ENTERPRISE AND CULTURE COMMITTEE

Tuesday 28 February 2006

Session 2

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

CONTENTS

Tuesday 28 February 2006

Col.

SUBORDINATE LEGISLATION 2685
Electricity (Application for Consent) Amendment (Scotland) Regulations 2006 (SSI 2006/18) 2685
BANKRUPTCY AND DILIGENCE ETC (SCOTLAND) BILL: STAGE 1 2688
PETITION 2704
Bankruptcy Law (Sequestration Recall Process) (PE865) 2704
BANKRUPTCY AND DILIGENCE ETC (SCOTLAND) BILL: STAGE 1 2705

ENTERPRISE AND CULTURE COMMITTEE

5th Meeting 2006, 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)
David McLetchie (Edinburgh Pentlands) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Nicholas Grier (Adviser)
James Thomson (Scottish Executive Enterprise and Lifelong Learning Department)

THE FOLLOWING GAVE EVIDENCE:

Marion McCormack (Accountant in Bankruptcy)
Graeme Perry (Accountant in Bankruptcy)
Gillian Thompson (Accountant in Bankruptcy)

CLERK TO THE COMMITTEE

Stephen Imrie

SENIOR ASSISTANT CLERK

Douglas Thornton

ASSISTANT CLERK

Seán Wixted

LOCATION

Committee Room 2

Scottish Parliament

Enterprise and Culture Committee

Tuesday 28 February 2006

[THE CONVENER *opened the meeting at 14:02*]

Subordinate Legislation

Electricity (Application for Consent) Amendment (Scotland) Regulations 2006 (SSI 2006/18)

The Convener (Alex Neil): I welcome everybody to the 5th meeting in 2006 of the Enterprise and Culture Committee. We have received apologies from Susan Deacon. We had also received apologies from Jamie Stone, but I understand that he is now in the building and may join us later.

The first item is the Electricity (Application for Consent) Amendment (Scotland) Regulations 2006 (SSI 2006/18), which is subject to the negative procedure. We shall hear evidence from James Thomson of the renewable energy policy division of the Scottish Executive Enterprise and Lifelong Learning Department. James is making his third appearance before the committee, and I ask him to tell us what the regulations are all about.

James Thomson (Scottish Executive Enterprise and Lifelong Learning Department): The regulations amend the fees paid by developers under section 36 of the Electricity Act 1989. Specifically, the regulations introduce two new fees for the extension and construction of generating stations with a capacity of between 1MW and 10MW. The fee for both is £5,000, reduced from £15,000. Because of the section 36 thresholds, the fees will apply only to stations wholly or mainly driven by water—hydroelectric stations and marine stations.

Murdo Fraser (Mid Scotland and Fife) (Con): I welcome the regulations. Members will recall that, back in June last year, we discussed the earlier set of regulations that increased the fees, and we made representations to the Minister for Enterprise and Lifelong Learning following comments that we received, such as those that a constituent made to me. The Executive has thought again and reduced the fees for hydroelectric schemes, so I welcome that.

However, I have one question, which arises from an inquiry from a constituent. There has now been a period of some months during which applicants have had to pay the higher fee of £15,000. My constituent is in just that situation, having applied for a small hydroelectric scheme in November, when he had to pay the higher charge. Will he get a refund?

James Thomson: We listened to what the committee said last year, and we have acted as quickly as possible to reduce the fee level. We have some sympathy with developers who applied during the period of the higher fee, and we understand that two or three have paid that fee, but there is nothing in the legislation that allows us to make refunds or to reimburse people retrospectively.

Murdo Fraser: So is the answer no?

James Thomson: The answer is no.

Murdo Fraser: Might the Executive reconsider that? It occurs to me that no more than a handful of people will have been affected. Given that the Executive now accepts, in effect, that it was an error to increase the charges in the first place, in the interests of natural justice, could it see its way to reimbursing the few individuals concerned?

James Thomson: Before I came to the committee, I checked how many people had paid the £15,000 fee—I think that three developers have done so. However, as I said, there is nothing in the legislation that allows us to reimburse those people. We would need to have financial memorandums and other regulations in place, but those are not present.

Murdo Fraser: Might the Executive want to consider that situation?

James Thomson: That would mean re-examining and possibly even changing the regulations again, which we are not minded to do.

Christine May (Central Fife) (Lab): To pick up on Murdo Fraser's point, his constituent and the other two developers nevertheless have a case that we ought to communicate to the Executive. We should at least make representations, although it may be that nothing can be done under the regulations. I have considerable sympathy for the three developers. I welcome the regulations, because they will allow the small-scale renewable energy proposals that we want in more isolated communities to go ahead and to be viable. The regulations go a long way towards meeting the real concerns of developers of small-scale hydro schemes about disproportionate costs.

Shiona Baird (North East Scotland) (Green): My comment is probably too late, but I have a concern about the huge difference in the fees for the 10MW and 100MW levels. How much discussion went on in making the decision on dividing up the fees? Is there any chance that the fee structure will be revisited?

James Thomson: There was a lot of internal discussion in the Executive on the level of fees. As members know, we have made the changes so that we and local authorities can be reimbursed properly for the costs that are incurred in processing section 36 applications. To re-examine the fees structure, we would need more amending regulations but, at present, we have no plans to lay such regulations.

The Convener: Do members agree with Christine May's suggestion that we draw the Executive's attention to the three affected developers, mention our sympathy for them and ask the Executive to explore whether it can recompense them?

