

# **SOCIAL JUSTICE COMMITTEE**

Tuesday 18 June 2002  
(*Morning*)

Session 1

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## SOCIAL JUSTICE COMMITTEE

12<sup>th</sup> 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 SUBSTITUTE

Ms Sandra White (Glasgow) (SNP)

\*attended

### WITNESSES

Hugh Henry (Deputy Minister for Social Justice)

Dr Richard Simpson (Deputy Minister for Justice)

### CLERK TO THE COMMITTEE

Jim Johnston

### SENIOR ASSISTANT CLERK

Mary Dinsdale

### ASSISTANT CLERK

Craig Harper

### LOCATION

Committee Room 1



# Scottish Parliament

## Social Justice Committee

*Tuesday 18 June 2002*

*(Morning)*

[THE CONVENER *opened the meeting at 10:01*]

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

**The Convener (Johann Lamont):** I welcome everyone to this meeting of the Social Justice Committee. We have only one item of business, on the Debt Arrangement and Attachment (Scotland) Bill. I call Robert Brown to declare an interest.

**Robert Brown (Glasgow) (LD):** I want to declare my membership of the Law Society of Scotland and my consultancy with Ross Harper and Murphy solicitors.

**The Convener:** I welcome the Deputy Minister for Justice, Dr Richard Simpson, and the Deputy Minister for Social Justice, Hugh Henry, to give evidence on the bill. We will move straight to questions, but I advise the ministers that, should they wish to raise particular points, they will have an opportunity to do so at the end or in writing.

The Executive has highlighted the importance of money advice within the approach introduced by the bill and has stated that funds for front-line money advice have already been channelled to local authorities along with clear guidance on how those funds are to be used. We have had further correspondence from Hugh Henry on that matter. Why do you believe that channelling funds through local authorities is the most effective way of meeting demand?

**The Deputy Minister for Social Justice (Hugh Henry):** We need a national structure for the distribution of funds. We also need a mechanism for ensuring that the allocation, distribution and use of those funds meet local needs. We are not in a position to determine centrally how those funds might best be used in local communities. The Executive and the Parliament accept the concept of subsidiarity and the fact that the local authorities are better placed than we are to make local decisions. Local authorities should reflect local circumstances and engage with local partners in those communities. Further, we believe that that is the best way in which to get the money out quickly. That is important as there is an

urgency about the situation.

**The Convener:** How was the money distributed among the local authorities? Any money that comes from the Scottish Executive is a delicate matter, but I would like to know what criteria were used to determine how the money would be allocated to the various local authorities. How do you intend to monitor where the money goes, and which are the most effective agencies and forms of advice that are used locally?

**Hugh Henry:** We have decided to give some protection to the smaller authorities by giving them some added support. Island authorities will receive a minimum of £20,000; the other authorities will receive a minimum of £40,000.

We have also attempted to come up with a calculation to assess potential problems. We decided that the use of jobseekers allowance and income support was a useful way of doing that. There is no single way that will be perfect. By ascertaining the areas in which there is relative poverty, we should have an indication of where problems might arise, although we accept that the problem of debt is not necessarily associated with poverty.

In distributing the money across Scotland, we have used the figures for income support and jobseekers allowance. There will be a minimum guarantee of £40,000 for local authorities, with a guarantee of £20,000 for the island authorities. That will give a disproportionate benefit to some smaller authorities.

**The Convener:** How will you monitor where that money goes to ensure that it is effective locally?

**Hugh Henry:** We have asked each local authority for a breakdown on how they will use the money. On the assessment of the 19 applications that we have received so far—we had thought that there were 23, but four are not yet formal submissions—there has been a total bid of £1,355,000, of which 40 per cent is for bids that will go to the voluntary sector. We are seeking information from the local authorities to ensure that the money is used in a comprehensive way locally.

When I have talked to local authorities and voluntary sector organisations, I have made it clear that, although the Executive is not ring fencing the money, we will want to ensure that the money is used not only to good effect but appropriately. I will take a close interest in the returns that we get to see the number of staff who are employed and where, and in which organisations, those staff are employed. I will also look at the returns for the number of cases that have been dealt with and the effectiveness of that work.

A substantial investment is being made, so it is right that we should scrutinise that closely on behalf of the people whom we seek to protect. We need to ensure that those who are charged with distributing the money locally are doing so properly.

**The Convener:** Will part of the definition of effectiveness be the capacity to recover debt?

**Hugh Henry:** Effectiveness is about the number of cases that are dealt with and the number of cases in which debtors are successfully protected. We do not seek to set up a structure to enable creditors to recover money effectively from poor people. Clearly, creditors would have an interest in our doing so, but our intention is to ensure that the legitimate aspirations of those who seek to recover their money are balanced with protection for those who are clearly unable to pay. Effectiveness is not simply about the recovery of money but about ensuring that some of the most vulnerable people in our society are properly protected with good-quality advice when they most need it.

**The Convener:** Given the importance of effective money advice that allows people who engage in the process at any stage to be protected from consequences further down the line, it is obviously important that that money advice is real. How will you monitor to ensure that sufficient funds are provided for money advice services? What systems do you have to allow local organisations and local authorities to feed in quickly if there is not enough money for them to do the job that must be done if people are to be protected from action further on?

**Hugh Henry:** It must be a two-way process. We want to hear from local authorities if there are specific problems. We have come up with a figure that is based on an assessment of the needs throughout Scotland. We have looked at what is there and we have sought to inject additional investment to fill the gap.

