requirements have been placed on them to show that the additional investment will be invested in front-line money advice. Local authorities will be required to account for their share of the £3 million and the front-line money advice that it has bought.

**Robert Brown:** Council tax was one of the main problems that led to the abolition of poindings and warrant sales and will be a feature in many debt situations. Will you give us an indication of the guidance that has been given to local authorities? Will the advice be provided in-house or through citizens advice bureaux, which form the biggest general advice service? What is the intended scenario?

**Marieke Dwarshuis:** The guidelines state that the resources should be used specifically for specialist money advice. The decision on whether to use in-house provision or other provision is for local authorities to take. They are best placed to assess local needs and to determine how to meet them. We have asked local authorities to consult local money advice agencies on how the money will be used. We have also asked them to consider choice for clients. It is intended to assess whether a range of providers of money advice is available.

**Robert Brown:** Will you make the guidance available to the committee?

**Marieke Dwarshuis:** Yes.

**Robert Brown:** I have two broader questions on the cost of setting up the debt arrangement scheme, and in particular the debt payment programmes. First, who will meet the cost of the arrangement beyond the £3 million and the various other moneys that are being provided? Secondly, court costs are usually added to what the debtor has to pay. Will that be the case with this scheme, or will there be, in effect, no charge for the debtor or the creditor?

**Laura Dolan:** I will answer the second question first. It is envisaged that, ultimately, there should be a saving in court costs. That will happen over a lengthy period of time. If people are channelled into the debt arrangement scheme before court action is taken against them, it is envisaged that there will be a large reduction in the number of court actions for the payment of money. Quantifying the scale of that reduction is extremely difficult. We will have to see how successful the scheme is in getting to people before court action has been taken but, ideally, it is envisaged that there will be a reduction.

On daily running costs, there are two significant aspects. At the moment, voluntary schemes are run by not-for-profit organisations and, in effect, take contributions from creditors by deducting a proportion of the amount that is paid to them at the end of the day. Creditors are extremely amenable to that, as it means that they can cut down their administration costs, because they do not need to chase up debts, keep track of what is coming in, and do everything else that is involved. There are proposals in the consultation paper on that and

specific questions have been asked. Questions are also asked about whether fees should be charged. For example, should people pay a fee when they apply to join the scheme?

There are proposals in the consultation paper for a public register to be set up. If creditors are unable to take enforcement or sequestration action against people who are in the scheme, they will want to access a register of names of people who are in the scheme. The consultation paper asks questions about paying fees for that as well. That might provide an element of funding for the scheme.

15:30

**Robert Brown:** I suspect that it is optimistic in the extreme to suggest that there will be savings in the long term. Would there be a court fee charge for the sheriff's involvement in the matter?

**Laura Dolan:** Nothing has been determined on that at this point.

**Robert Brown:** I think that I am right in saying that it is broadly envisaged that all the creditors will agree to the debt payment programmes but that regulations will mean that the consent of particular creditors can be dispensed with. What might those circumstances be?

**Laura Dolan:** There is some explanation of that in the consultation paper. A situation might arise in which only one creditor of a body of creditors is unwilling to participate. That creditor might be concerned with a large or a small proportion of the total debt, depending on how that is assessed. Views are sought on the extent to which creditors—whether they be large in number or large in terms of the proportion of the total debt—should have the opportunity to say that they do not want the scheme to go ahead.

It is envisaged that if, for example, the creditor is concerned with a large proportion of the debt, the issue would go to the sheriff. A substantial debtor might want to opt for sequestration, in which case there would be all sorts of arguments about the merits of that and the issue would best be dealt with by the sheriff.

If the matter concerns a creditor who says that they would prefer to get £5 a month rather than £4 a month, that would be better dealt with administratively so that the courts are not clogged up with the administration of finance rather than with the administration of justice. It is a question of balancing those interests to ensure that the appropriate kind of dispute is dealt with in the appropriate place.

**Robert Brown:** Will it be possible for a group of debtors within the larger group, whether it is in the majority or the minority, to say, unreasonably, that they do not agree with the debt arrangement and want to proceed with an alternative diligence?

