ENTERPRISE AND CULTURE COMMITTEE

Tuesday 7 March 2006

Session 2

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ENTERPRISE AND CULTURE COMMITTEE
6th 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)

THE FOLLOWING GAVE EVIDENCE:

Laura Bailie (Scottish Executive Justice Department)
Pat Boyden (PricewaterhouseCoopers)
Andy Crawley (Scottish Executive Justice Department)
Stephen Lawson (Association of Business Recovery Professionals)
Joyce Lugton (Scottish Executive Justice Department)
Katrina McNeill (Scottish Executive Justice Department)
Brian McVey (Scottish Enterprise)
Mr Mike Norris (Insolvency Service)
John St Clair (Scottish Executive Legal and Parliamentary Services)
John Tribe (Kingston University Centre for Insolvency Law and Policy)
Allan Wilson MSP (Deputy Minister for Enterprise and Lifelong Learning)

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 7 March 2006

[THE CONVENER *opened the meeting at 14:04*]

Bankruptcy and Diligence etc (Scotland) Bill: Stage 1

The Convener (Alex Neil): I welcome everybody to the sixth meeting of the Enterprise and Culture Committee in 2006. We have received apologies from Richard Baker and Susan Deacon. I remind everybody to switch off their mobile phones.

Item 1 is stage 1 consideration of the Bankruptcy and Diligence etc (Scotland) Bill. We will now receive a briefing from our adviser, Nicholas Grier.

Nicholas Grier (Adviser): I hope that the witnesses will not mind if I brief the committee as a Scotsman talking about the English Enterprise Act 2002—I hope that you will overlook my impertinence.

The Enterprise Act 2002 is in some respects similar to the Bankruptcy and Diligence etc (Scotland) Bill. In particular, the 2002 act has reduced the period of bankruptcy from three years to one year in England, which is what we are proposing to do here. The aim of the act was, among other things, to stimulate enterprise—the hope being that if people were bankrupt for only one year, they would thereafter be in a position to set up new businesses and start afresh. It was also hoped that the act would remove the stigma of bankruptcy. It appears that the 2002 act has not made a huge difference to entrepreneurs, and there is evidence both for and against the act's having done anything to get rid of the stigma of bankruptcy. Before us is Mr Tribe, who has done a lot of work on the actual effects of bankruptcy on debtors and on what the experience is like for them. No doubt, we will hear more about that.

The 2002 act introduced bankruptcy restrictions orders. Such orders are proposed for Scotland, so it would be interesting to hear what the witnesses have to say about their effects and, indeed, their effectiveness. The Government was, when the Enterprise Bill was passed, unaware that bankruptcy was going to be much more favoured by consumer debtors than by business debtors—I think that that took the Government slightly by surprise. It certainly resulted in a lot of criticism in the press, and people said that the act had made debtors much less responsible without necessarily doing very much for enterprise, which may or may not be the case. There were certainly many more bankrupts after the passing of the act, although that is not necessarily the fault of the legislation. The statistics suggest that the number of bankruptcies and individual voluntary arrangements was going up anyway—they were also rising in Scotland and Northern Ireland, which are not covered by the act. There was a rising tide of bankruptcy generally that was not restricted to England. It is therefore perhaps a little bit unfair to blame the greater number of bankrupts on the 2002 act.

Mr Tribe has done research on who is the average debtor applying for bankruptcy. At the risk of taking words out of his mouth, I say that he drew the conclusion that the average bankrupt debtor is male, aged between 20 and 40 and employed, but does not own his own home, does not have very good communication skills and has allowed consumer and other spending to get out of control. As I understand it, the research indicates that business debtors do not form nearly as large a proportion of those who become bankrupt as do consumer debtors. Mr Tribe established that most debtors who had been made bankrupt would never go through the experience again. It is a salutary experience, and the number of people who would wish to be in that position is very small. The Enterprise Act 2002 does not appear to have sorted out the problems of NINA debtors—the no income, no assets debtors. As I have mentioned before, a group in England is examining the New Zealand legislation with respect to whether something can be done for NINA debtors. So far, the 2002 act does not seem to be doing anything for them.

It would appear that the 2002 act has not, for reasons that have been discussed around the committee table before, made life significantly better for entrepreneurs. That is mainly because most entrepreneurs do not trade in their own names, but through limited companies. It is the company that goes bust, rather than the individual. It is arguable whether the aim of the Enterprise Act 2002—to stimulate enterprise for sole traders and so on—has resulted in any difference. That is just about all that I should like to say for the time being.

The Convener: That, together with the paper that you submitted, was very helpful. I invite questions or comments from members. I suppose that one recommendation could be to track down every 20 to 40-year old male who is employed, but who does not own their own home, and who has poor communication skills. That would solve the problem.

Christine May (Central Fife) (Lab): What would we do with them?

Murdo Fraser (Mid Scotland and Fife) (Con): We could elect them to Parliament.

The Convener: I am glad that I am over 40 and you are under 40, Murdo.

Murdo Fraser: Sadly, I am no longer under 40.

Shiona Baird (North East Scotland) (Green): I meant to check this myself—I probably have the evidence on this somewhere—but do individual voluntary arrangements apply only in England?

Nicholas Grier: They apply in England, Wales and Northern Ireland.

Shiona Baird: What is our equivalent?

Nicholas Grier: Broadly speaking, our equivalent is the trust deed.

Shiona Baird: The protected trust deed?

Nicholas Grier: Yes. We do not have an exact equivalent, but the protected trust deed is the nearest thing.

The Convener: As there are no other questions we will move to item 2, which is still on the Bankruptcy and Diligence etc (Scotland) Bill. I welcome from south of the border a strong team of experts. I ask Mike Norris, who is the head of policy at the Insolvency Service, to introduce the team and to make a few remarks to supplement the submissions that we have received.

Mr Mike Norris (Insolvency Service): On behalf of myself and the other witnesses, I thank the committee for the opportunity to come up and give evidence; I hope that it will be useful to the committee.

As the convener said, I am the director of policy at the Insolvency Service. Part of my role was to head the team that took the personal insolvency part of the Enterprise Act 2002 through Parliament. My team is now tasked with evaluating the effects of that legislation, so I have been part of the process since about 2000 when the original consultation took place.

Stephen Lawson is a lawyer who specialises in insolvency and is also a part-time deputy bankruptcy registrar in England and Wales. John Tribe has been mentioned; he is the academic at Kingston University who undertook the research on our behalf. Pat Boyden is an insolvency practitioner with PricewaterhouseCoopers—I suspect that he has more years' experience of insolvency than he would care to remember.

Each of us will speak for a couple of minutes about our own submission. If it is okay with you, we will keep our comments brief to leave as much time as possible for members of the committee to ask us questions.

The Convener: No problem.

Mr Norris: On my submission, the only specific measure within the Enterprise Act 2002 to which I will refer—members can examine the other figures at their leisure—is bankruptcy restrictions orders, because Mr Grier referred to the issue in his introduction. The take-up of bankruptcy restrictions orders was slow: in the first year there were only 22 orders. However, that is because misconduct could not be retrospective. The commencement of the act was on 1 April 2004. In order to get a bankruptcy restrictions order or undertaking against an individual, the misconduct had to occur after the commencement date, so there was always going to be a low initial take-up.

As my submission indicates, the figure is increasing this year. There have been 529 BROs so far in the 10 months to January this year and the figure is continuing to pick up. As is shown in the first table in my submission, the average period of restriction is about four and a half years. The second table in my submission, about the main areas of allegations, indicates that the most common allegation is

"Incurring debt without reasonable prospect of payment".

When the Enterprise Bill went through Parliament, concerns were expressed that the bankruptcy restrictions orders provisions would in some way affect entrepreneurship because they would be targeted at tradesmen and businessmen. In fact, the vast majority of bankruptcy restrictions orders or undertakings have been against consumer debtors. I thought that it would be useful to bring that point to the committee's attention.

The other two points that I will concentrate on are the obvious ones. One relates to an accusation that was levelled at the provisions during the passage of the bill and in the aftermath of its being passed. A story appeared in the press that the provisions would offer an easy way out for debtors, but I stress that they do not offer an easy way out. Although the reduction of the discharge period from three years to one year has reduced the discharge period to a third of what it was, the consequences of going bankrupt have hardly changed. The bankrupt person will still lose their assets and could still lose their home. In fact, the provisions under which we take surplus income from the bankrupt have been strengthened and there is still an adverse effect on the person's credit references. With the benefit of hindsight, I am concerned that we were perhaps not aggressive enough in defending the line and in making it clear to people that the new bankruptcy regime is not easy: it is still very harsh.

The big question is whether the Enterprise Act 2002 is driving numbers. I argue strongly that it is not, although it would be naive to say that it is having no effect. I am sure that it is having an effect, but that it is not the predominant driver of numbers. Reference has been made to the increase in Scottish sequestrations and to increases in the figures in Northern Ireland, and in England and Wales the increase in IVAs far outstrips the increase in bankruptcies. None of those figures has been changed by the 2002 act.

There is a body of research that is principally American, although an increasing number of academics over here are researching the matter, which shows that the biggest drivers of numbers are economic factors, the most significant of which is debt. In July 2004 we went past the £1 trillion of debt mark in the UK. If £1 trillion has been lent to people, we should expect some of them to go bust.

14:15

My final point is about the level of entrepreneurship, which is not particularly well known at the moment. John Armour of the University of Cambridge conducted research on the effects of bankruptcy on levels of entrepreneurship. It was comparative research that covered the 15 European Community countries—before the recent accessions—and the United States. There is strong evidence that the severity of a bankruptcy regime has a significant effect on levels of entrepreneurship. The proxy for severity was the discharge period. It is difficult to find something that is common to 15 European regimes; discharge is the one thing that is common to them.

The Convener: It would be useful if we could get at least a summary of that report.

Mr Norris: I can let Seán Wixted have a copy.

Stephen Lawson (Association of Business Recovery Professionals): I support and endorse all that Mike Norris has said. On the question about what is driving numbers, I certainly do not think that the provisions of the Enterprise Act 2002 on the duration of bankruptcy have had any material effect on the increase in bankruptcies, with the possible exception that one does tend to find that a number of people who in the past might have opted to go down the individual voluntary arrangement route now prefer to go down the bankruptcy route. As I said in my paper, there are a number of reasons why it might be in the interests of the debtor to do that, not the least of which is that they are susceptible to having to pay contributions out of their income for longer with a voluntary arrangement than they are with bankruptcy.

I do not think that the Enterprise Act 2002 has driven up the number of bankruptcies. My view, which is based on examination of cases both as an adviser and as a deputy bankruptcy judge in the High Court, is that the increase is a result of the increase in consumer debt and the number of people who cannot cope with it. On an average day in the High Court in London, one would see about 20 cases of debtors, whereas a couple of years ago there would be four or five on an average registrar's list. There might be between three and six registrars sitting in the High Court on any given day. I am talking just about the High Court in London—not the High Court in other areas in England and Wales or the county courts, which deal with an enormous amount of insolvency.

It is difficult to see that any of the debtors in such cases are in any sense entrepreneurs. They fit into the perspective that has been given of males aged 20 to 40—the average age of debtors must be coming down. They certainly have no capital assets or assets that they are going to lose in bankruptcy. Some are unemployed but many are employed and certainly have debts that are out of control. In the overwhelming majority of cases, the debts are consumer debts from endless credit cards that have hit the limit, and with which the debtor can no longer cope.

From my experience, mainly from advising people who are contemplating bankruptcy or an individual voluntary arrangement, the majority do not feel that there is any great stigma attached to bankruptcy. When I started in practice, it was undoubtedly the case that there was stigma attached to bankruptcy. Forty years ago, the overwhelming majority of people who went bankrupt did so as a result of failure in business, and one can readily understand how that category of debtor would feel stigmatised. However, when what one is doing in going bankrupt is, in effect, having tens of thousands of pounds worth of consumer debt written off, I do not think that there is a great feeling of stigma for the average debtor.

John Tribe (Kingston University Centre for Insolvency Law and Policy): I would reiterate the points that have been made by both my colleagues. The perception of the discharge provisions and their reduction has not had a marked effect on the users of the system. I refer the committee to page 2 of my submission, which contains bullet-point headings for some of the conclusions of the bankruptcy courts survey. It was usual among respondents that they had progressed into the system through a long accumulation of personal overindebtedness, and the majority of them were consumer debtors.