On the issue of protecting the public purse, if local authorities ask for more money, I will want to be assured that they need it for the purposes for which they say that they need it. I will not just write a blank cheque. We will be mindful of concerns that local authorities have, and if there are perceived and proven problems in the level of demand, we will seek to respond in whatever way we can. If an injection of more resources is required, we will give that some thought. However, I want to see clearly how the investment that has been announced is being used. We will keep an open mind on any further demands that we receive, but we will monitor the situation closely to ensure that it is not seen simply as a way for local authorities to get more money out of the Executive.

**The Convener:** One of the strongest arguments that is put forward in favour of the bill is that it supports people early in the process. If they engage at all, there are great rewards for them in going through the system. However, a lot of organisations tell us—and we know about it from our own experience—about the behind-the-clock syndrome, whereby people put off addressing their debt problem until the very last minute. All the process and the protection may therefore not be used by the most vulnerable people, who may slip through the net. How does the bill seek to deal with cases in which debtors fail to face up to the problem of mounting debt before it is too late? How can we engage with people who—as the evidence that we have received suggests—do not enter the system because of fear and anxiety?

**The Deputy Minister for Justice (Dr Richard Simpson):** That is the crux of the bill. As you say, convener, it is the people who, through fear and anxiety, delay dealing with debt until the last minute who are one of the greatest concerns in the process. The object of the bill is to put in place a series of steps that must be taken by the creditors before they can get to the point of the exceptional attachment order. The process cannot reach that point rapidly.

Before creditors can go to the court, they must demonstrate that they have sent the debtor a money advice pack. That is the first step. If they have not done that, the case will not proceed to court. Even if the creditor has done that and has taken all reasonable steps to reach a negotiated settlement with the debtor, it is open to the court to ensure that a money advice pack is issued and that the services of a money adviser are offered to the debtor.

The money adviser will act as both the adviser and the advocate of the person who is in a state of fear and anxiety. The adviser will support the debtor and indicate to the court what voluntary declaration procedure could be followed through the general standing process. At every step of the way, there will be an opportunity for the individual debtor—who is either fearful and anxious or who initially says that he or she does not want to pay but might finally pay—to get advice.

**The Convener:** The financial memorandum that was issued with the bill includes consideration of various costs on local authorities, other bodies, individuals and businesses. However, it notes that many costs, as well as potential savings, cannot be quantified accurately at this stage. Are there any plans to review the financial impact of the bill on creditors—which include local authorities—in the light of experience?

**Dr Simpson:** We are considering with stakeholders the best way in which to do that. We recognise that as a valid point, but we have not

come to a conclusion on it. It is part of the consultation process in the general document on diligence that we have issued, and we are considering the costs to the creditors. Over the years, contradictory views have been expressed. For example, the Scottish Law Commission has changed its view on fees. We need to get a clear view from the stakeholders on the matter.

**The Convener:** We have heard in evidence that section 43, which provides that legal aid is not available for proceedings under parts 2 and 3, may be subject to challenge under the European convention on human rights. What is your comment on that?

**Dr Simpson:** The approach that we are adopting mirrors that taken in the Debtors (Scotland) Act 1987. Initial advice and assistance under the legal aid scheme will be available before a case comes to court. Legal aid will not be available to pay for a solicitor to appear in court. However, the bill provides for lay representation where there is a hearing—we believe that in this instance there is no need for solicitors. Both our legal advisers and the Presiding Officer's advisers take the view that the bill is ECHR compliant.

10:15

**Robert Brown:** I welcome the announcement of £500,000 for support services, which is a useful initiative.

Sources of advice include local authorities, Money Advice Scotland, citizens advice bureaux and money advisers. Does the Executive know what percentage of money advice is given by those different organisations? I accept that different groups keep records in a different way. However, presumably the Executive has had to obtain that information in order to reach a view on what it should do.

**Hugh Henry:** We do not have details for the whole of Scotland. We hope that that information will be built up as additional investment is made. The £500,000 per year of additional investment that has been announced will go to central support services, which will be provided by Money Advice Scotland and Citizens Advice Scotland working together. A significant number of projects have already been awarded to the voluntary sector.

The key is to ensure that local authorities do not see the extra money that has been made available as additional grant-aided expenditure that they can use for any purpose they wish. Responsible local authorities will not do that, but we will keep a close eye on the situation. We want to ensure that, when money is spent by local authorities or voluntary sector bodies, it is used not just for the purposes for which it is intended, but to provide the best-quality advice that people in debt need. Bad

advice can be worse than no advice. It is not acceptable to say that, just because someone works for a local authority, they are competent to give good advice. Equally, it is wrong to say that, just because someone works for a voluntary sector organisation, they are competent to give good advice.

We want standards to be driven up. We are talking to Money Advice Scotland and Citizens Advice Scotland both about the support services that money advisers need and about establishing a standard of acceptable service for money advice services throughout the country. We want to know that, if a voluntary organisation says it can provide money advice services, the quality of that advice will be good. Equally, the Executive will not demand of the voluntary sector higher standards than it would demand of local authorities. We want consistency, irrespective of where the service is delivered.

**Robert Brown:** I accept that there is a varied pattern in the provision of money advice services. However, I am surprised that you cannot even tell me whether CABx provide more money advice than the local authority sector, or vice versa. CAB statistics are available, although I accept that those do not provide information on the quality of services. I assume that statistics could also be obtained from local authorities and Money Advice Scotland. Surely that information should have been requested at an early stage, so that the Executive could reach a view on the need for and current provision of money advice services. It could then build on that provision.

**Hugh Henry:** As I explained earlier, we have chosen to distribute money through local authorities rather than directly. The Parliament believes firmly in the concept of subsidiarity. Local authorities are the democratically accountable bodies in local communities, so it is appropriate that money should be channelled through them. We find that some local authorities are passing on all the resources that we give them to CABx and other voluntary sector organisations. Where such organisations are thin on the ground, local authorities are providing money advice services themselves.

