ENTERPRISE AND CULTURE COMMITTEE

Tuesday 14 March 2006

Session 2

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ENTERPRISE AND CULTURE COMMITTEE
7th 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)
Fiona Hyslop (Lothians) (SNP)

THE FOLLOWING GAVE EVIDENCE:

James Alexander (National Union of Students Scotland)
Rob Beattie (Committee of Scottish Clearing Bankers)
David Bennett (Law Society of Scotland)
Mr John Campbell (Society of Messengers-at-Arms and Sheriff Officers)
Yvonne Gallacher (Money Advice Scotland)
John Glover (Registers of Scotland)
Mr Stuart Hunter (Society of Messengers-at-Arms and Sheriff Officers)
Keith Robson (National Union of Students Scotland)
Ann Wood (Stirling Park Ltd)

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 14 March 2006

[THE CONVENER *opened the meeting at 14:01*]

Subordinate Legislation

Student Fees (Specification) (Scotland) Order 2006 (draft)

The Convener (Alex Neil): Welcome to the seventh meeting in 2006 of the Enterprise and Culture Committee. I have received no apologies. I remind everybody to switch off their mobiles.

I welcome Fiona Hyslop, who is here for agenda item 1, but she is welcome to stay for the other four items if she so desires.

Karen Gillon (Clydesdale) (Lab): Please do.

Murdo Fraser (Mid Scotland and Fife) (Con): It should be compulsory.

The Convener: Absolutely. I will explain the background to the Student Fees (Specification) (Scotland) Order 2006. Last year, we passed the Further and Higher Education (Scotland) Act 2005, which included provision for the introduction of fees, particularly for medical students. We gave an undertaking, to which the Executive agreed, that any statutory instrument made under that act would be introduced under the affirmative procedure to provide the opportunity for anyone to come to the committee and give evidence.

We have received only one request to give oral evidence on the draft order and that was from the National Union of Students Scotland, representatives of which are here today. We have the opportunity to write to the minister before the order is laid to make any comments. Once it has been laid, it is impossible to change it—we have to say yes or no to it at that point.

I welcome James Alexander, the deputy president, and Keith Robson, the director of the National Union of Students Scotland. James Alexander will lead and then we will hear from Keith Robson.

James Alexander (National Union of Students Scotland): I thank the committee very much for inviting us here today. It is important that we have this opportunity to put our views across so that you can make recommendations to the minister.

As Alex Neil said, the situation arises from the Further and Higher Education (Scotland) Act 2005. We played a big part in lobbying for the amendment to the bill to ensure that any statutory instruments made under the act would follow the affirmative procedure before tuition fees could be increased. We are pleased to be here today to continue that process and to make known our views on the draft order.

The two key issues in the draft Student Fees (Specification) (Scotland) Order 2006 that we want to speak about are the proposal to increase tuition fees generally to £1,700 a year and, more specifically, the proposal in the next paragraph of the order to increase tuition fees to £2,700 a year for medical students and those on courses preparatory to medicine.

The Convener: Will you tell us for the record what the current fees are?

Keith Robson (National Union of Students Scotland): The information is somewhere in our submission. That should have been a nice easy question to start with.

James Alexander: The current fee level is around £1,200. Fees were introduced at a rate of £1,000, but the level has increased a bit with inflation over the past four years.

The Convener: And for medical students?

James Alexander: The fees are the same for medical students—all tuition fees are currently the same.

The Convener: Okay. I just wanted to get that on the record, to ensure that anyone who reads the *Official Report* of our meetings—I am sure that many do—can see what the increase will be.

I ask Keith Robson whether he wants to add anything.

Keith Robson: Not at the moment. I will let James Alexander lead for the most part.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I seek information on the discussions about the proposals. Many members are aware that the NUS and individual students associations have raised issues and concerns about the matter—the Edinburgh University Students Association has been in touch with me. What representations have you made directly to the Executive and what response have you had?

James Alexander: We made a formal written submission to the consultation on the proposals—it is written into the Further and Higher Education (Scotland) Act 2005 that we must be consulted. We have also had contact with ministers, including the Minister for Enterprise and Lifelong Learning, on the issue.

Keith Robson: We meet the minister every six months. During the passage of the Further and Higher Education (Scotland) Bill, on the two occasions that we met the minister and his predecessor, we raised the issue formally. We have also raised it informally at every opportunity that we have had.

Richard Baker (North East Scotland) (Lab): I welcome the evidence that you have submitted, as I lobbied for the NUS to be a statutory consultee on the issue. Although I do not agree with the evidence, it is helpful for the committee. I have three questions. First, you argue that, after the changes, students from England will find it more expensive to study in Scotland than to stay in England. However, if they went straight into second year, as I did at the University of Aberdeen, I presume that that difference would not be maintained.

James Alexander: I understand that point and I will come to it, but I want to explain to the other committee members why we consider that the proposals will make it more expensive for students to study in Scotland than to stay in England. Table A in our submission compares the loans that students will require if they study in England with the loans that will be needed if they study in Scotland under the proposed £1,700 fee structure. For a four-year degree in Scotland, the loan for the fees added to the loan for four years of student support at the maximum rate of £3,190 will give a total of £19,560. That is the debt that students from England will get into if they study in Scotland under the proposed system. If they stay in the rest of the UK at a university that charges the maximum possible under the top-up fee system, that loan added to the loan for three years of student support will give a total of £18,570.

Both those amounts are horrendously large. We are disappointed that students will have to get into such levels of debt and we strongly oppose the idea. However, under the proposals in Scotland, it will cost students from England an extra £1,000 to come to Scotland to do a four-year degree. Richard Baker's point was that students from England can go directly into second year in Scotland and do a three-year degree. I do not know of many people who go directly into second year—only the brightest students do that.

Richard Baker: Thank you very much, James. I have always said that that is true.

James Alexander: The vast majority of students cannot go directly into second year and will find that it costs more to come to Scotland than to stay in England. Therefore, the main reason that the Executive gives to justify the proposed increase in fees does not hold. The fee level is set too high for students who come from England to do a four-year degree.

Richard Baker: My contention remains, but I want to move on. Your submission also makes the point that there has not been a big increase in the number of applications from students from England to study medicine. However, if I recall correctly, last year, there was a big increase. My argument is that we cannot plan ahead on the basis of this year's figures. Indeed, surely the measure needs to be pre-emptive to do what it is designed to do, which is to ensure that the cross-border flow is not excessive.

James Alexander: I do not agree. This year there was a drop in the number of applications—

Richard Baker: I acknowledged that.

James Alexander: At the same time that there was a drop of 6.5 per cent in the number of applications that were made by people in England to study medicine in Scotland, there was an increase of 12 per cent in the number of applications from Scots to stay in Scotland to study medicine. The previous year's increase, to which Richard Baker referred, was an increase of 5.5 per cent. That means that over the past two years, there has been a 1 per cent drop in the number of people who have come from England to study medicine in Scotland.

It is absolutely wrong to propose, on the basis of a supposition that the numbers of students who come to Scotland will increase—particularly when the statistical evidence in no way backs that up; in fact, it says the opposite—to increase the fee for medical students and to introduce in Scotland for the first time a variable fee structure whereby one course will cost more than another. The statistics have shown that even with the introduction of top-up fees in England, the total number of students who have come to Scotland this year has not increased beyond the level of the past five or six years; the trends have stayed the same. It would therefore be wrong to introduce a variable system. More evidence needs to be gathered and the statistics need to be examined over a longer period before any such suggestion can be made.

Richard Baker: I certainly think that we must continue to gather evidence, but I do not believe that the statistics prove that the opposite of the Executive's contention is true.

My final, cold-impeded question is this: given that there is cross-party consensus that we should not apply the English fee system in Scotland, is it not right for us to implement this measure to ensure that students do not come to Scotland to study simply because it is cheaper to do so, rather than on the basis of what would be best for them academically? There is a threat that Scottish students who could have those places and who could benefit from the bursary system for which I campaigned when I was in your position could be

squeezed out as a result of English students coming north in much greater numbers for financial reasons. Surely the proposed changes will mean that no Scottish student will have to pay more towards their education and will simply guarantee the right of Scottish students to get the places—and the accompanying bursaries—that would otherwise go to students from outwith Scotland. I have made that argument to students in my region and they have not told me that it is an unreasonable position.

James Alexander: As I said in my answer to the previous question, there is no statistical evidence to show that the introduction of top-up fees in England has caused a problem with cross-border flows. The best way to guarantee that as many students from Scotland as possible go to Scottish universities is to enhance and promote the widening access programme that the Executive has pushed over the past few years. However, medicine is the subject on which the record on widening access is worst. Only 10 per cent of the students who study medicine in Scotland come from working-class backgrounds. The tragedy is that while the Executive considers a non-existent problem with cross-borders flows, the task of widening access and getting more Scottish students from working-class backgrounds into medicine seems to be getting left to one side.

Richard Baker: My fear is that if we did not make the proposed changes, less than 10 per cent of medical students would come from working-class backgrounds.

Murdo Fraser: I am not sure that I should intrude on what it is clear is a family dispute among members of the NUS. I should declare an interest because my entry in the register of members' interests refers to the fact that I am an external member of the board of management of Dundee University Students Association.

I have some questions that relate to the fee level for medical courses. In the third paragraph on page 4 of your written evidence, you draw attention to the fact that the number of applications that have been made by people in England to study medicine at Scottish universities has fallen by 6.5 per cent in the past year. In your answer to my colleague Susan Deacon, you referred to your discussions with Executive ministers on the issue. I presume that they have access to the same information that you have presented to the committee. Has that information not had any bearing on their views on the matter? Have you raised that issue specifically?

14:15

James Alexander: Absolutely. One of our key arguments is that there is no evidence to suggest that students are coming up to Scotland in large numbers. You are right to say that the table indicates the exact opposite. That has been a key part of our discussions with ministers. However, it appears from the order that we are discussing today that they have not taken the points that we made on board. Had they done so, we would have hoped for at least a deferment of the fee proposals until statistics had been gathered. Our ideal position is that there should be no fee.