Members *indicated agreement*.

The Convener: We are considering the regulations under the negative procedure. I should correct point 1 at the bottom of the cover note. We have to report by 6 March—which will be 40 days from 20 January—and not, as the cover note states, by 30 January. That is obviously not the case, as we would have missed the deadline. We are well within the 40-day timescale. As we are following the negative procedure, there is nothing else for me to say, other than to thank James Thomson for his third appearance before the committee.

Bankruptcy and Diligence etc (Scotland) Bill: Stage 1

14:09

The Convener: Agenda item 2 is consideration of the proposed timetable for, and approach to, the Bankruptcy and Diligence etc (Scotland) Bill at stage 1. A fairly comprehensive paper has been circulated, but I will summarise it.

Members may remember that on 17 January we agreed our proposed timetable for consideration of what is a lengthy and complex bill, with a view to ensuring that there would be sufficient time for a stage 1 debate after the production of our report and before the summer recess.

However, we have received a request from the office of the Minister for Parliamentary Business to bring forward the timetable. Initially, the request was to bring it forward to the end of April. I have indicated informally—this will obviously be subject to the committee's approval—that setting a deadline of the end of April for our report is unrealistic. Because of the importance of scrutinising the bill, and because the bill is the longest that the Parliament has ever considered, and one of the most complex, I felt that we needed more time.

The committee has two responsibilities. The first is to assist the Executive, when appropriate, to get its legislation through. This committee has always tried to do that. The second—which is probably more important—is to ensure that the quality of scrutiny is such that the legislation passed by Parliament is of high quality. In the short life of the Parliament, we have already passed legislation that we perhaps should not have passed because it was not as good as it should have been.

We should come and go with the minister, and we should revise our timetable. The clerks and I have looked at our work programme, and I feel that we will be able to produce our stage 1 report in time to approve it at our meeting on 16 May. That is roughly one month earlier than we had planned in our original schedule. However, I believe that it would not be possible to meet a deadline of the end of April. I therefore suggest a compromise. I feel that it is fair to both parties and I hope that it is realistic. I invite comments from committee members. It is entirely up to you.

Christine May: As you say, convener, this bill is long and complex. It is certainly the first major bill that this committee has considered. We have worked on part 1 of the bill, and the issues are coming through clearly. Many of those issues resonate with the parts that deal with diligence. There are perhaps five key issues in the whole bill.

Now that we have spent so long on part 1, our level of knowledge is such that we can accelerate our evidence taking and conclude it sooner that we had expected to.

I agree that our job is to help to get the legislative programme through, when possible. We do not want to be regarded as obstructive; we want to help the minister. We can aim to conclude by 16 May, but if we can conclude sooner, we should do so, and inform the minister that we can do so.

The Convener: If it turns out that we can bring things forward by a week, or even two, I would be more than happy. The quicker we get the Bankruptcy and Diligence etc (Scotland) Bill out of our system, the better.

We are not in a position to commit to completing our report by the end of April. We need breathing space. However, if we set a deadline of 16 May, but then find that we have scope to bring the report forward, I expect that members of the committee would be happy with that. That would be a flexible and reasonable approach. Are members happy with that?

Michael Matheson (Central Scotland) (SNP): To a point. I hear what Christine May says about the key themes that have emerged so far, but we still have another three elements to consider in detail. Who knows what will arise? It is fair to say that five or six key areas have been highlighted, but they have been in part 1 alone. A similar number of issues may arise in each of the other parts.

I am somewhat surprised that the Minister for Parliamentary Business has made such a request of the committee at this stage; we proposed our timetable away back in January. I was a member of the Justice 1 Committee in the first session of Parliament, and we had to deal with very complex pieces of legislation. If we required extra time, we went to the minister and were then given that extra time. I am therefore surprised that, for this bill, after we have planned ahead in order to prevent our having to go and ask for extra time, the minister is now asking us to cut back on our time.

Aiming to conclude our stage 1 report by 16 May—although I had thought that it was to be 17 May—is still quite ambitious. To do the bill justice, we should aim to conclude our stage 1 report by the end of May. That is earlier than we had planned, but it is realistic if we wish to do the bill justice.

The Parliament has a history of rushing through legislation to the extent that that legislation ends up coming back to haunt us and the Executive has to take action to remedy faults that should have been ironed out at stages 1 and 2. This bill was proposed a while ago and is on an area of legislation that has needed to be amended for some time. Given the complexity and detail of the bill and the fact that, effectively, we have only one shot at it, to cut our scrutiny of it by an extra four to six weeks in order to squeeze it through is pointless and almost stupid. Given the time that it has taken to draft the bill and all the issues the led to the need for a new piece of legislation in the first place, we must ensure that we get it right. I am minded to say that the committee should produce its stage 1 report at the end of May, rather than the middle.

14:15

Murdo Fraser: I have a lot of sympathy with what Michael Matheson said. I do not know about other members, but I am struggling with the bill, which deals with some complex legal issues. I agree with him about the need to get the bill right. It is more important that, as a parliamentary committee, we try to get the bill right than that we try to meet some arbitrary deadline that is set by the Minister for Parliamentary Business. If we agree to a deadline, we do not need to take up all the time; if we deal with matters more quickly and, as Christine May said, identify matters that we have already gone over as we go through the bill, we can perhaps accelerate the process. Given the bill's complexity, however, I would be reluctant to agree to an earlier deadline than the one that we originally proposed.