**Laura Dolan:** It is envisaged that, administratively, it will be open to those making the decisions to be able to dispense with an unreasonable objection.

**Robert Brown:** Am I right in understanding that, if a debt payment programme has been agreed and authorised under the arrangements, it has the effect of stopping further diligence while it is in operation?

**Laura Dolan:** Yes.

**Robert Brown:** What happens if a month's or a week's payment is missed?

**Laura Dolan:** There are provisions for a variation of the scheme. You are talking about a small blip that causes one payment to be missed. However, if an event has taken place that means that the person cannot carry on under the conditions that have been agreed at the outset—for example, if they have lost their job—there will be an opportunity for a variation of the scheme. It is envisaged that that will be done with the support of the money adviser, who will be able to assess the current situation and the future situation.

We know from information that we have received from people running voluntary schemes that creditors are willing to have an adjustment in the arrangement that was originally agreed if there are justifiable circumstances. We also know that creditors want to get that done early to ensure that there are no on-going difficulties.

It is envisaged that the scheme will allow for the preparation of a report by the people distributing payments to alert the money advisers to instances where there has been a non-payment. That will allow the situation to be dealt with quickly. There will be on-going monitoring of the situation so that it does not escalate and get out of hand before it can be resolved.

**Robert Brown:** Shall I deal with part 3 now?

**The Convener:** No, we will come back to that later.

**Karen Whitefield:** Some people have suggested that the bill does little more than rename poindings and warrant sales. Can you outline for the committee the similarities and differences between the diligence of poindings and warrant sales and attachments and the diligence proposed by the Executive?

**Alisdair McIntosh:** It is easier to talk about the differences, as there are many more differences than similarities. The crucial issues are the enforcement procedures, how the processes can be used, where and in what circumstances they can be used and against whom they can be used.

The procedure in part 2, which will apply in commercial cases—those not involving domestic property—is similar to that under the current system. That is for a straightforward reason: commercial cases have not given rise to substantial public concern. The working group concluded that, as there had not been such concern, there was no fundamental need to change the procedure.

Nevertheless, the process in the bill includes three new measures of debtor protection in commercial cases. The first is the provision of the debt information and advice pack. The second is provision for vehicles reasonably required by the debtor and the third is specific protection for mobile homes where they are used as the principal residence.

The procedure in part 3 is very different.

**Karen Whitefield:** We will deal with part 3 later.

Sections 14 and 17 make special provision for mobile homes that are not the principal residence of the debtor. Can you outline why those provisions are needed and what effect they will have?

**Alisdair McIntosh:** That was not identified as a particular issue by the working group and was not raised in the consultation. However, in the process of preparing the bill, we became concerned about the fact that mobile homes are both moveable property and potentially a principal residence—the mobile home could be the principal residence of either the debtor or a third party. Ministers decided that special arrangements were needed to protect people who live in mobile homes that are their principal residence. Is that a sufficient explanation?

**Karen Whitefield:** That is fine. You mentioned the debt advice package. What will be contained in the package and what safeguards will there be to ensure that the debtor has an opportunity to act on any advice before an attachment is issued? What publicity will surround the procedure so that people who are just getting into difficulties know that new arrangements are in place?

**Alisdair McIntosh:** The Executive will commission the information pack from Money Advice Scotland and legal experts. The pack will contain three basic elements. The first is information and advice about the relevant legal procedures, the choices open to debtors and the possible consequences of taking one or other option. The second is more general information and advice on tackling debt and handling financial problems. The third is details of local Money Advice Scotland outlets that can provide assistance. In the case of single debts, time-to-pay arrangements are one option. Another is participation in the debt arrangement scheme. We can also check whether the person is claiming the benefits to which he or she may be entitled.

We intend to ensure that the new provisions and the advice and information pack are given considerable publicity and are well known. We will work with the money advice sector on how best to do that.

**Karen Whitefield:** The voluntary sector will provide much of the support that will be offered to people. Are you confident that it will have the resources and ability to deal with the increased demand on its services?