Murdo Fraser: The Executive has not disputed the figures. Have you received a response from it indicating why, notwithstanding the figures, it is determined to press ahead with the increase in fees for medical students?

Keith Robson: The minister's position is that one year does not make a trend. Everyone in the room is likely to agree. However, our position is that, even if the figure for the previous year is included, there has been a drop of 1 per cent overall. That shows the beginnings of a trend. I am not a qualified statistician, so I do not know how far back or forward we need to go in order to have a trend. We have a difference of opinion with the minister on that issue.

Murdo Fraser: That is helpful.

My second question relates to the second paragraph on page 6 of your written submission. Towards the end of that paragraph, you call on the Executive

"to operate a wait and see policy on this issue, and treat medicine as any other course for at least one year."

That suggests that you do not have an absolutist stance on the matter and that you might be prepared to look at it again if the increase were deferred for a year, to see how trends develop. Is that a fair characterisation of your views?

James Alexander: It is fair to say that we seek to recognise trends. We would be inclined to have a full and frank debate once statistics are available and trends can be identified, which is currently not the case.

Murdo Fraser: So the answer is yes.

James Alexander: Yes.

Christine May (Central Fife) (Lab): In your response to Richard Baker's question, you talked about the widening access initiative and seemed to suggest that nothing was happening, especially in medicine. Is that a fair representation of the situation as you understand it?

James Alexander: We did not say that nothing is happening. However, the figures for students who are currently in medical education indicate that only 10 per cent are from working-class backgrounds.

Christine May: Is it fair to say that the pilot scheme to increase access to medicine for students from poorer backgrounds that is running in parts of Glasgow may in a couple of years' time result in more folk from such backgrounds entering medical education? Is it too early to say whether there is a trend?

James Alexander: I am glad that you have raised the issue. The Calman report, which appeared recently, examined many issues surrounding medical education in Scotland. The report contained many recommendations, many of which were recently implemented by the Minister for Health and Community Care. Among them was a recommendation that relates to widening access and ensuring that more students from working-class backgrounds in Scotland are able to enter medical education.

Proposals that have been implemented recently include

"widening access through working with schools in disadvantaged areas"

and

"developing foundation courses and closer links with further education colleges."

Both those proposals will in the future produce many more applicants for courses in medicine from non-traditional backgrounds. It is a tragedy that at the moment such people are not entering medical education. The programmes have only just started, and it will take a number of years for them to roll through the system and for people from working-class backgrounds to start to graduate from medical courses. That point should be taken into account, and we should wait to see the result of the programmes before making any changes to the fee structure.

Christine May: Do you agree that it is equally valid to say that, as well as implementing the widening access initiatives, the Executive should put in place steps now to protect to an extent places in medical schools in Scotland for students from Scotland?

James Alexander: I do not agree. As I have said several times, there is no evidence that those places need to be protected or that there is a huge mass of students coming to Scotland. We are investigating a long-term problem. We need to consider statistics over a long period and wait a couple of years to see the results of the initiatives.

Christine May: When you looked at the relative numbers of students in Scotland going into second year, did you take account of the number of students who come under the two plus two arrangement, whereby after completing two years at a further education college they can start in second year—or even a later year—at university?

Keith Robson: NUS Scotland campaigned for that system prior to the work of the Dearing and Garrick committees in 1996 to 1997. We have considered the issue in the round, but we have always argued for greater articulation schemes. I am not convinced that the figures to which you refer would add up in terms of protecting places.

Christine May: I mentioned them in the context of the value of the final amount of loan repayment, which you set out in table A in your submission.

Can you recall what happened in the past when fees increased and therefore the level of support required for students increased?

Keith Robson: Will you expand on that a bit, please?

Christine May: I recall that when we asked the Minister for Enterprise and Lifelong Learning—in either the Subordinate Legislation Committee or this committee—why ministers were taking this step, he said that it was an improvement on previous practice, whereby there was no consultation with Parliament when fees increased; they were just increased.

Keith Robson: You are talking about the powers under previous acts. As I understand it, ministers had the powers to set fees under the Further and Higher Education (Scotland) Act 1992. Our position is that we are against fees, as we say later in the submission, so we sometimes have the luxury of ignoring more practical, pragmatic facts.

Shiona Baird (North East Scotland) (Green): We are going to discuss the Bankruptcy and Diligence etc (Scotland) Bill later and we have just published the report on our business growth inquiry. Are you concerned that the imposition of the fees will act as a disincentive for students to take university courses? I do not suppose that you can comment on this, but I am particularly concerned that the fees will act as a disincentive for students to enter further education.

James Alexander: The strongest argument against tuition fees—and certainly against variable fees—is that they act as a strong disincentive. Research commissioned by the Executive in phase 3 of its higher education review showed that the most debt-averse students are those from the poorest backgrounds. We are trying to get as many students from those backgrounds into education as possible, but lumbering them with tens of thousands of pounds of debt is certainly not the correct way to do it. They will be put off courses that are more expensive and which will lumber them with even more debt and might take a cheaper course. We will end up with a scenario where prospective students cannot do the course of their dreams because they are scared of getting into debt, so they settle for not going into higher education at all or for taking a cheaper course.

Shiona Baird: I gather that the Cubie report set the threshold income level for the repayment of loans at £25,000. I assume that you believe that that is the way forward. I am concerned at the level of debt that students are having to take on. One way round the issue would be for the threshold to be raised. That might ease the situation.

James Alexander: We regard £25,000 as the income level at which students can be said to have benefited financially from their university course. An additional part of our campaigning work is to campaign for the threshold to be raised. However, raising the threshold is not enough. Even with a higher threshold, students—certainly those from the poorest backgrounds—will continue to feel that the mountain of debt that they will get into is a disincentive to going to university.

Fiona Hyslop (Lothians) (SNP): I have a question for the NUS witnesses on the process and timescales.

On 5 April, the Executive first consulted on the cross-border flow issue. It then produced its summary of responses, in which figures for increases were given. In the case of ordinary fees, the increase was 40 per cent, which is a quite different figure from those for the incremental increases about which Christine May spoke. When the Executive began its consultation, it did not have the figures for either the number of students who had been accepted for entry to university last autumn or the number of students who had applied to go to university this year. Is it not the case that the Universities and Colleges Admissions Service has only just published those figures?

James Alexander: I believe so.

Fiona Hyslop: The committee has to address three questions in this regard: first, whether variable fee increases should be implemented; secondly, if they are to go ahead, whether a decision to implement them immediately is premature; and, thirdly, whether implementation should differentiate between medical and ordinary fees. Do you agree with the statement that a university principal made recently on the subject of preventing fee refugees from coming to Scotland? That principal said that if acceptances to universities are in line with the applications for entry that have been made so far, the number of fee refugees from England will not be enough to fill a bus.

James Alexander: The applications data for this year show that the number of English students who have chosen to apply to come to Scotland, so to speak, is not different from the number that we saw last year. The trend for the past five or six years is for figures to stay much the same. Top-up fees will begin for the first time this year, of course.

Fiona Hyslop: In our questioning of the minister, we will address the fact that, at the time that it did its original consultation, the Executive did not have available to it the most recent figures. It talks of the need for a disincentive to stop the cross-border flood of English students into Scotland. However, last year's acceptance and this year's application figures make it clear that the position is stable. Does that mean that there is no need for the Executive to rush into implementing this measure?

James Alexander: Yes. We are concerned that the Executive will implement it as a knee-jerk reaction to something that it only perceives to be a problem. As the member says, the applications data do not indicate that there is a problem.

The committee has to address the question whether fees should be increased and, if so, whether that should be done now or later. The answer is that if top-up fees were to be introduced now, they would apply to this year's applicants who, of course, have already made their applications. If the idea is that increased fees will act as a disincentive to people in England who are applying to university in Scotland, the measure is too late to make a difference this year. In any case, this year's applicants made their applications on the basis of the old fee system. There would be no benefit to the Executive from introducing this measure now.

Fiona Hyslop: Even if we agreed with the Executive—I do not—that it should introduce this measure, we need only look at applications that have been made to the medical schools to see that applications are down by 6 per cent even without the disincentive having been put in place. Is that what the UCAS figures show?

James Alexander: That is what they show.

Fiona Hyslop: Finally, the former Minister for Enterprise and Lifelong Learning told us that one of the reasons why the Executive wanted to increase fees was to make funding available to support Scottish students who want to study in England. Obviously, those students are subject to the top-up fees. However, this year, the number of Scottish students applying to English colleges has gone down by 3.5 per cent, which will mean less of a cost to the Executive. If that remains one of the reasons why the Executive feels that it must increase fees now instead of waiting to find out what the trends are, where should that funding come from?

James Alexander: Certainly not from English students who come to study in Scotland. They should not be made to subsidise Scottish students going the other way.

14:30

The Convener: As there are no other questions, I thank the witnesses for their evidence.

Although the order will be laid on Tuesday 21 March, we will not be able to consider it until April. The minister is due to discuss it with us on 18 April. Given that once the order is laid, it will simply be a case of yeaing or naying it—we will not be able to amend anything—we need to agree now any points that we want to raise, because a letter will have to be sent to the minister before the end of the week. Do members have any such points?

Murdo Fraser: I might be in a minority of one on this, but I will make my case anyway. I have to say that I was not particularly convinced by the National Union of Students Scotland's evidence on the general fee level, because I feel that some issues have still not been properly addressed.

Increasing of the fee for medical students is a more complex issue. I am concerned about the lack of an evidence base to support the proposal to increase the fee to £2,700 from September. Such a move seems to be premature, so I am interested in NUS Scotland's suggestion that the Executive take a wait-and-see approach and perhaps defer the increase for another year to find out what its impacts might be on student application numbers. I propose that we write to the minister in those terms and question whether there is, at this stage, a need for increasing medical students' fees.

Shiona Baird: I certainly support the suggestion that the increase should be delayed for a year. It seems grossly unfair to introduce such a measure so quickly, because it will negatively impact on students who might not have been aware of the increase when they applied for their courses. At the very least, implementation should be delayed for a year.

The Convener: Do you mean for medical students or for all students?

Shiona Baird: I mean for all students: after all, the order will affect other students.