It would not be right for us to determine for all local authorities how money advice services should be provided. I am happy with the balance of the applications that have been made. That has given me some assurance, but if local authorities simply squeeze out people who are not only main service providers but good service providers, we will have questions to ask.

**Robert Brown:** My final question is about the independence of advice. We have heard evidence that council tax, and often council rents, are a heavy proportion of the debt that is being chased.

How satisfied are you that it is appropriate that local authorities should play a significant part in debt advice, given their vested interest in the recovery of sums of money to such an extent?

**Hugh Henry:** My view—Richard Simpson can complement it from a justice perspective—is that the provision of money advice over the years has developed not only in a professional way, but in an objective way. No evidence suggests that the money advice service is considered simply as a means of increasing the amount of money that is available to local authorities. If local authorities managed to collect more of the council tax that is legitimately due to them from people who can afford to pay, we would all welcome that. None of us wants the obligation to pay to be removed from people who can afford to pay.

I worked for many years in welfare rights and I did some money advice work and worked closely with money advisers when a local authority employed me. The main objective of people who are employed in those services is to represent the best interests of their clients. I never saw evidence of a local authority trying to use those staff inappropriately as a debt collection agency for the local authority. We talk about driving up standards and providing support through Money Advice Scotland and Citizens Advice Scotland. I hope that the money advice sector will consider that, to ensure that safeguards that support the staff's need to act independently are built in. If there is evidence to the contrary, we will reflect on it, but we are not aware of that problem.

**Dr Simpson:** The guidelines cover the question of providing local choice, which is also important. With the funding that my colleague Hugh Henry announced last week, we will ensure the quality standards of the money advice that is given. Councils will retain some elements of the summary warrant procedure, such as fast-tracking on arrestment, which "Enforcement of Civil Obligations in Scotland" covers in its section on earnings arrestment and action of furthcoming—I had to look up the word "furthcoming", because it does not trip off the tongue. Councils will continue to have a fairly rapid option. However, their taking that action does not obviate the necessity of their advising the debtor of the appropriateness of seeking money advice from the local advice system. The two matters are separate.

**Mr Kenneth Gibson (Glasgow) (SNP):** I note the comments that have been made, but CABx and others are concerned that effective consultation has not taken place about distribution of the additional £3 million. It has been said that, in the Deputy Minister for Health and Community Care's area of Renfrewshire, a token consultation took place and that the intention was to use the funds to enhance the council's services. Some

councils that do not provide money advice are using the resources to establish money advice, which means that, in effect, they are ignoring existing services.

Hugh Henry said that he felt that local authorities do not use their money advice centres as debt collection agencies. That is true, but one local authority made it clear to us that it thought that council tax debts should be prioritised over other debts. That set alarm bells ringing. The CABx pointed out a microcosm study to us, which was commissioned by the community legal services working group. Its research showed that when someone who is a major creditor provides the debtor with advice, the result is not always the best advice. Will you comment further on the issue of, for example, local authorities not following guidelines and setting up money advice services, while ignoring groups that already provide that type of service? Although we all agree on subsidiarity, we think that subsidiarity should also go to appropriate voluntary organisations that are providing the best possible service.

**Hugh Henry:** Yes, but we cannot have it both ways. We cannot say that we believe in subsidiarity but that we in Edinburgh will make decisions for local groups. If we were to do that, the need for local authorities would be removed. It is one thing to say that we believe in the principle but another to say we that we want to remove the practice. Sometimes the practice will throw up inconsistencies and decisions that we do not like; those should be dealt with appropriately at a local level.

I am quite clear that the Executive will be considering its investment to ensure that it is being used. Over the years, there have been indications that sometimes money was not spent appropriately in areas such as community care or education. That is clearly something that the Executive should examine.

I cannot comment on whether some local authorities are choosing to set up services from scratch when other organisations are better placed to provide those services. That would be a matter of concern, but I am not sure that the solution would be for the Executive to tell local authorities how to develop their advice services. If we think that the £3 million that we are investing is not having the desired effect, we will go back to the local authorities and the voluntary sector and we will reflect on whether changes should be made in future. However, at the moment, the concern is to get the required number of money advice workers into post. We are trying to do something significant in a short space of time, and we know that there are risks involved. Trying to identify, recruit and train the right staff will cause problems. I hope that local authorities will respond positively and I have no evidence to the contrary at the moment.



**Mr Gibson:** The concern is not that organisations such as Citizens Advice Scotland want to tell local authorities what to do. The concern is that there is a lack of consultation in some local authorities. That is not true across the board; for example, Citizens Advice Scotland has said that some councils have fully involved the voluntary sector providers of money advice in drawing up plans for delivering additional money advice services. However, if we are to get the best possible results on the ground, surely the Executive wants to ensure that there is full consultation at local authority level and that guidance and guidelines are followed locally, so that that money can deliver the best possible outcome.

**Hugh Henry:** That is what we have done and I am not aware of local authorities not consulting. If there is any evidence to suggest that specific local authorities have failed to consult then, by all means, let us know.

**Mr Gibson:** I would be happy to supply that information.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** I will move to part 1 of the bill, which is about debt arrangement schemes. Some witnesses have raised concerns about how a national debt arrangement scheme might work. There are concerns about the complexity of any scheme and how it would affect existing debt collection arrangements. I know that the Executive is still consulting on that, but do you have information on how a scheme might work?

**Dr Simpson:** One of your points is about the complexity of the scheme. We obviously want there to be as little bureaucracy attached to it as possible. The scheme should be as practical and effective as possible. The work that is being done by the division of the development department that deals with social justice reflects the aim of ensuring that the schemes are as simple as possible. However, we are still consulting on the best way to achieve that, so we will keep the Parliament advised as matters progress.