**Alisdair McIntosh:** The additional investment in money advice is channelled through local authorities, but it will not necessarily remain with local authorities. In many areas, local authorities fund a variety of advice outlets. The advice sector should benefit clearly and directly from the additional investment that ministers have announced. Our colleagues in the social inclusion division have worked with the money advice sector to develop mechanisms for providing central support to the sector—through training, development, quality standards, referral mechanisms and other forms of accreditation.

**Marieke Dwarshuis:** The research that Money Advice Scotland carried out in 2000—I do not know whether members have seen its report "Money Advice Services in Scotland—A time to reflect"—indicated that at that time there were 67 full-time specialist money advisers, 19 part-time specialist money advisers and 170 volunteer specialist money advisers in Scotland. We believe that the additional £3 million annually should provide for at least 75 additional full-time money advisers. That represents almost a doubling of current provision.

**Alisdair McIntosh:** I am reminded of a point that I should have made earlier, concerning safeguards for ensuring that people receive the information and advice pack. The procedure that is foreseen in the bill will have the effect of ensuring that it is not possible to proceed in any circumstances with attachment unless the debtor has received the advice and information pack, which must be made available to him or her. That is an additional safeguard, albeit one that applies towards the end of the process.

Earlier, I mentioned that, when there is a hearing, the sheriff has the discretion to order that a money adviser visit the person concerned in his or her home. The provision ensures that, where all else has failed and the person has not taken advantage of the opportunities that they have been offered, advice and information services can be brought to them. It is important to underline that fact.

**Karen Whitefield:** It is important that people

should have access to the information that you intend to provide. However, sometimes they will require assistance in working through that information. The committee has highlighted the need for comprehensive advice services to be provided throughout Scotland. I remember that at early evidence-taking sessions concerns were raised with the committee about the patchy coverage across Scotland. I am fortunate to represent a constituency that is well supported by the voluntary sector and by the local authority, North Lanarkshire Council. However, the same may not be true of rural Perthshire, where last year I spoke with the local CAB. We need to ensure that coverage is even across Scotland and that people are not disadvantaged because of where they live.

**Marieke Dwarshuis:** The criteria that we have used for distributing money among local authorities are based on the number of jobseekers allowance and income support claimants in those areas. Those have been used as indicators of deprivation, on the basis of which the £3 million has been distributed among local authorities. We have ensured that there is a minimum of £40,000 per local authority; the sum would be lower if the money was divvied up on the basis of figures alone. That will ensure that there is significant provision in each local authority area. A smaller sum would not allow any money advice provision to be set up. The exception to that is the island authorities, which have been given £20,000 each.

**Karen Whitefield:** That is an important point, but we have to remember that it is not just poor people who get into debt. We cannot give money to local authorities based only on deprivation. It is important to bear that in mind, as people with income sometimes make unwise choices that lead them into situations that impact negatively on their lives.

15:45

**Linda Fabiani:** Alisdair McInstosh said that mobile homes are potentially moveable property to which attachment could apply. What about a mobile home that is the principal residence of someone who is not the debtor? What rights do they have to know about what is happening and about the possibility of their home being sold? How does that impinge on the rights of tenants to live in that home under some form of contract or tenancy agreement? How does it relate to the European convention on human rights and people's right to a home?

**Alisdair McIntosh:** The bill addresses head on the issue of mobile homes that are occupied by people other than the debtor. It states:

"Where a mobile home which is the only or principal residence of a person other than the debtor has been attached the sheriff may … order that the attachment of the mobile home is to cease to have effect."

That is precisely in order to protect people who are living in mobile homes that do not belong to them.

Our legal advisers looked closely at all aspects of the bill and satisfied themselves that its provisions were compliant with the ECHR. It was on that basis that ministers were able to certify that the bill had legislative competence. As you will be aware, the Presiding Officer is also required to take his own, independent view on whether bills have legislative competence, which includes consideration of whether they are compliant with the ECHR. He has done so in this case.

If specific aspects of the bill cause concern to the committee or other parties, we will be happy to consider them and get back to you. We are satisfied that the bill respects the ECHR.

**Linda Fabiani:** Are you saying that the first that someone might know about their home being attached is when the issue goes before the sheriff? Does that person—the tenant of a mobile home that is owned by a debtor—have no rights at all before that point?