We are taking evidence from witnesses who have a detailed knowledge of and interest in the subject. Given the bill's complexity, the committee will be a laughing stock if it is seen not to be giving it the detailed scrutiny that the witnesses expect. Given the knowledge and expertise of the people from whom we have been taking evidence, they probably think that we are not up to the job as it is, but they will think that we are even less up to it if we are seen to be unnecessarily rushing the bill through.

Christine May: May I raise a point of clarification? It is in fact the Parliamentary Bureau that proposes a motion to the Parliament and the Parliament that agrees the timetable, rather than the Minister for Parliamentary Business.

Michael Matheson: But it is at the minister's request.

Christine May: Indeed, but I just wanted to get the technicalities right.

Michael Matheson: I appreciate that, but the Executive has a built-in majority in the bureau.

Christine May: Indeed.

Karen Gillon (Clydesdale) (Lab): Has this been to the bureau?

The Convener: No.

Karen Gillon: Is it not unusual for a committee to agree a timetable before it is agreed with the bureau? Forgive me for my naivety, but that is what I assumed.

The Convener: There is certainly contact between our clerks and the office of the Minister for Parliamentary Business. The office knew about our proposed timetable and there were no objections to it until about two weeks ago, at the start of the recess, when we had an initial indication that the request would be made.

I hear what members are saying and I share many of the concerns that have been expressed by Michael Matheson and Murdo Fraser; I have indicated that to Christine May and others. I suggest that we set a deadline for our report of 16 May; if we can bring that forward, we will do so. If, however, as Michael Matheson has said, we find by the time we get there that we need more time, we reserve the right to ask for additional time. I hope that an acceptable compromise is for everybody to work towards a deadline of 16 May and genuinely try to meet that deadline. We are trying to do two things; we are trying to get the bill through—and there is cross-party agreement on the need for the bill—and at the same time we have to fulfil our obligation as legislators to try to get the legislation right. If, having set that deadline, we need flexibility either way, we can deal with that at the time, but at least we and the Minister for Parliamentary Business—who I hope will accept the compromise—will know that we have got a deadline that we are working to. Would that be agreeable to the committee? I know that it will not satisfy everyone but I think that we have to get this moving. To enable us to do that, we can reschedule other areas of work and deal with them in June.

Christine May: I have no problem with that and I do not sense any dissent in the committee in relation to the wider issue of timetabling and other administrative matters. I hope that you will take the matter up with the Conveners Group. The committee should not be spending its time discussing administrative issues.

Michael Matheson: One of the suggestions in the paper is that the convener should write to the Procedures Committee, which is conducting an inquiry into parliamentary time. We should do that, as this issue highlights the difficulties that committees can find themselves in when the Minister for Parliamentary Business is working to a timescale that is different to that which a committee thinks that it can work to.

The Convener: Committees need to be consulted more. The situation is informal at the moment and needs to be more formal.

I will draft a letter and circulate it to everyone. I will also raise the matter in the Conveners Group. For the time being, we will set the deadline for 16 May. Is that agreed?

Members *indicated agreement.*

The Convener: I welcome our adviser, Nicholas Grier, who is going to brief us.

Nicholas Grier (Adviser): I hope that you all have the note that was given to you about the role of the Accountant in Bankruptcy. At the risk of pre-empting anything that Gillian Thompson might say, I will tell you briefly what she does. Broadly speaking, she is in charge of the process of sequestration in Scotland and ensures that various registers, particularly those relating to sequestrations, protected trust deeds and corporate insolvencies, are properly maintained. Nominees in her office act as the trustees in sequestration in about 90 per cent of all sequestrations. Of those, a large number are subcontracted out on an agency basis to various insolvency practitioners. I understand that there might be changes to the way in which the agency programme is working.

The accountant in bankruptcy is also the appointed administrator under the Debt Arrangement and Attachment (Scotland) Act 2002 and supervises that area of business. She audits and checks the remuneration that is payable to trustees and complies with various other bits of legislation.

Recently, she has been in charge of the process of moving the office from Corstorphine to Kilwinning, which is no mean achievement. I understand that that required the hiring and training of a great number of extra staff, which must have taken a lot of doing.

Her work is funded partially from debtors' estates and partially from the public purse. Members will appreciate that not all debtors' estates are in a position to contribute much to the cost of running the office.

In the Bankruptcy and Diligence etc (Scotland) Bill, various changes are envisaged. Perhaps one of the most important is that debtors' petitions will no longer go to the sheriff court. Instead, they will go straight to the accountant in bankruptcy, who will then become an officer of court and will be able to deal with all such matters. I understand, however, that people will have a right of appeal to the sheriff if something happens to go wrong.

The Accountant in Bankruptcy office is also going to be involved much more in compositions, which are a variation on trust deeds and are a method whereby creditors can come to an arrangement with their debtors and under which there must be a minimum payment of 25p. One of

the more contentious issues, which we have discussed, is that it is suggested that the accountant in bankruptcy should be doing more to check the activities of the trustees in protected trust deeds in order to ensure that things are being done properly and to guard against the unlikely event that they are not. Most important, she is also going to be in charge of the business of issuing bankruptcy restrictions orders and undertakings. You will recall that those are the new orders that will be pronounced against debtors who might not have behaved very well in the process leading up to their bankruptcy.

Those are the things that the accountant in bankruptcy is likely to be doing once the bill becomes law. I have no doubt that she will expand on those points shortly.