Christine May: When the minister at the time, Jim Wallace, first made the proposal to increase medical student fees and we asked him about it, he gave us his reasons for introducing such a measure. As Murdo Fraser has suggested, we could, in our letter, ask the minister the following: to reflect on the evidence that was given then; to consider whether there has been any change in the national circumstances or in the relationship between Scotland and England; and, if so, to give us his views on what those changes mean.

The Convener: So, basically, we should concentrate on the evidence.

Christine May: Yes.

Susan Deacon: My points will chime with Christine May's comments. We should seek from the minister information on and assurances about the evidence base and we should highlight specific points and statistical information that have emerged this afternoon.

From my recollection of the committee's previous discussions on these and wider but related matters, we placed a lot of emphasis on monitoring, so we need to ask the minister about that. Given that everyone is to a certain extent operating with limited and partial data, we should seek information and assurances on how trends will be monitored and how the efficacy of the approach will be assessed.

We should also ask about the Executive's arrangements for liaising with the Department for Education and Skills not just on this matter but on wider cross-border questions. I am not sure that this is the right point at which to raise that, but I recall that it was important when we examined the wider issue of tuition fees—and, more specifically, the issue of top-up fees down south.

That said, although it is right and proper for the committee to probe and scrutinise the Executive and ask it to justify its position, I urge a note of caution about the superficial attractiveness of the wait-and-see approach. It could be argued that it would be negligent of the Government to sit back and do nothing if it believes that there is case for doing something and has consulted people who broadly agree that the situation needs to be addressed. That is the other way of looking at some of the points that have been made today.

Fiona Hyslop: The committee was influential in arguing that action on the differential funding of universities was needed because of the introduction of top-up fees down south. That helped to produce a favourable allocation of funds to the university sector as a whole. The question is whether there is evidence of cross-border flows. When the Executive consulted, current figures were not available. This is not an issue that I raised with the students, but the move to increase general fees—not just medical fees—from £1,200 to £1,700 changes the fundamental allocation of funds to the university sector from a grant base to one that is based on a per capita percentage increase. The committee may want to ask the minister about the rationale for that change.

Members can take a political position to oppose variable fees completely—as I do—but there is also a scrutiny role for the committee to play. We need to decide whether there has been a rush to judgment. We are not asking the Executive to wait and see for the sake of it. Students are being asked to pay more now, which will have an impact

on those who applied before the change was proposed. In June 2004, Jim Wallace said in the chamber that he did not think that increasing medical fees would be a disincentive to English students, which is relevant to Christine May's point. I will be happy to supply that reference to the clerks. The Executive needs to consider the rationale for what it is doing, especially on medical fees. There are three questions: Should we have increased fees at all? If we are to have them across the board, should we introduce them now? Is it fair or reasonable to have differentiation for medical students? Those are key questions that the committee will want to address.

Susan Deacon: Putting to one side the substantive matter that is before us, I want specifically to address the issue of timescales. Fiona Hyslop used the word "rush". Members of the committee will know that we have been debating these matters in considerable detail for a number of years. It is important to note that. The Executive, too, has conducted a range of consultations and discussions on the issues. I am not prejudging people's views on the substantive issue, but words such as "rush" and "knee-jerk" being used about an issue that many of us have been debating, thinking about and discussing for several years does not chime with my experience.

The Convener: I will try to get consensus on the points that we want to include in a letter to Nicol Stephen. Members are asking the minister for evidence. Murdo Fraser was seeking evidence specifically on medical courses, but other members want evidence on the whole issue.

Christine May: I am particularly interested in the evidence on medical courses, but it would be sensible for us to get evidence on the whole lot.

The Convener: We need evidence if we are to make a judgment. That is a fair request that applies across the board, rather than just to medical students. Such a request would cover the points that Murdo Fraser and Christine May made, and Susan Deacon's first point. Susan Deacon made a number of fair points about monitoring and evaluation—I cannot remember the other points that she made, but they were very good.

Susan Deacon: I made a point about on-going liaison with the United Kingdom Government.

The Convener: We will raise both Susan Deacon's points in our letter. The timing issue is related to the point about evidence. Why are the increases being introduced now, and why are fees being raised by the amounts that have been suggested?

Fiona Hyslop: The changes also reflect the move to per capita funding. More money is being given to universities through student fees, rather than in grant. There is not meant to be an increase or a decrease.

The Convener: Are members happy for the clerks to draft a letter and for me and Christine May as deputy convener to agree that letter? I am being advised that we should try to get a reply to our points before the Executive lays the order.

Murdo Fraser: Will the committee have an opportunity to look again at the matter before the order is laid? According to my notes, it is to be laid on 21 March.

The Convener: That is a week today. The answer is that we will not have another opportunity. When we were notified that the order was to be laid on 21 March, the clerks began a discussion with the Executive to try to make sure that we had time to put the matter on our agenda before the order was laid.

Murdo Fraser: If we are writing to ask for evidence, we will not have a chance to consider our response to that evidence in advance of the order's being laid.

The Convener: That is precisely the point. Unfortunately, there is nothing I can do about that. It is one of the procedural problems with Scottish statutory instruments.

Fiona Hyslop: I remember debating amendments; any SSIs were meant to follow the super-affirmative procedure. Therefore, we have to either make our changes now or forever hold our peace. If we cannot get the evidence back in time, as Murdo Fraser rightly said, it means that this super-affirmative instrument will be subject to pretty much the normal statutory instrument procedure.

The Convener: We could ask the Executive not to lay the instrument on 21 March to give us the chance to study the evidence in its reply. The minister is not due to come before the committee until 18 April, anyway.

Murdo Fraser: He will have laid the order by then.

The Convener: Yes he will, but I do not imagine that it will be a problem to have it delayed by a week. I ask members to leave the matter with us to negotiate with the minister. There were negotiations to ensure that we had time for today's evidence session.

Richard Baker: It might be that the situation that we are discussing is an annual process. Perhaps we should flag up now that we want more notice of the equivalent SSIs in the future. I would like to have had the chance to take oral evidence on the draft order from the minister before it is laid. I agree that satisfactory procedure has not been followed.

The Convener: Shall we make that point in the letter?

Members *indicated agreement*.

Susan Deacon: I ask for clarification. The convener touched on this matter at the beginning of the meeting, so I apologise if I blinked and missed it. You mentioned that the NUS was the only organisation to say that it wished to give oral evidence to us, but I think that I am right in saying that we contacted a number of groups and organisations. Has anyone else expressed any views to us in writing?

Stephen Imrie (Clerk): We contacted a number of organisations to ask them whether they would like to provide written or oral evidence, including the Scottish Further and Higher Education Funding Council, Universities Scotland and a number of others, but they did not want to provide anything at this stage. I can get the full list to members if they so wish. The only organisation that expressed an interest in coming before the committee or in providing written evidence was NUS Scotland.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): I apologise for being late today. Do we have an inkling as to why the organisations decided not to respond? It would be interesting to know.

Stephen Imrie: It is difficult for me to put words into organisations' mouths. A number of organisations had already responded to the Executive's consultation and had nothing further to add to that. Perhaps we can take it from that that they had no difficulties, but you would have to study their submissions to the Executive's consultation to find that out.

The Convener: Okay. Does everyone agree that we will write to the minister and make those various points?

Members *indicated agreement*.

The Convener: I thank members for that and I thank NUS Scotland for its evidence today.

Bankruptcy and Diligence etc (Scotland) Bill: Stage 1

14:44

The Convener: We move to agenda item 2, which is consideration of the Bankruptcy and Diligence etc (Scotland) Bill. Just before I ask Nicholas Grier to expand on his paper, which has been circulated, I inform members that we are dealing with four parts of the bill. We completed part 1 on bankruptcy last week. The clerks are preparing a draft report for us to consider next week on the various points on part 1 that we want to incorporate into our final stage 1 report.

Today we will deal with parts 2 and 3, which relate to floating charges and enforcement. As a result of the responses that we have received, we reckon that this is the only session that we will need to devote to those two parts.

We begin parts 4 to 16 next week, when we will deal with land attachment. The following week we will deal with money attachment; the following week we will deal with arrestment; and in the final week we will deal with the debt arrangement scheme and information disclosure. That gives members an idea of the subjects that we will discuss between now and completion of our consideration of the bill. In negotiations with the Minister for Parliamentary Business, we gave an undertaking to complete our stage 1 report by 16 May.

14:45

Nicholas Grier (Adviser): I hope that members will forgive me for taking them through the rather complex note that I have just produced about floating charges. I am afraid that it is technical stuff so I hope that you will bear with me.

I am sure that you are all familiar with the idea of a mortgage on your homes, but companies are able to have a special type of mortgage or security known as the floating charge. It is not available to ordinary sole traders or partnerships, but it is available to companies, limited liability partnerships and farms. What is unusual about that particular type of security is that it is not, like a mortgage, secured over land, but is secured over all the assets of a company that have not already been secured elsewhere, or that belong to somebody else. It is particularly useful for companies, because it means that they can borrow money even if they do not own land or buildings on which they could be granted a mortgage. It is a useful way for companies to raise finance.

A floating charge is just what it sounds like; it hovers like a net over all the assets of the company. If the floating-charge holder—the lender—is happy with how the company is being run and the interest that is being paid, the net just hovers over the top of the company's assets. However, should the company default on anything that it is supposed to be doing, such as paying its interest, the net is released and traps everything underneath. That, in effect, entitles the floating-charge holder to take over management of the company. Until recently, that was known as receivership, with which the committee is probably familiar. Although technically the receiver can take over the management of the company, what tends to happen in practice is that he conducts a fire sale—he sells as much of the company's assets as possible. If anything is left over it goes into liquidation.

Some of that has worked remarkably well for quite a long time, but various changes have been made recently. Some of those were introduced as a result of the Enterprise Act 2002, which we discussed last week. I should explain that although last week we were talking about the act in the context of English bankruptcy, it does apply to the floating charges. A new type of individual will be appointed with a new type of floating charge, known as a qualifying floating charge, which allows the floating-charge holder to appoint an administrator whose job it is to try to rescue the company and to help some of the unsecured creditors.

