

# **ENTERPRISE AND CULTURE COMMITTEE**

Tuesday 6 December 2005

Session 2

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# CONTENTS

Tuesday 6 December 2005

	Col.
ITEMS IN PRIVATE.....	2515
ST ANDREW'S DAY BANK HOLIDAY (SCOTLAND) BILL: STAGE 1 .....	2516
BANKRUPTCY AND DILIGENCE ETC (SCOTLAND) BILL: STAGE 1 .....	2537

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## ENTERPRISE AND CULTURE COMMITTEE

### 26<sup>th</sup> Meeting 2005, Session 2

#### CONVENER

\*Alex Neil (Central Scotland) (SNP)

#### DEPUTY CONVENER

\*Christine May (Central Fife) (Lab)

#### COMMITTEE MEMBERS

\*Shiona Baird (North East Scotland) (Green)  
\*Richard Baker (North East Scotland) (Lab)  
\*Susan Deacon (Edinburgh East and Musselburgh) (Lab)  
\*Murdo Fraser (Mid Scotland and Fife) (Con)  
\*Karen Gillon (Clydesdale) (Lab)  
\*Michael Matheson (Central Scotland) (SNP)  
\*Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

#### COMMITTEE SUBSTITUTES

Mark Ballard (Lothians) (Green)  
Donald Gorrie (Central Scotland) (LD)  
Fiona Hyslop (Lothians) (SNP)  
Margaret Jamieson (Kilmarnock and Loudoun) (Lab)  
Mr Brian Monteith (Mid Scotland and Fife) (Con)

\*attended

#### THE FOLLOWING ALSO ATTENDED:

Dennis Canavan (Falkirk West) (Ind)

#### THE FOLLOWING GAVE EVIDENCE:

Paul Cackette (Scottish Executive Justice Department)  
Andy Crawley (Scottish Executive Justice Department)  
Ian Donaldson (Scottish Executive Finance and Central Services Department)  
Beverley Francis (Scottish Executive Justice Department)  
Joyce Lugton (Scottish Executive Justice Department)  
Mr Tom McCabe (Minister for Finance and Public Service Reform)  
Jane McLeod (Scottish Executive Legal and Parliamentary Services)

#### CLERK TO THE COMMITTEE

Stephen Imrie

#### SENIOR ASSISTANT CLERK

Douglas Thornton

#### ASSISTANT CLERK

Seán Wixted

#### LOCATION

Committee Room 1



## Scottish Parliament

### Enterprise and Culture Committee

*Tuesday 6 December 2005*

[THE CONVENER *opened the meeting at 14:00*]

### Items in Private

**The Convener (Alex Neil):** It is 2 o'clock and we have a quorum, so we will start the meeting. Welcome to the 26<sup>th</sup> meeting in 2005 of the Enterprise and Culture Committee.

Item 1 is to consider whether to take item 6 today and the item on our approach to our report on our business growth inquiry at the meeting on 13 December in private. Do members agree that those items should be considered in private?

**Members** *indicated agreement.*

## St Andrew's Day Bank Holiday (Scotland) Bill: Stage 1

14:00

**The Convener:** Item 2 is stage 1 of the St Andrew's Day Bank Holiday (Scotland) Bill. I welcome to the meeting Dennis Canavan, who is joining us for items 2 and 3. I also welcome the Minister for Finance and Public Sector Reform, Tom McCabe. I will let the minister introduce his colleagues and make a few introductory remarks.

**The Minister for Finance and Public Service Reform (Mr Tom McCabe):** Good afternoon.

I welcome the opportunity to come to the meeting to present to members the Scottish Executive's position on the St Andrew's Day Bank Holiday (Scotland) Bill and our views on how we should celebrate our national day. I am accompanied by Judy Torrance, Jane McLeod and Ian Donaldson.

I begin by emphasising that the Executive is committed to celebrating our national day and that we are by no means opposed in principle to Scottish employers recognising that day by giving their employees a holiday. Celebrations on St Andrew's day are growing and the Executive, the committee and the Parliament would all, I am sure, welcome and encourage that.

The First Minister has shown his personal commitment to enhancing the celebration of our national day. This year's activities under the theme of one Scotland, many cultures have demonstrated that progress has been made. Members know that we hosted the one Scotland ceilidh in Edinburgh's old town, for example, which attracted around 4,000 people and was opened by the Minister for Communities. The event drew on Scotland's strong traditions in music, but reflected our increasing cultural diversity. A number of international guests attended the pre-ceilidh reception at the Hub, including people from the international media and fresh talent scholars who are currently studying in Scotland.

The committee will also know that Scottish ministers have been involved in a number of events in Scotland and Brussels. The First Minister attended the Glenfiddich awards ceremony at Prestonfield House and the Minister for Tourism, Culture and Sport attended a St Andrew's day event at the University of Glasgow's Crichton campus in Dumfries, at which Scottish songwriters performed. The Minister for Communities attended a race equality champions lunchtime event in the Parliament and, with the Minister for Education and Young People, attended an evening reception in the garden lobby

that was hosted by the Scottish Inter Faith Council. I attended the St Andrew's day lecture in Brussels and the Minister for Environment and Rural Development hosted a taste of Scotland evening reception in Brussels the following evening. It is important to stress that the Executive sees such activities as being catalysts for other organisations throughout Scotland to get involved and to organise events to mark St Andrew's day.

Last month, I wrote to all 32 Scottish local authorities to ask for their views on the one Scotland message. I received around 20 replies, which were published on our website on St Andrew's day. I understand that South Lanarkshire Council hosted a successful St Andrew's night in Rutherglen town hall.

The First Minister sent a St Andrew's day message to people in all 272 Foreign and Commonwealth Office posts overseas, which was read out at many St Andrew's day events and was published in some local newspapers. We also wrote to all embassies to offer promotional material for St Andrew's day events that they were hosting. We had 59 requests from across the world for Scotland in a box promotional material to support various St Andrew's day activities—we have examples of that material with us if members want to see what it comprises. Some 41 of those events were organised or supported by the Foreign and Commonwealth Office.

This year has therefore taken us further and we are committed to building on the events that we have held this year, to bringing forward other ideas and to making resources available where doing so is necessary. I would very much like to work with this committee and others on considering ways in which we can collaborate further to celebrate our national day.

That is a pretty comprehensive account of where we were, how we built up to this year's activities and what happened on St Andrew's day both at home and abroad.

I turn my attention to the St Andrew's Day (Scotland) Bill. During the stage 1 debate, I said in my speech and in the Executive's amendment that there are two important principles that we think should underpin the Parliament's legislative work. First, we should legislate only when it is necessary to do so and, secondly, we should be able to give such legislation practical effect. I believe that concern about meeting those important tests led the Parliament to vote to return the bill to the committee.

The bill's only direct legal effect would be to suspend financial and other dealings on St Andrew's day. In effect, that would allow banks to close, although it would not compel them to do so,

and would remove the possibility of penalties for delayed payments caused by such closures.

There is no legal concept of a mandatory public holiday in Scotland. Holidays are a contractual matter between employers and employees.

My concern about not being able to give practical effect to the bill is that if we add a day to the list in the Banking and Financial Dealings Act 1971, we cannot force the banks to acknowledge that day, and even if they do so, we cannot force anyone else to do so. What worries us is that we would raise public expectation of a new national public holiday, yet neither the legislation nor the Parliament's powers can bring that about.

However, the committee and the Parliament might feel that there is justification in trying to encourage a holiday on St Andrew's day. As the committee concludes its stage 1 report, which it will now consider as a result of deliberations today and perhaps on other days, it might wish to investigate whether anything further needs to be done to encourage a move in that direction.

The committee might also feel that there is a case for an additional holiday and might wish to investigate what the various consequences might be in terms of cost, service disruption or indeed the beneficial effects of such a holiday. Equally, the committee might wish to consider what could be done to encourage employers to consider swapping an existing holiday for one on St Andrew's day, as they are currently at liberty to do without any intervention from the Parliament. The Scottish Executive would be very happy to consider the committee's recommendations that might emerge from any rigorous examination of the variety of options that are available.

Having said all that, I stress strongly that in offering those thoughts we are trying to be helpful and to find a way forward. It is not for the Executive to determine the approach that a committee takes in its scrutiny of a bill; we recognise fully that that is for the committee to do. However, experience—sometimes hard experience—tells us that even the best of intentions can be misinterpreted, which I want to avoid.

If the committee is minded to do further work on the bill, incorporating some of the suggestions that I have made, or adopting some other approach, we would be happy to consider the outcome of its work at that time.

**The Convener:** Thank you, minister. That was helpful. Thank you for agreeing to the private meeting that we had, which was helpful in giving the committee a steer on its options.

**Dennis Canavan (Falkirk West) (Ind):** Thank you for that statement, minister. I found at least parts of it to be helpful.

During the stage 1 debate on 6 October you told Parliament:

"Referring the bill back to the committee will keep it alive".

Your deputy, George Lyon, went even further. He was asked by Mike Rumbles:

"Will the minister guarantee that the Executive will support the committee in bringing the proposal back at stage 1 in the next few months?"

Replying on behalf of the Executive, George Lyon said:

"I certainly give that assurance. We expect the committee to bring the proposal back as quickly as possible".

He went on to say:

"it is only sensible to refer the bill back to the committee to do further work and to seek answers to the questions before the bill heads to stage 2 for amendment."—[*Official Report*, 6 October 2005; c 19875, 19898 and 19899.]

The Executive gave Parliament the clear impression that the bill would be kept alive and that it would proceed to stage 2. Would it not be in keeping with the will of the Executive and of Parliament for the committee to compile a further report for the Parliament? Would the Executive give serious consideration to that report before deciding how to respond to any recommendations in it, particularly those that refer to the bill?

**Mr McCabe:** You raise several points. You are perhaps putting a particular interpretation on Mr Lyon's words. I will explain what I mean by that. When the Parliament passed the motion—it was the Parliament that did so, not the Scottish Executive—the intention was that the bill should come back for another round of scrutiny at stage 1. As normal, when the committee concludes its stage 1 consideration, it will produce a report for the Parliament to consider. I have no way of prejudging what recommendations may be contained in that report and it would be wrong of me to try to do so. It would be entirely wrong of the Executive to try to pre-empt decisions of the Parliament at stage 1. We have no way of knowing whether the bill will find its way to stage 2, as that is dependent on the decision that the Parliament takes on the principles of the bill after its next stage 1 debate.

**Dennis Canavan:** You said that one of the principles is that we should legislate only when it is necessary to do so. Do you accept that, for the Scottish Parliament to create a bank holiday, it is necessary to legislate by amending schedule 1 to the Banking and Financial Dealings Act 1971?

**Mr McCabe:** No, I do not. As I said a few moments ago, no legal concept of a public holiday

exists in Scotland. Although it is possible to legislate to add a day to the list of days in the 1971 act, that in itself would not automatically create a bank holiday.

**Dennis Canavan:** How can the Scottish Parliament create a bank holiday without legislation?

**Mr McCabe:** We are talking at cross purposes. You asked whether it is in the power of the Parliament to amend the 1971 act and add a day to the existing days that are listed as potential bank holidays. The answer to that is yes. However, the answer to the question whether the Parliament has the power to compel banks and other financial institutions not to trade on that day is no. Further, it is not in the power of the Westminster Parliament to compel banks not to trade on those days.

**Dennis Canavan:** Can you name any other mechanism that is available to the Scottish Parliament to declare anything resembling a nationwide holiday?