The Convener: I welcome Gillian Thompson, the chief executive of the office of the Accountant in Bankruptcy, Marion McCormack, the deputy accountant and head of case operations and policy, and Graeme Perry, the head of the operational policy unit.

Gillian, would you like to say a few words by way of introduction?

Gillian Thompson (Accountant in Bankruptcy): I was wondering whether or not to do so. Nicholas Grier has covered things so beautifully, so I thought that we could perhaps move swiftly to questions. The only thing that I would like to say—just to make the situation sound much more complicated—is that our relocation involved moving from George Street to a temporary office in Irvine, although some Edinburgh staff remained in the George Street office, and then moved from George Street to Corstorphine, where there are still some staff. I can explain all that, if members want to know about it. Staff then moved from Irvine to Kilwinning. We moved only recently into the new office in Kilwinning.

It was 14 February when we finally opened our doors for business in Kilwinning. It took us a little while to get there, but I think that we did the right thing by opening temporary accommodation in Irvine in November 2004, which meant that we were able to start recruiting and training and that we could get the Ayrshire team up and running. Apart from that, Nicholas Grier covered matters beautifully.

I have brought my supporters with me. If the committee gets into anything that is really technical or that concerns how we manage things day to day, my colleagues are well equipped to answer questions.

The Convener: I suppose that I should say welcome to Ayrshire. You will find the weather in Kilwinning much more palatable than Edinburgh's weather.

Christine May: It is just a shame that you did not come to Fife.

Gillian Thompson: I could not possibly comment.

Christine May: Quite. You are very welcome to the committee.

I read your short briefing paper with some interest. I note that you mention on the first page the areas of work that will be new to the office of the Accountant in Bankruptcy after consultation on the bill. What do you see as being the advantages to debtors and creditors? What are the disadvantages and are there other issues arising from the bill that we might wish to consider or question you on?

Gillian Thompson: In terms of—

Christine May: In terms of your office.

Gillian Thompson: Do you mean in relation to the specific additional functions that the bill contains?

Christine May: Yes.

Gillian Thompson: However people choose to submit debtor petitions, our aim is to become fully electronic in taking debtor petitions when debtors submit them electronically. Bringing everything under one umbrella will allow us to carry out scrutiny and to have a standard. The agency is committed to ensuring that the same standard be applied as we process all the work that we do. I hope that our work will become more efficient. I am not criticising the courts; I am simply saying that, from my perspective, bringing everything under one roof should make things more straightforward. You may take a different view; I would be happy to hear about that.

On the perspective on protected trust deeds, I have been in the Scottish Executive for an awfully long time and, just to show that the system works, I dug out my copy of the Scottish Office's 1998 consultation document on protected trust deeds and other issues, including apparent insolvency. This is the Executive's first opportunity to introduce the changes that were in effect being outlined in that 1998 document. I find that quite interesting. George Leslie Kerr, my predecessor but one, expressed concerns about protected trust deeds because, in some ways, they did not appear to be for creditors, and because there needed to be more supervision of protected trust deeds and so on. I suppose that my view on protected trust deeds is a bit jaundiced. However, the bill offers a useful opportunity to scrutinise protected trust deeds in a more overt way. We get some complaints, but there is very little that we can do about that as the arrangements stand. If you would like us to offer examples, we have brought some for the committee to hear. I am

talking only about protected trust deeds and the changes that appear in the bill and not about the current consultation document, although I am prepared to talk about how I see other proposed changes operating, if need be.

14:30

On bankruptcy restrictions orders, if there is to be a one-year discharge, it is entirely appropriate to have a regime that allows an extension of the period before discharge for debtors who require it. I was at a conference on the bill this morning at which the question of how the agency would police bankruptcy restrictions orders was raised. I admit that there would be a new way of working for us: we are talking about investigations, although I am sure that they would not quite be forensic investigations. However, we will learn lessons from the Insolvency Service. Graeme Perry and other members of his team have already talked to the Insolvency Service about how it works. There may be anxiety that we will not be suitably well trained, but I assure everybody that the necessary training arrangements will be in place.

Responsibility for policy does not lie with me—it lies with the Justice Department and the bill team. I was previously a policy developer, so members will realise that it is sometimes tricky for me not to take on that responsibility. Members will have the opportunity to ask Mr Allan Wilson and his team questions next week, so I am simply giving the committee my views as a pragmatic deliverer of policy.

Christine May: That is helpful. Will you comment on the potential disadvantages of the bill from an implementation perspective? At this stage, we are looking for issues that might lead to amendments being lodged at stage 2. I have read the consultation document on protected trust deeds, which confirms what you have said, but I have also had considerable conversations on the debt arrangement scheme in my area. It seems to me that we could consider proposals that would include elements of both at stage 2. Do you want to comment on that?

Gillian Thompson: I understand that the Executive plans to review the debt arrangement scheme and that it is likely to make recommendations for change. The general perception is that the debt arrangement scheme has been a failure, but I regard it as having been a bit slow to take off for a number of reasons. At 23 February, total debt of £1.2 million was covered by it, which is not too shabby. Some people would say that it has been a failure and that nobody goes into it, but—

Christine May: I am sorry, but I would like to make a brief interjection. The debt arrangement scheme does not allow interest and charges to be frozen. As a result, debtors can have significant remaining debts after 10 years. Do you agree that that is a problem?