The current system works up to a point; it has good points and bad points. The good thing about it is that it allows companies to borrow money, which they might not otherwise be able to do. The other particularly useful aspect is that in order for a floating charge to work it has to be registered with the registrar of companies within 21 days of its creation. There are difficulties with the 21-day period, because people do not always know whether a competing charge has been registered ahead of the one that they are trying to register.

There are other difficulties with the system, which the Government and Companies House in the south are particularly concerned about. The whole process is, in effect, underwritten by the Government. If the charge is registered properly, Companies House will produce a certificate of registration and charge which, on the face of it, means that it is a good charge. That represents the Government stepping into what is, in effect, a private bargain. The Department of Trade and Industry thinks that that is an unnecessary task which it should not necessarily continue.

Another problem is that in England it is proposed that the process that I have just described be replaced by a new system that is known as notice filing, which is used in Canada, Australia and the United States of America, for example. Notice filing has its virtues, but it has one particular disadvantage—it does not reveal much information to unsecured creditors. Our Scottish system has one cardinal virtue—anyone who is dealing with a company can look at its details in the register of companies and see how much of its assets would be grabbed by a floating-charge holder in the event of a financial disaster. That means that an unsecured creditor has what one might call a sporting chance to see what would be available to them if anything were to go wrong. Under the proposed new English system, which has not yet been introduced, that sporting chance would be diminished.

Because of various technicalities to do with the fact that, in Scots law, whenever there is a charge, there must be some form of delivery or registration, notice filing would not fit at all well with Scots law, so we are not happy with it. Although it is cheap, it would not work in the Scottish system. The Scottish Law Commission has proposed a dedicated register of floating charges that would be kept in Meadowbank House by the keeper of the land register. I understand that there are proposals, although they are yet to be worked up, to link the new register to the register of sasines and the land register, so that the system is a seamless whole and people can satisfactorily access information about a company. If it worked, it would probably be reasonably good. In some respects, it would be similar to the present legislation, which would have been tweaked a bit to make it more efficient by getting rid of the 21-day invisibility period and other problems.

However, as I indicate at the bottom of page 3 of my briefing note, there are some problems with having a Scottish register. One of the biggest is that, if we introduce such a register in Scotland now, the equivalent English changes to the floating-charge registration system may not be introduced until 2007. They may not be introduced even then, because there are doubts about whether the City of London will be happy with the changes. The result will be what is known as limping legislation. We will not be able to deal with anything with our new legislation until the system has been sorted out south of the border. That will put commerce in Scotland in an awkward position. Equally, it will make things awkward for English companies that deal in Scotland. There are problematic areas that need to be sorted out.

Another problem is that, even if the system is set up, English companies will have to know that if they have a general floating charge, they will have to register it in the English system and again in the Scottish system. It is not commercially sensible to have to register twice, because it is expensive.

That may be good news for Scots lawyers, because they will get business by registering the charges, but I am not sure that the bill should be dedicated to the preservation of Scots lawyers—saving Murdo Fraser. There are concerns that dual registration will be bureaucratic and may seem like legalistic red tape. Given that we are trying to encourage business, rather than to put impediments in its way, the provisions may not be entirely satisfactory. Scottish companies will also have to register down in England. The details have yet to be worked out, so what would happen if an English company did not realise that it was supposed to register its charge in Scotland? It is all very well to say that all companies dealing in Scotland should automatically be aware of such issues, but the world is not necessarily like that. There are difficulties, and we shall have to see what the Executive plans to do about them.

As members will have seen, we have received various representations about the matter, particularly from the Law Society of Scotland. Some of those representations are very astute and technical. I understand that the Executive has welcomed the Law Society's observations—although they do not address all the major policy issues—and that they will be taken on board.

I hope that I have not totally baffled members, although that is always a possibility. If you have any questions on floating charges, please ask them. We will come back to enforcement later.

The Convener: I think that it would be easier if Nicholas Grier briefed us on enforcement just before we take evidence on that subject.

Nicholas Grier: Otherwise we could be here all day.

The Convener: On limping legislation, if the English legislation will not be introduced until 2007—or even later—is it possible to write into the bill that implementation of that particular part can be delayed until, say, a statutory instrument is laid that would trigger it? After all, that is a fairly common occurrence.

Nicholas Grier: That is possible, but that provision is not in the bill.

The Convener: Should it be?

Nicholas Grier: It would be a very good idea to sort out such issues. One of the many issues that the Law Society highlights is that the Executive has not fully addressed the question of how to deal with such problems. Many technical matters need to be addressed in order to clarify the legislation, although I have tried to keep my comments to the major policy issues at this stage.

The Convener: Our report should highlight the need to address limping legislation.

I now welcome to the meeting the panel of witnesses who will address floating charges. David Bennett is convener of the company law committee of the Law Society of Scotland—he has no doubt been listening to Nicholas Grier's comments about lawyers. John Glover is legal director of the Registers of Scotland, which is an executive agency. Rob Beattie is from the Committee of Scottish Clearing Bankers which has, I believe, already given evidence to the committee on this bill.

As each witness represents a different interest, I will give each of them the opportunity to make introductory remarks.

Rob Beattie (Committee of Scottish Clearing Bankers): On behalf of the banks, the CSCB has been very impressed by the detail in which the Law Society of Scotland has dealt with the bill—I have to say that we have not gone into the same level of detail. As floating charges are clearly a very important form of security for Scottish lenders, we take great interest in any change to this area of the law.

I believe that the relevant points have already been made. There is a danger of a discrepancy arising between Scots and English law on this matter, although I am sure that the Scottish Law Commission regards the Scottish position to be much better and much more competent.

Because of the number of cross-border customers that they have, the Scottish banks would like to ensure that there is, if not consistency on this matter—I doubt whether that could be achieved—then a clear policy on the operation of the law north and south of the border. We must not have the kind of situation that Nicholas Grier outlined in which companies omit to register charges in Scotland or England.

At the moment, Companies House holds a central register of charges, which is an excellent source of information that allows lenders, customers or potential customers of a company to verify, as far as possible, the company's financial position and to find out whether it has security over land or floating charges in favour of banks or other lenders. Although we appreciate the rationale behind the move to create a new register of floating charges, we feel that it is essential that a one-stop shop be available to allow people to search a company's records at any time and to find out whether there are any existing charges.

The Convener: I should have pointed out at the start that, despite what it says in the agenda, Yvonne Gallacher is not part of this panel of witnesses. She will give evidence as part of the next panel.

We move to John Glover. I know that you are in charge of 15 registers. I do not want you to list all

of them, but it might be helpful if you could tell us about the registers that are relevant to this legislation. You mention a couple of them in your submission. Am I right in saying that you are not part of the registrar of companies?

15:00

John Glover (Registers of Scotland): We are wholly separate from the registrar of companies. Registers of Scotland is part of the devolved Administration, whereas Companies House is part of the reserved Administration. There is a registrar of companies for Scotland, who has a small office in Edinburgh, but the main business of company registration takes place in Cardiff.

When the Scottish Law Commission was working up the proposals on floating charges, it came to the view that registration should be a matter for the devolved Administration. At that stage, the keeper of the Registers of Scotland was approached and asked whether we would be able to take on registration activity. We decided that it would be appropriate and we would be happy to do so. Since then much effort has gone into working with the Executive and other stakeholders to try to make the proposed register fit for purpose and to answer questions such as the ones that Rob Beattie asked and which David Bennett will mention.

The principal point that I want to convey to the committee is that we are talking about an information-age register and not a book that people will have to go to Meadowbank House to see. The register will be available on the internet, as are Companies House data. It is not terribly difficult to overcome many of the potential problems, because electronic links or an electronic portal can be created so that what appears to be a single search will query information that is held by the keeper of the Registers of Scotland and by Companies House to provide a complete answer.

David Bennett (Law Society of Scotland): Nick Grier made a comment that I want to correct. Floating charges are generally registered by banks; there is no money for solicitors in registration, unless the bank forgets to register the floating charge and we have to petition the court on the bank's behalf to do so.

The Law Society of Scotland has consistently welcomed the proposals that were in the Scottish Law Commission's report, which have been translated into the bill. During discussions, we made the point that floating charges are the "etc" in the bill's title, which does not exactly tell the world that floating charges must be registered in Scotland. That is a function of parliamentary pressure in Scotland, but it is unfortunate that the bill's title does not signal to English or indeed Scottish readers who are not familiar with the law that a proposed separate law of floating charges is included in the bill.

Since the introduction of the bill and since we prepared our submissions, we have had constructive discussions with the Scottish Executive, with John Glover and his colleagues from the Registers of Scotland and with the DTI. The DTI has given some assurances that a system will be developed that will work throughout the United Kingdom, which is important. What that system will be depends on how the English solve the problem of introducing notice filing in their jurisdiction, as Nick Grier pointed out. The reference to "limping legislation" arises because that is not a Scottish issue, although there will be a Scottish register. The business of making available information about securities such as—but not exclusively—floating charges is a UK problem.

In our general approach to the bill, we consider it to be of the utmost importance that the system that is developed should not be clumsy, expensive and bureaucratic for business throughout the UK. In particular, the system should not handicap Scottish business. We can develop a system that does not do that. The proposals are consistent with the general approach of Scots law, as Nick Grier indicated. Some technical fine-tuning of the proposals is needed and our discussions with the Scottish Executive indicate that a sensible solution will be found in that regard. Our discussions with the DTI indicate that a sensible solution to the UK-wide problems will be found. The Law Society of Scotland welcomes the bill.

The area in which we had difficulties, which have been largely overcome since the bill's introduction, is the difficulty that the banks touched on. People want to be able to seek information on securities by Scottish companies in a single place, rather than in two places, which might have been the case were the bill to be enacted as it stands without other arrangements.

Since the bill was published and since our comments were put together, however, it has become clear that what I think is understood as a single portal of inquiry can be created so that, if somebody asks for information about securities granted by a Scottish company, they will get an answer from the property registers, from the new register of charges and from the existing Companies House. Although the bill will apply to new stuff, all the old stuff going back decades will still be held at Companies House. I understand from John Glover that that is a practical issue on which good progress is being made; however, it is key to many of the knock-on issues that might arise from the bill.