**Mr McCabe:** No.

**Dennis Canavan:** Can you name any national or nationwide holiday in Scotland or in the UK that is not a bank holiday?

**Mr McCabe:** I can certainly name holidays in Scotland that are not bank holidays.

**Dennis Canavan:** I asked about a national or nationwide holiday.

**Mr McCabe:** A variety of holidays are taken here, which is an important distinction between Scotland and England. South of the border, the recognised bank holidays tend to be adhered to, but in Scotland we have always had a different tradition—we have a range of local holidays that take place on a wide variety of days.

**Dennis Canavan:** The tradition in Scotland is not all that different. Do you accept that exactly the same mechanism, namely schedule 1 of the 1971 act, was used to create bank holidays in the United Kingdom, including Scotland, on days such as Christmas day, boxing day, new year's day, 2 January, good Friday and, more recently, May day?

**Mr McCabe:** I do not accept that statement in its entirety, because May day was formalised as a holiday for banks by the Bank Holiday Act 1871. That was then overtaken south of the border in, I think, 1978 by royal proclamation. The holiday continues to take place south of the border by annual royal proclamation.

**Dennis Canavan:** Yes, but it is based on the 1971 act. It is based on legislation.

**Mr McCabe:** No. I am afraid to say that, south of the border, May day is a holiday by royal proclamation. We exhort Her Majesty to make that proclamation each year.

**Dennis Canavan:** What about the other public holidays? What about Christmas day, boxing day, new year's day, 2 January, good Friday and so on?

**Mr McCabe:** I believe that those holidays are within the generalities of the schedule in question, but I do not have any knowledge of how that came about. They probably go back a fairly long way, but I will take advice on that.

14:15

**Jane McLeod (Scottish Executive Legal and Parliamentary Services):** Most of the days that you have mentioned are specified in the schedule to the 1971 act but, for Scotland, boxing day and the late May holiday are appointed by royal proclamation. I should point out that the act contains a provision that allows for extra or substitute days to be appointed by royal proclamation.

**Dennis Canavan:** The Scottish Parliament does not have the power to make a royal proclamation. However, am I correct to say that under the terms of the Scotland Act 1998, we have powers to add to the list of Scottish bank holidays in schedule 1 to the 1971 act?

**Mr McCabe:** We might have powers to add to the list, but we have no power to give practical effect to any additions. As a result, we can add as many days as we like to the list, but we have no power to ensure that, on that day, everyone takes a holiday, the financial institutions cease trading and so on.

**Dennis Canavan:** But that is the traditional way of encouraging a national holiday in Scotland and the rest of the UK. If the Parliament were to pass the bill, would it not be declaring the desirability of having such a holiday? You yourself have said that the Executive has nothing against encouraging the celebration of a holiday on St Andrew's day. Passing the bill would serve as such a declaration or encouragement.

**Mr McCabe:** My point is relevant to the second of what we think are the important principles that should be followed, which is that we should legislate only when necessary. No legislation is required to encourage individuals in the public or private sector to move an existing day's holiday to St Andrew's day. Our Parliament did not legislate to give its staff a holiday to celebrate St Andrew's day. Public authorities and private concerns could consult their employees. If they prefer to take an existing day's holiday on St Andrew's day or at

any other time, they are perfectly free to do so without recourse to legislation.

**Dennis Canavan:** But you are unable to give me an example of anything resembling a nationwide holiday that is not a bank holiday.

I have one final question, convener.

**The Convener:** Okay, but I have to move on and give committee members a chance to ask some questions.

**Dennis Canavan:** I know that you are rather sceptical about the bill, Tom, but I hope that you are still open to persuasion. I remind you of that story in the New Testament in which a simple fisherman called Andrew showed much greater faith than doubting Thomas.

**The Convener:** You do not need to answer that, minister.

**Mr McCabe:** Even though it was very profound, I will resist the temptation to respond.

**Murdo Fraser (Mid Scotland and Fife) (Con):** I will try to avoid biblical references, if I can.

**The Convener:** Even to David?

**Murdo Fraser:** Sadly, there is no Goliath in there, so David is bound to win.

I thank the minister for his presentation on the celebration of St Andrew's day and I am sure that committee members across the political spectrum welcome many of the initiatives that the Executive is pursuing. However, the committee's remit was not to examine the wider context of the celebration of St Andrew's day but to consider the general principles of Dennis Canavan's bill. Members unanimously felt that we should support the bill's general principles, despite the fact that we had different perspectives on the matter. For example, my support was predicated on its being a substitute for another holiday.

That said, in the debate and in your comments this afternoon, you have made a good case against the bill's general principles, because you have explained why we should legislate only where necessary and where we can give practical effect to the legislation. However, would it not have been more honest for the Executive to have opposed the bill's general principles instead of remitting it to the committee for further consideration? Given that we have already considered the matter once, I am not entirely sure how the committee is supposed to do so again.

**Mr McCabe:** That places me in a dilemma. I am not sure that Mr Canavan, the bill's promoter, would have appreciated it if we had shown outright opposition to the bill. We are genuinely trying to be helpful. As I said at the start of my opening remarks, we have no objection to employers



asking the people whom they employ whether they would like to move an existing holiday to St Andrew's day. However, there is no need to legislate to bring that about.

You say that you are in favour of substituting St Andrew's day for a holiday at a different time of year. I can see that there is a case for that, but we do not need to pass legislation to make that a reality. We did not need to do that to make it a reality for the staff whom we employ and I do not see why any other employer in Scotland needs legislation to be passed to make it a reality. They would need to consult the people whom they employ and do their best to put their views into effect.

**Murdo Fraser:** The logic of your position still seems to be that the Parliament should oppose the general principles of the bill. I put it to you that it was embarrassing for the Executive to be seen to oppose the bill and the creation of a St Andrew's day holiday, so, instead of doing the honest thing and simply opposing the bill, you kicked it into the long grass by sending it back to the committee.

**Mr McCabe:** I take it that you are not saying that we behaved dishonestly in the chamber—I would object to that kind of language. I do not know whether we need guidance from the convener, but that is not the kind of language that we should be employing in these exchanges. The Executive said at that point—we have said it again today—that we are doing our best to be helpful and that, if the committee wants to undertake a rigorous examination of any actions that it thinks would be necessary to move an existing day's holiday to St Andrew's day, we would welcome that. The committee may wish to examine whether there should be an additional day's holiday on St Andrew's day. It may wish to examine exactly what that would entail in terms of cost, service disruption and the beneficial effects that the holiday might have on Scottish society.

If we are talking about trying to be as straightforward as possible, a straightforward examination of the situation says that employers the length and breadth of Scotland could move an existing holiday to St Andrew's day without the Parliament taking up its time in legislating to bring that into effect. The Executive was a bit surprised that the committee did not recognise that. Perhaps, following the debate that took place in the chamber, the committee may wish to examine other aspects of that option. Perhaps the committee is unconvinced—as you would be entitled to be—that an existing day's holiday could freely move to St Andrew's day without legislation.

**The Convener:** I remind committee members that we must treat the minister with a degree of

respect and be careful in the language that we use.

**Murdo Fraser:** I take that reprimand, convener.

Nevertheless, it seems almost insulting, minister, for you to come along to the committee and suggest that members of the committee did not properly understand or consider the issues when we examined the general principles of the bill. I assure you that we examined all the issues carefully before we came to our considered opinion on the general principles.

I have a final question for the purpose of clarity. Is the Scottish Executive, in principle, in favour of a holiday on St Andrew's day?

**Mr McCabe:** As I think that I said in my opening remarks, we have no objection in principle to employers consulting the individuals whom they employ on whether to move an existing day's holiday to St Andrew's day. In fact, if the committee felt that it would be helpful, we would positively encourage employers—especially in the public sector—to do that. Ultimately, however, it is a decision to be reached between employers and the people whom they employ. I offer Mr Fraser the assurance that, far from wishing to insult the committee, the Executive is doing its best to be helpful in the consideration of the bill.

**Christine May (Central Fife) (Lab):** Good afternoon, minister. From your meetings with various groups around the country, do you have any feel for whether people wish there to be greater recognition of St Andrew's day?

**Mr McCabe:** There is undoubtedly a wish to see a greater recognition of our national day. People are pleased that we are upscaling the way in which we mark that day. That is reflected by the fact that 4,000 people attended the ceilidh that I mentioned earlier. That does not happen by accident, so it is clear that there is a warmth for the idea.

In Brussels, I attended the St Andrew's day lecture and Mr Finnie attended the taste of Scotland event. We received strong feedback from our European representatives, our staff in the Brussels office and representatives of other countries that we had done a good job of promoting Scotland in the way that we marked St Andrew's day this year. Having personally attended the event, I can testify to that. Alexander McCall Smith's lecture on St Andrew's day was certainly well received.

**Christine May:** Let me move on to my second question. The minister can correct me if I am wrong, but I get the strong sense from what he has said today that, although the Executive is not convinced of the need to legislate, for the reasons

given, it is convinced that more could and should be done to celebrate St Andrew's day.

**Mr McCabe:** Yes, that is right.

**Christine May:** If, after taking further evidence on the costs and discussing the issues with employer and public sector representatives, the committee determined that there was a case for giving a steer on the issue in legislation and presented evidence to that effect, would the Executive's view remain as it is now? Could you be convinced by those arguments?

**Mr McCabe:** As I said earlier, if the committee wished to undertake a rigorous examination of the variety of options that are available to it, we would be obliged to consider that and we would do so at that time. However, it would be wrong for me to try to predetermine that decision.

**Karen Gillon (Clydesdale) (Lab):** I approach the issue from a slightly different perspective, as I was not a member of the committee when it considered the bill. When I listened to the stage 1 debate in the Parliament, I was somewhat confused by the fact that some members seemed to want an additional bank holiday, whereas others, such as Murdo Fraser, wanted an existing bank holiday to be transferred.

The Presiding Officer has confirmed that, as no financial implications are attached to the bill, it does not require a financial memorandum. I think that I am right in saying that.

**Dennis Canavan:** The bill does not require a financial resolution of the Parliament.

**Karen Gillon:** Yes. That leads me to the view that any St Andrew's day bank holiday would need to replace an existing bank holiday rather than provide an additional one. We need to consider that further. In my view, it would be difficult to move any bank holiday other than May day but—like Dennis Canavan—I would be inexorably opposed to moving the May day holiday. We would therefore need to find another national holiday in Scotland that could be moved to St Andrew's day, although I accept that it is possible that a local holiday could be moved.

Has the Executive carried out any calculation of the cost of having an extra bank holiday? Given that passing the bill might be seen as a declaration of encouragement to the public sector to have an additional bank holiday, what preliminary work has the Executive done on the costs that might arise to the public sector from having an additional public holiday on St Andrew's day?

**Mr McCabe:** I am not fully aware of the depth of the work that was carried out by the Parliament's Finance Committee, but I understand that that committee concluded that the costs for the public sector would be in the region of £40 million.

However, I do not know what factors were included in that committee's consideration of the matter. As I understand it, no study has yet put a figure on what the potential costs are for the private sector.

**Karen Gillon:** If the committee decided to consider the matter further, could the minister's officials assist us in trying to put a figure on what an additional bank holiday would cost the public sector? Also, is the minister prepared to work with the Minister for Enterprise and Lifelong Learning to encourage private sector representatives to work out how much it would cost the private sector to have an additional bank holiday? Will officials also assist in considering whether we could substitute one bank holiday for another?

14:30

**Mr McCabe:** Yes. We would be more than willing to do that, with the caveat that although we are genuinely trying to assist the committee in its deliberations, there is a very thin line between giving every assistance and being accused of steering the committee.

I would be more than happy to encourage the Minister for Enterprise and Lifelong Learning to work with private sector interests to quantify the potential costs. That would be helpful, because if we pass the bill in its present form, the fear is that we will create an expectation among the Scottish public that we have created an additional day's holiday when that is not the practical effect.