Your second point is about whether voluntary schemes that already exist would be affected. Our view is that voluntary schemes should be built on and should not be destroyed, particularly where they are effective. In evidence to the committee, Dundee City Council asked whether the systems that it had in place—which it thought to be effective—would be destroyed or overtaken by some complex system. The answer to that question is no. Provided that the council is the sole creditor, the arrangements that it has put in place for the collection of council tax or rents, for example, would proceed in the same way. They would not be destroyed. If a creditor and a debtor reach a voluntary arrangement with which both are

comfortable, that is fine. The scheme will come into existence only if multiple creditors or a creditor and a debtor cannot reach a voluntary agreement on how to proceed.

10:30

**Cathie Craigie:** There is concern that if multiple debts and therefore multiple creditors are involved, a scheme could become very slow and bureaucratic. Do you have any thoughts about time scales for setting the scheme in motion?

**Dr Simpson:** Elements in the guidance and regulations will indicate time frames—that is, times by which all creditors can request to have their debts included in the scheme. On the whole, the scheme will be relatively simple, as the debtor will simply make a payment to the administrative organisation. That organisation will then pass any funds that are gathered through the system to all the creditors. The connection between creditors and debtors will be through an organisation. We think that that will be highly beneficial, as it will protect the debtor.

A fundamental of the bill is that it aims to protect the debtor from an attack by a single predatory creditor. Currently, a single creditor can rapidly go for an enforcement order but, under the new system, all creditors must take part in the debt arrangement scheme. If they do not, they can seek a variation at a later point, but they cannot go for rapid enforcement. The whole point is that they must go into the debt arrangement scheme.

**Cathie Craigie:** How local will the organisation be that will collect debts? I think that Money Advice Scotland raised concerns with the committee about people who have multiple debts and asked whether they would have to send off payments through the post office. The costs of making payments could be a disincentive to paying debts. How accessible and local will the organisation be?

**Dr Simpson:** The scheme will be a national scheme and there will be a national organisation. However, I understand that we will try to work with local money advisers and a local money advice system. Connections are important and need to be stressed. If a payment is missed—which will occur—both the debtor, who will obviously know that they have missed a payment, and the money adviser will be advised, so there will need to be effective local connectedness. The details of that need to be worked out, but that is the bill's intention and an important element of it.

**Cathie Craigie:** Is it intended that the debt will be paid locally?

**Dr Simpson:** It must be. People should not have to come to Edinburgh or go to Glasgow—

depending on where the national organisation will be—to pay a debt. Mechanisms will have to be in place for contributions to be made in a way that suits debtors. Many people will not have account systems or bank accounts. More than 200,000 bank accounts have been opened since we started to encourage people to manage their finances in a different way, but there is a long way to go. We must consider credit unions and post offices, for example, and work out the most effective methods by which debtors can pay. However, the scheme must be local.

**Cathie Craigie:** When will we know how that will work?

**Dr Simpson:** I cannot give you an exact date, but we will publish the terms once we get the scheme in place. We need to get the whole of the scheme in position before we embark on it. Part of that involves determining how people can pay their debts locally.

**Cathie Craigie:** One issue that has concerned local authorities in particular is the collection of council tax debts. Is there a case for treating local authority debt differently, given that local authority services, by their very nature, cannot be withdrawn?

**Dr Simpson:** We are currently consulting on the priority that could be given to different types of debt. As I said in answer to a question from Robert Brown, local authorities have the opportunity to use the summary warrant procedure, which is not open to other creditors. Local authorities already have an advantage in that respect. I reiterate that we are consulting on whether there should be a hierarchy of debt.

**Karen Whitefield (Airdrie and Shotts) (Lab):** Witnesses have told us that although they think that the bill has much merit and they welcome the introduction of a national debt arrangement scheme, they have some concerns that the scheme will need to be fully in place. They seek assurance that it will work, which will mean that people will be encouraged to participate in it. Can you provide that reassurance?

You mentioned that the money adviser would be advised if somebody did not make a payment. Would there be a conflict of interest there? You may want someone to come forward and genuinely engage in the process of sorting out their debt problems, but people often bury their heads in the sand and do not want to face up to their responsibility. When they do so, they need to believe that they can place their trust in the money adviser. If they believe that that person will constantly be checking up on them and advising them that they have defaulted, that trust will not develop. If there were such a conflict of interest, would the Executive be willing to consider allowing

somebody else to take on the enforcement role?

**Dr Simpson:** We want the scheme to be up and running as soon as is practically possible once the bill is enacted, and we will do everything in our power to achieve that. We do not want there to be a gap. We want to take proper account of the views of stakeholders that have been expressed in response to consultation. Clearly, until the bill comes into force, we cannot impose regulations under its provisions. I realise that that is not as clear an answer as you are seeking, but our endeavour will be to ensure that the schemes are in place. They are central to the effective operation of the bill.

I know that the question whether the money adviser will also act as policeman has been raised repeatedly in evidence. There is some confusion surrounding the legal terminology of the bill, for example when it mentions that the money adviser's role is

“to monitor the compliance by the debtor”.

The entire thrust of the bill is that the money adviser should be the debtor's advocate, not the creditor's advocate. Indeed, if the court wishes further information, it can, under certain circumstances, appoint a separate money adviser or person accredited to be involved in money advice to carry out some monitoring. However, the expectation is that there will be voluntary compliance. The provision of reporting failure to make payments is intended to allow the money adviser to seek a variation on the debt if that is appropriate.