As has been touched on, we want to avoid a system whereby a UK company has to register a floating charge twice, in Scotland and in England, under two separate systems. At the moment, it needs to take only one step. The proposal is that it will not be the company that is taking the money or granting the security that will be responsible for the register, but the lender—in effect, the banks. We want to ensure that, if a Scottish company grants a floating charge, it will register in the new register and that will be enough—that will be effective over assets in England as well—and that, if an English company grants a floating charge and complies with whatever system emerges from discussions, that will be enough and will affect assets that happen to be in Scotland.

For obvious reasons, since assets under a floating charge, as Nick Grier has described, move about, a company can have assets in Scotland some of the time and in England some of the time. To protect its position, if the law does not get it right, there would have to be double registration in case, one day, it acquired an asset that was technically located in Scotland even if it was an English company. We want to avoid that complication and extra step, which we believe is perfectly capable of being overcome by appropriate legislative adjustment at the UK level and the single portal that the keeper of the Registers of Scotland is considering. I understand that Companies House is being helpful in that respect, as that would solve some of its problems with the current system, which Nick Grier has touched on, and I am sure that it will go along with what is proposed.

When we get through the fine-tuning, we want to finish up with legislation that is accessible, transparent and obvious. We do not want to create lawyers' law in this matter; we want to create a system that commercial enterprises and lenders—not just banks, although they are the principal ones—will understand and know how to deal with. I do not know whether the committee wants me to go into any specific areas, but there are problems with the bill because, to our mind at least, it is a little too complicated. One example of that is the system of executing a document that contains a floating charge. At the moment, all that one needs to do is get an official of the company to sign it; one does not treat it as though it was a conveyance of property. The proposals, as they stand, require witnesses or two officials, as though it was a disposition of land going on to the property registers. That is not necessary now and we see no reason why it should be necessary in the future, although some points have been made about the reasons for that proposal.

We understand such matters to be fine-tuning, which we will address with the Executive and other interested parties in the same constructive spirit in which they have listened to our comments and we have modified our view. We are all on the same side; there is no argument in general terms.

The Convener: Thank you. That was very helpful indeed.

Christine May: I found that particularly heartening. I read the evidence and Nicholas Grier's briefing, and I thought, "This is a dog's breakfast." However, all three of you are saying that, although there are difficulties, you are well on the way to resolving them. Perhaps the suggested questions are largely irrelevant, which is good. Can you each tell us why you think that the proposed system will be better for Scottish business than the system that is currently in place?

David Bennett: I have not thought about that question, so it will need a few seconds' thought.

As a legal concept, the proposed system is consistent with everything with which Scottish business is familiar. One advantage is that, for example, people know perfectly well that when they sell and transfer title to a house, something goes on the property register and out pops a land certificate under the developing land registration system. The proposed system is the equivalent of that. A floating charge that is put on the register of charges will be there from the moment that it appears on the register, so there is no fear that one lender is running slightly faster and will suddenly be ahead of another by having a floating charge that was created technically some time before. That provides security and comfort that are not available at present.

I will make one technical point. It is often said that, to make a charge safe against challenge, it must be registered at Companies House. That is technically wrong. To make a charge safe against challenge under the UK legislation, the documents must be presented to Companies House. If Companies House lost the documents—although it does not do that kind of thing—or did not understand them and therefore did not issue the pass certificate with honours, that would not matter, because the law as it stands would have been complied with. That is a secret security that is perfectly valid, whereas under the proposed system, no doubt will arise. If a floating charge is to be valid, it will have to be on the property register.

We are talking about floating charges, but the same problem of presenting documents that the registrar of companies might lose arises with standard securities, except that a property register exists. The new legislation that we would like to have would have to mesh properly with the existing or amended provisions in part XII of the Companies Act 1985, which is UK legislation. That

is where the DTI's assurances, which have been given formally and informally, come in. We have lots of contact with the DTI about the issue. The DTI does not want to create a problem for Scottish business any more than the contents of this room do. It is technical stuff and I am pretty sure that those involved will produce a system that meshes, whatever England does. There are technical ways to do that. Does that assist you?

Christine May: Thank you. What is the view from the Registers of Scotland?

John Glover: We see four advantages. The first is that, at the moment, Companies House registers only brief particulars of a charge, whereas the proposed register will register the full text of a charge. That means that, if the original is lost, we will be in a position to create an authentic extract, in the same way as authentic extracts can be produced from the property registers. That means that storage of the floating charge deed will become less important and less critical.

The second advantage is related to the first. It is technically possible to have an electronic floating charge—nothing stops that happening. However, because no standards for formatting and authenticating electronic documents exist, no one would take the risk of lending on an electronic floating charge. When we have a register that captures the deed, it will be possible to capture an electronic deed, too. In relation to the land register, we are working up to introducing electronic land deeds from the start of next year. We will be unable to introduce electronic floating charges until we adopt electronic communication.

The third advantage is the reverse side of the coin on the perceived problem that if the keeper registers a floating charge, it is not patent to Companies House. At the moment, floating charges are not patent to people who inquire of the keeper.

The final advantage is the provision for registration with advance notice, which is novel. It will mean that, if floating charges have proper publicity, no one will ever be caught by surprise, and a mechanism will still exist for people who want to preserve their priority and to move quickly. The advance notice provision is useful.

15:15

Rob Beattie: John Glover has covered one of the advantages, which is the advance notice system. Another advantage is the change to the 21-day invisibility period that exists at present, which David Bennett mentioned. If a lender takes a floating charge from a company, the charge is created on the day that the company signs it, although it could register the floating charge at Companies House the next week, as long as that is within 21 days. The lender could then discover that the company had granted a floating charge in favour of another lender earlier that week. Even if that floating charge was registered subsequently at Companies House, as long as that happened within the 21-day period, it would rank first. The new register of floating charges will take away the invisibility period.

The advance notice filing system is another excellent proposal. When a company is negotiating with its bankers over a possible loan security by way of a floating charge, with the company's consent, a notice will be registered with the keeper of the Registers of Scotland to show that a negotiation is on-going with a particular lender. If a floating charge is granted, the effective date of the floating charge will be backdated to the date that the advance notice was filed. Those are a couple of excellent advantages for the Scottish business scene.

Christine May: I do not have another question, but I have a comment. I note what has been said about the good relationships with bodies and departments south of the border, which is fine as far as it goes for now, but if that all falls apart, we might want you gentlemen or the Executive to come back to the committee to tell us about that, so that we can make the appropriate decision.

David Bennett: That is unlikely to happen, but it would be solvable. The matter would become technical, but it would not be impossible. I agree with the comments about the advance notice system, which is an extremely good innovation.

The Convener: I will use a bit of poetic licence to introduce a new issue. If other members want to ask questions on it, I am happy for them to do so. In its written evidence, the Law Society refers in detail to the provisions in part 3 on enforcement, particularly civil enforcement.

David Bennett: I am afraid that that is not my territory, although I am sure that there are many people with great knowledge of the issue.

The Convener: Fine. I just wanted to clarify a couple of points, but that is okay. Perhaps we will clarify them offline.

David Bennett: Is there nothing more on floating charges? I could stay all afternoon for that.

Christine May: I have one more question—I was waiting to see whether any of my colleagues would ask it. On the registrar of companies, what happens if a company does not register something when it should have done so? You talk about how there will be transparency under the new system.

David Bennett: Do you mean under the current system?

Christine May: No, under the new system.

Nicholas Grier: I take it that you are talking about an English company.

Christine May: Yes. Let us suppose that, in spite of all the good intentions, a company does not register something.

David Bennett: There would be a conflict of laws. I hesitate to pronounce on the outcome, but if it was a new charge that was granted after the new provisions came into force, the Scottish courts would probably say that it is not enforceable because it is not registered. If the matter went to an English court, it might say, "Rubbish! It is enforceable because it is an English charge and is nothing to do with Scotland." Of course, the winding-up would take place under the jurisdiction of the English courts. In all situations, the test of whether a security is good security arises in the event of liquidation. What would the English make of that situation? Would they say that it is Scots law and so nothing to do with them and that the security can be enforced? However, if the bank comes to Scotland to try to sell the asset, there could be an interdict. One can envisage several messy scenarii, if that is the right word.

The Convener: If there is a conflict of law, would not the matter be referred to the Advocate General?

David Bennett: It would be a conflict of private law, so what would the Advocate General do about it?

Christine May: We will perhaps pursue the question with others.

David Bennett: The issue is important. As I said, we must get the systems to mesh correctly so that that sort of situation does not arise. I know the people in the DTI who are involved and I am fairly sure that they will not let that happen.

Nicholas Grier: The legislation is silent on the matter, so Christine May's point is well made. The DTI will indeed have to consider the matter.

David Bennett: We make several points about it in our submission, in which we state that we must avoid the need for double registration. We must ensure that, if someone registers in England they are covered even if they forget to register in Scotland, or vice versa.

Shiona Baird: I cannot remember whether it was the Law Society of Scotland that made a point about the title of the bill. Floating charges are included in the "etc".

David Bennett: We made that point, but we are not alone in how we feel about it.

Shiona Baird: Is there a mechanism by which we can ask for an expanded title? Would that be useful?

David Bennett: Yes. We think that it is important that users of law know where to find the information that they need. If the system for registering a floating charge in Scotland is buried in an act along with two unrelated topics, that will be an unfortunate result. I understand that the topics are all included in the bill because that suits the legislative programme, but if it was possible to call the bill the "Bankruptcy, Diligence and Floating Charges (Scotland) Bill" without doing any damage to it, that would solve the problem. It is not a trivial point.

The Convener: I am sure that we can raise that with the Executive.

David Bennett: The Executive is aware of that point at a certain level.

The Convener: We can amend the long title of a bill. That has been done before at stage 3. I am not sure about the short title, but we will find out.

David Bennett: I see some affirmatory nods from my colleagues.

The Convener: We will take advice and make recommendations accordingly. I take it that members would be happy to change the title to include floating charges if that were legally possible.

Christine May: Yes, if that would be helpful.

Shiona Baird: Yes. That would bring clarity.

The Convener: We will take advice. I thank David Bennett for raising that point, and I thank our witnesses for their helpful written and oral evidence.