**Karen Gillon:** My view, for what it is worth, is that if we passed the bill, the Parliament would be obliged to give the public agencies that we fund an additional day's holiday—if the bill is not merely to be a symbolic piece of legislation. It would be useful to have an indication of the financial impact of having an additional day's holiday on St Andrew's day, even if only for the public sector. I welcome the opportunity to get such information.

**Mr McCabe:** If the committee is desirous of examining that position, the Scottish Executive will do all that it can to assist its consideration.

**Michael Matheson (Central Scotland) (SNP):** Before we start examining the bill again, is it possible to get clarity on the Executive's position? Is the Executive opposed to the idea of an additional bank holiday being created on St Andrew's day?

**Mr McCabe:** We think that considerable costs would be attached to creating such a holiday. We have not been able to quantify those costs, and we have not been able to discuss with the variety of interests across Scotland—public and private—their view of creating an additional holiday. We would rather carry out the work that Karen Gillon

asked us to do and give you our view once we have done that.

**Michael Matheson:** Therefore, at this stage, the Executive is open to the possibility of adding a bank holiday to the existing list.

**Mr McCabe:** The Executive is open to the possibility of the committee examining rigorously the potential implications. If the committee were minded to make recommendations on the matter, we would consider them and give our view.

**Michael Matheson:** Therefore, the Executive does not have a view at present on creating an additional holiday.

**Mr McCabe:** If the committee is minded to carry out its examination, it would be wrong of me to try to pre-empt it.

**Michael Matheson:** I understand what you say, but before we can begin that process, it would be helpful to know exactly where the Executive stands on the issue. Do you not support the idea of an additional day?

**Mr McCabe:** I cannot give a definitive answer at the moment, as the implications of an additional holiday have not been quantified. Therefore, it would be irresponsible of me to give a commitment on behalf of the Scottish Executive. Although it is unlikely that the committee will say, "We think that it will cost the economy £1 billion," none of us knows, so it is too soon to give a view.

**Michael Matheson:** Would any benefits come from having a bank holiday on St Andrew's day?

**Mr McCabe:** Certainly, there would be benefits. There could be benefits in employers consulting their employees with a view to moving one of their existing holidays in order that we mark better our national day. However, it is not for me or the Parliament to proclaim that people must do that. There is no requirement to introduce legislation to allow that to happen—the Parliament reached such an agreement with its employees and an existing holiday was moved to mark St Andrew's day better. That facility is open to people in either the public or the private sector. If they decided to operate in the same way as the Parliament and to agree that with their staff, we would have no objections whatever.

**Michael Matheson:** If there is a possibility of gaining benefits from having a St Andrew's day holiday—and you conceded that point—what do you believe those benefits would be?

**Mr McCabe:** From an additional holiday or a moved existing holiday?

**Michael Matheson:** Either/or.

**Mr McCabe:** It is not as simple as either/or.

**Michael Matheson:** Well, let us go for your preferred option of transferring a holiday.

**Mr McCabe:** I am not necessarily saying that that is our preferred option. I am saying that it is an option that employers in any sector of the economy can take up if they choose. It is also an option on which employees in any sector of the economy could make representations to their employers through their trade unions or workforce representatives. If people in Scotland were minded to move one of their existing holidays to St Andrew's day, the nation would be indicating that it was prepared to mark its national day much more comprehensively than it does at the moment.

**The Convener:** Michael, you will need to make your next question your last one, because the minister has a time constraint and three other members want in.

**Michael Matheson:** I will let the others in.

**Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):** I hope that we take the decisions seriously and do not rush them. I respect what Karen Gillon says and the attachment of some of my colleagues to May day. I am not presuming what the committee will decide, but does the minister agree that, if the committee agreed to move one of the other holidays early in the year to St Andrew's day, the nation—including the banks—might be encouraged to recognise it if we were to legislate to make 30 November a bank holiday?

**Mr McCabe:** No, I do not. It was not necessary to legislate when we did that for the Parliament and it has not been necessary to legislate for employers and employees throughout Scotland to move holidays regularly as they currently do. You will see examples of that in the next few weeks, when people will move holidays to bridge the gap between Christmas and new year. A variety of different local holidays are taken at different times in Scotland. Such practices are and should be generated from the bottom up.

If a demand exists for a St Andrew's day holiday, it will be stimulated by the increased activities that we are generating around St Andrew's day. We have increased the focus on our national day through the range of activities that I mentioned earlier. I have already indicated that we are determined to try our best to add to that range of activities and, as we do that, it will help to stimulate the demand, if one exists. That will manifest itself in individuals in different locations and different sectors of employment throughout Scotland making representations to say that they would rather take a holiday on St Andrew's day than on another day.

**Mr Stone:** I know that you are not tempted to legislate, but if the bill sought not only to make St

Andrew's day a bank holiday but to delete one of the other holidays, would you be more inclined to warm to the concept?

**Mr McCabe:** I honestly cannot say what the benefit of that would be. Are you suggesting that we would add St Andrew's day and take away another day?

**Mr Stone:** Yes, but I am not suggesting anything as dangerous as removing Christmas day.

**Mr McCabe:** That would be a matter for the committee to consider, but it raises the potential of removing some sensitive days. You would get a reaction if you decided to abolish Christmas day—the committee would certainly get a headline. Equally you would get a reaction if you decided to move May day. You would certainly get a reaction from me, because I think that we should keep May day.

**The Convener:** We would get a reaction if we decided to abolish the holiday on 1 January as well, I would think.

**Susan Deacon (Edinburgh East and Musselburgh) (Lab):** The discussion today, like much of the discussion about the bill, has centred on places of work and what employers might do to facilitate a holiday, but I will ask the minister about school holidays, about which I have asked other witnesses, including Dennis Canavan. What mechanisms exist to create school holidays in Scotland? How might it be possible to encourage more local authorities to move towards a St Andrew's day holiday? How might the bill contribute to that process, if at all? Do you care to comment on how important or otherwise you think that school holidays are in the debate, given that one of the bill's secondary objectives is to create a more family-friendly environment in Scotland?

**Mr McCabe:** In its totality, the bill will not make any difference. As you know, there is a legislative requirement for 190 school days. If schools are currently in on St Andrew's day, and they cease to be, that day will have to be replaced, because they need to make an overall 190-day envelope.

You are well aware that the arrangements for school holidays in Scotland are extremely diverse. Sometimes it seems as if there is not a day in the year that some school or other in Scotland is not off for one reason or another.

The Minister for Education and Young People is better able to speak on those matters than I am. However, thinking back to my previous experience as a council leader at the time of reorganisation, I naively thought that it would be simple to harmonise school holidays across Scotland or even, dare I say it, within Lanarkshire. I failed spectacularly in that and there is still a great

diversity of holiday times even in a geographical area as small as Lanarkshire. The motivations for when holidays are taken seem to vary greatly throughout Scotland.

Last Easter, because of the exam cycle, we even had a situation in which schools in some areas only took a weekend and then took their holidays after Easter. That was a strange situation, but it underlines the diversity in when school holidays are taken.

The 190-day envelope is an important point. If a school takes a day off that it does not currently take, it would have to work out a way of fitting that day back in.

**Susan Deacon:** If that was an issue that the committee was minded to explore further, would it be possible for your officials to provide further details to us on the existing situation and how that might be influenced—or not, as the case might be?

**Mr McCabe:** As I am sure you appreciate, the situation is varied across Scotland, but we will do our best to get whatever information you request from us.

**Shiona Baird (North East Scotland) (Green):** Does the Executive's St Andrew's day holiday replace an existing holiday, or is it an extra one?

**Mr McCabe:** The Executive does not have a St Andrew's day holiday; the Parliament does.

**Shiona Baird:** I beg your pardon; I meant the Parliament.

**Mr McCabe:** Yes. As I understand it, an existing holiday was moved to accommodate the St Andrew's day holiday.

**Shiona Baird:** Can you tell me which one it was?

**Mr McCabe:** No. I was not involved in that.

**Jane McLeod:** It might have been the September holiday.

**Shiona Baird:** How much consultation of staff was done about that?

**Mr McCabe:** Again, that is a matter for the parliamentary authorities, not the Scottish Executive.

**Shiona Baird:** I was just interested to know about the process by which the decision was arrived at.

**Mr McCabe:** I am sure that it would have been done through consultation. I would be very surprised if, in this place of all places, it was done by diktat. I am sure that there was extensive consultation.

**Mr Stone:** I do not know about that.

**The Convener:** The decision was the responsibility of the Scottish Parliamentary Corporate Body, not the Scottish Executive, so it is unfair to ask the minister about that.

**Shiona Baird:** I am sorry; my mistake.

**The Convener:** Minister, you mentioned royal proclamations. For the sake of argument, let us say that the committee, having undertaken additional work, reaches the conclusion that there should be an additional holiday, recognising that adding St Andrew's day to the schedule of bank holidays does not make it a public holiday per se. If there was a royal proclamation, that would make it a public holiday. I see that your officials are nodding their heads.

Who makes recommendations to Her Majesty the Queen on royal proclamations? Is making such a recommendation a reserved matter or is it within the power of the Executive? What status does it have in terms of enforceability?

**Mr McCabe:** None, is the short answer. Each year, south of the border, the Queen is requested to make a royal proclamation with regard to May day. It is legal, but—and I do not mean this to be disrespectful to Her Majesty—it is not enforceable.

**The Convener:** Who advises the Queen on royal proclamations?

**Mr McCabe:** As I understand it, it is the Government of the day.

**The Convener:** Does the Executive have the power to recommend royal proclamations?

**Ian Donaldson (Scottish Executive Finance and Central Services Department):** Yes. The Executive writes to the Privy Council about royal proclamations for bank holidays in Scotland about a year in advance to advise the Queen of the dates that it recommends, for the second bank holiday in May in particular.

14:45

**The Convener:** But it is still not a statutory public holiday.

**Ian Donaldson:** That is correct. It is a bank holiday but not a public holiday.

**The Convener:** So that has the same net effect as adding the day to the schedule; it is not another route. It achieves the same end.

**Ian Donaldson:** Yes.

**The Convener:** It was useful to clarify that—I had never heard of the power of royal proclamations before.

Under our next agenda item, we will discuss how to move forward. I emphasise that the discussion is not an opportunity to go back over

old ground about the debate that we had in Parliament. We want to draw a line under that and to decide how to make progress.

I thank the minister and his officials for giving evidence today.

**Mr McCabe:** I thank the convener and members—I appreciate the way in which the conversation was conducted.

**The Convener:** We will now discuss the St Andrew's Day Bank Holiday (Scotland) Bill. Paper EC/S2/05/26/3, in my name, with some ideas and options, has been circulated. The options are not exhaustive by any means and members might suggest other ways to proceed.

A fairly basic decision needs to be taken about the extent to which we want to take the matter forward. As a result of the resolution passed by Parliament, we are obliged to report back to Parliament the next time we consider the bill at stage 1. At one extreme, we could decide simply to send back the existing report; at the other extreme, we could undertake a three-year inquiry into St Andrew's day. I am sure that the answer lies somewhere in between.

I was critical of what happened to the bill during the parliamentary debate, but we have to move on. I think that the committee should reconsider the issue in some detail. We should consider what happens in other countries, costings and benefits to see whether we can get a better handle on what the net costs and benefits of a St Andrew's day holiday would be, on whether it should be a recommended holiday and on what other activities need to be undertaken to celebrate St Andrew's day.

Such an approach would be in the spirit of what the Parliament decided, but we should put a deadline on that work, not least because we have a lot of other work to do. My gut feeling is that we should impose a deadline of about three months. We should do what the Parliament asked us to do timeously. We will include additional, thorough work on costings, in particular, make comparisons with what happens in other countries and gather any additional information that would be useful.