Gillian Thompson: I might be more inclined to the view that one reason why the debt arrangement scheme has not taken off is that we have had difficulties with persuading money advisers that to become an accredited money adviser is a good thing. At the moment, the average length of a programme is 41 months; it would be unlikely that we would approve a programme under the DAS that would last for much longer than that because of the issues that are involved. A 10-year programme seems to me to be unlikely. It has been said to me that the difficulty with the scheme has partly been that there have been no opportunities to freeze interest and to introduce an element of debt relief, if you like, but I think that the problem is more that we have not been able to get money advisers to operate it.

Murdo Fraser: I have a question on the register of bankruptcy restrictions orders that you will be required to maintain. I wonder about the practicalities, given that some BROs will last for 15 years. How easy will it be to maintain a register, given that debtors might move around Scotland, move down south or move to another country? How will you keep the register up to date and what sanctions will be in place for someone who moves house without telling you?

Gillian Thompson: I ask Graeme Perry to answer that.

Graeme Perry (Accountant in Bankruptcy): We have not gone into detail on how the register will be made up. We are taking advice from our colleagues at the Insolvency Service on the practicalities of monitoring people with BROs and, to some extent, people with bankruptcy restrictions undertakings. One of the conditions is notification, but we have not yet devised a plan with regard to whether we can chase up BROs and BRUs. If a case is brought to our attention, we will be able to take action, but it is asking quite a lot for us to maintain contact with somebody to the extent that they cannot disappear. There is a concern, but we can enforce the provision by requiring people who are under BROs and BRUs to contact us and notify us of changes in their circumstances.

Murdo Fraser: Do you have any thoughts on how the public will be able to access the register?

Graeme Perry: Excuse my always referring to the situation down south, but the Insolvency Service is the best example that we have. Our colleagues at the Insolvency Service publicise through regular press releases some of the juicier and more high profile BROs that are imposed on

people. In a classic example, the Insolvency Service quoted a gentleman's name and address, stated that he had incurred debts through gambling, drugs and prostitution and informed the public that a BRO had been imposed. I do not know whether we can go to such lengths, but the Executive has asked us to consider publishing BROs rather than simply including them in the register. There is also potential to highlight not only BROs but BRUs in the *Edinburgh Gazette.*

Gillian Thompson: There is a bit of time before we go live with the system, but we have begun the planning process and we are learning about what works elsewhere in the United Kingdom. In order that we can run what is a completely new function for the Accountant in Bankruptcy, I will need additional staff who are properly trained in investigation. If we are required to police the system in such a way that we monitor people to prevent them from dropping off the list, that is what we will seek to do.

Murdo Fraser: Have you built the costs of that into your financial projections, which are covered by the financial memorandum?

Gillian Thompson: Yes, although they are not separated out.

The Convener: That leads on to my questions, which are on resources. The bill will bring about a major expansion in the role and activities of the Accountant in Bankruptcy. How many staff do you have and how many additional staff will you require to carry out your new functions?

Gillian Thompson: Before we relocated we had 92 staff, two of whom were working on relocation. We aim to have 92 staff in North Ayrshire and we have a recruitment campaign on the go at the moment. My view is that, when we have 92 staff, we will have restored equilibrium in the work that we do now. We should perhaps remember that, in the current financial year, we are delivering an increase of just over 50 per cent in the number of sequestrations. In addition to our on-going work, Graeme Perry and his team are planning for the future. We have analysed carefully what we will need to do by way of getting additional staff. We might need an additional 25 staff, which would take our numbers to—what is 25 plus 92?

The Convener: 117.

Gillian Thompson: Thank you. We are not 100 per cent certain that we will need so many additional staff, because the picture is changing all the time. I am under the cosh to make efficiencies and savings and to be smarter, so we are modernising our information technology system with a view to operating more efficiently and we are taking other action to make us more productive. It is difficult to say precisely how many extra staff we will need, because we might find more streamlined ways of dealing with our business.

During the 2004 spending review—as long ago as that—I was asked to estimate the additional resource that we would need if we were going to deliver what would be required of us. We identified an amount in excess of the £1.44 million that is in the financial memorandum. It is a matter of public record that £1.8 million will be included in my 2006-07 budget. That money is for start-up costs, such as recruitment, training and IT. Beyond that, additional resources will come in year on year. Members will have spotted the awkwardness that arises because of the length of time that passed before the bill was introduced in November 2005. Because of that awkwardness, we are working with the Scottish Executive Justice Department on how to protect the additional funds for the future, so that if I cannot spend the money that comes into my budget in the next financial year, which might happen, we can carry it over to the following year.

Additional funding is coming into the agency's budget and we will recruit at an appropriate time, after the passage of the bill through Parliament.

The Convener: I have a few more questions. First, since the Enterprise Act 2002 was passed by the United Kingdom Parliament there has been an exponential increase in the number of bankruptcies. Have you built into your business plan assumptions about the percentage increase in bankruptcies in Scotland that might result from the bill? Secondly, what performance indicators does the Executive set for you? Thirdly, will you comment on the impact of the expanded responsibilities in relation to protected trust deeds that the bill would give to the AIB? The matter is mentioned in paragraph 4 of our adviser's paper, under the heading, "Areas of questioning for the AIB".

Gillian Thompson: I might need some help. In June 2005 we thought that the sequestration increase in the previous financial year had been a blip. We witnessed an overall increase of 51 per cent over the financial year 2004-05. It proved not to be a blip and we are dealing with 50 per cent more sequestrations, as I said.