As Mike Norris suggested, the Enterprise Act 2002 changes were geared—as the current bill is—towards entrepreneurially derived recovery and rehabilitation, but my argument in the bankruptcy courts survey was that, if consumer debtors were the prevalent users of the system, we might be minded to focus our rehabilitation regimes towards that approach. The majority of respondents—more than 57 per cent of those who responded after the Enterprise Act 2002—argued that the act's reduction in discharge had had no effect on their decision to go into the procedure. That decision was made simply because of a long-running accumulation of debt, and the most favourable regime for those people to progress into ultimately proved to be bankruptcy, as opposed to individual voluntary arrangements.

My other conclusions are probably at the consultation paper stage, rather than at the evidence stage, so they are probably not suitable for discussion at committee. I shall ask Pat Boyden to comment further.

Pat Boyden (PricewaterhouseCoopers): I was asked by my firm—I think in 2003—to consider where bankruptcies and IVAs were going to go in England and Wales, and I famously went into print in February 2004, just before the Enterprise Act 2002 came into force, saying that the IVA was dead. However, IVAs have virtually tripled in number since then, so I have spent the past two years trying to work out where I went wrong. I have reread the article a couple of times and found that there were a couple of caveats in it, but the one thing that I misjudged entirely was the effect of what we call the IVA factories—the new firms that have come along and are advertising on daytime television, offering people ways out of their debt. Most of them were looking, first of all, to sell debt management plans and informal schemes, and they are now trying to sell the IVAs. They are driven largely by profit, as members would expect.

Over the past couple of years, for which I have been analysing the figures, bankruptcies have still gone up quite a way, as one might have predicted. I concluded that the awareness of personal insolvency generally—not just bankruptcy or IVAs—and the accessibility of IVAs as a way out of debt problems have created a kind of wake that has dragged bankruptcies up as well. Stephen Lawson mentioned the fact that somebody who chose bankruptcy would perhaps face a three-year income-payment agreement for a sum that was less than they would probably have to pay for five years in an IVA, so if all other circumstances are identical why would they choose an IVA over a bankruptcy? Nobody sells bankruptcies, but people sell IVAs. The new regime has created an awareness of ways out. One can ring a freephone number to arrange an IVA in the same way as one rang a freephone number to get into debt in the first place.

The other point that I would like to make is echoed in all forms of personal insolvency, bankruptcy, debt management plans and all the research that I have seen. People do not get into problems through a life event such as divorce, loss of employment or ill health. Sometimes such things can have an effect, which might be only marginal or might be more influential.

The survey that we did of IVAs showed that people fail simply because they take on too much debt. That result, which is echoed in all other research into consumer debt, is because of what I call the frog-in-the-saucepan effect—when the frog is put in cold water and the heat is turned on, it does not realise that it is in danger until it is too late for it to escape. People borrow a little more and a little more—they think only about how much they can repay. People are interested not in interest rates or other terms, but in how much the monthly repayment is and how that fits into their budget. People are over-optimistic, mainly because they do not budget in the first place and they convince themselves that they can take on an extra loan because they want a holiday or a car. In effect, they live their lives on credit, but they reach a point at which they cannot take on any more debt, which is when insolvency tends to happen.

The Convener: Those comments were helpful. We also found the submissions extremely helpful.

As previous witnesses did, you seem to be saying that the main driver of the increase in the number of bankruptcies is the overall increase in the level of personal debt. Would a graph of the growth of personal debt in the past five years—it is now more than £1 trillion—compared to the growth in the number of bankruptcies show that the propensity to be bankrupt has increased, decreased or remained fairly steady?

Pat Boyden: Broadly, in the past five years, the number of personal insolvencies has nearly doubled, as has the amount that is owed in consumer debt.

The Convener: So the rates of increase are pretty well in line.

Pat Boyden: There is a correlation, although the figures vary from time to time. I think that the increase in the number of insolvencies is beginning to race ahead of the increase in debt, as there is a lagging effect. The peak insolvency rate occurs two or three years after the peak amount of debt.

Mr Norris: There is a strong correlation between the two. Some of the modelling work of the Department of Trade and Industry's operational research unit looks retrospectively at the relationship between debt and the number of personal insolvencies; putting one graph on top of the other gives a good fit. The research unit has come to the conclusion that the insolvency graph lags by about six or seven quarters behind the debt graph, so changes in the number of insolvencies follow 18 or 21 months after changes in the amount of debt. Those figures are not published—the project was internal, but it was instructive. Pat Boyden is correct.

The Convener: Given that time lag, I presume that it is too early to say whether the correlation still exists after the introduction of the Enterprise Act 2002.

Mr Norris: I last spoke with someone about this about six months ago. The research unit project is on-going, but I got the impression that nothing has changed and that the correlation still exists. However, I cannot put my hand on my heart and say that that is definitely the case.

The Convener: There seems to be universal agreement that the main driver for the number of insolvencies is the amount of debt.

Pat Boyden: There is support for that from the United States of America, where the credit card culture is similar to ours—or perhaps ours is similar to theirs. The number of insolvencies in America rocketed in the late 1990s and the early part of the present decade, but has now flattened out, as has credit card usage. In both countries, the credit card market is virtually saturated. Credit card companies try to take market share away from one another, because they cannot sell any more credit cards overall. In the US, the rate of increase in debt is beginning to flatten out—credit card spending went down for the first time ever in the last quarter of 2005. The American graph would show that, two or three years after the saturation of the market, the rate of insolvencies flattened out and has steadied at 1.6 million a year.

We could say the same for England and Wales, but we have other little factors, particularly the IVA phenomenon, which is a different driver. However, the situation in America is indicative of our situation.

Stephen Lawson: If one considers the history of personal insolvency in England and Wales, certainly during the period that those of us who are here have been dealing with it, it could be said that the regime has been made progressively easier. A number of acts prior to the Enterprise Act 2002 either cut down the period that somebody remained as an undischarged bankrupt, or made it easier—if one can use that term—to get a discharge from bankruptcy. I do not think that it has ever been suggested that any of that legislation, which came in from about 1976 onwards, had any effect in driving up the level of bankruptcy.

14:30

The second point that might be worthy of note is that the last great increase in personal insolvency—indeed, in insolvency generally—was in the late 1980s and the 1990s, when there was an enormous increase in personal and corporate insolvency south of the border. There is no suggestion that that was in any way attributable to any legislation. Even though the Insolvency Act 1986 was still quite a new animal, that great surge in insolvency was due entirely to economic reasons, for example unemployment and the collapse in the property market. I believe that it is due primarily to economic reasons now, although they are different economic reasons.

Mr Norris: If I could just add a couple of points to what Pat Boyden said, I am not here as a publicist for PWC, but it might be worth while for the committee to get hold of a publication called "Precious Plastic" that PWC produces every year, which indicates the growth of credit. It is a short but instructional document.

I will say a word of caution, though. Pat Boyden mentioned those two initials "US". I always get a bit nervous when people start talking about the United States' experience and comparing it to the United Kingdom's experience. There are significant differences between the personal insolvency regime in the UK and that of the US. In the US, there are essentially two processes: chapter 7, which is a physical-asset based regime; and chapter 13, which is all about taking income off the debtor. In simple terms, the debtor can choose which route to go down. A means test has just been introduced to try to force more people into chapter 13. If they go down the asset route, their income is not touched; if they go down the income route, their assets are not touched. That gives the debtor quite a lot of power and means that they can go down the route that is most beneficial to them.

In the UK, whether you go into bankruptcy or an IVA—which, broadly, are the two equivalents to chapter 7 and chapter 13 in the US—that situation does not arise because both procedures affect the bankrupt's assets and income. The other big difference is exempt property—there are huge property exemptions in the US. I do not know whether the committee has considered the US position, but I give a word of warning about paying too much heed to the effects of the US on the UK.

The Convener: There is a lot to pursue in what you have said.

Murdo Fraser: The witnesses have covered some of the ground in my questions. I have two general questions. The bill has been presented to us as a way to encourage a more entrepreneurial culture. First, in the light of that, to what extent has the 2002 act achieved its aim of encouraging a more entrepreneurial culture? Is there is any evidence for that? Secondly—to touch on comments that were made a few moments ago—

would you, with the benefit of hindsight, pass the 2002 act again? If not, what changes would you make to it?

Christine May: What would you call it?

The Convener: We will not tell Alan Johnson your answer.

Stephen Lawson: I have a particular interest in individual voluntary arrangements—which you do not have in Scotland, so my answer to your question will be totally irrelevant to you—so there is one big change that I would make.

Murdo Fraser: We have something called protected trust deeds, which are perhaps not too dissimilar.

Stephen Lawson: I do not know enough about them to answer that one. I wish that when the 2002 act was introduced, it had been made possible for people who were discharged from bankruptcy to promote IVAs. That is not possible at present. My colleagues may disagree, but in my view that would have helped many people to deal with their financial affairs. In England, a large number of old bankruptcies from the previous great surge in the late 1980s and 1990s, to which I referred, are being resurrected because suddenly the debtor's house, which was in negative equity, has substantial positive equity. The same may be happening in Scotland. A number of debtors, who were discharged many years ago, would be assisted if they could enter into IVAs but they cannot. I would have liked that change to be made.

Mr Norris: Having had a chance to think about the issue, I would like to answer the questions that have been put. The first question, which was about levels of entrepreneurship, is similar to the question about stigma. The legislation has been in force for only 23 months—just under two years—and it is wrong to expect a change to have taken place in such a short time. If there is to be change, it will not happen that quickly. The global entrepreneurship monitor, which was published about a month ago by the Small Business Service, indicated that the level of entrepreneurial activity in the United Kingdom is flat and has not changed from 2005. The honest answer to the question is that, at the moment, the legislation appears to have had no effect. Business start-ups are still on an upward path, but it would be wrong to place the credit for that with the Enterprise Act 2002.

You asked what I would do differently. I will take the easy way out and argue that it is too early to say. We have made a commitment to evaluate the provisions. It is no good putting legislation in place and thinking, "Thank goodness we have got that out of the way." Over the past five years, consumer credit has been changing at an incredible rate. We need to keep an eye on whether the legislation is fit for purpose.

The 2002 act changed the income payments order regime and introduced income payments agreements, which have been a phenomenal success. Since the act came into force and the court was removed from the process, which took out some of the costs, income payments orders have been put in place for 20 per cent of the bankruptcies with which we deal. For many years, the proportion was 9 or 10 per cent. The number of income payments orders has risen from about 2,500 to more than 7,000 this year.

It is too early to say whether bankruptcy restrictions orders have been successful. I think that the number of such orders will go up, but essentially they are a flag. They enable the public and the commercial community to see that people have gone through the process of bankruptcy and have emerged either as a vanilla-flavoured bankrupt or as someone with a strawberry-flavoured bankruptcy restrictions order, which means that they are different in some way.

We make the relevant information freely available on our website, so people can look at it. People can do searches on bankrupts, IVAs and people who are subject to bankruptcy restrictions orders. Our aim is that, in the future, when people are making lending decisions or decisions about whether to do business with someone, they will use and react to the information that is available. My concern is that people will not use it.

I would not do anything differently, but I wonder whether we could have done more to promote the information resource that is available and which people need to use. In this area, information is king.

John Tribe: In paragraph 7 of my submission, I make a similar point. Because the reduction in the discharge period was included in the Enterprise Act 2002, the perception was created that it would be much easier for individuals to pass through the new regime. In fact, if BROs and bankruptcy restrictions undertakings are taken as a whole, the system is not particularly user friendly. The 2002 act is a balanced piece of legislation that has stigmatising effects as well as rehabilitative aspects. It is unfortunate that the provision for the reduction was not made in an insolvency act 2003, rather than the 2002 act. That might have created the perception of a more balanced regime. The point does not apply to the bill, which amends the Bankruptcy (Scotland) Act 1985.

Mr Norris: To be honest, making the provisions part of an act on enterprise caused problems, because bankruptcy and enterprise do not sit well together. In retrospect, the 2002 act was probably the wrong vehicle through which to make the changes, but such are the stresses on parliamentary time south of the border that we must make the most of our opportunities.

Murdo Fraser referred to protected trust deeds. I am not an expert in Scottish bankruptcy law and Pat Boyden might want to respond, but I think that differences exist. I am not sure whether dividends that are paid out in a trust deed in Scotland are of the same level as those that are paid out in IVAs or are the same as the amounts of money that are collected.

Pat Boyden: My answer to the second question is that I would make two changes. I would not bother with having early discharge—discharge in less than 12 months. As members probably know, discharge can happen from the moment that the official receiver reports that there is nothing untoward in a bankruptcy. The average time to discharge people from bankruptcy in England is six and a half to seven months. I would have stuck with a straight 12 months, because early discharge does not make much difference.

Mr Norris: The average time for early discharge is seven months, but that is not the overall average time.