We have a commitment from the Executive to provide us with some support and information if that is required. I ask Dennis Canavan, whose bill it is, whether he is thinking along the same lines.

**Dennis Canavan:** Your suggestion is a good one. It is not for me to dictate the timetable of the committee—I am not a committee member and members know what other items are in their work programme.

I would not like a further investigation to go on indefinitely. The convener's proposal to impose a deadline of three months is reasonable and would

give the committee time to gather further written and oral evidence.

Paragraph 12 of the paper states:

"Members are also invited to consider the extent to which the Committee wishes to develop an additional set of non-legislative alternatives to the bill".

I am all in favour of non-legislative measures to back up the bill, but I do not see those as alternatives to the bill. There is a legislative route and a non-legislative route; I do not see it as being an either/or situation. I believe that one set of measures would complement the other.

**The Convener:** I accept that point.

**Christine May:** I welcome the convener's statement of his personal view, which to a large extent coincides with mine. I also respect Dennis Canavan's position in defence of his bill. He has done much to generate the debate that we are having today, which it was legitimate to do.

On option A in the convener's paper, we should take account of the various points that members raised in their questions. For example, Karen Gillon asked about the Deputy First Minister and Minister for Enterprise perhaps encouraging employer organisations to talk to their employees and looking for employers to encourage greater recognition. It is essential that when we consider such suggestions, costings are done of both the benefits and the costs to the economy. We should get a balanced view.

Lessons can be learned from what other countries do to celebrate their national day. Although such events will not be without cost, they also generate a benefit. We must try to get a handle on the costs and benefits. I seem to recall that we tried to get such information in our original evidence, but we did not have time to do so.

Finally, I agree that three months seems about right. The inquiry will be concentrated and tight, but we should aim to do it in that time.

**Murdo Fraser:** I must say that I do not entirely accept the premise that the committee did not examine thoroughly those issues first time round. I was aware of the various options that we were considering and I think that we gave the matter proper consideration. Having said that, in the interests of consensus, I am happy to go along with the proposal for further study. However, I am firmly of the view that, given the committee's heavy workload, we should truncate it as much as we can and come to an early view on the matter.

**Mr Stone:** I have two points. Although I hear what Murdo Fraser says, I think that one of the questions that it would be interesting to put to business and the banks is the one that I hinted at in my second question to the minister: how would

the Executive feel about it if we were minded to delete a holiday, such as the second May holiday, and replace it with St Andrew's day? We cannot predict what they would think, but that proposal might appear more cost neutral.

I do not know whether we can get to it, but it would be useful if in some way, shape or form we could understand the Executive's thinking apropos whether there should be the same number of holidays or an extra holiday. The minister could not be drawn on the issue, but it would be helpful if we could get an answer to that question so that we would at least know which way the tide is running in the Executive.

**Susan Deacon:** I, too, broadly agree with the convener's proposal. I will make a couple of points. The first is that, not for the first time in this Parliament, I have found it frustrating that we have taken a long time to plod through oral evidence to establish basic factual information that we could probably have elicited in other ways. To an extent, that happened today on issues such as royal proclamations and the like; it certainly happened in our earlier evidence sessions when we were trying to understand bank holidays.

My plea is that we should maximise the work done outside formal evidence sessions to establish the factual basis for the debate. We should be willing to utilise or to work in co-operation with the Executive. I appreciate the minister's comment that there is a fine line between assisting the committee and steering it, but I think that we are big enough and ugly enough to make that distinction. The Executive has the resources to do much of the work or, certainly, to work with parliamentary researchers and so on to feed in information. We should employ all the resources that are available to us—including the Executive—to commission research so that we have a good factual basis on which to build.

My second point is about the further work that we must do through written evidence or oral evidence sessions. We have still to conclude what further evidence we will take—the Convention of Scottish Local Authorities has a particularly important role to play. I, for one, would like to explore the issue of school holidays a little further. There are also issues around local holidays and so on. I am not sure where that fits in, but I am open-minded about where and how it fits in—as long as we do not lose sight of COSLA's particular importance in that regard.

**Michael Matheson:** I agree with the position that the convener set out. I think that the three-month timescale for taking further evidence is reasonable. It is clear from the evidence that we have heard from the minister today that there is an issue over whether the St Andrew's day holiday should be additional, whether it should be a

substitute day for an existing holiday that is transferred or, indeed, whether there should be a St Andrew's day holiday at all. We need clear evidence about the pros and cons of each.

I sound a note of caution, which goes back to Dennis Canavan's point about paragraph 12 of the convener's note. I do not believe that, in a stage 1 report, it is our responsibility to make a list of recommendations on how the Executive should go about celebrating St Andrew's day. Our job is to scrutinise the bill, its intentions and its various pros and cons. There might be additional provisions that we think ought to be built into the legislation to make celebrating St Andrew's day more beneficial should a bank holiday be made but, as I have said, I do not believe that it is our responsibility, in a stage 1 report, to provide the Executive with a St Andrew's day celebration programme.

**Karen Gillon:** Like Michael Matheson, I am keen for us to get a handle on each of the three options. When it came to the parliamentary debate, some of my confusion was about what members were talking about—whether they were talking about an additional day or a replacement day. I would be keen to get more of an idea about that—perhaps a briefing from the clerks—as I was not involved with the bill previously. I refer in particular to the evidence that the committee received about having an additional day's holiday. I am drawn towards the option of the additional day when it comes to proposed legislation. What evidence does the committee have on whether or not the banks in particular would implement the holiday differently? Are there other bank holidays—as opposed to public holidays—that are different north and south of the border? I am not clear about that. I am sure that the committee has such evidence; it would be useful for me to have a look at it.

**The Convener:** The clerks can, I think, supply you with the evidence that we have taken on many of those matters.

I think that there is a consensus that we should undertake additional work, with a three-month deadline. I agree with Susan Deacon that the initial stage is more about research than taking oral evidence. My view is that we need some outside, professional assessment of the costs and benefits of the various options of having a replacement or an additional holiday, and that we need more hard evidence about what other countries do to celebrate their national days, taking into account the costs and benefits for them.

I suggest that we ask the clerks to prepare, in time for our next meeting on 17 January, a detailed work programme, building in a facility—subject to approval by the Scottish Parliamentary Corporate Body, if necessary—to have outside

research work undertaken, particularly with regard to costs and to what happens in other countries. There might be further aspects to take into account. We can then consider the matter at our meeting on 17 January.

We obviously need to undertake a fairly rapid piece of work. A number of companies will have information on the costs of public holidays and so on fairly readily to hand, so it should not be difficult to do the work within the proposed timeframe. We should think about having a report ready in time for the Easter recess, which would give us a reasonable period.

If we agree in principle to proceed along those lines, we will return with a proposed work programme for the committee's consideration on 17 January. Subject to approval of that programme, we can then move forward.

**Christine May:** I would like the clerks also to consider what evidence might be obtained without particular cost. For example, a letter to COSLA would not generate enormous costs, and it would probably give us quite a lot of the public sector, local authority, or Executive—

**The Convener:** The Executive, through the Foreign and Commonwealth Office, might be able to find out what happens in other countries.

**Christine May:** Yes. Let us use external support where we absolutely have to or where it would be difficult for our staff to get the information. However, I suspect that we can get some of the information that we need.

**The Convener:** The costings need to be independent of the Executive. We need to estimate the cost of undertaking a reasonably objective exercise. Susan Deacon is right to say that we should start with the facts and then consider the issues. Is everyone happy for us to move forward on that basis?

**Members indicated agreement.**

**The Convener:** I thank Dennis Canavan.

## Bankruptcy and Diligence etc (Scotland) Bill: Stage 1

15:00

**The Convener:** Agenda item 4 is stage 1 consideration of the Bankruptcy and Diligence etc (Scotland) Bill. I welcome to the committee the team from the Scottish Executive: Paul Cackette is head of the civil justice division; Andy Crawley is the bill team leader; Beverley Francis is the bill team manager in the civil justice division; and Joyce Lugton is the property law team leader in the civil law division.

The purpose of the session is for us to be briefed by Scottish Executive experts on bankruptcy and diligence, who will provide us with an overview of the bill. I will then open the floor to questions and comments from members. After that, we will deal briefly with each of the three or four elements of the bill and take members' questions and comments on them. The aim is to give us a flavour of the bill's main provisions, without our going into inordinate detail at this stage. I am sure that members will read the bill in detail over the Christmas recess.

**Christine May:** It is on my list.

**The Convener:** I invite Paul Cackette to introduce the team and to outline its members' respective roles.

**Paul Cackette (Scottish Executive Justice Department):** I am grateful for the opportunity to attend this afternoon's meeting, with the bill team, for the purpose of briefing the committee. The convener has outlined a reasonable way of proceeding. The bill is large and technical, with more than 200 sections and six schedules, so this introductory opportunity to bring the bill team before the committee is welcome from the Executive's point of view.

On my immediate left is Andy Crawley, who is the overarching bill team leader. If the committee would find it beneficial, I will ask him to say a few opening words about the general structure of the bill and its main subject headings. He will be able to respond to questions from the committee regarding the bankruptcy and diligence provisions.

On my immediate right is Beverley Francis, who has been instructing those parts of the bill that deal with the establishment of the Scottish civil enforcement commission. On my far right is Joyce Lugton, who is in a position to answer questions on floating charges. I hand over to Andy Crawley, so that he can say a few introductory words.

**Andy Crawley (Scottish Executive Justice Department):** The bill comes in four bits and, perhaps less helpfully, 16 parts, so it contains plenty of detail. The main elements of the bill are bankruptcy reform, floating charge reform, enforcement reform—the proposed Scottish civil enforcement commission and the reform of the court officer professions—and diligence, which is the largest bit of the bill.

I propose to examine some of the bill's overarching themes. I hope that that will give the committee some idea of the policy drivers behind what the Executive is doing and some themes to pull together different reforms in a fairly large package. It will take me about 10 minutes to do that. As Paul Cackette has suggested, we are happy to take questions after I have spoken or, indeed, at any time. One of the main reasons for our being here is to answer the committee's questions. After we have completed the initial part of the presentation, we will move on to the specific reforms in the bill.

I will outline what I think of as the unifying themes that drive the Scottish Executive's view of why we need the bill in the first place. Those themes, which are explained on pages 16 to 24 of the policy memorandum, are a way of understanding some of the detailed changes in the bill. The five themes, or policy drivers, are: can pay, should pay; better information on the enforcement system; modernisation of the law; removing barriers to business; and striking a balance or, more exactly, striking the right balance.

The first theme is can pay, should pay. Debt, and dealing with debt, is a complex subject; the size of the bill helps to drive home that point if nothing else does. The Executive intends that the bill will bring some order to the system or systems that have grown up piecemeal over many decades if not hundreds of years. The ultimate aim is to have an integrated system of debt management and debt relief, with clear remedies for creditors, clear protections for debtors and no unnecessary overlap, so that we can get rid of any duplication that exists.

That will not happen overnight, and the bill will not deliver all the Executive's aspirations. That alone is a reason for having a Scottish civil enforcement commission to take forward the work of the project. However, any journey must have a starting point, and the starting point for the bill is the can pay, should pay principle. That principle is not new; the Executive was promoting it at the time of the Debt Arrangement and Attachment (Scotland) Act 2002, which replaced poinding and introduced the debt arrangement scheme.