I have an example of someone in my constituency who was involved in a voluntary arrangement under the present scheme. Her child's shoes were lost when she was away swimming and she suddenly had to find £30 to replace those shoes. The voluntary scheme allowed for a suspension of payments for about four weeks until she was in a position to start repaying again. That is the sort of thing that would happen under the scheme.

Obviously, there would be many examples, such as bereavement or change of circumstances. There are all sorts of reasons why, despite the best will in the world, debtors cannot meet the required regular payments. The money adviser's close relationship must be maintained in such a situation. The debtors must be advised because otherwise we might get the situation in which the debtor buries their head in the sand again. I have seen that happen. The debtor says, “I will just hold off until they come at me. I can't manage this any more.” The money adviser should be in there quickly to say, “Look, you don't need to get alarmed about this. We can seek a variation, if we need to, which would allow us to continue with

payments.”

**Karen Whitefield:** But there is a distinction between the money adviser being the person who tells the debtor that they can seek a variation and their being the person who enforces the agreed payments. That is a fundamental difference. The issue is about building the trust and confidence that would allow a person to say, for example, that they need to buy new shoes for their children but have not budgeted for that, or that their child has lost a school blazer, or that something else has happened unexpectedly. That kind of thing happens to us all, but if a person is in debt and has a limited income, most of which is spoken for, the problem is compounded. There must be a distinction between the roles of enforcing and supporting.

**Dr Simpson:** Absolutely. I feel strongly that if we started using money advisers in an enforcing role, we would seriously damage the whole thrust of the bill, so your point is correct.

**Hugh Henry:** I emphasise that getting in touch with debtors is not about enforcement; it is about, as Richard Simpson said, ensuring that when someone has a particular problem there is the potential for variation. We are clear that the money adviser's role will be to act as an advocate to protect the interests of the person who has the problem. The money adviser's role will not be to enforce the debt for the creditor.

**Mr Gibson:** Significant details of the scheme are being considered as part of the wider review of the law of diligence. The bill gives ministers extensive powers to make further provision for debt payment programmes by regulation. During our consideration of the bill, will you be able to provide the committee with more information about how you intend to use those powers to complete the detail of the scheme?

**Dr Simpson:** Yes. It is a given that we will keep the committee and the Parliament informed of our intentions once we have considered the responses to the consultation exercise. We will have to seek Parliament's approval of the detailed regulations once the bill is approved.

**Cathie Craigie:** On the debt arrangement scheme, can you give us any evidence about how similar schemes have worked in other countries?

**Dr Simpson:** I cannot give you evidence from other countries, but we have good evidence of voluntary schemes in Scotland that are working well. We feel that it is appropriate to build on that Scottish practice. We know that the administrative orders in England—which were the attempt down there to deal with the matter—have given rise to problems. England is revising its scheme because it has run into difficulties. However, we believe that building on the voluntary schemes here, on which

we have taken evidence and which have worked well, is the way to proceed. We feel positively about how we have introduced the scheme.

**Mr Gibson:** Some measures that are designed to assist debtors, on which you commented, have not always been widely used in the past. Do you have plans to monitor the use of the debt arrangement scheme to check whether it is being used in appropriate cases?

**Dr Simpson:** We will monitor all the bill's provisions, as we would with any new bill. Again, it is evident from earlier bills that, where there are problems, the new democracy operates by MSPs being asked by their constituents to take the problems into account. The MSPs will indicate to Parliament and the Executive whether things are not working.

**Robert Brown:** I want to stick with the business of the gap between the bill coming into force on 30 December and the implementation of the scheme. I assume that 31 December must be a non-day in legal terms for some unknown reason that I cannot imagine. However, there is a concern that there will be an indefinite period between the enactment of the bill and the implementation of the debt arrangement scheme. What time scales are you working towards and what will the situation be in the meantime?

**Dr Simpson:** I will consult my officials for a moment.

As I said in answer to an earlier question, I cannot give you a definite answer. We intend to do all that we can to bring things in as quickly as possible. We should send out the message that the intention of the coming legislation is to build on the voluntary schemes. Therefore, voluntary schemes should be started, even though the bill has yet to be enacted.

10:45

**Robert Brown:** The committee accepts that there will be difficulties but it would be helpful to have some guidance. Are you talking about three months, nine months or three years? Can you give us a broad perspective? The Executive must have a target date.

**Dr Simpson:** We would like to be able to do it in three months, but I am very hesitant to give you a guarantee on that. However, it will be three months rather than nine months or—what was the other one? Years? I cannot remember; I did not even pick it up. It will be the shortest time that we can manage.

**Robert Brown:** Do you expect any problems in the skewing of the bill towards the interests of the creditor in the period before the new provisions come in?

**Dr Simpson:** No. If there were a gap beyond the end of the year, some of the protections in the bill would come into place. The exceptional attachment orders have additional protections for debtors and, if they were to come in first, they would be better than what we have at present. Any movement will be to the advantage of the debtor, not the creditor.

**Karen Whitefield:** It has been suggested by some people who have given evidence to the committee, and by press commentators, that parts 2 and 3 of the bill are no different from poindings and warrant sales. How do the ministers respond to that allegation?

**Dr Simpson:** Quite a number of things are different. First, specific application has to be made to the court, so no individual creditor can go through the process in a predatory way. Secondly, notification has to be made to the debtor at least three weeks before a hearing can be scheduled. We have heard evidence of people being taken into court rapidly without having been aware that that was going to happen, but there will now be a good length of time before a debtor is taken to court. Thirdly, there is the provision of a free information and advice pack to the debtor. Before going to court, the creditor is required to have demonstrated that they have given the pack to the debtor. Fourthly, the debtor has the opportunity to seek help from a money adviser, to try to negotiate a settlement. That builds on the present voluntary schemes, because offering that opportunity will be mandatory.