Pat Boyden: Secondly, I would not have made a bankruptcy restrictions order just a punitive measure. I would have tried to keep an option open for creditors to obtain something, so I would have had the after-acquired asset provisions—I do not know whether members understand them. If assets are acquired before bankruptcy is discharged, they can be claimed in the bankruptcy. However, if someone wins the lottery the day after they are discharged, the money is theirs to keep.

Bankruptcy restrictions orders continue all the restrictions of being an undischarged bankrupt except the after-acquired asset provision, but that might be more of a deterrent. The bankruptcy restrictions order is a little bit daunting. Most people do not know about it when they go bankrupt, so it cannot be much of a deterrent. If they thought that their houses could be taken from them, they might make more effort to repay their creditors.

I move to the point about protected trust deeds and sequestration. The 2004 figures show that the average dividend is about 18.5p in the pound in sequestration and about 22p in the pound in a protected trust deed. In some previous years, the figures have been almost identical, so there is not enough of a difference. The consultation document on protected trust deeds suggested a minimum dividend of 30p in the pound in order to distance protected trust deeds from sequestrations. However, that might mean that more people went for sequestrations than for protected trust deeds.

Scotland has issues that relate to protected trust deeds that do not relate to our IVAs, principal among which is the fact that many protected trust deeds do not offer 1p in the pound to creditors. From the word go, the trustee can just say, "He will pay this much, and this is my fee"—full stop. By law, IVAs must offer something, although no minimum dividend is set, except that which is driven by creditors.

I am in favour of keeping a fairly punitive bit of law, such as bankruptcy, to try to force people to take IVAs. I represent many credit card companies and I know that a bankruptcy pays a creditor on average 1p in the pound—I do not know the exact figure in England, but it is negligible. The dividend that IVAs offer—I use that word as a caveat—is on average 36p in the pound. That makes a big difference for creditors, most of whom want 25p in the pound before they will consider an IVA. In the circumstances, 36p in the pound is a good return.

It is right that the IVA is the weapon of choice, because it puts money back in the hands of creditors. Whatever you do with your sequestrations and protected trust deeds, you should aim for much the same situation. If the average dividend of 18p in the pound in sequestration can be maintained, that is great, but a protected trust deed should still be the way to force people to repay what they can.

Christine May: Thank you for your interesting presentations, gentlemen. You all made more or less the same comments and, as we reached the last speaker, I wondered whether you thought that we should pass the bill at all. What is the advantage of legislation such as the bill?

14:45

Mr Norris: Let us return to the question of credit. I am harking back a little, but the Cork report, which was published in 1982 and led to the Insolvency Act reforms, contains a phrase that I often use in presentations, because it is so apt. The report says:

> "Society facilitates the creation of credit and therefore multiplies the risk of insolvency".

We cannot have our cake and eat it. We cannot have a consumer-credit driven economy and make credit available to people unless we also give people the means to get out of the financial problems that, as sure as eggs is eggs, they will get into. If the credit world is changing, we must ensure that our insolvency regime keeps pace with those changes. That does not mean that we should make things easy for debtors; we should not do so, but we must find the best way of balancing the interests of the debtor and the creditor. Only time will tell whether the approach in England and Wales is good or bad—to put it simply—and we hope that evaluation will flush that out.

In response to Christine May's question about whether the Executive should be taking action at all, I think that the bill is a worthwhile piece of proposed legislation that should be pursued.

Stephen Lawson: I echo those comments. In general terms, in our regime the IVA is the facility that forms part of the rescue and rehabilitation process. That is what people who are in debt use if they have a business that they want to continue and can probably make a go of. I seriously doubt whether the changes that have been made in England and Wales, or the proposals to change bankruptcy law in Scotland, will do an awful lot to encourage entrepreneurship.

Christine May: Do you think that the bill could have a detrimental effect?

Stephen Lawson: I would not have thought so.

Christine May: Mr Boyden, I think that you made a comment about insolvency practitioners who say, "My recovery rate will be a penny in the pound and by the way, that's my fee, so you'll get nothing." Could you expand on that? I would be concerned if all the money that was recovered went into the hands of insolvency practitioners. I do not suggest that such people should not make money; of course they should. However, the creditors are also important.

Pat Boyden: The vast majority of bankruptcies south of the border result in no return to creditors. That work is largely done by the Insolvency Service and it is right that there should be a safety net for people who cannot afford to pay. However, the Executive's consultation document on the reform of protected trust deeds notes that some 23 per cent of deeds do not offer a dividend to creditors. Protected trust deeds are supposed to offer a deal to creditors, but not much of a deal is offered in such circumstances and one wonders what the purpose of a deed is, other than to pay money to an insolvency practitioner. I am an insolvency practitioner and perhaps I am constructing an argument against my profession, but in my view such cases should be dealt with through bankruptcies and sequestrations. The process is brought into disrepute if it is regarded simply as a means of passing money from someone who is impoverished to a professional who does nothing for the creditors.

My point is probably a little off-piste, given the subject of the discussion. However, bankruptcies and IVAs in England and Wales are linked; what happens in one will affect the other. If I could express a wish, it would be that the committee consider the two processes together, to ensure that they gel. The Executive was considering a bill on bankruptcy in late 2004, when it introduced the debt arrangement scheme, which seems to conflict with the current approach. I have said to a minister south of the border that there seems not to be much joined-up thinking in some processes; proposals come from the courts, the DCA, the Department of Trade and Industry and the cross-departmental ministerial group on overindebtedness and I sometimes wonder whether those bodies talk to one other.

Mr Norris: I sit on the officials group on overindebtedness and can confirm that those bodies do occasionally talk to one another.

The Convener: For the record, the DCA is the Department for Constitutional Affairs.

Christine May: My final question is about debtors having to pay part of the court costs when applying for bankruptcy. Is that fair and reasonable and, if it is, what should the level of payment be?

John Tribe: A number of respondents to the survey mentioned that the application fee was a bar to their entry into the bankruptcy system and some said that they had to borrow the money to pay it from their relatives or from other agencies. Mike Norris disagrees with me on the contention that the fee is a necessary barrier to prevent overuse of the system. It certainly affects some people's entry into the system, so it should be considered to be a barrier.

Christine May: I sense a little conflict.

Mr Norris: There is not much conflict. The requirement to pay part of the costs is not used as a barrier to entry. In England and Wales, we have made a policy decision that it is only right that part of the cost of administering a bankruptcy should be met by the debtor. The payment amounts to only a small part of the total cost of administering a standard bankruptcy, which is roughly £2,000 south of the border. The vast majority of that sum is met by a fee that is paid by creditors in cases in which there are assets. There is an element of cross-case subsidy of the secretary of state's fee. I could explain that, but it would take quite a long time to do so.

Our policy reasoning is that because a debtor benefits from going into bankruptcy, they should meet part of the cost. That said, we need to address the needs of those people who—for whatever reason—are, in effect, barred from entering into an insolvency process. That takes us back to another policy initiative that we are considering, which was mentioned earlier. We are still working up our proposals in relation to those whom you call NINAs; we used to use that expression, but we now refer to debt relief orders. We had hoped to piggyback our proposals on to a DCA bill during this parliamentary session, but that has not happened. We await developments, but we are aware of the issue and seek to address it.

Christine May: The committee is acutely aware that the bill will not do anything for people who have no income and no assets and that another way of dealing will them will have to be found.

Shiona Baird: I was struck by the concept of

"acquire now and file later",

which is mentioned at the end of Stephen Lawson's submission. It is rather cynical, but perhaps quite accurate, to suggest that some people may adopt such an outlook. Given the amount of consumer debt that exists, is there any evidence that the credit card companies have moved towards more responsible lending? You said that we have reached a peak in the number of credit cards that are being issued.

John Tribe: My evidence of irresponsible lending practices is only anecdotal. Part of the research that Mike Norris has agreed to fund will examine the credit environment. Comparative work that has been done in Canada suggests that overzealous lending activity leads to an increase in usage of the bankruptcy system, but I do not yet have any factual evidence to support the contention that that is what is happening in England and Wales.

Mr Norris: Professor Michelle White has done research on the subject in the United States, where there are 40-odd slightly different regimes working closely next to each other. Comparative work is extremely useful in the States. A study was conducted that considered the severity of the various regimes and the number of bankruptcies that they resulted in. One would imagine intuitively that the more lax the regime, the higher the number of bankruptcies it would lead to, but the opposite was found to be true. In states in which there was a severe regime, there were more bankruptcies. The researchers concluded that the lending industry uses a severe regime as a backstop for lazy lending decisions. If a more lax regime was employed, there would be no backstop and the lending industry would have to put more resources into making sensible lending decisions.

I am not sure that there is any great evidence of more responsible lending, although I am sure that the banks would say otherwise. All I know is that most of the banks are making bigger and bigger provisions for bad and doubtful debts. Pat Boyden may have more of a feel for the subject.

Pat Boyden: Yes, but I will speak in broad terms, as I do not have the exact information to hand. Over the past couple of years, the percentage of credit card write-off that was due to bad debt has risen from about 3.5 per cent to 4.5 per cent of the total lending that is written off. At the risk of incurring Mike Norris's wrath again over my use of US statistics, I point out that the rate in that country is about 6.5 per cent. There has been an increase over here, but that write-off includes fraud. That said, as was reported this morning, fraud on credit cards has fallen recently.

I am always wary of the phrase "irresponsible lending"; usually I counter it by saying that a hell of a lot of irresponsible borrowing goes on, too. People are too quick to blame somebody else for their own foolishness. Instead, they should do all the things that their mums told them to do—these days, they probably heard it from their grandparents. Instead of wanting everything now, people should do a budget and save for things.

The overall picture in this country—by which I mean the United Kingdom—is that gross domestic product is two-thirds driven by retail spending. We should put a curb on that by introducing something like the credit freeze of the 1960s—a measure of Harold Wilson proportions. That would have an effect on the country's wealth. The situation presents the Chancellor of the Exchequer—the Prime Minister elect—with a bit of a problem.

Shiona Baird: I think that John Tribe mentioned financial education. Has that led to a move towards better education?

John Tribe: Mike Norris can speak more authoritatively on the subject. Currently, the Financial Services Authority has a new project by which debt education is cross-fertilised throughout the national curriculum. In America, the recent movement that Professor Gross reported to Mike Norris is that the growth of debtor education has, more likely than not, created a system from which other practitioners—not the debtors—can benefit.

Pat Boyden mentioned creditor responsibility and the idea that bankrupts are responsible in some way for their own conduct. My contention is that, although that is the case, creditors are in a much more powerful position to monitor their behaviour and to make lending decisions; I am thinking of the access that they have to information. Although the bankrupt should be held culpable or responsible to some extent, perhaps the creditor or the credit industry, because of their possibly erroneous lending decisions, should bear the greater cost of debtor education.

There is a comparative position in France. If a lending decision is made on a basis that is subsequently found not to be sound, the creditor is restricted in its ability to prove in any subsequent liquidation.

Christine May: What a good idea.

Mr Norris: Debtor education is very big in the USA, as it is in Canada.

Stephen Lawson: But that education is post-bankruptcy.

Mr Norris: Yes. I was just about to say that the education is being provided post-bankruptcy. That said, debtor education in the States is now being provided pre and post-bankruptcy. However, many people are sceptical about the use of debtor education, especially post-bankruptcy. When education is offered as part of the process, it seems to become merely something else that a debtor has to do—they have to do their two hours of financial counselling.

The personal insolvency taskforce in Canada reported in 2002 on its 10-year review of the country's bankruptcy laws. In a sense, it was a toss-of-a-coin decision whether Canada kept its post-bankruptcy financial counselling provisions.

More debtor education initiatives are now under way; that is certainly the case in England and Wales, particularly in relation to education that is aimed at children and young people. As John Tribe said, the move is away from the previous approach that saw a load of teenagers being sat down in a room and talked at for an hour and a half—everyone knew what the end result of that would be. People are trying to interweave financial lessons into the fabric of the curriculum. I always give the example of the teaching of Victorian history, which can cover debtors' prisons. The aim is to improve general awareness of debt and insolvency. The Financial Services Authority works with the Department for Education and Skills on such an approach, which is almost a bit insidious.

15:00

John Tribe: Professor Donna McKenzie Skene at the University of Aberdeen has advocated that it might be appropriate to have debtor education as a condition of discharge. That was in an article in the *Journal of Business Law*, which compares the Enterprise Act 2002 with the bill.