To understand what can pay, should pay means on the ground, it is helpful to think about the



different ways in which debtors behave and the different circumstances in which debtors can find themselves. As we see it, there are three classes or categories of debtors. There are the won't pays—those who could pay but who choose not to. Secondly, there are the could pays—those who could pay but not right now and who need more time and more support to pay in full. Lastly, there are the can't pays—those who are at the end of the road and who have no realistic chance of paying what they are due to pay; in that context, can pay, should pay means can't pay, shouldn't pay, so there is a structure to the whole thing. The Executive intends that the law, post the bill, will be tougher on the won't pays; will offer more support to the could pays; and will be humane to the can't pays. If we deliver all that, we will be happy that we have got the main thrust of the bill right post implementation.

The next theme is better information. The fact that dealing with debt is complex means that it is also stressful. People who are in debt are extremely stressed and can suffer all sorts of consequences as a result. Having clear and accessible information is important, and in the consultation exercises that the Executive carried out before introducing the bill a view that emerged strongly was that more, better and clearer information was needed. That theme is as much an aspiration as a policy, but the Executive has certainly done as much as it can to try to get it right and to include in the bill the provisions that will help to deliver that.

The next overarching theme is modernisation. In a sense, the bill is, above all, about modernisation. One of the key factors that led to the bill was the work of the Scottish Law Commission. There were no fewer than six reports leading up to the introduction of the bill, so there was a big backlog of modernisation work to be carried out. There are lots of examples of modernisation in the bill, but it might be useful for the committee if I highlighted some of them now. In the bankruptcy element of the bill, we are taking debtor applications out of the courts system, thereby modernising the way in which bankruptcy is administered. The floating charge element introduces a new register; the enforcement element abolishes an old advisory council; and the diligence element creates new diligences. All those changes are aspects of the modernisation drive.

Much of what the bill does is about what might be called justice policy, but it is not wrong that the bill is before the Enterprise and Culture Committee, because removing barriers to business is an important theme of what the bill will do and what its effect will be.

When looking at the size of the bill, it is useful to think of it as overhauling a significant part of the

Scottish legal system—what might be called the effective part of the legal system. Diligence in particular is what turns legal rights into cash. It is all very well to go to court and get an order, but if someone cannot get the money to pay what they are due, the order is completely worthless. In effect, diligence is what turns a claim into cash in the profit and loss account. Getting all the measures right will mean that Scotland is a better place in which to do business.

Plenty of other things in the bill will make Scotland a better place in which to do business. We are encouraging early restart with the bankruptcy reforms. We are creating a new register of floating charges, which will make it easier and more efficient for limited companies to raise finance and for the finance sector to make loans. We are making it harder for won't-pay debtors to hide from their business creditors, because a large part of the bill is about opening up new assets to enforcement. Those measures are all good for businesses, which will get more of their money back and therefore be more profitable.

The last theme is striking the balance. Again, that is not new—the Executive has aspired to do that not only in relation to the bill, but in relation to many other measures. Striking the balance was one of the important drivers at the time of the Debt Arrangement and Attachment (Scotland) Act 2002. In dealing with debt, it is almost inevitable that competing interests come into play, which means that there is almost an inherent conflict in anything that the Executive or the Parliament does. The public want protection from bad behaviour, but people who behave badly want the freedom to behave as they wish. Creditors want to be paid, but debtors do not necessarily want to pay them there and then. All those competing interests need to be balanced.

We feel that we have struck the right balance. Our reason for thinking so is the length of time that we have taken to prepare for the bill. I use the word “we” in the big sense. I use it to mean the Scottish Law Commission, which has worked on some of the issues for 20 years. I also use it to mean the Scottish Executive, which has held three major consultations on the bill, and spoken extensively to a large number of stakeholders and tried to take on board their concerns. Some of that is covered in the policy memorandum.

We intended the bill to strike the right balance and we hope and believe that it does so. We are striking a better balance for the public, through making it harder for bankrupt debtors to behave badly; we are doing that by introducing bankruptcy restrictions, which balance the earlier opportunities for restart. We are striking a better balance for creditors, by making it easier for them to be paid when a bank arrestment catches something.

Conversely, we are striking a better balance for debtors, by introducing a protected minimum balance when a creditor arrests a bank account. There are lots of examples, but I hope that those three at least give a flavour of how we have approached some of the issues by examining where the balance is wrong. We hope that we have got it right in the bill in all those ways.

I have listed the five policy drivers behind the bill, which weave in and out of a lot of its detail. I am happy to take members' questions on those themes.

**The Convener:** Thank you. I am sorry about the conversation that was going on while you spoke, but Murdo Fraser was relaying to the rest of us the result of the election for the Tory party leadership. It was approximately 132,000 votes to David Cameron, compared with 64,000 votes to David Davis.

15:15

**Murdo Fraser:** May I put on record my congratulations to my new party leader? I voted for him, of course. [*Laughter.*]

I have a couple of questions on the policy background to the bill, particularly in relation to the bankruptcy provisions. Recent figures seem to show what can be characterised as a surge in personal bankruptcies in Scotland over the past couple of years. Was that background taken into account in the drafting of the bankruptcy provisions? Is one of the policy intentions to try to reduce the number of personal bankruptcies, or is that seen as something that is happening more or less separately and for different reasons than as a result of the bankruptcy laws as they stand?

**Andy Crawley:** No; the question whether someone is insolvent is really a matter of fact—someone either can or cannot pay their bills. The question is how to deal with the can't pays and what to put in place. In a sense, bankruptcy is demand led. Obviously, the Executive does not want to see more bankrupts, but to a large extent that is not within our control.

**Murdo Fraser:** I note that one of the provisions is to exclude student loans from the debts that may be extinguished by bankruptcy. Certainly, there is anecdotal evidence to suggest that some of the people who are declaring themselves bankrupt are graduates who are trying to avoid repaying some of the debts that they incurred during their student years. The provision may of itself help to reduce some of the levels of personal bankruptcy. Do you have any evidence or figures to support that suggestion?

**Andy Crawley:** We have quite a lot of figures, which we can supply to the committee. In

essence, our position is that we have no evidence to suggest that students or former students who make themselves bankrupt are driving up the bankruptcy numbers. If anything, the evidence suggests that there has been a slight dip in the numbers over the past year—fewer students seem to be making themselves bankrupt—but I would not like to read anything into that. The main change probably relates to there being a lot more students around. It is therefore inevitable that, as a percentage of the population, more students and former students will go bankrupt.

**Murdo Fraser:** In some ways, the bankruptcy provisions in the bill reflect the provisions in the Enterprise Act 2002, which is in operation south of the border. Will you say a little about how the experience in England and Wales informed the policy making on the bill?

**Andy Crawley:** Our starting point was that we thought that the bill would be a good thing. We thought that Scotland should have something that made for a level playing field across the UK, particularly in the context of business start-ups and other economic issues.

Nothing has happened to make us think that that was the wrong approach to take. As I am sure the member is aware, some press reports have said that bankruptcy numbers in England have increased because of the reforms down south. Again, we have neither any evidence of that nor any reason to think that that is a factor. Generally speaking, bankruptcy rates are rising in similar numbers across the whole of the UK.

**Murdo Fraser:** Thank you; that is helpful.

**Christine May:** Thank you for breaking down the subject into something that I can get my head around. I was feeling quite intimidated by the scale of the bill. I have a couple of questions that stem from my reading of the briefing notes and from what you said. They relate to some of the work that I have done in regeneration areas and in places with significant levels of long-term unemployment. I am thinking of the effect of sequestration and bankruptcy on those who wish to serve on boards or get jobs in financial institutions, for example. Will the bill deal with those issues?

**Andy Crawley:** The intention is that we will move from a system of fixed bankruptcy restrictions to a more flexible system, under which it will be possible for restrictions to be tailored to the circumstances of the particular person. They would no longer be a debtor in that situation.

Bankruptcy is an issue that spreads widely across all sorts of policy areas, which can make it difficult for everything to be pulled together. We are clear about what we are doing with the core restrictions that relate to credit and business

activity. We are working on pulling in other interests, for example disqualifications from holding office and from being in employment.

By and large, there are no legal employment restrictions on former bankrupts—the issue is about how companies view such people. We hope that the bill will encourage rehabilitation on the personal and legal levels, where appropriate. That will not always be appropriate but, in the situations that you mentioned, it might well be.

**Christine May:** To set the context, I remind the committee that I am a member of a steering group of the Financial Services Skills Council. Until I joined that group, I had not realised that financial services institutions sometimes find it difficult to recruit from target areas because of the credit and bankruptcy history of many people who live in those areas. Has that issue been discussed with financial institutions during production of the bill?

**Andy Crawley:** No, but that is an interesting point that I would like to follow up.

**Mr Stone:** In producing the bill, has consideration been given to the companies act as it presently sits and, if so, what will the consequences be for the act as the bill progresses? Will it have to be tweaked or amended?

**Andy Crawley:** Do you mean the Company Law Reform Bill that is before the UK Parliament?

**Mr Stone:** I am thinking of the classic Companies Act 1985, which says that, where a trader is trading in the knowledge that their assets do not meet their liabilities, terrible things happen. There is a link between that and bankruptcy. In producing the bill, were you mindful of the principles that were enshrined a long time ago in the companies legislation and which have subsequently been amended over the years?

**Andy Crawley:** Yes. The disqualification regime in the Companies Act 1985 is the mother of the bankruptcy restriction regime. Our view is that that has worked successfully for limited companies and that extending the principles into personal insolvency will create a better system for everyone, not just for people who have limited company businesses.

**Mr Stone:** Will the bill have ramifications for the 1985 act?

**Andy Crawley:** No.

**Susan Deacon:** Thank you for your helpful briefing and summary of the bill. I accept that, in any bill, particularly one such as this, the devil will ultimately be in the detail, but I have two broad-brush big-picture questions for right now, right here. First, on the general approach that you have outlined and under the general principles of the

bill, what significant points of disagreement or differences in perspective have emerged in the raft of debate and deliberation that has taken place? Our detailed briefing points to all sorts of details on which opinion is evenly divided, but are there any particularly significant areas of disagreement to which you wish to alert us as we engage initially in the process?

**Andy Crawley:** When we come to later parts of the briefing, I plan to let the committee know who has a view to express, although I will not necessarily express that view for those people. The main concerns are about the introduction of new diligences. Introducing a new diligence of any kind impacts on a range of interests, so people are naturally concerned that the Executive should get the balance right. That is probably the main focus for concern of the kind that I think you mean. Generally speaking, many people have come to us and said that they are not too happy with one aspect, but that they are okay with another one.

**Susan Deacon:** In a similar broad-brush vein, what methodology has been used to test the provisions that you are putting forward against the experiences of those who have had to engage with the process that has been followed until now, at the hand of either the Executive or the Scottish Law Commission? Obviously, many umbrella bodies and interest groups have engaged with the process. Are we talking about a consultation document that has looped round the same set of interest groups several times, or seminars and discussions with practitioners and individuals who have direct experience of bankruptcy?

**Andy Crawley:** Both, or perhaps all three. I cannot say how the commission approached its work, but the Executive has tried to take both a quantitative and qualitative approach to gathering evidence and forming opinions. The statistics, which are in the policy memorandum, are all available publicly; we have not needed to go out and procure them. We have instructed research around the debt arrangement scheme, which is on-going.

On qualitative research, we have spoken to a lot of stakeholders. In relation to bankruptcy reforms, members of my team and I have been to a lot of insolvency discussion group meetings. We took the bill team on a road show, as it were, last summer. We went to Inverness, Aberdeen, Dumfries, Dundee, Edinburgh and Glasgow. We advertised the events publicly in the hope that we would get members of the public to come along, which we did. I suppose that with the bill being a year away, there was not the immediate interest that there would be if we were to do the same thing now.

**The Convener:** I have not read the bill or the policy memorandum; it will be my Christmas

reading. Does the bill deal with the issue of bank arrestments?