South of the border, comparisons are done quarterly, so figures are published quarterly. In Scotland we talk about financial years, so we brought our reporting into line so that we can measure what is happening south of the border in relation to what is happening in Scotland. In the fourth quarter of 2005 there was a 37.6 per cent increase in bankruptcies south of the border. That was an increase over the previous quarter in 2004—

14:45

The Convener: Was that an increase on the figure in the previous quarter or the figure in the same quarter in the previous year?

Gillian Thompson: You are right to ask. The increase was on the figure in the same quarter in the previous year. I could give you the figures for each quarter if you are interested—in fact, I can leave the figures with you.

The Convener: If you leave the information, we will circulate it to members. We are interested in the figures.

Gillian Thompson: I will leave the information for you. The main point is that the number of sequestrations in the last quarter of 2005 was 66 per cent higher than in the same quarter of the previous year. One argument against changing the discharge period from three years to one year has been that it might make bankruptcy easier, so people will be more inclined to petition for bankruptcy. However, we have not changed the law, but the rise in sequestration outstrips the rise elsewhere. My opposite number, Desmond Flynn, who is the chief executive of the Insolvency Service, has said on the record that he does not believe that the increase south of the border relates to the changes that have been made, which is why I have couched my comments in the terms that I have used.

Perhaps we are experiencing an economic downturn and people are deciding that they can no longer struggle on with their debts, or they have overcommitted themselves. There are many scenarios. The bottom line is that the law has not changed but the number of bankruptcies has increased. You asked whether we have factored that in. We have not factored in an increase of that magnitude; the increase was much more modest and was based on previous years' experience.

Graeme Perry: Our original assessment was that the rise would be 25 per cent, so we must revisit that. We do not, however, know whether the increase will continue.

The Convener: In the latest quarter, the number of sequestrations in Scotland showed an increase of 66 per cent on the comparable period in the previous year.

Gillian Thompson: Yes.

The Convener: On top of that, the bill may result in a 25 per cent increase.

Graeme Perry: No. Back in June 2005, when we tried to assess what the bankruptcy figures would be on implementation of the bill, we thought that bankruptcies would rise by 25 per cent. We must now consider the implications of an increase of considerably more than that—60-odd per cent. We must now reassess what the rate and number of bankruptcies at the time of implementation will be.

Gillian Thompson: In the financial year to the end of February, the increase in sequestrations has been 51 per cent, so the increase over the financial year 2005-06 is likely to be 50 per cent, although it may tail off. It is important to say that we do not know whether the rise will continue. We cannot say that it will. The modelling that we undertook on the basis of a 25 per cent increase concerned sequestrations that might arise as a result of various changes that the bill will make. Normally, we would assume a much more cautious 5 to 7 per cent increase in business, as had been the case until the financial year 2005-06.

Of the petitions that form the 51 per cent rise in the financial year 2005-06, 60 per cent are creditor petitions that relate to local authorities and council tax. We might be experiencing what is to an extent an artificial increase—I have not quite decided about that—because there is no doubt that local authorities and HM Revenue and Customs have in this financial year been much more aggressive about ingathering money that is owed to them.

Michael Matheson: You said that you modelled on the basis of a potential 25 per cent increase.

Graeme Perry: That was without the bankruptcy reforms.

Michael Matheson: Was that the situation when the bill was introduced?

Gillian Thompson: Yes.

Michael Matheson: However, given the pre-legislation increases that you have experienced, what is the increase on which you are now basing your modelling?

Graeme Perry: For bankruptcy, the increases will be generated by economic factors, not necessarily by factors that will be introduced by the bill. We do not expect there to be any impact on the numbers that relates specifically to the implementation of the provisions in the bill, because it is economic factors that will affect the numbers. At the moment, we have a dilemma, because creditor petitions are slightly skewing the figures for the potential expected rise. We do not know what creditors such as local authorities or HM Revenue and Customs will do. If they maintain the same level of petitions for bankruptcy, we can expect an increase of 50 to 60 per cent to be maintained over the next year.

Marion McCormack (Accountant in Bankruptcy): We can provide the committee with an analysis of the creditor petition split. We have done an analysis of HM Revenue and Customs petitions for 2004 and 2005, for instance, and found that there has been an 81 per cent increase

in creditor petition activity. We can provide that sort of analysis for HM Revenue and Customs, for local authorities and for banks and financial institutions, which pursue debts involving consumer lending and credit cards. We have also analysed activity by finance companies and building suppliers, which will be relevant to small businesses. I would be happy to provide a summary of that analysis to the committee.

The Convener: That would be extremely helpful.

Christine May: I was going to ask what analysis, if any, you had done on the debtors. How many of them are debtors with no income and no assets? Is it only debtors with assets who come across your radar, or are you talking only about the total number, regardless of status?

Marion McCormack: At the moment, we are working with the Scottish Executive to get some proper analysis of debtors done, because our current IT systems are unable to supply us with such detailed analysis. We are investigating the option of having an extract of our database put on to another system to enable us to carry out that kind of analysis, until we get our new computer systems up and running. We are in a state of flux between an old system that is inadequate and a new system that we hope will be able to deliver such analysis without such an IT exercise being necessary.

Christine May: Just to be absolutely clear, do the figures that you have given refer to all bankruptcies, with no indication of a split between NINAs and other debtors?

Marion McCormack: It is unlikely that creditors would seek to take action against people with no income and no assets. Local authorities, for example, take action against people who own their properties, because those assets could be liquidated.