Shiona Baird: I am interested in the concept of a two-tier system of bankruptcy that has been suggested. There is a big difference between consumer debt and business debt. The cost implications of consumer debt can be borne by the credit card companies, who can raise their interest rates and put the costs back on all of us. However, in business, when there is a debt, there is a creditor, so bankruptcy can have a knock-on effect on other businesses. I am interested in how a two-tier system could be incorporated in the bill.

John Tribe: Given my earlier conclusions and discussions with Mike Norris, I do not believe that a two-tier approach would be workable, because of the issues with identifying what is consumer debt and what is business debt. Mike Norris gave the example of a plumber—how would we identify the debt that arose from his plumbing activities and the debt that arose from his consumer activities?

Stephen Lawson: Most business bankruptcies involve a considerable element of consumer debt, so drafting two separate schemes would have enormous practical difficulties. I am sorry if I am repeating myself, but I return to the introduction of IVAs south of the border in 1996. The measure was intended to be a means of dealing with insolvent businesses—that was never the exclusive purpose, but that was the primary aim or philosophy.

Pat Boyden: The consumer debtor had not really come on to the radar at the time.

Stephen Lawson: That is right. Consumer debtors only recently latched on to IVAs in a big way.

Mr Norris: It is fair to say that that happened at the behest of practitioners, who saw IVAs as an opportunity. I am sure that Pat Boyden would agree that there is an element of the market driving the market—the people who provide the service are actively seeking customers. That is relatively new in insolvency proceedings.

Pat Boyden: In my experience, it is likely that the plumber will have paid for raw materials via a credit card or personal loan, because of the restriction of credit by traditional builders' merchants, who tend to be canny and deal with people as individuals. The plumber will be able to borrow through personal loans with preset lending requirements, using a freephone number—such credit is available for a person's business. Therefore, if a plumber has credit card debts, bank loans and personal loans and owes to a builders' merchant, it will be difficult to distinguish what the cause of failure is. In our survey of IVA debtors, we found that difficult, so we came up with a broad-brush approach—we said that certain people seemed to be consumers and others seemed to be traders. Sometimes the reason is obvious—for example, if there is a tax debt; otherwise, it is hard to distinguish.

Shiona Baird: We must bear it in mind that this is the Enterprise and Culture Committee and we are trying to encourage entrepreneurship. If the bill does not include a provision to protect the creditor business, I wonder where we are going. We do not seem to be balancing the creditor issues.

Pat Boyden: As Mike Norris said, we do not create enterprise by moulding the insolvency process. People do not think about insolvency. I suppose that, if we brought back debtors prisons, people would think twice about taking loans, which might discourage enterprise. However, most people feel that there is a way out and just carry on. Other economic circumstances, such as interest rates, encourage or discourage entrepreneurship.

The Convener: In America, if someone goes bankrupt but wants to start a business soon afterwards, it is fairly easy to do that.

Pat Boyden: It is easy to do that over here, too.

The Convener: It is not perceived as being easy to do that over here.

Pat Boyden: The real difficulty is the practical issue of things such as getting a bank account, but that is a separate issue. A while back, there was a move in England and Wales for banks to offer accounts to people who would otherwise struggle to get one. I think that the Nationwide Flexaccount was one of those. I am not positive about this, but I think that the Nationwide has withdrawn that facility because none of the other banks joined in and it felt that it was all on its own, taking all the bad risk. However, it is that sort of thing, rather than the safety net, that will encourage people to go into business. There is a safety net and we are tinkering with it and tightening the ropes and corners.

Stephen Lawson: Looking at the issue broadly, I believe that the best way for the insolvency regime to assist the entrepreneur culture is to have rescue remedies as opposed to death remedies. Liquidation and bankruptcy are both processes of death. The other remedies—administrations and voluntary arrangements—are primarily aimed, initially, at rescuing a business. That is the part that corporate and personal insolvency regimes must play in promoting entrepreneurial concepts.

Mr Norris: I know that the committee is running short of time, so I will be quick. I agree entirely with Stephen Lawson. The issue is ensuring that people get the most appropriate remedy, having regard not only to their position, but to that of their creditors. We should not lose sight of the fact that there are provisions in the bill that will be of real benefit to business creditors, such as the provisions for income payments agreements. It is early days, but they have been a big success in England and Wales and will put a lot more money back into the hands of creditors. Bankruptcy restriction orders will also be beneficial, if creditors use the information with which they will be provided.

The Convener: I have a couple of quick questions to finish with. First, to return to the US experience, is there any benefit in our copying the US and going down the chapter 7 and chapter 13 routes? It seems to me, having lived and worked in the US, that many businesses there that survive by going down those routes would not survive in this country under the old regime or the proposed one. My second question also concerns the US. I believe that the US has changed its legislation back and extended the period before a bankrupt can be discharged because it was thought that the shorter period was not working. I believe that Australia has done the same. Can I have your comments on that?

Mr Norris: I will take the second point first. I think that Australia has gone back to a three-year discharge from a six-month discharge, but I might be wrong about that. Australia's regime is a strange one to look at. Australia tends to indulge in a lot of knee-jerk legislation. High-profile things happen, for example—

The Convener: We are definitely not guilty of that.

Mr Norris: I am being unfair to my Australian counterparts, but changing bankruptcy regimes on the basis of a few high-profile barrister failures, which is what happened, does not seem to me to be a sensible way to legislate. The United States has changed its regime, but the change is not so much around the discharge period. The US has introduced the idea of trying to force people into the chapter 13 route so that they cannot hide behind the chapter 7 process, which perhaps allows them to divest their assets, go into the process with no assets and keep their income. The US has put in place a means test that all chapter 7 debtors must pass, which is done around median incomes in a state. If someone falls above that median income, they are compelled to go into a chapter 13 bankruptcy. That is the main change in the US regime. I think that Pat Boyden can confirm that what I have said is accurate.

Pat Boyden: Yes. In order to get a discharge from the chapter 7 or chapter 13 processes, I think that someone must have financial counselling as well. That is fine.

I get the impression that the changes that have been made in the US are often just tinkering at the edges, and will not have a great effect. The measures there are very much a watered-down version of what was first proposed at the end of the Clinton period. People wanted something a lot harsher then, but that was driven by finance companies, which were experiencing some big write-offs.

To put that in context, 97 per cent of all chapter 7 and chapter 13 cases involve consumers. Only 3 per cent of the 1.6 million are in business. There might be more self-employed people in America and different dynamics come in. I certainly would not advocate introducing homestead exemptions into the insolvency regime here. In this country, creditors' best chance of getting any of their money back lies in the equity of their homes.

Mr Norris: My short answer to your first question, convener, would be no.

Mainly, the chapter 11 process is used to restructure after a corporate failure. It is available to individuals; one does not have to be a corporate entity or limited company to go into chapter 11 bankruptcy. Businessmen can and do go into that form of bankruptcy, but in very small numbers.

The Convener: Do we have an equivalent to that here?

Mr Norris: No. In England and Wales, our choices are bankruptcy and IVA, or an informal route.

The Convener: Should we have such an equivalent?

Mr Norris: I would argue that we do have an equivalent in the form of the IVA. The big benefit of an IVA for a debtor is its flexibility.

Pat Boyden: For a businessman—an individual who has cash flow problems or whatever, but who runs a reasonable business, which could be profitable if it was not for the burden of debt—an IVA offers a good solution. The only problem is that it is very much subject to creditors' requirements.

Stephen Lawson: A 75 per cent vote is required to approve an IVA. There is some suggestion that that might be reduced. I hope that it will be—I think that it ought to be. Whether or not that will have any great effect in facilitating more IVAs being granted for businesspeople, I do not know.

The Convener: Later, we will be considering a report from our Finance Committee, whose responsibility it is to consider the financial memorandum that accompanies the Bankruptcy and Diligence etc (Scotland) Bill. One of that committee's major concerns relates to the cost estimates of the Accountant in Bankruptcy. What budget is available to you, Mike? How many staff do you have and how many bankruptcies do you deal with in a year?

Mr Norris: Pat Boyden is more au fait with bankruptcy numbers than I am.

Pat Boyden: We dealt with about 46,000 bankruptcies in 2005.

Mr Norris: As well as those 46,000 bankruptcies a year, we also deal with about 7,000 or 8,000 compulsory liquidations of companies that are wound up by the courts. We have about 2,100 staff, of whom around 1,600 work in our operational arm, in our network of official receivers' offices, of which we have 30 to 35 around the country.

We get our funding from various streams. The initial administration of the cases—this is the same for liquidations and bankruptcies—is met from two routes, both of which I referred to earlier. The petition deposit and the secretary of state fee are charged across all cases. For about two thirds of cases, we get nothing back, because they are no asset cases. However, the fee is set at such a level that the money that we do get back, from asset cases—the fee is the first thing that is paid—along with petition deposits, provides a pot of money that is sufficient to fund the total cost of the administration across all bankruptcies and liquidations.

We also have an investigation and enforcement role. The funding for that is met separately. It comes directly from the DTI by way of its programme budget. We get a pot of money—it is about £35 million a year, I think—to undertake company director disqualifications, the investigation of potential prosecutions and, now, bankruptcy restrictions orders.

As for staff, most of the enforcement work is done in our official receivers' offices. We also have an enforcement team of about 150 people. There are other incidental functions. The funding for the policy function is met directly from the department. However, I have described our two main sources of income.

The Convener: What is the total amount that you get from central Government to fund your organisation?

Mr Norris: The total amount from central Government is about £40 million to £45 million. We probably get an equivalent amount back from creditors through the various fees that we charge, such as the registration fee for IVAs.

The Convener: So your overall turnover is about £90 million.

15:15

Mr Norris: It might be creeping up to about £100 million now. It is something of that order.

The Convener: I hope that you never go bankrupt. Thank you very much. Your written and oral evidence has given us a lot of food for thought and was very well presented. We might approach you again informally for follow-up information if that is okay.

Mr Norris: Yes. I hope that we have been helpful and I am sure that we are all happy to do whatever we can to assist you in your future deliberations.

The Convener: That is great. Thank you.

We will now hear from Brian McVey, from Scottish Enterprise. The Deputy Minister for Enterprise and Lifelong Learning is due to join us at about 3.30, so this evidence session will be a bit shorter. I apologise to Brian, because our previous evidence session ran on a bit, but I thought that it was only fair to explore all the avenues with our colleagues from down south. We might have to curtail our hearing from you if the minister arrives at 3.30. We can always call you back quite quickly.

Brian McVey (Scottish Enterprise): That is okay.

The Convener: I invite you to say a few words, before we ask you questions.

Brian McVey: Most of what I have to say is in our paper. Rather than focus on the detail of the bill, we have considered it from a policy perspective. We have considered whether bankruptcy legislation acts as a constraint on the growth of businesses; the degree to which it acts as a constraint on entrepreneurship, particularly given the proposed reduction from a three-year to a one-year sequestration period; and whether Scottish companies will be put at a competitive disadvantage compared with companies in England and Wales.

As the committee knows from its business growth inquiry, we have undertaken a lot of research in the past year into developing a growing business strategy, which was discussed in Thurso. That research looked into the role of growing companies in the economy, how much that contributes to economic growth and how it relates to business start-ups and entrepreneurship. We considered the growth of companies to significant scale and to a smaller scale. That research produced little evidence of bankruptcy legislation acting as a constraint on such activity, although we were not looking for that.

As the previous witnesses said and as the written documentation suggests, most of the impact is in the individual sphere, which probably means that it relates to entrepreneurship. The research that we have done has underlined what we have known in Scotland for some time—Alex Neil knows that I have been involved in this for a while—which is how important entrepreneurship and start-ups are to the economic growth programme and how that affects Scotland's economic performance, given our historically low business birth rate. Whether bankruptcy legislation is a constraint on entrepreneurship is an issue that is of particular interest to us from a Scottish perspective.

I was interested to hear what Mike Norris said about the importance of the severity of the bankruptcy legislation for entrepreneurship, which highlights what the issues are. In evidence from people who are interested in entrepreneurship, issues such as fear of failure and fear of getting into debt emerge near the top of the list, although the top issue is accessing finance.

Another feature of some of the research that has been undertaken over the past 20 years—the global entrepreneurial monitor report, which has been mentioned, is a good illustration of that—is the importance of the perception of the entrepreneurial climate. The point about the importance of the business environment for entrepreneurship, business start-up and business growth came out strongly from our research.

In my submission, I highlight some research that we commissioned from the University of Nottingham and the University of Stirling and that was produced a couple of years ago. A research team examined an important issue: serial entrepreneurship. A disproportionate amount of entrepreneurial activity is done by people who do it more than once. They learn from experience and start multiple businesses. Serial entrepreneurs and those whom the academics described as portfolio entrepreneurs—people who run a number of businesses in parallel—tend to create bigger and more significant businesses. Therefore, the ability to get back into business after a previous venture is an important part of the process. Given the comments that the convener made about the American system, the ability to go back into business may be significant. However, that is a personal issue. There is not much evidence in the research of people rebounding from bankruptcy; they tended to be rebounding from a business venture that failed, which is much more common.