**Andy Crawley:** Yes.

**The Convener:** Sympathetically?

**Andy Crawley:** We certainly think so. We are aware of the previous bills that have been introduced to Parliament, including your bill, convener. The Scottish Law Commission also considered the matter. We have not necessarily followed the path that others have suggested, but we believe that what we have will work and will address the particular worry about people's bank accounts being cleared out on arrestment.

**The Convener:** Thank you.

The Public Petitions Committee heard evidence a couple of months ago from a chap from the Aberdeen area who had been made bankrupt. It sounded as though his was a genuine case of mistakes and various problems arising from HM Revenue and Customs. It strikes me that the preferential creditor is always HM Revenue and Customs. Does the bill address the issue of preferential creditors?

**Andy Crawley:** It does not need to, because there are no preferential creditors, at least not in the sense that I think you mean—that of public creditors. HMRC and local authorities feature so much in these cases because they are much more likely than any other creditor to take that kind of action. It is not that they have any special claim.

**The Convener:** Right.

There are four elements to the bill and 16 parts. I think that we are always better to get a general overview and not to try to absorb too much detail all at once. However, it would be useful if you could cover briefly the main provisions under each of the four elements. With the exception of Murdo Fraser, none of us is a lawyer and we are trying to absorb the general principles of the bill before we get into too much detail. A brief overview would be helpful.

**Paul Cackette:** That makes sense.

**The Convener:** We will perhaps stop for questions after the first two elements and then take the second two, just to break it up a bit.

**Paul Cackette:** It seems sensible to take them in the order in which they appear in the bill. Bankruptcy is first, then floating charges, then enforcement and land attachment.

15:30

**Andy Crawley:** We have some slides, which are structured in a way that should give you the overview that you are looking for. We start with what the existing law is, why we think it needs to

be changed, what the bill does and who we think will have a view on the matter—in essence, those are people to whom we have spoken and who we know have views. As far as we could, we have taken those views on board.

**The Convener:** The structure is helpful.

**Andy Crawley:** In relation to bankruptcy or sequestration—which is, in fact, the name for bankruptcy in Scotland—it might be useful to say that my take on the matter is that bankruptcy is not just sequestration. Anything that means that someone is dealt with formally as an insolvent individual is, in effect, bankruptcy. We have sequestrations and protected trust deeds—the committee might hear more about protected trust deeds as the bill runs its course—both of which are forms of insolvency. The bankruptcy element deals primarily with sequestration, which is what most people think of when they think of bankruptcy.

The existing situation involves a fixed three-year sequestration period. That is it. If someone is bankrupt, it is for three years and that is the end of it. With standard bankruptcy restrictions, everyone is treated in the same way for the same length of time. When the debtor is discharged, the restrictions fly off. The core restrictions mean that the person cannot take credit without telling people that they are bankrupt or act as the director of a limited company. There are a lot of other things that bankruptcy prevents, including being an MSP.

Under the existing law, people who go bankrupt often have an income and are employed. They are either won't pay or could pay who could make a contribution towards the money that their creditors are due. However, it is difficult to ensure that that happens.

At the moment, there is no sunset clause for unrealised assets. When someone goes bankrupt, everything that they might own goes into the bankruptcy. The fact that they are discharged later does not mean that they get anything back. Many people who go bankrupt have the misconception that, if something has not been dealt with in the three-year period, they will get it back. However, that is not so. What we have at the moment is a light-touch regulation on protected trust deeds, which are a significant form of bankruptcy. The policy memorandum shows that there are roughly 3,000 sequestrations and roughly 6,000 protected trust deeds. Most people who go bankrupt are not sequestrated at all; they sign protected trust deeds.

Why should we change bankruptcy law? First, we think that there is an opportunity for people to restart more quickly once they go bankrupt. Secondly, we think that the public will be better

protected if we have a system of flexible restrictions rather than a one-size-fits-all approach, which we have at the moment.

The Executive has reviewed the way in which the bankruptcy and sequestration process works and we think that it could be run more effectively than it is at the moment. We think that the present balance is not in the right place and that a better balance could be struck between debtors and creditors.

**The Convener:** When you say that the balance is not right, do you mean that it favours the creditor or the debtor?

**Andy Crawley:** That is the difficulty about striking the balance. There are ways in which the system could be better for creditors and there are ways in which it could be better for debtors.

I will deal with creditors first and return to the point that was made about won't pays. The incomes of people who go bankrupt can be quite high, which may be surprising, but creditors currently find it nigh-on impossible to get any money from people who can afford to pay money from their income. We think that that is wrong, that the balance has been struck in the wrong place and that it should be easier for people who can pay to do so. Therefore, we want to introduce income payment orders to deal with the matter and to strike a new balance.

With respect to debtors, we think that the balance is wrong when people believe that they will get their property back if it is not dealt with during the sequestration period and that the law should be changed to reflect the reality as people see it, so that if a trustee does not deal with somebody's home during the bankruptcy, it will go back. The onus will therefore be on creditors to deal with things properly rather than simply leave them sitting around potentially for years. That happens at the moment.

**The Convener:** So the age-old trick of a man transferring everything to his wife's name or doing something similar will not be possible or effective in the future.

**Andy Crawley:** Things will stay the same in that respect. Large parts of personal and insolvency law will not be changed. You are referring to gratuitous alienations—I am sorry, but a bit of jargon sneaked in there; I will try to keep the jargon that I use to a minimum. A person's handing over everything that they own to somebody else and then merrily declaring themselves bankrupt does not work now and will not work in the future. Things will stay the same in that respect.

**Murdo Fraser:** You should have gone to law school, convener.

**The Convener:** Yes.

**Andy Crawley:** The bill will introduce a one-year discharge from sequestration—or, to be more exact, the potential for a one-year discharge. A discharge is not necessarily guaranteed, but it is at least possible. Two-year to 15-year bankruptcy restrictions and income payment orders and undertakings will be introduced. That takes us back to what I said about bankrupt people who can and should pay.

Sequestration business will be taken out of the courts as far as possible. Much of that business is currently dealt with in the Court of Session, but we see no reason for that—it is completely unnecessary. Creditor bankruptcies will be moved to the sheriff courts, which will be local for people who are faced with bankruptcy, and we want to take debtor petitions out of the courts altogether. Therefore, debtors who cannot pay and who want to make themselves bankrupt will not need to go to court—they will be able to apply administratively to the Accountant in Bankruptcy. We think that one benefit of that will be that the consequences of a person making himself or herself bankrupt will be much more apparent if they go down that route because plain English will be used. Fewer phrases such as "gratuitous alienation" will be used; rather, people will tell it as it is in language that everyone can understand.

**The Convener:** I have come across the role of the Accountant in Bankruptcy in dealing with a constituency case. To whom is he responsible? Is proper accountability built into the process for the work of the Accountant in Bankruptcy?

**Andy Crawley:** We think that proper accountability exists. The Accountant in Bankruptcy is a she—Gillian Thompson is the chief executive of the Office of the Accountant in Bankruptcy. She is an office holder in the Scottish Administration. The Accountant in Bankruptcy has been around for many years, but the Bankruptcy (Scotland) Act 1985 formalised the role. In essence, the Accountant in Bankruptcy supervises bankruptcies and ensures, as far as possible, that they are properly administered. She supervises the insolvency practitioners. I am glossing over much of what she does, but we think that she performs an important role and that she can, in fact, do more to ensure that creditors and debtors get what they should get.

**The Convener:** What does someone do if they are unhappy with the service that they receive from the accountant in bankruptcy? Is the accountant covered by the public services ombudsman?

**Andy Crawley:** Yes. The accountant is part of the Scottish Administration. She is a civil servant

and the people who work for her are civil servants, too.

**The Convener:** They were recently relocated to Irvine, I think—is that right?

**Andy Crawley:** Yes, temporarily, as it turns out.

Lastly, the bill makes it possible for Scottish ministers to make regulations dealing with protected trust deeds. We think that that is important because there are many more protected trust deeds than there are sequestrations. That will be the subject of a separate consultation, which the committee will be copied into. You will be able, if you so choose, to express a view on what the Executive proposes to do with protected trust deeds.

**Michael Matheson:** I seek clarification on the existing law. The second bullet point on your slide on standard bankruptcy restrictions up to the point of their discharge states that the bill will introduce

“2 to 15 year bankruptcy restrictions”.

**Andy Crawley:** Yes.

**Michael Matheson:** Under the existing law, what would be the normal or average timeframe for bankruptcy restrictions?

**Andy Crawley:** Three years—the restrictions last as long as the bankruptcy does. The bill will break the link between the bankruptcy and the restrictions, so that the restrictions will last longer than the bankruptcy. I find it easier to think of what we are doing as moving from a three-year fixed bankruptcy system to a one-to-15-year flexible bankruptcy restriction. That is a relatively crude way in which to put it, but it conveys the essence of what we are doing. We are not saying that everyone is let off after one year, as that is presented as being soft on debtors—and it would be soft on debtors if that was what we were doing. However, that is not what we are doing. We are moving from a rigid system to a flexible one that we think will provide better protections for the public.

That is perhaps a good point at which to say who we think may have a view on that specific reform. We have spoken to Money Advice Scotland and Citizens Advice Scotland about the large package of reforms in the bill, rather than on this specific issue, but we think that they will have a view on it. The Institute of Chartered Accountants—essentially, the insolvency practitioners—will obviously have a view on anything involving sequestration and protected trust deeds. Finally, the legal professions will have a view on any law reform package.

**The Convener:** In drawing up the bill, did the Executive speak to anyone who has been declared bankrupt?

**Andy Crawley:** We see a lot of casework. My branch sees a lot of ministerial correspondence cases.

**The Convener:** Did you consult people on the various policy points relating to being made bankrupt?

**Andy Crawley:** Yes, we did. We have received responses to the consultation. One of the reasons for having the roadshows last summer was to enable people to speak to us about their personal experiences. At most of the roadshows, people who had been sequestered or who had signed a protected trust deed related to us their particular experiences, which they wanted us to understand. Generally, they were in favour of reform. The bill addresses most of the concerns that were put to us directly by people who had been insolvent.

**Shiona Baird:** Let us consider the other side of things. Did you receive representations from creditors who have suffered through being unable to recover money that they were owed? I am thinking specifically of businesses.

**Andy Crawley:** Surprisingly, no. Part of our concern about the existing structures is that creditors do not have a sufficiently strong voice. Because I am not a creditor, I cannot speak for them, but my impression is that there is a degree of fatalism about what goes on in insolvency. Creditors seem to take the view that the game is up and there is no point in worrying about anything that follows on from it. Of course, that is not the position that the Executive takes. Its position is that it will fix the system for creditors, even if they have not asked for that. Generally, creditor concerns are well rehearsed in professional journals and reports. There are many ways in which creditors' views are understood. To an extent, the insolvency practitioners who represent creditors speak on their behalf. Creditors' representation is indirect rather than direct.

15:45

**Christine May:** The language in which individuals receive information from insolvency practitioners is often obscure, to say the least, although I accept that there have to be legal forms of words. However, my son, who was employed in a firm that went bankrupt, received letters that I had difficulty with—I struggled to make any sense from them of what he was supposed to do. I take it that that issue is not dealt with in the bill.

**Andy Crawley:** It is not dealt with directly in the bill, as it is the kind of issue that we normally deal with through subordinate legislation. However, it is certainly our intention that, post reform, things will not appear in quite the legalistic way that they do at present. Ultimately, we can only encourage

people to use less jargon; we cannot make them do so. However, we will do what we can.

**The Convener:** Can you give us an overview on floating charges?

**Andy Crawley:** Even better, I can hand on to a colleague.

**The Convener:** I am just looking at how full the public gallery is: do not let anyone tell you that bankruptcy is not popular.