I invite Nicholas Grier to brief us on enforcement before we hear from our next panel.

Nicholas Grier: I ask members to turn to my note on enforcement.

As I am sure the committee remembers from previous sessions, in Scotland the process of enforcement is usually known as diligence. It is carried out by sheriff officers and messengers-at-arms. They are the ones who go to people's houses and can, if necessary, take away assets to be sold at auction. They carry out arrestments and various other things. The Executive proposes that the process of managing sheriff officers and messengers-at-arms should be changed.

As I am sure members are aware, sheriff officers and messengers-at-arms have existed for many years. They are still under the jurisdiction of the Lord Lyon King of Arms and I understand that they hold office under the Crown. To be a sheriff officer and, later, a messenger-at-arms, one has to undergo a considerable amount of training on court enforcement procedures.

For various reasons, the Executive believes that the profession has not always been as well regulated as it might have been and that an up-to-date approach to its role is required. There is also a wider issue. Apparently, not many people are going into the profession—with certain exceptions—so there is now a smaller number of people in it and there is a feeling that something should be done about that.

The Executive proposes that the positions of sheriff officer and messenger-at-arms should be amalgamated into one position. The job title that the Executive has devised is "messengers of court". That has not been well received by sheriff officers and messengers-at-arms, who have their own views on what the new job title should be. They favour the title "judicial officers", which is the English translation of the job title that is included in the title of the profession's international body.

Another proposal in the bill is that owners of sheriff officers firms—I will call them that for want of a better phrase—should themselves be sheriff officers. That is causing some difficulty because, for example, one leading firm of sheriff officers is owned by a Swedish company, which, by definition, is not a sheriff officer. The debate continues over how important the proposal is. The Executive seems to feel strongly that ownership should be in the hands of sheriff officers, but the commercial view is that it is not important. There may also be human rights implications: if we say that the Swedish company that owns the firm of sheriff officers is not allowed to own it, it could be argued that its business is being taken away, which might be contrary to some parts of human rights legislation. That is a wider issue to be considered.

Another proposal in the bill is the setting up of a Scottish civil enforcement commission, which will oversee the whole profession, set professional standards, discipline errant sheriff officers and ensure that things are run properly. Some concerns arise because the proposal raises the dread word "quango". I understand that people in some parts of this building feel that we should have fewer quangos rather than more.

In the middle paragraph on page 5 of my note to the committee, I have listed the proposed members of the quango:

"a Court of Session judge … a sheriff or sheriff principal, an advocate or solicitor, a sheriff officer",

various lay people,

"the Lord Lyon King of Arms"—

to keep the traditions going—and

"the Keeper of the Registers of Scotland."

Although I do not think that there is any complaint about the make-up of the commission, some questions have been raised over whether it is right that ministers should decide the members of the commission. Ultimately, of course, ministers are the users of sheriff officers in enforcing decrees, so there would be a conflict of interests. I know that the Society of Messengers-at-Arms and Sheriff Officers is concerned about that.

There has been much discussion of the way in which the profession will be regulated, and detailed questions will certainly have to be asked. The profession is anxious about the amount of stuff that is being left to be decided later by statutory instruments or what are called Henry VIII clauses. It is being left to ministers to decide what those may be and sheriff officers are concerned at a potential lack of scrutiny.

I hope that that has given the committee a reasonable introduction to the issues.

The Convener: It was very helpful indeed. Do members have any questions?

Shiona Baird: There is just one point that I would like to be clarified—again it goes back to semantics. The word in Scotland is "diligence", but a clearer word would be "enforcement". You have used the word "enforcement" in your note. Does that give more clarity?

Nicholas Grier: "Diligence" is a lawyers' word; they are brought up using it and they become accustomed to it. However, it is perfectly possible that "enforcement" could become the new word. If one wanted to make the bill as user-friendly or as easily intelligible as possible, there would be something to be said for using the word "enforcement".

Mr Stone: You said that the bill requires the owners of firms to be sheriff officers. On the face of it, that seems a bit odd; the owner, managing director or chairman of Wimpey does not have to be a civil engineer. What is the thinking behind the requirement in the bill? You mentioned the potential problem with the Swedish firm.

Nicholas Grier: Ann Wood from Stirling Park Ltd is here and, if I may say so, she is the representative of the Swedish company. May I duck the question? Ann Wood is probably better placed to explain.

The Convener: I will bring Jamie Stone back in with that question once the witnesses have introduced themselves.

Christine May: If they do not answer it first.

The Convener: Indeed.

I welcome back Ann Wood, who is a managing partner at Stirling Park Ltd; Yvonne Gallacher from Money Advice Scotland; and John Campbell and Stuart Hunter, who are respectively the president and past president of the Society of Messengers-

at-Arms and Sheriff Officers. I ask each of you to give a brief introduction—although with Stuart and John only one introduction might be necessary.

Mr Stuart Hunter (Society of Messengers-at-Arms and Sheriff Officers): I will defer to John Campbell; I am here as the experienced head from previous consultation processes.

The Convener: Okay—we will have John, then Yvonne, then Ann.

15:30

Mr John Campbell (Society of Messengers-at-Arms and Sheriff Officers): I will start by confirming that, with the exception of four areas of concern, the society welcomes and agrees with the general principles of the bill. The society has acknowledged the proposed establishment of the Scottish civil enforcement commission; we see a number of positive aspects evolving as a consequence of its creation.

As I said, we have concerns in four areas—independence, accountability, our proposed new title, and the proposed abolition of the ancient office of messenger-at-arms.

Yvonne Gallacher (Money Advice Scotland): Good afternoon, and thank you once again for allowing us to give evidence to the committee. We, too, welcome the introduction of the Scottish civil enforcement commission—not least because advisers in the money advice sector have, in the past, had difficulties in dealing with clients on these issues. However, there are examples of good practice—there are some round the table today.

We welcome the bill, especially the introduction of the code of practice. We have submitted written evidence on some of the things that we would like to be included in the code. Obviously, we are concerned about the fitness for the job of any potential officers—I am sure that everyone else is too. We welcome the bill but we feel that it must be refined, especially where the code of practice is concerned.

We would like the money advice sector to provide one of the lay representatives on the proposed commission. We feel strongly about that and have received a lot of support from outwith the money advice sector. We would like the committee to consider the lay representation.

Ann Wood (Stirling Park Ltd): Thank you for this second opportunity to sit at the table. I endorse the comments of each of the previous speakers.

Stirling Park welcomes the bill and supports its aim of improving the balance between debtors and creditors. We, too, support the advent of the Scottish civil enforcement commission. Together with many measures taken by the current society and by firms such as Stirling Park, the commission's work will improve the regulation and accountability of all firms of court officers. For all those reasons, we endorse and welcome the bill. We welcome the wider-ranging diligences, although, as we have said before and as we say in our written submission, we have a number of concerns over practical issues of enforcement.

Although we embrace many things, we have particular concerns to do with the structural and managerial reorganisation of any of the firms of sheriff officers. We believe that that runs contrary to the bill's aims of modernising the profession and encouraging entrepreneurship.

I would dearly love to be able to answer Mr Stone's question on the thinking behind the reorganisation of the structure. If, during our deliberations with the Executive, I had been able to find out the thinking, or had been given any evidence to back up that thinking, I would have been happy to answer the question. Unfortunately, we were given neither the reason nor the rationale, nor indeed any evidence to support the Executive's recommendation in the bill.

Like the Society of Messengers-at-Arms and Sheriff Officers, we are concerned that many provisions will be in secondary legislation rather than in primary legislation. We think that that will prevent us from making further input to the debate.

The Convener: I promised Jamie Stone that he could ask the first question. It seems to have been answered already, but he is welcome to take up the offer.

Mr Stone: Despite my long association with Stirling Park—in my role as an elected member, in case anyone reaches the wrong conclusion—I did not know about the company's Swedish connection.

My question has been half answered, but I will put it again the other way around. Why would one object to the provision that the owners of court officer firms should be qualified sheriff officers? I also take the opportunity to ask John Campbell and Stuart Hunter whether they have a different view on the matter.

Mr Campbell: An officer of court can be appointed only after he has trained, studied for and passed examinations and his fitness to hold office has been investigated. It therefore seems inappropriate for someone who is not a commissioned officer of court to take up a position of ownership or part-ownership of a firm and, in effect, control somebody who should be independent and impartial in the execution of their duties. That is the main thrust of our position.

Secondly, if there was malpractice on the part of an officer, it might have occurred as a consequence of pressure placed upon them by their employer. If the employer is not a commissioned officer of court, it is difficult to see how they could be disciplined by the proposed Scottish civil enforcement commission.

Ann Wood: Stirling Park has 20 fully commissioned officers who work with the company in the execution of their duties. No other member of staff of Stirling Park or any other participant in Stirling Park executes any diligence or operates in the execution or service of any court activity. In full compliance with Scots law, each officer is commissioned in his own right and complies fully with all the regulatory and legislative requirements of the position. In no instance would any other member of staff of Stirling Park—or, indeed, of any other sheriff officer firm that operated in a different part of the company—have any input whatsoever into the execution of those duties. They are absolutely the preserve of the officer concerned. In no way can our officers' compliance with regulation and legislation be influenced by any other area of the company.

To return to what Jamie Stone said earlier, I agree that it would be ludicrous to require someone who works in a business to be fully qualified in every aspect of that business before they could manage and grow it.

The Convener: I think that, in our report, we should ask the Executive to clarify whether the provision is consistent with European Union directives on competition. I am not sure whether that has been checked out. If not, it should be.

Mr Campbell: The proposal is not unique in Scotland. For example, there is a prohibition on non-solicitors sharing the professional fees of solicitors. There are also regulations on who may be designated on solicitors' stationery.

On the point that a non-commissioned officer of court might bring inappropriate influence to bear on an officer, I am aware of only one case of malpractice in recent times. In that case, the sheriff principal held the senior partner's influence to be much more overbearing than that of the officer in the execution of his duties.

The Convener: I am sure that the debate will run and run. We have the written evidence and we have heard the case for and against. When we agree on our report, we will decide whether to comment on the matter and to come down on one side or the other. We have been fully briefed on both sides of the argument and I do not want to dwell on the point.