A debtor who wishes to pay their debt, even if they will find it very difficult, will have the opportunity to submit a voluntary declaration of financial circumstances. They can either draw that up themselves or do so with the assistance of a money adviser.

A debtor will have the option of having lay representation in court and the creditor must demonstrate that he or she has sought to negotiate a settlement and has made every reasonable attempt to secure payments by other means. It must also be taken into account whether the debtor has non-essential assets that could reasonably be sold to realise at least a significant proportion of the debt. We feel that all those provisions are quite different from what exists at present.

At court, the sheriff has to take account of whether the debtor has received advice. The sheriff may not proceed without having ensured that that opportunity has been offered. The financial circumstances of the debtor, the nature of the debtor, whether the debtor conducts a business from his or her home, and whether there has been any previous debt arrangement are all factors that have to be taken into account. The

sheriff then has a number of options, including deferring judgment to allow the provision of further money advice and to allow further negotiation. The sheriff can order a visit from a money adviser. As we have already discussed, that adviser would be different from any money adviser that the client had appointed—unless the client is comfortable with keeping the same money adviser.

The sheriff can refuse the application if not all the conditions have been satisfied. In exceptional circumstances, the sheriff can grant the application but place severe restrictions on the assets that may be taken, when they may be taken and how they may be taken. Furthermore, there will be a limited appeal for the debtor thereafter. Therefore, to even suggest that the proposed arrangements are similar to what exists at present is to misconstrue both the intentions of the Executive and the purpose of the bill.

**Karen Whitefield:** I am grateful for that response. However, some people who support the proposals still have concerns about the operation of exceptional attachment orders. The Scottish Association of Law Centres and the Legal Services Agency Ltd have suggested to the committee that exceptional attachment orders will not be exceptional enough. What is the Executive's view of that suggestion? Will you be willing to consider amendments to the bill in relation to that issue? Last week, the Scottish Consumer Council suggested that judicial training should be available to sheriffs to ensure that what is considered to be reasonable is implemented fairly throughout Scotland, regardless of the sheriff. What is your view on that?

**Dr Simpson:** As I have said, the bill sets out clearly the factors that the sheriff has to take into account. We believe that, before the exceptional attachment order can be made, there is a high hurdle for the creditor to negotiate.

We are confident that sheriffs will apply the law correctly. Training is important, but it is a matter for the Judicial Studies Committee. We have told that body that we are willing to become involved in providing education for sheriffs; I hope that our offer will be accepted. We are offering all the assistance that we can to ensure that sheriffs follow the best possible practice.

**Karen Whitefield:** Before granting an exceptional attachment order, a sheriff must be satisfied that the money that will be realised by auction of a debtor's property will reduce the debt by at least 10 per cent or £50. It has been suggested to us that that figure is too low. Is the Executive willing to consider that view or do you believe that that is the correct threshold?

**Dr Simpson:** The figure was recommended to us by the Scottish Law Commission, which felt that

that was a reasonable level. Section 47(2) of the bill says that Scottish ministers may by order modify section 47(1)(c), which is the part of the bill that sets the level to which Karen Whitefield refers,

“by substituting—

(a) for the percentage for the time being specified in subparagraph (ii) of that provision such other percentage;

(b) for the sum for the time being specified in that subparagraph such other sum, as appears to them to be appropriate.”

The level is a starting point. It will not be uprated annually but, on the basis of experience and the monitoring arrangements to which Hugh Henry and I have referred, there will be an opportunity to vary the amount if appropriate.

**Karen Whitefield:** In an attempt to protect the poorest debtors, the Legal Services Agency and others have argued that some individuals who are on income support, working families tax credit, jobseekers allowance or incapacity benefit and are claiming housing benefit or council tax benefit should be automatically exempted by the sheriff from having an exceptional attachment order granted against them. Such people have not got into debt by spending money for the sake of it, but through the harsh reality of living on a limited income. Would the Executive be willing to consider that suggestion?

**Dr Simpson:** I do not need to tell the committee about the complexity of the benefits system. It is possible to receive benefits while earning up to £50,000. It did not seem to us that the benefits system was the fairest arbiter of exemption from attachment orders. Use of the system would be arbitrary: which benefits would include or exclude individuals? A significant number of people on benefits would be included, but others who were in receipt of certain benefits but who had other income would not.

As of November 2001, 420,700 people in Scotland were claiming income support. Not all those people would fall into the “can’t pay” category, nor would they wish to. Many people do not claim the benefits to which they are entitled and we are all also concerned about that group. The exceptional attachment order is designed to allow a sheriff to take individual circumstances into account. We believe that that is the best way to proceed and we will monitor progress.

It has been suggested that the banding on council tax might be a way in which to deal with entry into the system, but that approach would also be arbitrary. People in very low council-tax banding can have reasonable incomes and, by the same token, former patients of mine who lived in relatively high-banded family houses were elderly, rather poor widows. However, if sheriffs are required to take individual circumstances into

account, the focus will be on the individual, as it should be.

**The Convener:** It strikes me that the enforcement process is clear, but the process by which a person can avoid the enforcement process is less clear. Unless the Executive puts in place support to people who come into the system, it could be said that the Executive has got right the bits that are in the interests of the creditor, but it is still sorting out the bits that are in the interests of the debtor. Could that charge be levied at the Executive?

**Dr Simpson:** No, although the committee might have received evidence to the contrary. Creditors could say that a lot of protection has been put in place for debtors and that that has slowed down the process to a degree that some creditors might find difficult.