**Joyce Lugton (Scottish Executive Justice Department):** It might help the committee if I explained first what a floating charge is.

**The Convener:** It would.

**Joyce Lugton:** Briefly, it is a kind of security that is granted to a company or to a limited liability partnership. It is not a personal loan. When looking for a loan, companies will often not have a physical property that is available for security against the loan. That may be because the company has an existing mortgage over its premises or because the premises or equipment are leased. In such cases, a charge is granted that floats across the assets of the company. If the company goes bankrupt, the charge will descend—the technical term is “crystallise”—on whatever assets happen to be available. The floating charge is ranked in a particular order of priority when it comes to satisfying the creditors.

The law on floating charges—the law that we seek to reform—is that floating charges must be registered within 21 days of being granted. They are registered at Companies House, not in the form of the deed itself, but in the form of particulars of the deed. That is where the trouble lies. First, there is a hiatus in the 21-day period, during which there is a kind of blind spot—it will not be evident to everybody that there is a floating charge, because it is not yet on a register. That means that a company could, for instance, seek a second floating charge, or a third. The creditor would not be aware of the complete financial picture.

The objective of this small part of the bill is to provide greater clarity and transparency so that people will be aware of the financial situation in such circumstances. The intention is for there to be a Scottish register of floating charges and for charges to be created, or to become effective, at the point of registration, so that the blind period of 21 days disappears. In addition, the deed itself will be registered, rather than the particulars of it, which will mean less scope for inaccuracy on the register. Again, that is a transparency issue. There will also be arrangements for facilitating advance notice of charges. However, that is to descend into a level of detail that we do not require just now. From what I have described, the committee can

see that the list of stakeholders, which is shown on the fourth slide on floating charges, is as one would expect. The issue is a technical one, which is of interest to a limited range of groups of people.

The final point that I wish to make, which is not covered on the slides, is that consequential amendments will be required to be made to UK legislation. Those amendments, which will need to be processed at Westminster, relate to reserved matters that cover Scots law and involve unscrambling the current registration arrangements. We are in close touch with the Department of Trade and Industry on that point and it has agreed to take the matter forward. We will continue to liaise closely with the DTI to ensure that the two legislative regimes dovetail and that the respective measures will be commenced at the same time. The vehicle that is being used at Westminster is the Company Law Reform Bill, which was introduced at the beginning of last month.

**The Convener:** Let us now take a brief overview of enforcement matters. [*Interruption.*] I am sorry—Murdo Fraser wishes to ask a question.

**Murdo Fraser:** I am sorry to be the committee geek on this issue—

**The Convener:** I am glad that we have a geek.

**Murdo Fraser:** My question is about floating charges. I would probably know the answer to this if I had read the bill and remembered the correct section, but will it still be necessary to register floating charges at Companies House?

**Joyce Lugton:** That aspect will be taken up by the DTI. Strictly speaking, it is a reserved matter. The Scottish Law Commission recommended that such an action should not be necessary. It recommended that the company should be obliged to keep a register of all charges at its registered office and that it should be obliged to show any potential creditor or interested party what is on that list. In addition, the company would be required, as part of its annual return to Companies House, to have a list of registered charges.

The Committee of Scottish Clearing Bankers is not entirely happy with that aspect of the Law Commission's recommendations and we have been holding discussions with it on the matter. I expect that we will be widening those discussions to include other organisations, such as the Law Society of Scotland. We will also be discussing the matter with the DTI.

**Christine May:** If Murdo Fraser is the committee geek, may I be the geekess? It was stated earlier that there would no longer be preferential creditors. If that is the case, where is the point in the provisions? It seems that the early bird would have the advantage.

**Joyce Lugton:** Yes. That refers to a different aspect, in which I am not an expert. You are quite right. As far as floating charges and other forms of secured charges are concerned, there is a ranking order. When you come to consider that level of detail, provisions will be coming before you that contain ranking information.

**The Convener:** That is something to look forward to.

**Christine May:** Absolutely. My Christmas stocking is even more exciting.

**Karen Gillon:** I am not a geek at all and I come to the subject on a very steep learning curve. If the company holds the information, what will the sanction be if it does not pass it on?

**Joyce Lugton:** I guess that the ultimate sanction would be that the creditor would examine what was being presented very closely and would not lend if they smelled a rat. I presume that it is perfectly possible for a company to mislead a creditor, as the Scottish provisions contain nothing in the way of a criminal sanction.

**Karen Gillon:** Am I right to assume that, if the 21-day rule was done away with, the current position would be that a creditor could check with Companies House whether such a charge existed?

**Joyce Lugton:** No. The current position is that the registration is made at Companies House and a company has 21 days to make that registration but, during that period, there is pretty well complete invisibility.

**Karen Gillon:** I am just struggling to understand what the position would be—

**Joyce Lugton:** It is not easy stuff.

**Karen Gillon:** Let us assume that the 21-day rule was done away with. What would happen if creditor 1 came along and was granted a floating charge but, when creditor 2 came along, the company did not tell them about creditor 1?

**Joyce Lugton:** Creditor 2 would be able to consult the register, because it will be public and searchable.

**Karen Gillon:** That is fine. By whom will it be held?

**Joyce Lugton:** The Keeper of the Registers of Scotland.

**Karen Gillon:** Okay. I asked because that was not entirely clear.

**The Convener:** I think that we are ready to move on to enforcement.

**Beverley Francis (Scottish Executive Justice Department):** I will deal with the proposals in the

bill for the establishment of a new public body—the Scottish civil enforcement commission—and the reform of the enforcement officer profession.

The first thing to say is that, in Scotland, civil enforcement is a private matter, which means that parties that are involved in court action are responsible for that action and for its funding. However, there is a profession of enforcement officers who serve a public function in that they are responsible for the delivery of witness citations, the service of court documents and the general enforcement of court orders in relation to debt and other matters. Those people are called sheriff officers and messengers-at-arms. At the moment, there is a two-tier profession. The easiest explanation is that messengers-at-arms deal with matters to do with the Court of Session and sheriff officers deal with sheriff court matters.

**The Convener:** I am led to believe that one of the bill's provisions makes a distinction between those companies that are required to be owned, controlled and run by qualified messengers-at-arms and those companies that employ, but are not owned by, messengers-at-arms, on which there are restrictions. I might not have got that entirely right.

**Beverley Francis:** I am aware of the issue to which you allude. Essentially, commissioned officers are commissioned individually—once they have undertaken a qualification to become a sheriff officer or a messenger-at-arms and completed their professional training, they are commissioned by an individual sheriffdom to operate in that area. Although they are commissioned as individuals, on occasion they form themselves into companies. A number of those organisations are limited partnerships and others are simply small businesses.

One of the issues that it is important for the committee to understand is that, although sheriff officers and messengers-at-arms have a formal role in relation to work that is commissioned by the courts, a number of the firms in which they are involved also undertake informal debt collection activities—that is to say, the recovery of debt that has not been formally decreed in court. It is in that area that concerns have been expressed during our consultations and considerations. We want to move towards a system of regulation for both informal and formal debt collection by professional officers.

We have also consulted on the ways in which officers form businesses and on how such businesses should conduct themselves. We carried out a secondary consultation as part of our work leading up to the initial publication of the bill to elicit views on whether further restrictions should be applied. We considered whether the partners in businesses should be able to operate



without being commissioned officers. I think that that is the point that your question referred to, convener.

Our view is that, to avoid potential conflicts of interest between the parts of a business dealing with informal and formal debt collection, there should be regulation of any non-commissioned officers within the business. We can do that by making it compulsory that everyone who is a partner in such a business is a qualified officer, or we can do it by more informal regulatory means.

16:00

**The Convener:** As the bill proceeds through its stages, we will get into more detail.

**Beverley Francis:** Yes, I would expect to have further dialogue on the detail.

**The Convener:** Have any aspects of the bill been through the Executive's improving regulation unit to assess their impact? For example, has the unit been involved in discussions on what will happen when you introduce new regulations on who can and cannot trade in this area?

**Beverley Francis:** We have been in discussion with the unit, but we have not yet produced a formal regulatory impact assessment for the bill. When we considered the criteria, we deemed such an assessment unnecessary. However, we will undertake a regulatory impact assessment for the regulations that we will produce through secondary legislation—subject to the Parliament's views, of course. We are already making progress in identifying the particular business impact.

To put things in perspective, there are only 190 commissioned officers in Scotland and they operate in 28 firms. The number of businesses is therefore quite small. We want to work with those businesses to ensure that their views can fully inform the development of the regulations.

**The Convener:** I do not want to dwell on the matter too much, because we will go into more detail when the time comes. However, the issue is interesting.

**Christine May:** We could take evidence on it.

**The Convener:** Absolutely.

I am sorry, Ms Francis—I interrupted you.

**Beverley Francis:** That is all right. Lastly, I confirm that at the moment officers are commissioned by the courts and disciplined by the courts. An advisory council of judicial and other interests oversees the officers' work, gives advice, and lays out arrangements. That is set out in the Debtors (Scotland) Act 1987. Also, the committee may wish to pay particular attention to the Act of

Sederunt (Messengers-at-Arms and Sheriff Officer Rules) 1991.

Why change the existing system? Although the bill may be difficult for the layperson to understand and to come to terms with, the enforcement system is at present poorly understood by the public. Often, it is not until people are being pursued through the courts that they begin to realise what the interface looks like in terms of access to advice and to information on their rights and responsibilities. We therefore feel that there is a case for reform.

On the issue of accountability, there is a sense of there being too many cooks. The judiciary—the Court of Session and the sheriffs principal—are involved in matters of discipline. The Act of Sederunt (Messengers-at-Arms and Sheriff Officer Rules) 1991 set out arrangements for how discipline and conduct matters for officers would be dealt with. There is also a professional association, the Society of Messengers-at-Arms and Sheriff Officers, from which I understand the committee will take evidence. It has its own disciplinary arrangements.

There is a sense that nobody is really sure where accountability lies. Evidence suggests that existing disciplinary arrangements are neither well used nor understood. In relation to accountability, the advisory council is low key. It is not particularly hands on; it meets fairly infrequently and does not do a lot of proactive work. There is a sense that work on accountability is low key and that the sheriff officer and messenger-at-arms profession does not operate on a proper footing. That makes a case for change.

Essentially, we will create a new, unified profession. Instead of having sheriff officers and messengers-at-arms, we will have a new officer profession that will act as one. The suggestion is that the office of messenger of court will be created—there are references to it throughout the bill.

Secondly, the bill will establish a new public body—the Scottish civil enforcement commission—to oversee and modernise the recruitment, training, regulation and discipline of the new unified enforcement profession. The bill contains a lot of detail about the new commission and what it will and will not do. I shall not dwell on that, because the schedule on the commission is fairly straightforward and easy to understand. The enforcement profession is in need of modernisation. For example, the Act of Sederunt (Messengers-at-Arms and Sheriff Officer Rules) 1991 suggests that to be a sheriff officer one has to be at least 20 and cannot work after 70. There are lots of fairly traditional and old-fashioned barriers that we need to modernise to bring the profession into the 21<sup>st</sup> century.

The third important element of the package is that the commission will play a broad role in public education and information. We expect the commission to produce information about enforcement that is easily accessible to members of the public. It will explain in simple terms what is happening to them with regard to diligence that is being done to them and what rights and responsibilities they have.

The last piece in the jigsaw is that there is a strong case for compulsory membership of the professional body for all officers. At the moment, membership is not compulsory; only 119 of the 190 commissioned officers are members. There has been some anecdotal evidence of a schism in the professional body and a sense that it is not responding or modernising. We have worked closely with SMASO to help it to deal with some of those issues and to use the bill as a vehicle through which it can obviously improve and modernise itself and become a more effective representative body.