Bankruptcy legislation will tend to manifest itself in such perceptions. The fact that a reduction from a three-year to a one-year recovery period appears to improve the environment for entrepreneurship in Scotland might be significant in encouraging people to think about starting a business. Much of the evidence indicates that the negative perceptions about starting a business are particularly strong among people who have not started businesses. Scotland's economic problem in relation to entrepreneurship is that not enough people start a business; it is not that people fail once they start one.

There is not much evidence about the effect of such perceptions. As previous witnesses said, there is little evidence that the problem is directly related to bankruptcy legislation. People do not think about bankruptcy legislation when they start a business; they think about how to get funding for their business and what will happen if it fails.

The point about parity with England and Wales probably relates to perception. I echo the views of most of the previous witnesses and it was interesting to hear what they said. The effects of the bankruptcy legislation on entrepreneurship and business growth are likely to be small. Many things are more important than the bankruptcy regime in stimulating entrepreneurship, but it could have an impact on perception, which would be particularly important if the perception is that the system is somehow more difficult in Scotland than elsewhere.

Christine May: You spoke about the reduction in the recovery period to one year and the perception of creditor businesses. Can you say more about whether that reduction will make life more difficult for creditor businesses? That perhaps goes back to the point that Shiona Baird made.

Brian McVey: I echo the comments of one of the previous witnesses. Business recovery relates to recovery mechanisms for businesses that are struggling rather than bankruptcy issues for companies. There is no differentiation between the circumstances of individual entrepreneurs and those of businesses.

Christine May: But perhaps a perception that a regime is being introduced that would guarantee creditor businesses a slightly better return would be helpful.

Brian McVey: Almost anything that improves such perceptions on the part of business is likely to help.

Michael Matheson (Central Scotland) (SNP): In your submission you raise the issue of the competitive disadvantage that could be caused to business in Scotland if there is not parity with the system that operates in England and Wales to deal with bankruptcy. Is not the issue the need not only to address the potential disadvantage but to give business in Scotland a competitive advantage? If so, how can we ensure that that happens?

Brian McVey: I agree. Rather than create disadvantage, we should create advantages. Most of the issues in trying to promote entrepreneurship relate to access to finance and the need to address some of the perceptions. Some of the concerns about access to finance for business start-ups are based on the perception that raising finance for business is more difficult than it is. It is about creating an atmosphere that enables people to think that it has become easier for them to raise finance for their business.

Michael Matheson: Can much be done in this piece of legislation to give Scottish business an advantage?

Brian McVey: Probably not, given that bankruptcy legislation does not place much emphasis on either stimulating or discouraging entrepreneurship. How it is presented might affect perceptions about the overall business climate for entrepreneurship in Scotland.

Michael Matheson: Does a bit more work need to be done to help someone to access finance after they have gone through bankruptcy and want to do something as simple as open up a bank account?

Brian McVey: Yes. Help could be given to do the things that help people to get back into business. Addressing some of the barriers that were mentioned earlier, such as getting access to bank credit again, would be particularly useful.

Michael Matheson: In your submission, you say that you do not think that the bill will have much of an impact on business growth in Scotland. You say that, if anything, it might have a small impact in the short to medium term, but you go on to say that it might have an impact on entrepreneurship in the long term. In what way will it have such an effect?

Brian McVey: Our experiences of stimulating entrepreneurship in Scotland in the past 15 years suggest that the process is very much a cumulative one. A positive change in the legislation might add to the positive perceptions. Over the past 15 years, there have been significant shifts in attitudes towards entrepreneurship in Scotland. When we first researched the issue in the early 1990s, there was a significant gap between Scotland and the rest of the United Kingdom. However, the recent global entrepreneurship monitor report shows that that gap has all but disappeared. The kinds of regulatory changes that we are discussing can add to that process and build momentum, which will mean that the cumulative process that has been evident in this area over the past 10 years or so will continue.

Shiona Baird: Is there any evidence on the impact of business bankruptcies on creditor businesses? I am quite concerned that the balance is not even.

Brian McVey: I am not aware of any evidence in that regard.

Shiona Baird: Do you think that any work has been done in that area?

Brian McVey: I am sure that work has been done in the academic field, but I am not aware of it.

The Convener: Thanks for your oral and written evidence, Brian.

As this will be a long meeting, I am sure that a five-minute break will be in everyone's interests.

15:28

Meeting suspended.

15:36

On resuming—

The Convener: I welcome Allan Wilson, the Deputy Minister for Enterprise and Lifelong Learning, and his officials, who make up our third panel of witnesses on the Bankruptcy and Diligence etc (Scotland) Bill today. Minister, you may introduce your officials and make a few introductory remarks.

The Deputy Minister for Enterprise and Lifelong Learning (Allan Wilson): Convener, "a few" will be the operative term. As I mentioned during the suspension, I have around 15 pages of notes to get through. You will be pleased to learn that I have cut them down to three pages, however, as I thought that, given that the committee is engaged in stage 1 consideration of the bill, it would be helpful to allow more time for questions, which my colleagues Katrina McNeill and Andy Crawley, from the Scottish Executive Justice Department, and John St Clair, from Scottish Executive Legal and Parliamentary Services, can answer. It will be useful to explore the policy intent and you can give us the benefit of the considerable amount of evidence that you have already taken, in order that we may develop the process at stages 2 and 3.

That tends to be the way in which I work with committees in these circumstances. I hope that you welcome that approach in general terms.

Credit is essential in our modern economy. In the past 20 years, new credit markets have been opened up and getting credit has become easier and cheaper than it used to be. In general terms, I am sure that we would all agree that that is a good thing. It has supported economic growth by helping business and has helped people to improve their standards of living.

Most of us use credit wisely, whether as businesses or consumers. Unfortunately, for some of us, good credit can turn into bad debt. People can become insolvent, as the professionals say. That can happen through bad judgment or bad luck.

Bad debt comes at a heavy personal and social cost. It can lead to depression, illness, homelessness, the break-up of families and so on. Whether people are in business or are consumers, it is bad news if they are caught in the debt trap. Some people are able to manage their way out of debt, but some cannot and need another way out. Bankruptcy, whether through sequestration or protected trust deed, is such a way out.

People with debt problems often bankrupt themselves. However bankruptcy happens, it is a valuable debt tool that gives each creditor a share of whatever money remains and relieves people of their debts. Although bankruptcy can be the right way out, it is not an easy way out—it is important to make that distinction. Going bankrupt is tough. Everything that the debtor owns, including their home and any surplus income, goes into the pot to be divided among the creditors. As a consequence of bankruptcy, people can lose their jobs and careers and can find it difficult to get affordable credit for many years afterwards. However, that is the way that things need to be. People should, if possible, pay their debts. The policy intent of the bill is not, as some people have argued it is, to make bankruptcy a soft option.

However, the act of being made bankrupt is not the whole picture. We need to think about what happens during a bankruptcy and how people get out of bankruptcy so that they can start again. Part 1 of the bill will make big changes to what happens both during and after a sequestration. It will give the Executive the necessary powers to make what we believe are overdue changes to protected trust deeds.

The law on bankruptcy has not changed in any great way since 1985, but much has changed in the intervening 20 years. As I said, more people now use credit and more suffer from bad debt. One result of that is the well-documented rise in the number of bankruptcies. Arguably, the one-size-fits-all system is no longer the answer. Our business start-up rate is lower than that of our competitors. The bill provides us with a chance to make Scotland a better place in which to do business. Changing bankruptcy law is not the be-all and end-all of that process, but it is one way to make a difference.

In addition, more of our young people now attend college or university and more of them have student loans to repay. Long-term debt is a more common feature of our lives than it was 20 years ago. Arguably, short-term solutions are no longer good enough.

As the committee has heard in evidence, as a result of the change to bankruptcy in England in April 2004, there is no longer a level playing field. We need to ensure that businesses in Scotland are not put at a disadvantage.

The sum and substance of the matter are that the laws that were made 20 years ago are in need of reform, as they are no longer fit for purpose. They do not strike the right balance between the interests of debtors, creditors and the public. They make it too hard for people and businesses to start again, which is an important part of the entrepreneurial cycle. In addition, the current law does not do enough to protect the public from reckless, feckless and, indeed, criminal debtors.

I have outlined the general policy intent of the bill but, as members will know, the bill contains a mass of detail. I am told—having spent many hours poring over the detail, I have no reason to disbelieve this—that the bill is the second largest piece of legislation to have been introduced since the establishment of the Scottish Parliament. However, as the minister who took the largest piece of legislation—the Land Reform (Scotland) Bill—through the Parliament, I have sufficient experience of such bills to appreciate the importance of the parliamentary process. Stage 1 of the process is about issues of principle; discussion of the fine details should wait until stage 2, which is the line-by-line, section-by-section scrutiny of the proposals.

The intent of the bill is to provide a modern law for a modern Scotland. We all have a role to play in that process. I hope to answer any questions that members ask, but I cannot guarantee to do so. My colleagues will be able to provide further information and add to the process of deliberation. I assure the committee that, on any questions that we cannot answer immediately, we will come back with the detail that is required.

15:45

The Convener: I remind members that the minister is here to discuss part 1 of the bill. At the end of the process, he will come back to discuss the other parts of the bill. Members will be glad to know that today's meeting marks the end of our consideration of part 1 of the bill. We will move on to deal with floating charges and diligence next week—something to look forward to.

You mentioned the business birth rate. How will the bill improve that?

Allan Wilson: It is argued that discharge after one year will assist businesses. The issue is about cultural change and ensuring that the Government is seen to be sympathetic to entrepreneurial activity. We would argue that part of creating that culture is making it easier for businesses to start up again—to enable them to take on the slings and arrows of outrageous fortune, so to speak, and have another go.

The Convener: I want to pursue that because we have heard a lot of evidence to the effect that the bill will not do much for entrepreneurship.

Michael Matheson: Minister, I understand that you are saying that you would like the legislation to encourage failed entrepreneurs to go on to start up another business. However, one of the policy intentions of the bill that is expressed in the policy memorandum is that it should increase entrepreneurship. It is still not clear to me how exactly the bill will do that.

Allan Wilson: The cultural change that underpins that issue has been generally welcomed by business organisations, which agree that people should be encouraged to try again. The change to a one-year discharge period gives people an opportunity to move on and sends a message that the Executive supports an entrepreneurial economy. In itself, that does not transform anything. We have never said that it would. However, if the Confederation of British Industry, which is a fair judge of these matters, feels that that will help to promote a more entrepreneurial culture by enabling early business restart, that is reflective of the mood that we are seeking to create.

John St Clair (Scottish Executive Legal and Parliamentary Services): The minister talked about a change of culture. Previously, bankruptcy carried a stigma. However, the fact that we will have bankruptcy restrictions orders only where there has been culpability means that it will be publicly recognised that the people who do not have those orders are completely innocent. Where an individual—I am talking about people, not companies—has failed through economic circumstances, they will be able to go back into the economy. That will be good for business start-ups. The change of approach will de-stigmatise the bankruptcy progress.

Michael Matheson: Minister, it would appear that one of the main ways in which you hope to promote entrepreneurship and business start-ups is by reducing the discharge period from three years to one year, which will result in a change in culture. Has the Executive any evidence of another country experiencing an increase in business start-ups and a change in culture after it has introduced a similar discharge period?

John St Clair: There is EC evidence that the introduction of such a period promotes a more friendly approach to entrepreneurship. Reducing the discharge period on that premise is not just a United Kingdom phenomenon; it is being adopted across the EC.

Michael Matheson: Could we have copies of that research?

John St Clair: Yes, we can get you information on that.

Michael Matheson: That would be useful.

I will move on to the debt arrangement scheme and protected trust deeds. It appears that the Executive is in favour of greater use of the debt arrangement scheme. Why has uptake of the scheme been so limited since it was introduced?

Andy Crawley (Scottish Executive Justice Department): I can provide some background information. The main reason why there has not been much take-up is that not enough money advisers have become approved to offer the debt arrangement scheme. It is not an open house. A person can get into the debt arrangement scheme only if they go through an approved money adviser—that is, not an ordinary money adviser but one who has an extra qualification. There are various reasons why not enough money advisers have become approved to offer the scheme, including the fact that some money advisers may not be particularly happy with the scheme. To address that concern, we are completing a thorough review of the legislation so that we can identify barriers to take-up and fix them.