Christine May: Good afternoon, everybody—particularly John Campbell and Stuart Hunter, who briefed me last week on many of the matters that have been mentioned. I will explore the argument that large companies—Stirling Park is an example, but there are others—might wish to cherry pick aspects of enforcement, thus removing local offices that are in place throughout Scotland under the sheriff officers system. How could that happen under the bill? How would an organisation such as Ann Wood's ensure that such local facilities could be retained, if they were integral? Perhaps Yvonne Gallacher could comment from a Money Advice Scotland perspective.

Mr Campbell: It is important to remind committee members that although the bill primarily concerns debt issues, the officers of court are engaged in a wide variety of civil court work outwith debt recovery. We are involved in custody actions, divorce actions and a long list of civil actions. We are essential to the Scottish court system.

In some areas, small firms of officers depend on some types of debt recovery work in addition to their other civil duties to be profitable or to survive. The society's worry is that the larger commercial firms are more interested in debt recovery work and its profits and less concerned about our other work. If that suspicion is correct—I believe that it is—a small local firm in a rural area might lose a substantial client and therefore be unable to continue. The local community would therefore lose the provision of sheriff officer services. Another possibility is that a monopoly could develop in our legal system.

Christine May: What impact might that have on a community? I appreciate the impact on a firm, but I am interested in the impact on a community.

Mr Campbell: Pursuers in actions—husbands and wives in divorce actions and individuals who are in dispute—depend on the officer of court to serve their document in order to have their action commenced and heard in court. Following judgment and grant of decree, they depend on the officer of court to enforce the order as declared by the sheriff.

Yvonne Gallacher: One issue that strikes me, which has been discussed and which the bill draws out, is access and costs to debtors. At Money Advice Scotland, we encounter people who are pursued for what are sometimes negligible amounts of money. Sheriff officers have been charged with doing that. Invariably, travel costs—particularly if sheriff officers are travelling from a city to a rural area—are extensive on a debtor, which adds to their already difficult situation. We ought to try to expand rather than contract the number of officers and to find a way to facilitate the work.

Mr Campbell: In response to that, I confirm that our professional table of fees decrees that the

mileage clock commences from the nearest sheriff court or the nearest firm of officers of court.

15:45

Ann Wood: In the execution of its business—business that is open to all sheriff officers firms—Stirling Park works primarily with local authorities on the collection of local government taxation. We currently work with 13 local authorities—we went through open tender procedures and won the contracts.

In all our tender documentation to local authorities, we offer to open local offices, thereby giving local debtors—whom Yvonne mentioned—the opportunity of a local service. The local authority can either accept the local office as part of our service, or not. In all the local authority areas in which we work, as well as providing a number of other opportunities, we have gone ahead and opened local offices, to provide exactly the level of service that Yvonne has spoken about. That is part and parcel of Stirling Park's practices.

Christine May: I want to explore other issues that are touched on in a number of the written submissions to the committee—the encouraging of new blood into the sheriff officer profession; debt advice and liaison with money advisers; and modernisation and education. Will each of the witnesses comment on what they have done to modernise the profession?

Ann Wood: We would all acknowledge that the number of potential sheriff officers coming into the training regime prior to obtaining a professional qualification has reduced over the years. Stirling Park is well aware of the issue. All our officers are members of the Society of Messengers-at-Arms and Sheriff Officers; we fully endorse and comply with all the society's resolutions for the profession. Over and above that, Stirling Park has launched its own Stirling Park training academy, which invests in recruitment. Expert sheriff officers offer suitable candidates the three years of professional training and the education and vocational training opportunities that are required in the lead-up to gaining a professional qualification. There is a truly guided career path. We have invested a lot of money to make that happen.

As the guys here will agree, sheriff officers are able to execute their duties only once they have their professional qualification and they are commissioned by the sheriff principal. Up to that point, there is a three-year period of paid training. We have willingly invested in that—not only to drive up standards but to increase the numbers within our profession.

We are the only sheriff officers firm in Scotland that is an associate member of Money Advice Scotland; our relationship with Money Advice Scotland is very strong. We have all the contact information for money advisers, and we willingly direct in-need debtors to them, or debtors whom we have identified as "can't pays" through our profiling capability. That capability allows us to separate the "can pays" from the "can't pays". The "can't pays" are directed to appropriate help such as Money Advice Scotland, Citizens Advice Scotland or the local authority welfare rights departments that have been set up to accommodate their needs.

We have invested heavily in debtor profiling technology, which allows us to take immediate action on people who owe local authorities money but who we identify as having no way on this earth of being able to afford to pay. They need help, information and advice, and we direct them immediately towards that—without pursuance of any type. People who should receive income support or who need to take up benefits are allocated back to local authorities accordingly. That takes them out of the pursuance system and away from potential eventual enforcement.

As I have said, we operate in full compliance with local government tender and procurement processes. In every instance, we demonstrate full compliance with all regulatory and legislative requirements. That ensures that everyone has fair, open and honest treatment. A slight misconception seems to be held about how our business operates. For some reason, because we are owned by an external company, it is thought that we would operate outwith compliance.

Christine May: I am less concerned about ownership and much more concerned about attracting new people into the profession, and about training and guidance. I would like to hear from the sheriff officers about that.

Mr Campbell: It is worth while pointing out that, in the past 10 or so years, our profession has taken various knocks from legislative change that has diminished the amount of work that is available to us.

As for promoting the profession, our society has operated a training course for 20 years that is designed to get trainees through the examination and qualified. In addition, for 10 years we have operated continuing professional development: we organise annual seminars about the law that concerns us, to keep our members and their trainees aware of the law and to develop their professional services.

Yvonne Gallacher: We welcome any move towards what Ann Wood spoke about. What she described accounts for 13 local authorities, but that leaves another 19 that do not go down such a route with whoever they contract with. Some issues remain, not only with the conduct of sheriff

officers, but the instructions that they are given, which are perhaps not clear. I say with respect to that profession that it is picking up the tab for that. People are being bounced backwards and forwards from local authorities. Ann Wood is talking about a clear delineation between what sheriff officers do and what other people in a company do. We need to reach the point at which, when debts are passed on to sheriff officers, local authorities take responsibility and stay out of the picture, to allow sheriff officers to get on with the job.

In recognition of that difficulty, which we have seen occurring over time, we have managed to get together with the Convention of Scottish Local Authorities, the Society of Local Authority Chief Executives and Senior Managers and the Scottish Executive to come up with a draft corporate debt recovery policy. That is in the making and it is hoped that it will be issued later, if it is endorsed through COSLA and SOLACE. We hope that that will help to move along some of the issues in relation not only to sheriff officers, but to debt collection as a whole.

Christine May: It might be worth getting something from COSLA about authorities that use one system and those that use the other, for comparative purposes.

Murdo Fraser: I will pursue a couple of slightly different issues. My questions are directed to John Campbell, but others may want to respond. My first question is about the new quango—the Scottish civil enforcement commission. In its submission, the society strongly opposes making the new quango responsible for appointments and regulating the profession. You make the point that that will be a substantive change from the current position, under which the courts appoint members of the profession. I understand the legal theory of the profession's independence from the Executive, but will you explain why, in practice, a problem might arise with making the commission responsible for appointing sheriff officers?

Mr Campbell: That proposal is the only concern that the society has about the proposed commission. I will articulate the problem as best I can. I am sure that you would consider it inappropriate if I executed a citation or diligence in pursuance of a debt that was owed to my firm; you would think that a conflict of interest was involved and that I would possibly not act with independence and impartiality. The same would apply in the situation that you mention. That the citizens of Scotland should see officers of court as being wholly independent and impartial in executing their duties is important.

The Executive's control over the new association of officers of court is another control in the bill. We think that it is essential that we are appointed judicially, preferably by a person such as the Lord President or the Lord Lyon King of Arms. We are entirely happy for the commission to investigate complaints about misconduct or malpractice, but if an officer is found guilty of misconduct or malpractice, the matter should be referred to the member of the judiciary who made the appointment for handing down the discipline.

Murdo Fraser: I understand what you say, but leaving aside the issue of perception, you have not explained why there might be a problem in practice.

Mr Campbell: In a nutshell, the problem is that we are often engaged to execute citation and diligence at the Executive's instance.

Murdo Fraser: Okay. Thank you.

I want to ask about name changes, which is a vexed question for the profession. As a Conservative, I resist change unless it is absolutely necessary. I have never understood what is wrong with the titles "messenger-at-arms" and "sheriff officer". Has a case been made to change titles in the profession?

Mr Campbell: We support the principle of modernising and think that there have been many inappropriate comments about our profession. Consequently, the title "sheriff officer" has become tainted. We do not think that it has become tainted as a result of our actions, but it is easy to pick on us. No one loves us, do they?

Murdo Fraser: That is what is called the Sellafield argument.

Mr Campbell: Yes. We like the idea of modernising our office and moving forward, but we think that the proposed title of "messenger of court" is inappropriate and misleading because it does not cover the execution of all our duties. The title suggests a menial office and delivering messages; it does not cover the execution of diligence and the enforcement of a court's orders.

We have polled not only members of our society, but all practising messengers-at-arms and sheriff officers in Scotland to ask them about their preference. The overwhelming choice for a title was "judicial officer".

Murdo Fraser: What on earth does your written submission mean by referring to the term "messenger of court" as "Zimbabwean"?

Mr Campbell: I surfed the internet and found that Zimbabwe is the only country in the world that has messengers of court. The Zimbabwean model is not necessarily a good model for Scotland to follow.

Murdo Fraser: Does Ann Wood want to add anything to what has been said?

Ann Wood: Absolutely not. Whatever our officers are called, our professionalism will not be in question.

Michael Matheson (Central Scotland) (SNP): I want to follow up on Murdo Fraser's questions. If you do not think that the title "messenger of court" explains your role to people, Mr Campbell, what does the title "messenger-at-arms" explain? It sounds as if the person goes to doors armed with a gun.