I understand the convener’s concern about individuals who, throughout the process, might bury their heads in the sand; those who neither turn up at court nor accept money advice. However, at the end of the day, those individuals have to be assessed. The thrust of the bill is to provide for those who are prepared to participate at any stage in the process. The bill provides for those who take the opportunity to get into voluntary arrangements.

**The Convener:** My concern is twofold. First, the minister said that people could seek advice and that they would have an information pack. Anxiety has been expressed about the extent to which somebody who is already distressed or stressed could absorb the information in the pack. Can provision be made so that, rather than having to seek advice, people can be offered it? I seek reassurance that people will be given help to work through the pack.

Secondly, will the minister reassure us that when people get into an arrangement, it will be manageable? Will the arrangement allow a person to pay their debt? The arrangement needs to include somewhere local that is convenient—a pay point, as suggested by Money Advice Scotland—that is not off-putting, because that bit of the arrangement must be facilitated quickly.

**Dr Simpson:** I accept that point. We are addressing that concern in two different ways. First, information in the information pack will direct debtors to local money advice arrangements, which gives them the opportunity voluntarily to seek advice. Secondly, if the debtor does not take up that opportunity, the sheriff can tell them about the accredited money advisers in the area and say that they should now get involved with one of those advisers.

The system is not based on a written instruction that contains advice; the process has a second

phase. The convener rightly says that, from the viewpoint of supporting the debtor, we need to get the money advisers in there.

**The Convener:** It strikes me that the system needs to be proactive—a pack is, after all, a pack. How is the information pack made into something that people believe will help them? Where is the person behind the pack? How can people be made aware that, behind the pack, there is a helpful person?

**Dr Simpson:** It will be important to work with the money advice sector and with those who give money advice locally to see how we can promote the pack. At the end of the day, we do not want anybody to go to court; we want people voluntarily to take advice. Everything that we are doing is pushing people towards that voluntary advice, rather than towards the legal solutions. It is important to see the situation in that context. We will work with local money advice people to achieve that.

11:00

**Hugh Henry:** It is also fair to say that for those who slip through the system—people inevitably will—creditors will not be able to use the court system without reference to what we are putting in place. There is a degree of protection even for those who, for whatever reason, do not make any contact.

**The Convener:** There is anxiety that although the pack might appear to be helpful, unless it is made real to people who receive it by way of proactive work, it will be tokenistic.

**Hugh Henry:** The pack, in itself, would be meaningless. It should be backed up by good quality money advice that should be available throughout the country.

**Mr Gibson:** Many of the concerns about the bill relate to exceptional attachment orders. For example, last week, Money Advice Scotland suggested that exceptional attachment orders were a bigger threat than were poindings and warrant sales,

“because the period for the removal of goods is shorter.”

A representative of the Institute of Credit Management said that

“the acceleration in relation to sheriffs' ability to take goods” is the main cause for concern, and that

“the Debtors (Scotland) Act 1987 contained all sorts of protections that will not exist under the bill.”—[*Official Report, Social Justice Committee*, 12 June 2002; c 3022.]

Furthermore, Citizens Advice Scotland took the view that the bill would not be fatally flawed if exceptional attachment orders were removed from it. The Scottish sheriff court users group said that

exceptional attachment orders should be removed from the bill insofar as they relate to consumer credit.

I would like the ministers to comment on those views, because exceptional attachment orders will be focused on as the bill progresses. It would be unfortunate if the debate about the orders obscured the good points in the bill, given that so many people feel that the orders are not necessary. How necessary do you think they are to the working of the bill? How would you address the concerns that have been raised?

**Dr Simpson:** First, the position that was stated by a representative of Money Advice Scotland in evidence to this committee was not the position of Money Advice Scotland. The ICM was represented on the working group and supported the approach that we are taking.

It would be extremely dangerous to drop exceptional attachment orders, because to do so would create a major loophole and encourage abuse. It would send out to the small number of individuals who can, but do not, pay their debts a clear signal that they can avoid doing so. It would encourage a non-payment culture.

Worse than that, people who respectably offer credit would stop offering credit to many people, and the problem with loan sharks would increase substantially. There has to be—the working party was clear about this—some form of final attachment order. It is important to ensure that use of such orders is exceptional and to ensure that the hurdles are high. The representations that have been made by certain people on the abolition of exceptional attachment orders are inappropriate.

**Mr Gibson:** It is obviously of concern if witnesses come here and do not represent the views of their organisations. The Institute of Credit Management inferred that there would be no impact on people's ability to gain credit. What about acceleration, which was of particular concern?

**Dr Simpson:** There is no acceleration. The new procedure gives debtors information and advice and it gives them time and the opportunity to get the help of money advisers in seeking negotiated settlements. All the points that I have rehearsed with the committee are steps that must be gone through. I do not see how the process can be viewed as being accelerated. I stress again that at the moment, a single creditor can go for an enforcement order quickly. Under the new system, that will simply not be possible. The creditor will have to come to the court and the court will have to go through a number of procedures, so it will not be an accelerated process by any means—it will be a step-by-step approach.

Those who wish to pay, or who wish to attempt to pay, will be given every opportunity to do so, right down the line. Those who cannot pay will be protected, which was the Parliament's main objective in its vote 18 months ago. We are putting in place measures that protect the debtor. That is the purpose of the bill.

**Mr Gibson:** Could the bill be amended to clarify the comments that you have made? The evidence that we received from the Scottish Association of Law Centres seemed to express the same view—that the period of removal of goods will be shorter. The bill does not seem to make it clear that that would be the case. Most people appear to take the opposite view on how the bill would work to the one that you have just expressed.