Another concern that money advisers have expressed is that to get the extra qualification to become approved takes too much effort. The approval process is run not by the Executive but by the money advice sector. We are speaking to that sector to see how we can remove some of the barriers to advisers becoming approved. If there is too much form filling and hassle, we want to deal with that and get rid of those barriers. The money advice sector recognises that and we are working together to solve the problems.

Another consideration is that the expectation for take-up was perhaps higher than was reasonable. The committee has heard evidence about bankruptcy restrictions. It was not as if we were going to start the debt arrangement scheme and suddenly there would be 3,000 programmes; it takes time to build up such programmes. It takes time to build up capacity within the money advice sector and it takes time for people to understand what the debt arrangement scheme does.

Although take-up has been lower than we had hoped, it is not the case that the debt arrangement scheme is not working. It is, and already more than £1 million of debt is in payment. We think that many changes that the bill introduces will make the scheme an even more useful tool. People will become more familiar with the scheme, more money advisers will be available and more people will start using it. Essentially, there are what we might call roll-out issues. The scheme is quite ambitious and we are trying to break new ground. We are trying to make it possible for people to get money advice if, for example, they are threatened with bankruptcy. We are pulling together many threads. We hope and believe that the scheme will be a success in the medium term. It is too early to say that the scheme is not working, but it is not too early to say that we are making an effort to ensure that it works.

Allan Wilson: That is true. Part of the review that Andy Crawley mentioned involves working with organisations in the sector to consider their low-income clients, who are potential beneficiaries. Given that the debt arrangement scheme works on the basis of surplus income, it is clear that it will not be the answer for everybody.

We want more money advisers to come to the fore. There are many reasons why that has not happened. The scheme is subject to review and more can be done to make it work better. The committee has heard about what the scheme has achieved to date. Part of the raison d'être of this process is to improve the scheme.

Michael Matheson: Is it the Executive's policy intention to move people away from protected trust deeds and towards the debt arrangement scheme? I will explain why I ask that. The committee has been provided with some evidence about the fact that the bill is largely silent on protected trust deeds. There is a suspicion that the intention is to encourage people to use the debt arrangement scheme rather than protected trust deeds. Protected trust deeds have no cost to the taxpayer, whereas the debt arrangement scheme incurs a cost to the taxpayer. Those who have given us that evidence believe that a protected trust deed can do exactly what the debt arrangement scheme would do, and at no cost to the taxpayer.

Allan Wilson: There is no policy intent in that regard. I would agree that protected trust deeds are a low-cost option for the public, which is important. However, we would also note that it is the creditor who pays the fee, as the debtor's contribution goes to pay fees, rather than the creditor. As I have come to discover, there is a great deal of vested interest, depending on which side of the fence people are on. There is no policy intent there, however.

Andy Crawley: I entirely agree with the minister about that. Our view is that if the debtor is able to enter into a debt arrangement scheme, that is better for the debtor than going bankrupt. It is better than signing a trust deed and it is better than sequestration. In that sense, we would say to debtors, "If you can do it, do it." It is better for them and better for the creditors. Sadly, however, a lot of people simply do not have the money.

Returning to what the minister said, I point out that if people do not have surplus income, they will not be able to enter into a debt arrangement scheme. The important comparison is between protected trust deeds and individual voluntary arrangements. They are both forms of insolvency. Compared with IVAs, trust deeds do not look very good—they look like a pretty soft option for debtors, because the creditors often get nothing out of them. That is where the policy interest is. It is not in relation to trust deeds and DAS, but in relation to trust deeds and sequestration—trust deeds and IVAs. That is where we think things are not working as they should.

Christine May: I too want to pursue the issue of the debt arrangement scheme and protected trust deeds. To simplify matters, it seems that the debt arrangement scheme gives no relief from debt. Debtors are still liable for the whole debt and for any interest charges that might accrue as they pay the money off. DAS is therefore good for creditors, who get a greater benefit, but not so good for the debtor and the cost of administering it falls on the public purse. Protected trust deeds, and IVAs, to some extent, give a dividend to the creditor, who also bears quite a large part of the cost of administering them.

In the light of that—I see nodding—I wonder whether the Executive is considering changes to all three options, perhaps picking some of the best elements of each so that they are genuine alternatives, rather than one being utterly punitive to the debtor and entirely beneficial to the creditor and the other being the other way round.

Andy Crawley: Some witnesses have said that there should be an element of interest relief under the debt arrangement scheme to make it more attractive to debtors. We have listened to those concerns, and our review is addressing the issue to determine whether it is right to add some element of interest relief, perhaps just freezing interest or charges. There should be clear distinctions between the different tools. There should be clear distinctions between DAS, trust deeds and sequestration, so that creditors and debtors understand what they are doing. We think that those distinctions are not clear at the moment. We are trying to look at those different tools in the round, as you have suggested, to ensure that they work well together. That is certainly one of our policy objectives.

Allan Wilson: I agree. As I have said, one size does not fit all. Part of the aim is to ensure that we have a process that does not distinguish between one or other form of debt relief, debt management, sequestration or bankruptcy, but which provides realistic, competitive options at the end of the legislative process. That would be the policy intent. We are open to suggestions and arguments on the merits and demerits of different approaches.

16:00

Christine May: We will consider that in detail at stage 2.

Witnesses have generally agreed that if debtors are to be given a better chance of petitioning for their own sequestration, the definition of “apparent insolvency” has to be made easier. Have you considered having a threshold lower than £1,500? That will not help the NINAs, but it might help those who are almost NINAs.

Allan Wilson: I agree that that is an issue and I am open to arguments. When we set up the debt relief working group, we asked it to take an independent look at apparent insolvency and other barriers to debtor access to insolvency. The working group subsequently made recommendations for reforms. We are considering those recommendations and further changes will be introduced at stage 2.

We are open to argument and will consider what the committee says in its report. It is fair to say that such issues are under active consideration.

Andy Crawley: Yes, I completely agree, but I will clarify one point. The issue of how much debt a person has to be in to be in bankruptcy, and the issue of apparent insolvency, are not necessarily the same. They are two different barriers and we might need to consider them separately.

The main reason why we have not changed the £1,500 limit is that consultees did not think that it was a good idea. However, we are reviewing that as well; we have to take other factors into account and it may be that changing the figure is indeed a good idea. We have to consider issues in the round and, as the minister says, they are under active consideration.

The Convener: I have asked the clerks to circulate a summary of the recommendations of the debt relief working group. That summary will be helpful. If members want further details of the full report, we can provide those as well.

Allan Wilson: There are implications for the definition of “small debt”, for example, and I am genuinely interested in the committee’s views.

Murdo Fraser: Michael Matheson asked about entrepreneurship and we would all concur with the ambition of creating a more entrepreneurial culture. However, this afternoon’s witnesses from south of the border highlighted a problem: there is little evidence that changes to the Enterprise Act 2002 have made any impact at all in creating an entrepreneurial culture down south.

When we took evidence from two businessmen who had been through the bankruptcy process, they said that the period of bankruptcy made little difference. Once they had been discharged, they were unable to get credit from any mainstream lender. The businessmen said that, unless such issues were looked into, the question of the period of discharge would be irrelevant. How can we encourage people in that situation to get back into business? How can we smooth the path for them?

Allan Wilson: I take the point—although access to credit is obviously a reserved issue. Perhaps credit unions or something of that ilk would be a positive way of responding to such a situation.

Andy Crawley: Mr Fraser raises a difficult question, and a fair one. We come back to the general point of considering how much difference the changes in the bill will make to entrepreneurial and business activity. As the minister said, if the bill does nothing else, it sends a message that the Executive values what the business community is doing. As the committee knows, the bill has been welcomed on that basis by the business community.

There is no doubt that the bill removes some barriers to business restart. I do not see how one could question that. It removes legal barriers to restart, which is a good and useful thing to do. If the reforms are introduced, people will be able to restart after one year. We will also make another change that has not been mentioned. At present, there is a ban on repeat bankruptcies within five years, but the bill will get rid of that. If someone has a good reason, such as entrepreneurial activity, they will be able to go bankrupt more often. If people abuse the system, we will catch them with bankruptcy restrictions orders.

Those things are good in themselves. It is reasonable to discuss how much difference they will make but, as the minister said, our position is that we have to consider the changes as part of the bigger picture of all the other things that the Executive is doing. I think that the committee heard from witnesses who put the matter in that context. The change to the discharge period will not in itself transform Scotland into one of the states of America, but it will help to an extent and there is certainly no evidence that it will be harmful. I return to what my colleague John St Clair said—the proposals in the bill are the right way forward and we think that we should keep up with our competitors.

Like the UK Insolvency Service, we will thoroughly evaluate the reforms and we hope to come back in three, four or five years with an answer to the question. That is as much as we can say. We think that the reduction in the discharge period will help. We believe that it is worth trying and we want to be able to find out for sure once the reforms have bedded in. We hope that the Parliament will agree that that is a good thing to do.

Allan Wilson: It is interesting that I was asked the question from the opposite perspective at a conference on the matter that was held last week. I was asked whether the bill will prevent people from getting into more debt, whether it will result in more personal insolvency and therefore whether it will act as a restriction on lenders who give out easy credit. That is not what we envisage and we do not believe that that will happen. People's ability to get credit will not necessarily be affected. It is interesting that the question was asked from the other perspective by those who are involved in giving money advice. They ask how we prevent people from getting into bad debt in the first place, which is something that we all want to do.

Murdo Fraser: I wonder whether the answer is to find a way of distinguishing between those who become bankrupt due to business and entrepreneurial activity and those who become bankrupt due to consumer debt. Perhaps the Executive considered that and found that it was impossible.

Andy Crawley: We considered that. It sounds like a good idea, but when one tries to separate the sheep from the goats it is not easy. If we are too prescriptive, we create an incentive for people to say, "I'm a sheep, not a goat." Also, administering such a system would involve a lot of time, trouble and cost. Our view—and the view of the Insolvency Service—is that bankruptcy restrictions orders are a better and more flexible approach. In that way, we can take a policy view and weigh up the various factors, which might include the fact that someone has failed as a result of trying to run a business rather than as a result of running up a debt of £150,000 on their credit cards.

In an ideal world, we would choose the route that you suggest, but we do not live in an ideal world and the best solution is the one in the bill. It is the most flexible solution and the one that is most likely to deliver the benefit that we seek.

Murdo Fraser: My colleagues asked about the debt arrangement scheme, so I do not intend to pursue the matter in detail, but it is clear that there are questions about the scheme and that there are possible modifications that would improve it.

A parallel issue is the future of protected trust deeds. I understand that the Executive is considering changes to protected trust deeds, and that causes the committee a problem. We are scrutinising the bill, which deals with one aspect of insolvency legislation, while at the same time other changes, of which we are not aware, are being proposed. Did the Executive consider having all the legislation tied together and brought forward in a oner? That way, the committee could have seen the whole picture while it was considering the issues, rather than trying to deal with the bill in isolation.

Andy Crawley: We certainly considered the policy in the round. It was not as if, once the bill came in we plucked the idea of trust deed reform out of the air and said, "That sounds good. Let's get up a consultation."

To be honest, much of the explanation is to do with the size of the bill. The bill is so big and we had so much to do on it that our timescale for consulting on trust deed reform was pushed back. We did not want that to happen. We wanted the trust deed consultation to be published at the same time as the bill was introduced to address the fair point that you make, which is that that would have made it easier for the committee to understand what is going on. All that I can say is that we put a big effort into getting the consultation published as soon as we could, so that the committee would at least see it before the stage 1 evidence-taking process was completed. I hope that the committee can take into account our proposed changes to trust deeds, not least because we are relying on the enabling power in the bill. If the Parliament does not agree to give us that power, we will be back to square one on trust deed reform.

Allan Wilson: It is not dissimilar to what happened in the land reform legislation, in so far as we used enabling powers to take forward our policy intent by regulation. From the committee's perspective, I would look at it more as an opportunity than a threat, as it means that members are involved in the process of determining the regulatory framework that would underpin the potential power. I would argue that that is a good position to be in.

Andy Crawley: May I make a point of clarification? I want to make it clear that the trust deed consultation is the end of a long process. The consultation that the committee has seen during the course of its scrutiny of the bill is the fourth consultation on trust deed reform. The reform should not come as a surprise to anyone who works in the sector. The point that I was making is that we would have preferred to get the matter to the committee at an earlier stage. We can say only that we will try to do better next time.