The majority of respondents to our consultation welcomed our proposals for the commission. There was some resistance from the more traditional sheriff officers and messengers-at-arms, who believed that modernisation would sweep away a lot of the traditions and historical things that they hold dear. You may hear some of that in their evidence. Essentially, that is the proposal for the Scottish civil enforcement commission.

**The Convener:** Thank you very much indeed. The fourth element in the package is on diligence. We obviously do not have time to go through all your slides, so it might be useful if you gave us five minutes on the key points. We will spend much more time on diligence when we scrutinise the bill, but there is a danger of information overload. It would be helpful if we just got the overview on diligence.

**Andy Crawley:** I am happy to do that. I hope that the slides will follow the approach that we have taken with the rest of the briefing. They can be read through quite quickly and will convey a lot of the sense of the big picture.

Essentially, the diligence element does three things. One is to reform the existing diligences.

Perhaps I am jumping ahead a little. "Diligence" is not a word that people use in everyday language. What can I say? It is a Scots term of art. It is not really used anywhere else, which does not help people to understand its meaning. Crudely speaking, diligence is the law of court enforcement. More exactly, it is the law of having debts paid from assets that belong to the debtor. It spills over into other matters, but the big picture is that diligence is about debt enforcement and all

the ways in which creditors can get their money back from people who will not pay. Many of the reforms are intended to help the could pays and the can't pays, but the big picture on diligence is that it is designed to be effective and to help creditors to get their money back, one way or another.

The popular diligences are largely those for which a summary warrant can be used. As I said, the most active users of diligence are public creditors—primarily HM Revenue and Customs and local authorities. A summary warrant can be used to arrest earnings and bank accounts and to attach assets. Those three diligences are the most popular by some margin. The other diligences complete the toolbox and ensure that every kind of property has a diligence.

First, we are trying to ensure that the popular and well-used diligences are fit for the job and that we get right things that are not working as well as they could. It is fair to say that the bill will do quite a lot of fine tuning of existing forms of diligence. Nearly all of that arises from detailed work by the Scottish Law Commission, which investigated, spoke to many stakeholders and consulted. It has said what changes it thinks should be made and, by and large, the Executive's view has been that those changes are fair enough. This is technical stuff and the Law Commission has done the spadework, so we will go along with what it thinks needs to be done to make the diligences technically effective, which is important.

Another big piece of diligence work is on ensuring that creditors have a full toolkit. If creditors cannot get at some kinds of property, we will provide new diligences to give them more options: land attachment, residual attachment, money attachment and interim attachment. Those four diligences are new, to all intents and purposes. As a result, the committee will want to examine closely how we have balanced them. As I said, striking the balance is the key to much of the bill. If we are introducing new diligences, such as land attachment, we want to ensure that the appropriate level of debtor protection is available, particularly if someone's home might be at risk.

Providing better information is the third broad theme of diligence reform. As Beverley Francis said in relation to the functions of the proposed Scottish civil enforcement commission, many problems in the interface between the state and the citizen involve people not understanding what is going on, what they have to do and what they do not have to do. That means that, for example, if the bank accounts are arrested of the could pays, or if someone grabs a slice of their wages, they may not know that they could apply for time to pay. If they are granted time to pay, they are protected from enforcement action and have

breathing space. That is right—that is how it should be.

To ensure that people understand their rights and responsibilities, the bill introduces many information triggers. The key provision in which I think the committee will be interested is that, when a creditor wants to take enforcement action, they will have to provide the debtor with a copy of the debt advice and information package. That is a rather ugly term to appear in legislation, but it refers to an Executive information leaflet called “Dealing with Debt”, which is being piloted under the Debt Arrangement and Attachment (Scotland) Act 2002.

16:15

The leaflet, which is being sent out to debtors, tells them in the plainest language that we can manage what diligence is, what different kinds of diligences there are and what they can do if they face enforcement action. It also tells them what their protections are, where they can go to get time to pay and, perhaps most important, who they can contact to find out how they can get the help that they think that they need. The debt advice and information package includes a list of local money advisers—not money advisers throughout Scotland, but a list of 10, 15 or 20 phone numbers of advisers in the local area who can provide debtors with money advice. A lot of effort has gone into the package, as a result of which it should be used widely. The bill extends the use of the “Dealing with Debt” leaflet, and our intention is to expand it to make it more effective and useful for could pay and can’t pay debtors.

I turn to questions of balance relating to information. The bill enables the information disclosure order scheme, which will be a way for creditors to find out about the assets of debtors. At the moment, the won’t payers find it too easy to hide from creditors—effectively, they disappear. If Government holds information about debtors that might be useful for enforcement purposes, creditors should be able to get that information and take the appropriate enforcement action. Obviously, there are big questions around the need to protect people’s personal data and ensure that there is a proper balance. That is why the scheme will be run through the courts. The courts will be the gateway and will ensure that everything is run properly.

Earnings arrestment is a widely used diligence, but it is not working as it should because the people who are involved do not know enough about what is going on. Sometimes when a debtor is subject to an earnings arrestment, the first time that they know about it is when half their salary is missing. We do not think that that is right; debtors should have more warning about that. Also,

creditors may not know whether the money is being deducted, and we think that they should have better information about that. When debtors move, information about any new employer should be made available. The committee will, no doubt, want to consider all those issues. Those are all ways in which the bill will improve the level and quality of information that is available in the diligence process.

That is an overview of the diligence element of the bill. The nitty-gritty is in the handouts that have been circulated to members.

**The Convener:** That was helpful. Are there any questions on diligence? Murdo Fraser—the geek—has a question.

**Murdo Fraser:** As an aside, I note that the Executive is abolishing sequestration for rent. I remember from my days in practice that that was always a useful sledgehammer for a lawyer who was helping a landlord to recover funds from a recalcitrant tenant.

My question is on earnings arrestment, which is widely used by public authorities, such as local authorities in seeking to recover council tax arrears. A common complaint from the small business community is that the burden of dealing with earnings arrestment is placed on the employer, who has to jump through lots of administrative hoops and get the calculations right. That puts a considerable burden on the payroll department, especially if it is a small firm. Has any thought been given to the idea of permitting employers to charge the creditor for the time and administration that is involved in processing earnings arrestments?

**Andy Crawley:** We have met representatives of the Institute of Payroll and Pensions Management, which is an employer representative body, to consider all the provisions in the bill and ensure that the footprint is as small as possible. Our view is that, notwithstanding your comments, earnings arrestment is already a well-balanced diligence that has—or at least will have, once it has been fine-tuned by the bill—a proportionate impact on all the people involved. The bill does not break new ground but simply tries to get the technicalities right.

In answer to your specific question, we believe that employers should generally get a bit more to compensate them for the work that is involved in earnings arrestment. For that reason, we plan to increase the fee from 50p to £1.

**Murdo Fraser:** That does not sound terribly generous.

**Andy Crawley:** Well, it represents a 100 per cent increase. The fee will be £1 for each payment.

**Murdo Fraser:** That will be £1 a month.

**Andy Crawley:** Over the piece, it will accumulate.

It might be helpful to the committee to keep in mind the fact that such matters are software driven, so employers do not need to work things out with paper and pencil. Our reason for speaking to the IPPM is that the institute works with software suppliers to develop the software that employers need in order to operate such systems. In that context, I should point out that most legal systems have similar provisions and that the Scottish system is by no means the worst. We believe that the footprint of the earnings arrestment provisions is proportionate.

**Christine May:** Has consideration been given to the safety issues that are associated with ensuring that a person's subsequent employer is made known? For example, given that many people fall into debt after fleeing a violent relationship, issues of personal safety could arise if folk can know where people have gone and where they now work. Has that issue been raised with you?

**Andy Crawley:** That point has not been raised with us. The information is disclosed within a very narrow sphere—essentially, to creditors—but I suppose that, hypothetically, a creditor could pass on the information. However, that has not been put to us as a risk.

**The Convener:** If members are happy and have no further questions, let me thank the Executive bill team for their helpful introduction to the bill. They have given us a lot to think about and to read before we see them again in January. We hope to appoint a special adviser for the committee before Christmas, so we expect that he—unfortunately, there are no shes on the short list—will be in touch fairly soon after his appointment. I thank the witnesses very much indeed.

I also thank the researchers from the Scottish Parliament information centre for their tremendous effort, which was extremely helpful.

As we will now move into private session, I must clear the gallery.

**Christine May:** Will we not discuss the note by the clerk in public?

**The Convener:** Sorry—I thought that we were going straight to item 6. If they wish, the people in the public gallery can stay and listen to our discussion under item 5, which is consideration of our approach to the bill.

Basically, there are a number of aspects to consider. Given that, under item 6, we hope to agree on who will be offered the job of adviser on the bill, I suggest that we should ask the clerks

and the adviser to put together a work programme or schedule that we can discuss on 17 January.

I also suggest that we agree to invite some obvious witnesses to our meeting on 17 January for a round-table discussion in which we can identify the issues. It is helpful that many of the relevant organisations are listed in the presentation that we were given. In my view, it would be helpful to hold two round-table discussions in public. One of those could involve the professional bodies and the other could involve lay people who have an interest in the bill.

Do members agree with those suggestions?

**Murdo Fraser:** I suggest that the lay people whom we invite should include people who have been made bankrupt. We should hear from those who have been made personally bankrupt, but we should have an equal interest in hearing from people who have been in business and have been made bankrupt. I do not know whether there is an association of bankrupts through which one can get hold of such people, but there must be some way of getting in contact with them.

**The Convener:** I can think of a couple of people whom we could invite. The chap who went to the Public Petitions Committee seems to be an obvious choice to include in a round-table discussion. We could also invite Bill Fleming, who gave evidence to the Enterprise and Culture Committee as part of our business growth inquiry. I am sure that I can find more bankrupts from my extended family.

**Christine May:** I was going to suggest that we could include people who have sought to pursue people who owe them money.

**The Convener:** Yes. We should ask both sides.

**Michael Matheson:** The key thing is to try to get people with real-life experience of the existing law and information on how the new law will impact on the process.

**The Convener:** Absolutely.

**Shiona Baird:** Might the Federation of Small Businesses—or a similar organisation—have gathered information on the business side and the impact on creditors?

**The Convener:** We can certainly approach the FSB. We want to ensure that business organisations are given an opportunity, and there are business organisations other than the FSB.

**Shiona Baird:** Yes. I just gave an example off the top of my head.

**The Convener:** We could have two sessions on 17 January, and another session if necessary. Getting a feel for the issues from professionals and lay people would be a good way of kicking off

discussions on the key issues that we need to address in our scrutiny of the bill at stage 1. We will also discuss a more detailed paper from the clerks on our work schedule.

**Susan Deacon:** In the same vein, there have been several references to the Executive's roadshow work. I wonder whether there is a way in which we can tap into the more qualitative research and into conversations about that work before we decide whom we should bring in and, for that matter, what we want to ask them.

**The Convener:** That would be helpful. I would have thought that that information would be fairly readily available, certainly in summary form. Perhaps it would give us a steer on the key issues. Would you like it for your Christmas reading? We will do our best to obtain it.

Is everybody happy with what has been proposed?

**Christine May:** I was intrigued by the final sentence of paragraph 6 in the paper from the clerks, which contains the nearest thing to an instruction to members that I have ever seen. A strong suggestion is made that we should adopt a thematic approach, which I would be pleased to adopt.

**The Convener:** Excellent. For the second time, I ask that the public gallery be cleared so that we can move into private session.

16:27

*Meeting continued in private until 16:31.*



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