**Dr Simpson:** The detailed process of taking evidence through which the committee is going is important and we look forward to receiving the committee's considered views. If the committee decides to propose workable suggestions that retain the balance, we will consider them favourably. "Striking the Balance" was the title of the working group's report on a replacement for poindings and warrant sales—there must be a balance. Providing that the amendments that are lodged retain that balance and do not create loopholes that damage the prospects of the people whom we all seek to protect, we will look at such amendments with considerable favour.

**Mrs Lyndsay McIntosh (Central Scotland) (Con):** That a balance must be struck was the essence of your previous comments. "Striking the Balance" recommended that the Executive should give further consideration to use by local authorities of summary warrant procedure. I am prompted by the response that you gave to Karen Whitefield's question, in which you said that local authorities already have an advantage. Will you outline the Executive's thinking on the issue? Is it your intention to keep that added advantage for local authorities?

**Dr Simpson:** That issue is a matter for the Minister for Finance and Public Services. It is being acted on as a follow-up to "It Pays to Pay – improving council tax collection in Scotland" and we will provide further information to the committee in writing, if members would find that helpful.

**Mrs McIntosh:** I am sure that we would all welcome that.

During our evidence-taking sessions, some people have suggested that the requirement to serve a debtor with a formal charge for payment should be a necessary step before any attachment. That was certainly the evidence of the Society of Messengers-at-Arms and Sheriff Officers. Is that necessary or is an attachment

under summary warrant procedure appropriate without a charge for payment?

**Dr Simpson:** We must be clear that it will not be possible for anyone to carry out attachment in domestic cases without first seeking and obtaining an exceptional attachment order by way of the new procedure. Therefore, it is misleading to talk about attachment under summary warrant procedure.

**Mrs McIntosh:** Some people would portray the Society of Messengers-at-Arms and Sheriff Officers as a body that is despised in the exercise of its normal role. The society regards its role as being to help in difficult situations—it would be loth to be there on the doorstep lifting goods yet again. The society wants to avoid that.

**Dr Simpson:** We are consulting on charges in relation to the process. The important thing is that separate enforcement by a separate attachment will not be possible. We are consulting on the charges that are related to the process.

**Mrs McIntosh:** I am sure that the SMASO will make a response.

**Cathie Craigie:** We have taken evidence from the Scottish sheriff court users group, the Scottish Association of Law Centres and from money advice organisations. All have told us that much of the debt on which people come to their organisations for advice relates to local authorities. Quite a substantial part of that debt is in relation to water and sewerage charges. I do not know whether the ministers will be able to comment, but the committee has received the suggestion that there should be the opportunity for rebate, relief or assistance—whatever one calls it—for poor people who still have to pay water and sewerage charges. If such relief were available, it would take out of debt a considerable number of people who are unable to pay. Where does the responsibility for that lie and does the Executive have any plans to consider the matter in detail?

**Dr Simpson:** If I understand the question correctly, the reply is that excluding from enforcement those who have water and sewerage charge debts would be unworkable and unreasonable. It would not be a measured or appropriate way in which to give protection to those who need it. The appropriate level of rebate is a matter for consideration by ministers whose responsibilities include local government and water.

**Cathie Craigie:** Perhaps you could pass it on to your colleagues that the committee and voluntary organisations have suggested such rebates as a serious way of helping people out of debt and poverty.

The Scottish Association of Law Centres and the

Legal Services Agency Ltd expressed concern about part 1 of the bill, section 2 of which gives Scottish ministers the power to approve debt payment programmes. Their evidence was that that power was unnecessary and that ministers should not have that responsibility. Although the bill contains provision for some other body or organisation to approve debt payment programmes on behalf of the Scottish ministers, the Scottish Association of Law Centres and the Legal Services Agency believe that that should be a judicial role. They called on the committee to lodge some intelligent amendments, including one to give to the judiciary the power to approve such programmes. Have the ministers had an opportunity to consider that evidence?

**Dr Simpson:** We will need to consider the matter in more detail. However, we know that some misunderstandings about the role of ministers have been reported in the newspapers. The detailed roles of the debt arrangement scheme will be set out in the legislation. Beyond that, ministers will have nothing to do with the operation of the scheme or with the registration of individual cases. It is proposed that those will be dealt with by an administrative body and that disputed, complex cases will be remitted back to the sheriff.

The Executive is consulting on that in “Enforcement of Civil Obligations in Scotland”, to which I referred earlier. The bill gives ministers responsibility for the scheme, with the power to transfer that function to an appropriate body, which will be determined through consultation. The proposal on which we are consulting is that a Scottish civil enforcement commission should carry out that function and other functions that do not directly concern the debt arrangement scheme. In the interim, it will be necessary to set up a small unit attached to the Executive to perform the proposed commission’s largely administrative functions.

Although ministers will be ultimately responsible—as they must be—they will not be involved in individual cases or even in the process, which will be managed separately. From the reports that we have seen, we believe that there has been a misunderstanding. However, we will consider your point about judicial review as opposed to ministerial review. We have not seen the evidence in detail yet.

**The Convener:** Why must ministers be ultimately responsible?

**Dr Simpson:** Ministers will be responsible in the same way as they are in the case of other bodies that operate on behalf of the Parliament or Executive. It is the same form; it is a statutory scheme. Ministers must be able to respond to questioning from parliamentary committees on

whether the statutory scheme that they have put in place is effective. They will not, however, be engaged in individual cases—that is important.

**The Convener:** Ministers would be ultimately responsible for the process rather than for what comes out of the process.

**Dr Simpson:** That is correct.

**The Convener:** That is where the anxiety lay.

There are no more questions from the committee, so I thank Hugh Henry and Dr Richard Simpson for attending. I also thank the officials who attended with them.

*Meeting closed at 11:13.*



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