**Alisdair McIntosh:** There is provision for prior notice. I ask Laura Dolan to clarify the matter.

**Laura Dolan:** It is not easy to determine that in the context of the bill, as such questions as arrangements for notice will be dealt with in the rules of court. The Parliament will see the rules of court in due course, but they are currently in the preparatory stages. The supporting rules of court cover many issues, including forms and notice.

**Linda Fabiani:** Have we checked how such provisions work in relation to the legality of tenants' rights under tenancy agreements?

**Laura Dolan:** I believe that they work satisfactorily. If we can get back to you about any particular issues in that regard, we will be happy to do so.

If it would be convenient, I will say a few more words about safeguards in connection with court procedures for attachment. Section 38 allows the sheriff clerk to assist people with court procedure by filling out forms and generally giving them advice. Another safeguard, for people who are in employment but in the poverty band, is the telephone debtline, of which I think the committee is aware. The debtline is for people who cannot access advice during the day.

**Cathie Craigie:** The committee is interested in money advice and debt advice. The evidence that we have heard today does not reassure me that there is an army of people out there who can give that advice. I would like some of the information that we have heard about today to be sent to the committee so that we can assess it. I am

concerned that we might be putting too much weight on the shoulders of the volunteers who give debt advice.

**Marieke Dwarshuis:** Let me explain some of the issues. First, we do not intend the bulk of money advice to be provided by volunteers, which is why £3 million has been made available for specialist money advisers, most of whom we envisage will be employed advisers rather than volunteers. Secondly, we are in discussions, which are far progressed, with money advice agencies in Scotland about additional central support for money advice. You expressed concern that there might not be enough money advisers out there. The additional money is to ensure that there will be centrally provided training for money advisers and for what we call secondary advice provision, which will allow inexperienced money advisers or advisers who do not have experience of particular aspects of money advice to consult more experienced specialists or solicitors.

We are also considering whether to provide specialist information centrally. Advice provision could rest on that bottom line. We will also work with money advice providers to develop common standards and quality assurance and a common statistical framework to ensure that we have figures that indicate how many people are being assisted with debt problems throughout Scotland. We are quite far advanced in those discussions. The intention is that the central support for money advice will come on stream in time to support the new money advisers who will be employed throughout Scotland.

**Cathie Craigie:** That is to be welcomed.

**The Convener:** Be brief, then I will take Kenny Gibson.

**Cathie Craigie:** Right. Will I get back in after that?

**The Convener:** Do not ask me hard questions at this time of the afternoon. I will take Kenny Gibson just now. If you want to come back in afterwards, I will take you.

**Mr Gibson:** I think that we all welcome the additional £3 million, but that works out at just over a penny per person per week in Scotland. Therefore, the sum is not as significant as it may seem—distributed across 5 million people, it is not a lot of money. I am concerned about the impact of the bill on organisations such as Citizens Advice Scotland. Even with centralised support and specific money advice people, organisations such as Citizens Advice Scotland will be stretched because of additional burdens arising from new legislation from Scotland and Westminster. What support will you provide for such organisations?

Section 38 allows a debtor to obtain advice and assistance from the sheriff clerk on procedures available to the debtor under parts 2 and 3 of the bill. Are there plans not only to encourage the use of that facility, but to monitor its use?

**Marieke Dwarshuis:** On whether £3 million will be enough as an additional investment, the assessment of that figure was made in a report called "Facing up to Debt: Housing Debt Advice and Counselling in Scotland". The report, which was commissioned by the Executive's central research unit, concluded that current provision does not meet the need and that there is a shortfall in debt advice provision in Scotland to the value of approximately £3.5 million. We plan to put an additional £3 million into front-line money advice. We shall also provide additional central support for money advice services. Our current assessment suggests that the combination of those two measures would be an adequate provision.

