ENTERPRISE AND CULTURE COMMITTEE

Tuesday 2 May 2006

Session 2

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ENTERPRISE AND CULTURE COMMITTEE
12th 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:

Andy Crawley (Scottish Executive Justice Department)
Hugh McAloon (Scottish Executive Enterprise, Transport and Lifelong Learning Department)
Jane Morgan (Scottish Executive Enterprise, Transport and Lifelong Learning Department)
David Reid (Scottish Executive Finance and Central Services Department)
Nicol Stephen (Deputy First Minister and Minister for Enterprise and Lifelong Learning)
Allan Wilson (Deputy Minister for Enterprise and Lifelong Learning)

CLERK TO THE COMMITTEE

Stephen Imrie

SENIOR ASSISTANT CLERK

Douglas Thornton

ASSISTANT CLERK

Seán Wixted

LOCATION

Committee Room 1

Scottish Parliament

Enterprise and Culture Committee

Tuesday 2 May 2006

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

The Convener (Alex Neil): I welcome everybody to the 12th meeting in 2006 of the Enterprise and Culture Committee.

Michael Matheson (Central Scotland) (SNP): On a point of order, convener. It was brought to my attention at the end of last week that the *Official Report* of our meeting last week would not be available until tomorrow. When we took evidence from Scottish Enterprise officials last week, a range of issues was raised and it would have been extremely helpful to have the *Official Report* of that meeting today, when we have the Minister for Enterprise and Lifelong Learning before us.

My understanding is that the *Official Report* of last week's meeting is not available today because of the bank holiday yesterday. I wonder whether you can look into the matter with a view to trying to ensure that in future we have the *Official Report* of the previous meeting at least before the start of the current meeting, irrespective of bank holidays.

The Convener: Thanks very much indeed. The member gave me notice of his point of order and I know that other members share his concern—as indeed do I. In principle, the *Official Report* of a previous meeting must be available before the current meeting. I will raise the matter with the Conveners Group to try to put procedures in place to ensure that the *Official Report* is always available for a meeting in time for members to read it prior to the meeting taking place.

I have apologies from Karen Gillon and I remind everybody to switch off their mobile phones.

Scottish Enterprise

14:06

The Convener: Item 1 is evidence on Scottish Enterprise. I welcome the Deputy First Minister and Minister for Enterprise and Lifelong Learning to the meeting. I will leave him to introduce his civil service team. I hope that you will be able to give us an update on Scottish Enterprise's financial problems.

The Deputy First Minister and Minister for Enterprise and Lifelong Learning (Nicol Stephen): Thank you, convener. I am happy to introduce Jane Morgan, the head of the division responsible for Scottish Enterprise, and Philip Rycroft, the new head of the Enterprise, Transport and Lifelong Learning Department. I am sure that this is the first of many fun experiences in front of the committee for him. To his left is David Reid, from the Finance and Central Services Department.

I will start by giving the committee an update and making a few points, but I realise that the committee will want to get into questions as quickly as possible.

The future role of local enterprise companies has been discussed in the context of the committee's concern that the LECs should be able to respond to local opportunities and needs. Clearly, Scottish Enterprise needs to be able to address issues of national strategic significance. The move to the metropolitan region planning approach with metropolitan region boards is an important shift in Scottish Enterprise's strategy. However, the agency must also be able to consider how best to build the strength of the LECs to encourage economic development at the local level. As Jack Perry made clear at last week's meeting, that does not mean investing only in our cities or focusing resources purely on our urban areas. I agree with that approach and, as I made clear in my statement to Parliament, we need the LECs to respond to local opportunities and needs and we need local businesspeople to be involved in decision making in the LECs. We need LECs to deliver locally, to continue to prioritise locally and to propose projects of both local and national significance. Many large projects have their roots in, and begin at, the local level.

Scottish Enterprise is working with the LEC chairs to establish how metropolitan region planning and the LEC boards will work with each other. I agree that that needs to be sorted quickly and I am pleased that Sir John Ward indicated, when I met him and Jack Perry earlier today, that progress is being made on the issue. I know that the committee is particularly concerned about LECs' ability to respond to local opportunities during the 2006-07 financial year, which will be difficult because of the circumstances facing Scottish Enterprise's budget, so I will move on to that issue.

I will look briefly, if I may, at the origin of Scottish Enterprise's problems, then consider the 2006-07 budget position. There has been questioning about what the Executive knew and when it knew it. Those are key points and the committee will no doubt wish to look into the issues in greater detail. However, in October, Scottish Enterprise returns showed a potential overspend of, it seems, around £100 million. Scottish Enterprise indicated that it would take action to bring that to a balanced budget position. Board reports imply that in Scottish Enterprise's view, matters were under control at that stage.

On 13 and 16 January, Scottish Enterprise staff inquired about an increased budget from the Scottish Executive. They were told, as the finance team within Scottish Enterprise already knew, that that was not possible. Scottish Enterprise did not reveal the then anticipated scale of its overspend. The figure of £77 million is one that KPMG extracted from internal reports; it was not then available to the Scottish Executive. On 19 January, following press reports on the issue, Jack Perry told Executive officials that Scottish Enterprise would manage its budget. However, given the press reports, a meeting was requested between the Executive and Scottish Enterprise officials in order fully to understand the situation. That meeting took place on 24 January. I was informed of the likelihood of an overspend the day after that meeting, on 25 January, when Eddie Frizzell, as head of department, wrote formally to Jack Perry to express his concerns following the information discovered at that meeting.