Gillian Thompson: I am not sure that I can remember now, because it was a while ago, but I think that there was a third leg to the question. There are several points to make on the percentage increase. First, we must ask what the number of sequestrations will be in future, which is obviously a question that is exercising us. We also need to consider the cost. We get fees in from each sequestration; that money goes back into the public purse, so there is an income as well as an outgoing, or cost, to the organisation. My operational costs are defrayed by the income that comes in from fees, so the more sequestrations there are, the more income there is to defray the additional cost.

Christine May: What do you think that the insolvency practitioner industry thinks of the proposals?

Gillian Thompson: Before I forget, I should say that our annual report is a marvellous publication, and we can leave you a copy. I have now remembered what the third leg of the question was about. It was about the targets, was it not? Rather than going through them individually, I point out that you can find them at the back of the annual report. However, it is fair to say that they have been around for a wee while, as the Accountant in Bankruptcy has been an agency since April 2002. We will be looking at the targets and there may be some things that we will want to examine as a result of the Parliament's scrutiny of the law. The annual report is available on the website and we are happy to supply copies to the committee—we can certainly leave a copy with you now.

The Convener: That would be helpful. We are always looking for some late-night reading.

Gillian Thompson: I believe that you also asked about insolvency practitioners.

Christine May: I wonder how insolvency practitioners view the proposal that more PTDs will go through you. After all, that perforce means that fewer PTDs will go through them and that they will receive less income while, arguably, you will receive more.

Gillian Thompson: I am currently the trustee in 90 per cent of cases, which have increased in number by 50 per cent. One would expect the remaining 10 per cent to comprise rather more complicated sequestrations.

Although we are shifting the balance a bit now, under a certain scheme, I employed insolvency practitioners to deal with 75 per cent of the cases in which I am the trustee and kept the remaining 25 per cent of cases in-house. Because we knew that, as a result of the relocation, we would lose very experienced staff and would have to take on new staff, we changed the balance and sent out more cases. However, this month, we have taken on almost 30 per cent of the cases. We are restoring the balance and are now going beyond that figure.

Of course, you will have to ask those in the insolvency profession for their views on the matter. However, I should point out that it would cost me more to pay insolvency practitioners to carry out the work that my in-house staff carry out. If members are interested, we can provide the committee with those figures.

Christine May: That would be helpful.

The Convener: I suspect that a proportion of the increase in sequestrations connected with local authority pursuit of debt is related to the fact that some authorities have been pursuing old poll tax debts vigorously; indeed, I know that that has happened in North Lanarkshire. However, do you

have any comment on the view expressed by Citizens Advice Scotland, in particular, that local authorities seem to consider sequestration as the first line of attack rather than as a last resort?

Gillian Thompson: That would seem to be the case. The debt in question is a mixture of unpaid council tax and unpaid community charge. However, one view is that by going down this route the councils are encouraging other non-payers to pay up.

I should point out that our workload has not increased simply because we are dealing with more sequestrations. One strand that has led to an increased workload this financial year is dismissals. I realise that this is conjecture, but I think that that is to do with a local authority, for example, taking action against a non-payer and the petition being dismissed eventually because the non-payer pays up. I understand that, anecdotally, local authorities regard sequestration as an extremely useful tool because it not only brings in revenue but encourages other people to pay up. Of course, that presupposes that assets can be liquidated. Given that, in most of these cases, we would be looking to sell people's homes, it is clear that various issues still have to be sorted out and that the situation is not as straightforward as it seems. Although it might seem productive to use sequestration as a first line of attack, it presupposes that I would be inclined to sell someone's house anyway. Such a course of action is expensive and, if I cannot secure the owners' agreement, I have to persuade the court that it is a good idea. These days, that does not happen all that often.

The Convener: That was very helpful. Of course, in trying to pay off their local authority debt, people might well get themselves into debt with someone else.

As members have no other questions, I thank the Accountant in Bankruptcy very much. We look forward to receiving all that useful material, which will be circulated to committee members.

Christine May: When do we have to read it by?

The Convener: Tonight.

Petition

Bankruptcy Law (Sequestration Recall Process) (PE865)

15:00

The Convener: Item 5 is a referral from the Public Petitions Committee of a petition by Edward Fowler, which calls on the Scottish Parliament to investigate the sequestration recall process and to consider amending the law to allow a right to appeal to a sheriff for those who are made bankrupt by mistake. We have circulated a paper on the issue. The petition relates to a case in which it appears that HM Customs and Excise made a mistake. I listened to the evidence that was presented to the Public Petitions Committee and thought that the request seemed reasonable. Are members happy to accept the referral of the petition?

Members *indicated agreement*.

The Convener: Do members agree to consider the petition as part of our stage 1 consideration of the Bankruptcy and Diligence etc (Scotland) Bill and to write accordingly to the petitioner?

Members *indicated agreement*.

Christine May: I received an e-mail this morning from a person who supports the petition—I suspect that other members received it, too. Can we keep that individual informed?

The Convener: Yes. We will need to take appropriate written, and possibly oral, evidence on the issue.

Bankruptcy and Diligence etc (Scotland) Bill: Stage 1

15:01

The Convener: Item 6 is to consider issues that have emerged from the evidence that we have taken from the Accountant in Bankruptcy on the Bankruptcy and Diligence etc (Scotland) Bill. I thought that the most interesting statistic was that there has been a 66 per cent increase in sequestrations, which is about double the rate of increase for the same period south of the border. We need to analyse that and find out what is behind it.