**Mr Gibson:** Does Citizens Advice Scotland agree with that?

**Marieke Dwarshuis:** I do not know whether it agrees.

**The Convener:** We will have the opportunity to question Citizens Advice Scotland later.

**Mr Gibson:** Yes, indeed. I am sorry, convener.

**Marieke Dwarshuis:** At present we cannot assess the additional call on advice that will result from the bill.

**Alisdair McIntosh:** The Debtors (Scotland) Act 1987 enabled sheriff clerks to provide advice and information on procedures in certain circumstances. Experience suggests that sheriff clerks have an important part to play in helping people with the procedures and paperwork, not least because they are experienced and on hand when a matter comes to court. It is not being suggested that sheriff clerks are in any way a substitute for money advisers, but they are a useful complement. That is why ministers wanted that facility to continue to be available under the bill. We will be monitoring how arrangements under the bill work as a whole and that is one aspect that we will certainly want to keep under review.

**Mr Gibson:** Section 43 provides that legal aid is not available for proceedings under parts 2 and 3 of the bill. Could you explain the reasons for that?

**Alisdair McIntosh:** There are two reasons. First, the procedures are designed to be simple, understandable and accessible. Secondly, the bill specifically provides that debtors may be assisted by lay representatives, whether money advisers or others. Money advisers have often indicated that they would like the opportunity to represent their clients in court, rather than have solicitors do so, for example. The bill makes explicit provision for

that and it is not felt that, in those circumstances, legal aid is necessary or appropriate. However, initial advice and assistance from a solicitor are available on that point of Scots law, just as they are on any other point of Scots law, to all those who qualify under the financial criteria. People will be able to get initial advice and assistance, as it is called in legal aid terminology, from a solicitor if they so choose. However, if and when the matter comes to court action, they will be able to be represented by a person of their choice.

**Karen Whitefield:** Will you outline the main features of the special procedures set out in part 3 of the bill in relation to the attachment of articles kept in a dwelling-house?

**Alisdair McIntosh:** The policy memorandum outlines the procedures in general terms, but I shall run through the specific elements. First, the part 3 procedure requires a specific application to the court. It is not available under summary process. Secondly, it requires notification to the debtor at least three weeks before any hearing can be scheduled, including transmission of the information and advice pack, with the intention of allowing the debtor an opportunity to seek help or to try to negotiate a settlement. If that is unsuccessful, the case may proceed to a hearing.

It is worth underlining two specific new elements in relation to the hearing. The first is the opportunity for the debtor to submit a voluntary declaration of financial circumstances—a declaration of income, liabilities and assets—which may be drawn up with the assistance of a money adviser. The Executive intends to provide supporting materials for money advisers to use for that purpose. The second is the opportunity for the debtor to be represented by a money adviser or another person of their choosing.

16:00

At the hearing, the creditor must demonstrate that they have sought to negotiate a settlement, that they have tried other forms of enforcement and that there are valuable, non-essential assets, the sale of which would realise a significant proportion of the debt. As well as considering that, the sheriff will take account of whether the debtor has received money advice and information; the voluntary declaration, to which I referred a moment ago; the nature of the debt, in particular whether it relates to taxes or duties or to any trade or business that the debtor might be conducting; whether the debtor conducts a business or a trade from their home; and whether there has been any previous arrangement. Such an arrangement might have been made under the debt arrangement scheme, or it might have been a time-to-pay arrangement or another arrangement that was in place but which has not worked for one reason or another.

Sheriffs have four broad options. First, where they are not satisfied that the debtor has engaged with the advice process, they can order a visit to the person's home by a money adviser. Secondly, where they consider that a prospect of settlement exists with a bit more time or information, they can defer judgment. Thirdly, where not all the conditions that I have outlined have been met, they will refuse an application. Where, in exceptional circumstances, all the conditions have been met, they may grant the application—subject, of course, to the restrictions on what can be taken, when it can be taken and how it can be taken. The decision is also subject to an appeal. Those are the steps in the procedure.

**Karen Whitefield:** What makes those special procedures different from the arrangements under existing legislation on poindings and warrant sales, which the Parliament agreed needed to be ended?