Mr Campbell: The title "messenger-at-arms" was developed more than 600 years ago; I am not surprised that people might not understand what it means in 2006. The bill proposes to abolish that ancient office. Our members are not suggesting that the title should be "messenger-at-arms"—they have said that the new title should be "judicial officer".

16:00

Michael Matheson: I move on to the proposed Scottish civil enforcement commission. Murdo Fraser has already covered its having two roles: the appointment of officers of the court and a regulatory role. I am not persuaded about the conflict of interest that you highlighted. At the moment, the Scottish ministers appoint judges to the bench on the recommendation of the Lord Advocate, who is also appointed by the Scottish ministers. However, judges on the bench act entirely independently. The fact that a judge is appointed by ministers does not automatically mean that there is a direct conflict of interest.

Mr Campbell: I take your point, but we will have to agree to disagree.

Michael Matheson: You also stated that you want the commission to be wholly independent and impartial, and that that is one of the reasons—

Mr Campbell: No. It is essential that officers of court are independent and impartial.

Michael Matheson: There is therefore a level at which the commission will have to be independent and impartial in carrying out its function in order for that independence and impartiality to follow down the line. Do you think that your members should pay for the establishment of a regulatory body if it is to act independently?

Mr Campbell: At present, the annual subscription to the Society of Messengers-at-Arms and Sheriff Officers is met by the individual members. From that budget, we do all that we can to promote our profession. The commission will be engaged in taking far greater steps than our society could ever take on that budget. It simply would not be possible for our members to finance the commission.

Michael Matheson: Do you think that your members should contribute towards its operational costs, given that it will have a regulatory and standards-setting function for the profession? Most other professionals have to make some type of contribution to such running costs.

Mr Campbell: Preferably, our members would have to make no contribution—again, on the basis of independence. I could see the rationale behind a contribution for administrative purposes, but I would like to think that such an annual cost would be minimal.

At present, officers of court who are members of the society pay an annual subscription of £500, and we have 110 members.

Michael Matheson: Does Stirling Park have a view on these issues?

Ann Wood: Stirling Park is happy to invest, if you like, in the commission as we do in the current society. We enable our officers to be members of their professional society so that they are kept fully informed about every opportunity that the society gives. Stirling Park endorses the proposal for the commission, which I do not believe will be any different from the society or less impartial than it. We and our officers pay fees to the society and we presume that it is impartial in its delivery of instruction. We therefore have no objections to the commission.

The Convener: I thank the witnesses very much for their written and oral evidence; it is very helpful indeed. That completes the consideration of the evidence on the proposed Scottish civil enforcement commission.

We will now try to round up today's evidence on floating charges and enforcement.

Nicholas Grier: I would like to think that members agree that there was a good degree of unanimity on floating charges. There might be technical issues that have to be sorted out but there is a good deal of good will from all those who are party to the discussion. People want to make the new system work and there are none of the tensions that can sometimes arise when they have to cope with the Department of Trade and Industry. With a fair wind behind us, it should be possible to iron out the difficulties that we have raised today. Once things are sorted out, the current situation can only improve. I do not propose to say anything more about floating charges.

As for enforcement, one can see from the evidence that we have just heard that there are clearly some difficulties. We shall have to consider the issue that Michael Matheson has raised about the extent to which the proposed civil enforcement commission will—or will not—be independent. The

Society of Messengers-at-Arms and Sheriff Officers clearly feels strongly about that. It is possible that the Executive has not made the very best fist of the job of explaining what is wrong with independent ownership.

One can argue that sheriff officers ought to be in charge of enforcement, but they run businesses like any other business people and the issues that arise are partly technical. For example, they were not allowed to set up as limited companies—although there was nothing to prevent them from setting up as limited liability partnerships—because those did not exist when the existing legislation was passed. There is also a wider question: should the equivalent of enforcement officers be allowed to be part of a bigger organisation? I am sure that that happens elsewhere in the world. A bailiffs organisation in England has to be owned solely by bailiffs, but I think it highly unlikely that that exclusive ownership rule applies everywhere. We will have to continue to try to sort that out.

As for cherry picking, travel costs were mentioned. That is a reasonable point: a fair expense is involved if sheriff officers have to go to see someone in the Western Isles. There is no getting around that difficulty, although it sounds as if some of the issues are being addressed. Part of the solution could be to make the job of being a sheriff officer slightly more attractive; I do not imagine that—rightly or wrongly—the profession always gets the warmest press at the moment. Making it more attractive probably depends on the amount that sheriff officers are paid. Dealing with rural debtors would be less of an issue if being a sheriff officer became a more desirable profession, and good training and prospects, which some firms appear to offer, can only enhance the profession.

There has not been much detailed discussion about the funding of the proposed commission, and I understand that there are difficulties about setting up further quangos.

The Convener: The Finance Committee has raised that issue.

Nicholas Grier: This committee has not discussed that yet.

The Convener: That is right.

Nicholas Grier: That is something else that we shall have to address. As Michael Matheson pointed out, almost every profession—solicitors, accountants, surveyors and others—must, to some extent, fund the costs of regulation, so it would be nothing unusual for sheriff officers to have to make a contribution. There is work yet to be done on those matters, but I think that there is a fair wind behind us.

The Convener: I would like to add a couple of points. The creation of the proposed commission clearly raises an issue of dispute. The Law Society of Scotland's written evidence quoted extensively from the Scottish Law Commission comments on the implications of the remit that the bill will give the proposed commission. When we come to do our report, we will have a range of issues to consider. The Finance Committee raised the issue of finance and basically questioned the need to create a new commission. As members know, last week we decided to write to the Executive and to the Auditor General for Scotland to try to move our discussion along, so we will have more information and feedback by the time we finalise our report.

Another point that was raised was to do with the balance between primary and secondary legislation. That is an important issue, particularly when it comes to the proposed commission. More of the arrangements for the proposed commission should be in the bill itself, because perception is sometimes more important than reality. The perception of independence will be extremely important and may be affected by the length of tenure for members, for example. The bill specifies the members of the proposed commission, but perhaps the length of tenure could be extended to guarantee that tenure is independent of the four-year election periods that are in place for one or two other bodies. Quite a lot of issues to do with the establishment of the proposed commission will need to be explored further.

Christine May: I want to flag up one or two issues. Nicholas Grier said that it is unlikely that all owners of debt enforcement companies throughout Europe are bailiffs, or whatever the equivalent may be. However, the problem is how one ensures that when debt enforcement officers carry out their work, they are free from pressure from their board of directors, for example. That is a valid argument. The bill will confer Henry VIII powers on the Scottish ministers, but changing primary legislation should not be left to subordinate legislation. The powers relating to the proposed commission are probably too important to be left to Henry VIII powers and should be on the face of the bill.

We could ask the Executive what account it has taken of those matters in connection with the proposed commission. There are fors and againsts—if we are not to have a commission, how would the Executive provide accountability, training, modernisation of the profession and standards, and how would that work be funded?

Money Advice Scotland spoke about membership of the proposed commission. I take seriously the suggestion that that organisation might be included in membership of the proposed commission, given what we heard from Stirling

Park about its relationship with Money Advice Scotland and what was said about people with no income and no assets.

Nicholas Grier: It is proposed that the commission will have lay members.

Christine May: Yes, but I suggest that Money Advice Scotland should be, by right, one of the lay members.

The Convener: We came across a similar issue in the Further and Higher Education (Scotland) Bill. We wanted to ensure that the NUS, for example, had a representative on the Scottish funding council, but the Executive was reluctant to name the organisation in the bill. We found a compromise, although I cannot remember exactly what it was, but we could find a similar compromise in this case. The precedent exists.

Christine May: That would be helpful.

Murdo Fraser: It seems daft to seek to impose on the profession the name "messengers of court" when they are not happy with it.

The Convener: I think that "judicial officers" is fine. It sounds like what they are. Perhaps we should recommend that. Are there any other comments?

Michael Matheson: To reinforce Christine May's point, I am not persuaded of the need for a commission and the associated costs. Prior to ruling it out, however, I would like to know what alternative options are available. There are grounds for some self-regulation in the profession, for which, obviously, it would have to pick up the tab. As with the Law Society, if someone were dissatisfied at the end of the process, they would have the opportunity to go to the Scottish legal services ombudsman. There might be something in existing structures that could accommodate that as an additional duty, rather than create a new commission.

I am not persuaded that the appointments process would somehow compromise the proposed commission, for the very reason that judges, who are appointed by the Scottish ministers, might have to listen to a case in which the Scottish ministers are involved. I understand what the convener said about perception, but we could overegg that pudding.

Let us consider the potential membership of the proposed commission. Our briefing note lists:

"a Court of Session judge … a sheriff or sheriff principal, an advocate or solicitor, a sheriff officer or messenger-at-arms, three other persons … the Lord Lyon King of Arms and the Keeper of the Registers of Scotland."

That is not exactly a group of people who will say, "We are going to do what the ministers tell us to do." Given the calibre of individuals that the Executive intends to appoint to the proposed commission, it is almost outrageous to suggest that those folk would doff their caps to ministers.

The Convener: That is useful. There are many other points in the written evidence that we have not discussed today. No doubt the clerks will pick up on them in the draft report.

As I mentioned earlier, we agreed to make sure that we would meet our side of the bargain on the timescale for completing our report by 16 May, so we are rolling out the draft report as we go along. We should have the draft report on part 1 next week, and the draft report on parts 2 and 3 the following week.

I am conscious of the clerks' workload, which is substantial, given the bill and all the other things that are going on. However, they assure me that the timescale is reasonable, so we can consider the draft report on parts 1, 2 and 3 when matters are still relatively fresh in our minds. We will start consideration of parts 4 to 16 next week.

I remind members of the procurement seminar that will take place in committee room 1 next Monday afternoon. The seminar will follow up the business in the Parliament conference and it would be helpful if members of the committee could attend it.

Shiona Baird: I have a question that goes back to the independence of the proposed commission. The Law Society raised its concern about that and said that it could be

"a dangerous encroachment on the independence of the courts".

We should not be too dismissive of such concerns and should investigate that angle.

The Convener: We will have the opportunity to discuss the matter fully when we get the draft report. It is a major issue in part 3, so it will obviously be raised in the draft report.

Meeting closed at 16:16.

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