Murdo Fraser: Committee members are grateful to the Executive for reducing our workload and not giving us more legislation to consider at this stage. However, the issue is that we will be asked to pass, as part of the bill, enabling legislation that allows regulations to be made on protected trust deeds, without knowing the detail of the regulations. With the benefit of hindsight, it might have been preferable had we examined the issue in the round.

Andy Crawley: I will also provide clarification on that point. There are draft regulations in the consultation, so we are providing the committee with the detail of what we plan to do.

Allan Wilson: We are open to the argument that the regulations should be subject to the affirmative procedure.

The Convener: The other concern is that more should perhaps be included in the bill. We are always concerned that too much is left to subordinate legislation.

Christine May: I was a member of the Subordinate Legislation Committee, which is very aware of that concern.

My question is about a previous answer on the review of the debt arrangement scheme. Ideally, it would be good if the Bankruptcy and Diligence etc (Scotland) Bill, the review of protected trust deeds and the changes to the debt arrangement scheme all came into force at the same time. Is that your hope?

Allan Wilson: We could come back to you with written evidence that would chart where we are, where we want to get to and how we propose to get there.

The Convener: Joined-up Government.

Shiona Baird: Are you concerned about the impact that business bankruptcies could have on creditor businesses?

16:15

Andy Crawley: It depends what you mean by "creditors". Part of the complexity of the issue is that, when you talk about creditors, you are talking about a multitude of kinds of people. We do not think that there will be any effect on the banks, but there could be a significant effect on small traders.

Shiona Baird: I was talking about small and medium-sized enterprises, which have a restricted cash flow.

Andy Crawley: The key point in this regard is that bankruptcy is just something that happens as a result of insolvency. People go bust and they need some form of debt relief. Nothing in the bill makes people more or less likely to go bust. If someone is bust and cannot pay their debts, the harm has already been suffered. If the small creditors are going to lose money, they are going to lose money. That is just a sad fact of life. The question is, how do we deal with the consequences of that? Mostly, that is to do with how we deal with the debtors. If they do not have the money, they cannot pay.

Allan Wilson: The implication behind your question might have been that the bill might lead to an increase in sequestrations or bankruptcies. Is that correct?

Shiona Baird: There might be a domino effect—

Allan Wilson: The evidence that we have suggests that that is not the case. As I said, the bill, per se, will not lead to increased pressure on creditors. That pressure is already there.

Shiona Baird: Do you have any evidence to back up what you are saying? I would be quite interested to see it.

Andy Crawley: We can provide information that has come from the UK Insolvency Service. You might have heard about that earlier today.

The Convener: It is going to send us that evidence anyway.

Andy Crawley: It released the latest quarter's figures for English bankruptcies and IVAs. Those figures are going up, as are the Scottish ones. The Insolvency Service's view is that there is no evidence that the one-year discharge has led to an increase in bankruptcies. Our view is that that makes sense. The bill is about how people who have gone broke can be dealt with, not how they went broke in the first place. That has to do with economic circumstances, their behaviour and a range of other relevant factors.

We are confident that there is no evidence to support the argument that the one-year discharge will lead to a higher number of bankruptcies. This is an area in which there is clear evidence to support that position. We do not have the one-year discharge and our bankruptcy figures are going up faster than the English ones. There are reasons for that, but they are not to do with changes in legislation.

Shiona Baird: Can I pursue that because—

The Convener: We are running out of time. Previously, we gave a lot of time to this issue and, as we are going to get more evidence on it, there will be time to look at it again before we come to our report.

Allan Wilson: I would favour an evidence-based approach to this legislation. The evidence that I have seen leads me to the conclusion that I have outlined. An exchange of evidence is a good thing.

The Convener: Absolutely.

Company Law Reform Bill: Legislative Consent Memorandum

16:19

The Convener: The minister will remain with us for the next three items. I remind members that it is now nearly 20 past 4 and we still have a fair amount to get through. I think that the evidence sessions merited the time that we awarded to them but hope that we can get through the rest of our business fairly quickly.

For this item of business, the minister has with him two new officials, Joyce Lugton, the property law team leader in the civil law division of the Justice Department and Laura Bailie, who is in the Development Department's charity law team.

Minister, do you want to say a word or two by way of introduction?

Allan Wilson: Yes. I will do so briefly because I am conscious of the pressure on the committee's time.

The Company Law Reform Bill was introduced into the House of Lords on 1 November 2005. The bill follows a full-scale review of company law by the Department of Trade and Industry. The bill seeks to ensure that British business operates within a legal and regulatory framework that promotes enterprise, growth, investment and employment.

The bill runs to almost 900 clauses and is predominantly concerned with matters that are outwith our legislative competence. However, there are five provisions in the bill that are subject to the consent of the Scottish Parliament, by virtue of the Sewel convention. That is because they apply to Scotland and are for devolved purposes or because they alter the executive competence of Scottish ministers.

These matters are minor and technical in nature and I do not think that they are about to cause controversy—but you never know. The five issues are, first, to confer a new power on the Lord Advocate that will enable him to issue guidance to regulatory enforcers in relation to the new offence of deliberately making a false audit report; secondly, to confer a new power on Scottish ministers to allow them to specify, by order in the Scottish Parliament, relevant companies that would be required to have their accounts audited by the Auditor General for Scotland. I asked for and have a list of those companies, if members want to see it.

The third issue is to extend to Scotland a new provision to regulate the trade names of sole traders, so that no rogue traders can interfere in that process up here and the Scottish public are as protected as their English counterparts. The fourth issue is to extend to Scotland the prohibition on charitable companies producing individual or group accounts in accordance with international accounting standards. The fifth issue is to ensure the application in Scotland of the simplified provisions exempting small charitable companies from having an audit and allowing them to have an accountant's report instead. From the perspective of the small charitable company, that is obviously an advantage. Laura Bailie can speak on that particular subject.

The point of the motion, therefore, is to deal with those five technical and relatively minor changes. I believe that they provide a good case for using a legislative consent motion in this instance.

The Convener: Thank you, minister. It is fair to say that the Company Law Reform Bill is, in some ways, the sister bill to the Bankruptcy and Diligence etc (Scotland) Bill and that they are intended to complement each other. I draw members' attention to a couple of points in the briefing paper that was circulated. The first is that the Subordinate Legislation Committee considered the legislative consent memorandum on the Company Law Reform Bill on 7 February and reports that it is content with the proposed use of delegated powers.

We have five points to consider, which are highlighted in paragraph 7 of the briefing paper. We must consider the merits of the five relevant provisions in the bill that are identified by the Executive in the memorandum on the legislative consent motion, which is the new name for a Sewel motion. We must consider whether it is appropriate to use the Sewel convention for each of the five provisions and consider the points raised by the Subordinate Legislation Committee. We must also consider the wording of the draft legislative consent motion and agree whether to make a specific recommendation to the Scottish Parliament to give its consent to the United Kingdom Parliament, as set out in the draft legislative consent motion, to pass the bill.

I will take general comments from members, then go through the relevant parts if there is any dissent.

Christine May: I do not dissent. I am content.

Shiona Baird: I do not dissent from the five points, but I want to raise an issue that pertains to the reserved nature of the bill, although I do not know whether it is relevant.

The Convener: Tell us what it is and we will tell you whether it is relevant.

Shiona Baird: It is about the fact that the Westminster bill, which I obviously accept is a reserved issue, does not appear to place a duty on company directors to take account of the environmental and social implications of their businesses.

The Convener: That is a reserved matter.

Shiona Baird: Well, can I put my question?

The Convener: Sure.

Shiona Baird: Sustainable development is a core principle of the Executive's thinking, so I wonder what influence the Executive has on the bill. Do you have any influence at all in Westminster, minister?

The Convener: I think that that should be the subject of a parliamentary question because this discussion is specifically about the five points that the minister listed. I must keep the discussion within the confines of those points.

Shiona Baird: I recognise that.

The Convener: If no-one has any points, questions or comments to make on those five points, are members happy to accept the recommendation that the writing of the report—which will be circulated to the committee anyway—should be delegated to me and the clerk?

Members *indicated agreement.*

Subordinate Legislation

Renewables Obligation (Scotland) Order 2006 (draft)

16:25

The Convener: The deputy minister remains with us for item 4, which is about the draft Renewables Obligation (Scotland) Order 2006. I remind members that the order is a Scottish statutory instrument that is subject to the affirmative procedure.

Does the minister have any opening remarks to make before he moves the motion?

Allan Wilson: I will explain the intention behind the order. Everybody here will be familiar with the renewables obligation Scotland. The ROS is the means by which we influence the market in respect of the growth in renewable energy development and renewable technology more generally. Everybody accepts that as a key part of the future energy mix. Renewables obligation certificates have played a key role to date—and will do in the future—in driving forward the renewable energy agenda.

We are beginning to see increasing diversity in that development activity. The past year has seen consent granted for the first new large hydro scheme for many years, as well as a multimillion pound biomass plant at Lockerbie. Those are signs of diversification in the market that we want to encourage. We want to ensure that new technology comes on stream and that there is diversification in renewable energy development beyond the proven technology of onshore wind power.

We have reviewed the process with everybody concerned this year, as we do each year, and laid before the Parliament a draft order. I will refer briefly to its key provisions. First, we have amended the threshold for biomass fuel. At the moment, generators burning biomass must demonstrate that what they burn has a minimum animal and plant matter content of 98 per cent. We propose to reduce that to 90 per cent to expand the range of eligible fuels and hopefully maximise the potential contribution to ROCs from waste woods that would otherwise go to landfill. That will bring an environmental benefit and stimulate market growth in biomass. For example, the waste wood from kitchens contains small amounts of glue, varnish or paint that take it below the existing 98 per cent purity requirement. That means that, currently, it probably goes to landfill. Under the new rules, such waste woods could be burned to generate electricity, which is a good thing.

We hope that mixed waste generators that use combined heat and power will be eligible for support under the ROS. CHP is more costly than electricity, or electricity-only generation from waste to be more precise, but it is more energy efficient. That will provide additional support for the biomass element of waste fuel.

The amended order contains a number of administrative simplifications that we do not need to go into in great detail, but they provide for the introduction of a pre-accreditation procedure for generating stations that have not yet been commissioned. That will remove the uncertainty that a project might not be eligible for support under ROCs and might help projects to procure the necessary finance. If we take away some of the obstacles for qualification, it will enable the projects to go to the market to secure investment capital on the strength of their future entitlement to ROCs.

We have made changes to provide the Office of Gas and Electricity Markets with greater flexibility in the handling of ROC claims, to reduce the frequency of requirements on generators to submit fuel measurement and sampling data, and to enable the measurement of biomass fuels away from the generating station. The draft order contains a number of changes, which we hope will continue to stimulate the renewable energy market and—more important—help to diversify generation by moving us away from reliance on onshore wind towards the use of competing technologies, particularly biomass and CHP.

16:30

The Convener: Thank you. I will explain the procedure. The draft order is subject to the affirmative procedure. First, members who have any technical points that they wish to clarify can put questions to the minister. I will then ask the minister to move the motion, after which we will debate the substantive issues. Is there any aspect of the order that anyone wishes to clarify? I am not talking about the substantive issues.

Christine May: I have a question about what the minister said about the sampling by Ofgem of biomass products away from the site. Does that deal with cases in which coal and biomass might be blended off site, by allowing the product to be inspected and verified there?

Allan Wilson: Yes. I will not go into the detail.

Christine May: That is fine.

The Convener: Are there any other points of clarification?

Shiona Baird: I do not know whether it is a point of clarification; it relates to the reduction in the biomass threshold to 90 per cent. There is no definition of what the other 10 per cent might consist of, other than waste wood. Will the minister explain that?

The Convener: I think that that is a fair question.

Allan Wilson: We established the figure of 10 per cent through consultation with industry. My understanding is that only one plant in Scotland—which is in the Shetlands—stands to benefit, so it is not as if we are talking about a general move towards the generation of energy from waste. It must be established that there is biomass content within the waste stream. That is sampled and authenticated, so there are safeguards. Although I favour greater reliance on the production of energy from waste, I know that Shiona Baird probably does not. It must be established and authenticated that there is genuine biomass content within the waste stream, and 10 per cent waste is the maximum that is allowed.

The Convener: Does that clarify the definition?

Shiona Baird: I think so. Time will tell.

The Convener: I invite the minister to open the debate by moving the motion.

Motion moved,

That the Enterprise and Culture Committee recommends that the draft Renewables Obligation (Scotland) Order 2006 be approved.—[*Allan Wilson*.]

The Convener: Members may now make comments. At the end of the debate, I will ask the minister to sum up.