**Alisdair McIntosh:** The proposed procedures are different in many respects. First, they must be followed on the basis of a specific application. That is new. Secondly, the creditor must serve an advice and information pack. That is new. Thirdly, the hearing provides the opportunity for a voluntary declaration. That is new. Fourthly, there is provision for lay representation. That is new. Fifthly, the creditor must satisfy the sheriff of a whole series of factors, which I have just outlined. That is new. Sixthly, the sheriff must be satisfied not only in relation to those matters, but in relation to the other matters that I have outlined. Seventhly, there is a specific provision that the sheriff can order a visit from a money adviser.

The procedures differ from the previous arrangements in all those ways.

**Robert Brown:** One of the factors of which the sheriff must be satisfied is that a reasonable prospect exists of the auction reducing the debt by at least 10 per cent or £50. Is there any particular rationale for those figures?

**Alisdair McIntosh:** As I recall, the figures were based on recommendations from the Scottish Law Commission. The intention was to ensure that at least a minimum significant portion of the debt would be realised after any expenses that were associated with the procedure. Section 47(2) allows for the figure to be reviewed, according to what is judged appropriate in the light of changing circumstances.

**Robert Brown:** You touched upon the expense of the procedure. The key problem with warrant sales was that people often found that they sold off an item only for the proceeds to go in legal and sheriff expenses. People ended up having reduced their debt by next to nothing. The new procedure will be elaborate and expensive. Will

the expense be a definitive part of the action? Will the creditor be able to recover the expense? That is not currently possible in relation to poinding and warrant sale dues.

**Laura Dolan:** Certain aspects of the procedure will be recoverable, but that will be at the end of the process. Provision for expenses is set out in the schedule to the bill. The schedule specifies exactly what can be charged as expenses if the attachment is carried out.

**Robert Brown:** Will that apply only if the exceptional attachment order is granted or will the debtor be landed with expenses even if the order is not granted?

**Laura Dolan:** It depends on the steps that are taken. An expense is incurred for each and every step that is taken.

**Robert Brown:** If the creditor applies for an exceptional attachment order, one of two things happens—either he gets the order or he does not. I am sorry, to be gender neutral I should have said he or she. In each of those instances, is the cost of the procedure added to the debt? If so, do we have a feel for what the costs in a typical case might be? You may wish to take guidance from colleagues on that question and get back to the committee with the information. It is important for the committee to have a feel for that, as it will influence our view of the procedure.

**Laura Dolan:** The expenses occur when the attachment takes place. In schedule 1 to the bill, which is introduced by section 39, members will see a list of the expenses that can be charged that are incurred as part of the procedure of attachment.

Paragraph 6 of schedule 1 sets out that no expenses are

"due to or by either party"

in connection with an application or with any of the hearings that may be held under the bill.

**Robert Brown:** My point is about continuations, which might lead to extensive costs. The problem raises policy issues. Has the Executive made an assessment of the likely costs and court dues? Perhaps you can give us information on that at a later stage.

**Laura Dolan:** We can certainly write to you, but, as can be seen in paragraph 6 of schedule 1, it is envisaged that expenses will not be charged to either party for the costs of hearings.

**Robert Brown:** Does that include the cost to creditors of their solicitor being present at hearings?

**Laura Dolan:** If the creditor asks a solicitor to come with him, he would be liable on his own part. No expenses would be

"due to or by either party".

**Robert Brown:** That is helpful.

My final question relates to the ECHR, to which Linda Fabiani referred. The sanctity of family life is the main issue and there is a question of proportion. Given that the bill envisages a compulsory arrangement involving people's houses, does the Executive have a view—I assume that it does—on whether the provisions will cause problems with regard to the ECHR?

**Alisdair McIntosh:** Our legal adviser takes the clear view that the provision complies with the ECHR. We should note that the previous system was not subject to a challenge under the ECHR. The bill institutes substantial new debtor protections.

If the committee has a specific concern with regard to a provision, we will be happy to provide a further note on it.

**Mrs McIntosh:** We spoke about mobile homes being part of the attachment under the bill, but we did not speak about domestic garages that form part of a person's home. What is the reason behind excluding the property that is kept in a garage from the protections that are set out in the bill? I have a very specific reason for asking.