Nicholas Grier: I agree entirely. The figure raises the question why we need the bill. If hundreds of people are desperate to be sequestrated, it will on the face of it make no difference whether the bankruptcy period is three years or one year.

Michael Matheson: It is interesting that the AIB's equivalent in England has stated that the increase in sequestrations there is not a result of the recent legislation on the matter.

Nicholas Grier: That is what the Insolvency Service says, but it would be unrealistic to say that the legislation had no bearing on the increase. There are a number of possible reasons, but I am sure that the introduction of the Enterprise Act 2002 is likely to have had some effect, just because more people know about the provisions. We may not know the true reasons, but there will be several factors.

The Convener: We will explore that issue next week.

Christine May: The figure puts into context the evidence from the advice agencies that most debtors want an arrangement to regulate their debt and allow them to begin to pay it off to free themselves from the burden. As well as the greater levels of debt with which people cannot cope, it may be the case that the legislation in England has made that process slightly easier. I suppose that we want the bill to make it slightly easier for people to get debt relief and to get on with their lives.

The Convener: Another interesting point was about the perception that the debt arrangement scheme is not working—the AIB thinks that that is because of teething problems rather than anything inherently wrong with the scheme. We need to pursue that issue, because all the evidence that we have had so far has been that the scheme needs to be reformed to make it do what it is supposed to do.

Christine May: Some of the evidence that I have had in private discussions with my local advice service is that if charges and interest are not frozen during a lengthy debt arrangement scheme—the maximum possible time is 10 years—some debtors can end up with a debt that is as large as or larger than the debt that they had at the beginning of the process. There is no incentive for people to enter into such a scheme if they see no light at the end of the tunnel. We should consider whether the scheme could be tweaked through a stage 2 amendment to give relief.

Another issue is that some lenders lend money to pay off debts—particularly credit card debts—which then creates more debt.

The Convener: And sometimes that debt is more expensive to service.

Christine May: Yes. I would like the opportunity to put that to the clearing banks at stage 2.

The Convener: We do not take evidence at stage 2.

Christine May: No, but we can ask for comments.

Shiona Baird: My concern is that when people apply for bankruptcy, they do not understand—as we heard—the major negative impact that being declared bankrupt can have. I get the feeling from all the evidence that we are taking that there might not be sufficient room for us to debate how we can enable people to make arrangements before they reach the bankruptcy stage. A big part seems to be missing from the bill and I do not know how we can address that problem.

The Convener: That is part of a wider issue to do with hierarchy. The local authority goes straight for sequestration, but we want more of a hierarchy, in which the minute that somebody gets into debt, particularly to a public authority, the first line of approach is early intervention to prevent a lot of problems later on.

Similarly, before people go for bankruptcy, they need to understand the longer-term implications. Although they might be discharged after a year, as we have heard, trying to raise the funding to start up a new business would be very difficult. However, one of the main purposes of the bill is to try to ensure that serial entrepreneurs are not prevented from setting up new businesses because they have been bankrupt once. That is part of the hierarchy and we need to look at that when we make our report.

Shiona Baird: Is there a mechanism in the bill that would allow us to do that?

The Convener: Yes, in parts 4 to 16 of the bill.

Michael Matheson: Various arguments have materialised from insolvency practitioners about the debt arrangement scheme. They seem to dismiss the scheme and say that people would be better off using a protected trust deed instead. The money advisers think that it is a positive scheme that should be encouraged. The AIB says that there appear to be problems in getting accredited money advisers. If the debt arrangement scheme is to continue, we have to identify clearly where the problem lies and look at what remedies can be applied to overcome that problem. We have to address that in our stage 1 report because, if the scheme is fatally flawed, we should flag up where. If the problem is the practicality of getting more accredited money advisers, we need to flag up what the Executive should do to ensure that we get more of them, given that the Executive introduced the debt arrangement scheme in the first place.

The Convener: I am told that part 13 of the bill deals with debt arrangement and part 15 is concerned with information provision. I inform Shiona Baird that when we come to parts 13 and 15, there will an opportunity to comment. I am sure that members knew that anyway.

Michael Matheson: Thanks for reminding us.

The Convener: It is okay. I think that we had good feedback and useful evidence from the Accountant in Bankruptcy.

Shiona Baird: Gillian Thompson talked about some examples of protected trust deeds.

Christine May: She talked about complaints that had been received.

Shiona Baird: Yes. Would it be possible to see those? If we have a practical example of something, it can provide clarity and focus.

The Convener: We can write and ask her whether that is possible.

Nicholas Grier: Might it not also be a good idea to have examples of people who are happy with their protected trust deeds? It would be good to see the other side of the table.

Shiona Baird: Certainly.

Nicholas Grier: I have come across examples of people who are entirely satisfied with their protected trust deeds and who thought that it all worked very smoothly. We should hear both sides of the argument.

The Convener: Absolutely. If everybody is happy with that, we will move to item 7, which is our draft report on business growth, which we will consider in private.

15:09

Meeting continued in private until 16:07.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Thursday 9 March 2006

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00
Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75
Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by Astron and available from:

Blackwell's Bookshop
53 South Bridge
Edinburgh EH1 1YS
0131 622 8222

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh

Blackwell's Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders
business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders
business.edinburgh@blackwell.co.uk

RNID Typetalk calls welcome on
18001 0131 348 5412
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by Astron