Christine May: I will be brief. I am pleased about the regime that the order will establish, which is the culmination of a great deal of consultation and lobbying by members, not least by me. I am conscious that the order has to strike a fine balance between implementing measures that will ensure stability in the price of electricity for consumers and giving gentle—or perhaps not so gentle—encouragement to companies to use more renewables in the production of electricity. I believe that the proposed measures will shift that balance towards the greater use of renewables without necessarily damaging the price to consumers any more than it has already been damaged by world events.

I am pleased that, on page 6 of the document that the Executive has provided, the point is made that the order has the broad support of the renewables sector. I recognise that many people in that sector want more emphasis to be given to their sphere, but a balance needs to be struck.

I do not think that we have reached the end of the process. As the renewables sector develops, the minister and his department will be under continuing pressure to re-examine the regime to identify whether further tweaking needs to be done. I suspect that I might be involved in some of that lobbying.

Shiona Baird: I am concerned that there is no clear definition of the 10 per cent waste that may be burned with biomass. We also need to ask how effective the flues on biomass plants will be in removing contaminants such as glue, which the minister mentioned, and possibly others. Another concern, which must always be considered in the context of energy from waste, is whether the waste, rather than being burned, could be used more effectively.

In addition, the draft order provides no definition about the type of mixed waste plants producing combined heat and power that will be eligible for ROCs. I assume that those plants will use municipal waste, but I have serious concerns about such plants being eligible for ROCs. Under any definition, municipal waste cannot be regarded as a renewable energy source. I have serious concerns about the order.

The Convener: As no other member wishes to contribute to the debate, the minister may sum up.

Allan Wilson: As Christine May will know, the draft order before us is part of an annual process, but we are considering other provisions by which obligations might promote co-firing more generally and stimulate the marine tidal market. We are looking at those issues in conjunction with the Department of Trade and Industry and further proposals in that regard will come before the Parliament in due course.

In response to Shiona Baird, I should point out that the alternative in this instance is that all the waste would go to landfill. However, ROCs will be payable on only the 10 per cent waste stream, not on the remaining 90 per cent. Any move towards energy from waste from municipal waste streams will come, if it comes at all, irrespective of this measure. The measure will simply make that process—if it happens—marginally more sustainable by requiring that the 10 per cent waste stream for which ROCs are creditable comprises fuel such as waste wood, which has a biomass content.

The Convener: I appreciate that Shiona Baird wants to respond, but I must follow the procedure strictly. I should also point out that the Subordinate Legislation Committee, which considered the draft order on 7 February, reported no concerns about the order.

The question is, that motion S2M-3953, in the name of Allan Wilson, on the draft Renewables Obligation (Scotland) Order 2006, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fraser, Murdo (Mid Scotland and Fife) (Con)
Gillon, Karen (Clydesdale) (Lab)
Matheson, Michael (Central Scotland) (SNP)
May, Christine (Central Fife) (Lab)
Neil, Alex (Central Scotland) (SNP)

AGAINST

Baird, Shiona (North East Scotland) (Green)

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Motion agreed to.

That the Enterprise and Culture Committee recommends that the draft Renewables Obligation (Scotland) Order 2006 be approved.

Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No 2) Order 2006 (draft)

The Convener: Agenda item 5 is another piece of subordinate legislation. As with the previous item, we will hear from the minister and a regular official—

Michael Matheson: James Thomson is almost an honorary member of the committee.

Christine May: Do you mean that the officials accompanying the minister earlier were irregular, convener?

The Convener: Mr Thomson is indeed almost an honorary member, as he has become a regular feature at the committee.

I invite the minister to make a few opening remarks about the draft order, but not to move the motion at this point.

Allan Wilson: I will try to be brief, given that time is moving on.

The draft order is about stimulating the marine energy market. As members will know, we have invested millions in the European Marine Energy Centre up in Orkney, and are conducting a strategic environmental assessment of the coastline that will not only help to predict the impact of marine devices on the environment but guide developers to the best places in which to site such devices. If the development of onshore wind is anything to go by, members can bet their boots that arguments will arise over the optimum place for locating such devices.

The draft order consolidates in one instrument the devolution of functions covered by section 38 of the Electricity Act 1989, which gave Scottish ministers the power to consent to the construction, extension and operation of electricity generating station developments in Scotland. The 1989 act has now been amended at Westminster and the draft order transfers to Scottish ministers the additional powers that were added by the Westminster amendments.

One of those additional powers is the power to give consent for offshore generating stations in the new renewable energy zone. Has the committee seen the map showing the boundary of that zone?

The Convener: Yes.

Allan Wilson: The zone is an area of sea beyond territorial waters that can be used for the installation and development of renewable energy stations. The boundaries of the Scottish section were designated last year, and the powers transferred by the draft order will allow ministers to give consent for offshore wind stations and wave devices, in the same way as we can currently give consent for terrestrial stations. Obviously, that will greatly extend the area in which we can place renewable energy developments, and will give the marine industry more area in which to develop. We will be able to assess the impact of such developments, just as we assess the impact of terrestrial developments.

We have to do things in an environmentally sustainable manner, so we will introduce risk-based controls to assess the impact that developments have on Scotland's water environment. The overriding policy objective will be to adhere to the controlled activities regulations—with which members will be familiar—which protect the water environment and the social and economic needs of those who use it.

Until now, Scottish ministers have used the powers under section 36 of and schedule 5 to the 1989 act to set the operating conditions of renewables stations in order to protect the water environment. In the interests of having better regulations, we propose to transfer functions, by means of the draft order, to the Scottish Environment Protection Agency, which will have a more formal and explicit advisory role in the assessment of cases. That will ensure that we take an integrated approach to the regulation of activities that impact on Scotland's water environment and prevent any duplication of regulatory controls.

To sum up, we are extending ministerial powers over new consents in the renewable energy zone beyond territorial waters and are giving SEPA the power to advise Scottish ministers on how we should implement the policy objectives of making our developments more sustainable and protecting the water environment. I am sure that the committee will agree that those powers are important. They will ensure that we can grow marine renewables—offshore wind and wave technology—in a sustainable manner in a vastly increased area of Scottish waters.

The Convener: Thank you, minister. Do members have any questions or points of clarification?

Karen Gillon (Clydesdale) (Lab): This point might be totally inappropriate, minister, but an offshore wind farm in the south of Scotland required a private bill before it could be introduced. Will the draft order prohibit such bills in future?

Allan Wilson: It will give Scottish ministers the power to consent to such developments under the 1989 act.

Karen Gillon: So we will not have any more private bills for offshore wind farms.

Allan Wilson: My recollection from being involved in—was it Crystal Rigg?

Murdo Fraser: Robin Rigg.

Allan Wilson: Of course. The draft order will give Scottish ministers the power to consent to any such application in the renewable energy zone.

The Convener: As there seem to be no further points from members, I ask the minister to move the motion.

Allan Wilson: We will write to the committee with an answer to Karen Gillon's point. The Robin Rigg development may have been dealt with as it was because it was cross-border.

The Convener: If you would like to come back to us to clarify the point, it would be easiest to do so in writing. I presume that waiting for an answer will not affect the way in which Karen Gillon will vote, if there is a division.

Motion moved,

That the Enterprise and Culture Committee recommends that the draft Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No.2) Order 2006 be approved— [*Allan Wilson.]*

The Convener: We move to open debate. Are there any substantive points on the draft order?

Members: No.

The Convener: Do you wish to sum up, minister?

Allan Wilson: No.

The Convener: The Subordinate Legislation Committee did not have any concerns about the draft order. I take it that there is unanimity on the draft order among members, since it represents a transfer of functions to Scottish ministers. Therefore, the question is, that motion S2M-4044 be agreed to.

Motion agreed to,

That the Enterprise and Culture Committee recommends that the draft Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No.2) Order 2006 be approved.

The Convener: I thank the minister and all the officials who attended today.

Bankruptcy and Diligence etc (Scotland) Bill: Stage 1

16:45

The Convener: Item 6 is consideration of the Finance Committee's report on the bill and issues emerging from today's evidence. The report, which has been circulated, is fairly straightforward. I suggest that we go to the conclusions on page 8.

There are four conclusions for us to follow up on. In the first, the Finance Committee details its concerns about the establishment of the Scottish civil enforcement commission. I suggest that we write to the minister, referring him to the concerns expressed in the report and asking for his response.

Members *indicated agreement.*

The Convener: The second conclusion relates to the accuracy of the estimates made in relation to the budget for the Accountant in Bankruptcy. We might ask the Auditor General to consider that issue—if he can do so quickly—and to give us some independent advice on the estimates, because there is clearly a dispute between the Finance Committee and the Executive about their veracity and robustness.

Christine May: We heard evidence today from down south on any increase in costs, and last week we heard the Accountant in Bankruptcy's estimate of that, even without the bill. In the first instance, it might be worth providing that evidence to the Executive and asking it to comment, and then considering whether we want to go to the Auditor General.

Michael Matheson: Given the time limits within which we are considering the bill, I suggest that we write to the Executive and the Auditor General at the same time. By the time that we get a response from the Executive, we may also have a response from the Auditor General, which would give us a good comparator.

The Convener: The key point is that the Finance Committee is in dispute with the Executive. It would be helpful if we could get some independent advice. Do members agree that we should write to the Auditor General and the Executive simultaneously?

Members *indicated agreement.*

The Convener: The Finance Committee's third concern relates to the reform of protected trust deeds. Again, that is primarily a cost issue, but it is also a guidance issue.

Christine May: We do not know what the reform of protected trust deeds will involve because we have not got to that part of the bill yet.

The Convener: Exactly. We should draw the Executive's attention to the specific point that the Finance Committee raised. Do members agree that we should write to the Executive? We could also ask the Auditor General whether he would agree to help us on that, as it is probably falls within his remit.

Christine May: If there is time, we could attach the evidence and the responses to questions that we got earlier today.

The Convener: Absolutely. Is that agreed?

Members *indicated agreement*.

The Convener: The final concern of the Finance Committee is the uncertainty over uptake of the information disclosure scheme and associated costs. As we would expect from the Finance Committee, that is another finance issue. Shall we do the same again, and write simultaneously to the Executive and the Auditor General?

Members *indicated agreement*.

The Convener: Is Nicholas Grier able, in three minutes, to sum up the emerging issues?

Nicholas Grier: Well, there is a challenge—the answer is probably no.

The Convener: I thought that the evidence from down south was extremely helpful and interesting.

Nicholas Grier: I agree. What came out most clearly in the evidence from England is that the bill will not make much difference to enterprise. That is not necessarily a bad thing, and it will help some entrepreneurs. We just have to recognise that the purpose for which the bill was introduced is not necessarily the one that it is going to achieve.

What the witnesses told us about the bill was useful. There were some issues that I would have liked to have heard more about, such as the things that could be done better in future. It would have been useful to have heard a bit more about the cost to the public purse, and we could have heard more about debtor education. It just would have been nice—in the greater scheme of things—to have heard more about those issues.

Scottish Enterprise seems to have few views on the bill, other than that it will do no harm—

Murdo Fraser: That is always a good thing.

Nicholas Grier: Scottish Enterprise's response makes it difficult for me to say anything constructive in that context.

We heard that the minister thinks that the bill will change the culture. We will have to see whether that happens. The fact that there is optimism about legislation does not necessarily mean that what is hoped for will be achieved, but one can always hope that the culture will change—it depends on how sceptical one is about the capacity of legislation to make a difference. I am not sure that I can contribute much more; members of the committee listened to the evidence just as I did. In the interests of brevity, I will shut up.

Karen Gillon: Perhaps you could write to the individuals from whom you would like more information.

Nicholas Grier: I would be happy to do that.

The Convener: The agenda for this meeting was long, because as well as taking evidence from witnesses we had to consider two SSIs and the Company Law Reform Bill. However, if we are to meet the deadlines in our timetable for consideration of the Bankruptcy and Diligence etc (Scotland) Bill, we will have long meetings for the next month or two.

I asked the clerks to work on the part of our report that will deal with part 1 of the bill. It would be useful if we considered that part of our report in two weeks' time, while the matter is fresh in our minds, so that we do not have to revisit it at the end of the process. I mentioned the clerks, but Nicholas Grier will also have a heavy input.

In the light of the discussion at our last meeting about the timetable for consideration of the bill, the Minister for Parliamentary Business has sent a paper to the Parliamentary Bureau that suggests that the stage 1 debate be held on or before 26 May. That would tie in with our report deadline of 16 May, because it would allow five sitting days between the publication of the report and the debate. The onus will be on us to meet our side of the bargain and complete the report on time, and I am working with the clerks to ensure that we do so.

If there are no further comments on the bill, we will move into private session.

16:52

Meeting continued in private until 17:04.

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