**Alisdair McIntosh:** The reason is that the working group took the view that the primary concern was the protection of the house or flat itself and that domestic garages were not of the same sensitivity. Ministers shared that view and, in particular, acknowledged that, in some circumstances, garages may be used to store valuable but non-essential assets.

**Mrs McIntosh:** There could be an Aladdin's cave in a garage.

**Alisdair McIntosh:** That could be the case, particularly if a person has been engaged in commercial or trading activity. I emphasise that the bill includes an exemption for vehicles that are reasonably required by the debtor. That issue is addressed separately.

**Linda Fabiani:** I am trying to come at the bill as if it is brand new and not to compare it with anything else. If the sale of a significant proportion of a debtor's non-essential assets, which is supposed to raise £50 or 10 per cent of the debt, goes nowhere towards clearing the debt, what happens to the remainder of the debt?

**Laura Dolan:** If the enforcement procedure is not available because all the conditions have not been complied with, the procedure to which you refer could not be used. If another type of procedure could be used—for instance, if the debtor was in employment and an earnings

arrestment was appropriate—that would be open to the creditor. However, if there is no enforcement procedure that can be competently or reasonably used, there is no means of enforcement. That is why it is considered essential that there be recourse for those who want to pay their debts. Even if they have only a small proportion of money left over from any income, they should have the opportunity to pay their debts through, for example, the debt arrangement scheme.

**Linda Fabiani:** If selling someone's goods at auction is a last resort and it is deemed worth while to raise 10 per cent of the debt and that is all that is raised, what happens to the remaining 90 per cent of the debt?

**Laura Dolan:** If no other enforcement avenue can be followed, the creditor can do nothing about that.

**Linda Fabiani:** What happens if the creditor has paid for a lawyer?

**Laura Dolan:** Creditors have to judge every day whether it is worth their while to do that. A process such as that proposed in the bill encourages creditors to think about that and to decide whether it is worth while for them and others to go down such avenues.

**Linda Fabiani:** I also have a question about the role of the sheriff officer. Who will be responsible for pricing the goods before they go to auction? Will sheriff officers still have a role in warrant sales? Who will remove the moveable property from the dwelling-house? Will sheriff officers be given training under the bill to make them deal with people differently from how they have dealt with them in the past?

**Laura Dolan:** Pricing needs to be done and it is appropriate that people who are appropriately qualified and supervised do it. That leads me on to the second aspect, which concerns supervision of officers of court. If you have had the opportunity to read the consultation document "Enforcement of Civil Obligations in Scotland"—the consultation continues until July—you will know that a large part of the document addresses the subsidiary issues that have arisen in the debate about the conduct, supervision and training of officers of court. The document contains many proposals on those matters, particularly in relation to the overseeing body to which Alisdair McIntosh referred at the start of the discussion. There is considerable examination of the problems. Various complaints have been made at different stages. We are trying to get to the root of the problems and fix them. The proposals in the consultation document are intended to tackle those issues.

**Linda Fabiani:** Will the decision on the significant amount that should have to be raised before proceeding to a sale be at the discretion of the individual sheriff or do you intend to specify the amount in guidance?

**Alisdair McIntosh:** Section 47 contains a provision that a sale will go ahead if the sheriff is satisfied

"that there is a reasonable prospect that the sum recovered from an auction of the debtor's non-essential assets would be at least equal to the aggregate"

of the elements specified in the bill. The bill contains a provision that the figures may be adjusted by secondary legislation in the light of circumstances, but the amount is clear in the bill itself.

**Linda Fabiani:** Is the provision that allows the amount to be varied an acknowledgement that the figure may be silly and might have to be changed?

**Alisdair McIntosh:** Absolutely not. It is an acknowledgement of the fact that prices, incomes and economic circumstances change.

**The Convener:** I thank the witnesses for coming along and answering our questions. A number of points have been flagged up to which the witnesses have agreed to respond further. If, once they have reflected on what has been said, there are other points on which they think it would be helpful for us to have clarification, that would also be welcome.

We now move into private session to consider item 4, which is a draft response, and item 5, on our approach to the Executive's response on HMOs.

16:16

*Meeting continued in private until 16:37.*

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