The important issue is the adequacy of Scottish Enterprise's financial systems. KPMG was asked to check the accuracy of the overspend estimate and to make any recommendations on financial practice and reporting. The KPMG report points to some serious failures, which Scottish Enterprise needs to address. I have written formally today to Sir John Ward requiring implementation of the recommendations of the KPMG report. Scottish Enterprise intends to implement the detailed recommendations of its own internal audit process. The Enterprise, Transport and Lifelong Learning Department will liaise with Scottish Enterprise on the implementation of the KPMG recommendations, but I intend to ensure that there is an external check on progress.

Scottish Enterprise has admitted that it should have taken much stronger action in November and December, once the estimated scale of the overspend was known, and that the lack of such action is the key cause of the overspend. It also accepts KPMG's recommendations, which are in line with its internal work. Most important, there must be clear responsibility for delegated budgets. The resource allocation system introduced last year was clearly not properly managed or implemented. Reporting to the board must be in resource accounting terms and must be more timely. Appropriate balance sheets must be prepared throughout the financial year. There is no reason why non-cash items cannot be tracked rather than just left to the end of the financial year.

Those facts do not in any way diminish the important task that Scottish Enterprise must perform. I support Scottish Enterprise and the important projects that it is introducing. What we need now is for Scottish Enterprise to ensure that it can deliver those within budget to the benefit of the Scottish economy. I am confident that Scottish Enterprise can do that.

I turn to the impact of last year's overspend and the pipeline of Scottish Enterprise's current projects. Many have expectations of Scottish Enterprise that will be hard to meet, but Scottish Enterprise has to prioritise in the same way as other organisations. I acknowledge that the original estimate of non-cash items was too low and that that would otherwise lead to reduced cash spend for Scottish Enterprise; in other words, to make allowance for the non-cash items, the grant in aid made available to Scottish Enterprise would have to be split between projects and making available resource cover.

I have therefore been discussing with Scottish Enterprise the allocation of additional resource cover to tackle the difficulty caused by non-cash items this year and last year. That will allow Scottish Enterprise to meet its non-cash requirements in 2006-07 and allow access to Scottish Enterprise's reserves, as it has requested.

I will write to Scottish Enterprise, requiring that additional resources are, in due course, allocated by the organisation in line with ministers' priorities. I am not going to allocate the budget—that is for the board to propose and the Executive to agree—but I will make absolutely sure that spending is in line with strategic priorities on growing business, skills and learning, regeneration and global connections.

The Scottish Enterprise board will meet on 12 May to finalise the budget proposals. It is obviously important, therefore, that these discussions are completed prior to that date, so that announcements can be made to all of Scottish Enterprise, including its business units and the local enterprise companies, and more widely, as soon as possible after 12 May.

I should make it clear that I have no evidence that Scottish Enterprise has underspent its resource budget in recent years. I can clarify that if you wish.

14:15

The Convener: I thank you for your statement, which will have raised a number of questions in the minds of members. I will ask a couple of questions first, in the interests of clarification.

Are you saying that ministers were not told by Scottish Enterprise of the potential overspend until the last week in January?

Nicol Stephen: From October, officials were aware of a projected overspend from Scottish Enterprise. As was explained to the Scottish Enterprise board, we were informed that Scottish Enterprise was taking steps to manage that overspend, which was not a particularly unusual occurrence, and that, in previous years, a significant amount of Scottish Enterprise's budget had been spent in the final few weeks of the financial year. Based on previous years' projections, Scottish Enterprise expected the overspend figure to come down in a manageable way.

In early to mid-January, approaches were made by planning officials—not the finance officials—in Scottish Enterprise. Jane Morgan could give you more detail about that. We did not realise that the reason for that approach was to do with the continuing financial problems. We read press reports about the continuing financial problems and Jane Morgan approached Jack Perry. It might be better if she explained that part but, following the press reports, there was contact and an assurance was given that Scottish Enterprise was continuing to take steps to ensure that the budget came in at or under the level allocated. Only when a meeting was held on 24 January did it become clear that the level of overspend was at the £77 million figure that KPMG had identified. At that point, it was clear that it was unlikely that the budget would come in under the figure required by the end of March.

At that stage, Eddie Frizzell, the head of department, sent a formal letter to Jack Perry. Eddie Frizzell notified me and other ministers of the potential overspend in Scottish Enterprise.

We had an indication that there was an overspend but, until the latter part of January, we were given the impression that the overspend would be managed and would be under control by the end of the financial year. It became clear on 24 January that that was not the case and, the following day, I was informed.

Perhaps Jane Morgan would like to give a little more detail about that exchange.

The Convener: You have outlined the gist of the matter, which is enough for now.

On 19 January, the First Minister responded to a question that I asked in the chamber:

> "I expect Scottish Enterprise to meet its budget targets."—[*Official Report*, 19 January 2006; c 22555.]

Would it be fair to say that, five days later, it was clear to ministers that Scottish Enterprise would not do so by a substantial amount?

Nicol Stephen: That became clear on 24 January. Ministers were told about it on 25 January.

The Convener: Why was it another two months before the chamber was informed that there would be a substantial overspend? It appears that on 19 January, the First Minster unintentionally—I am making no accusation against him—informed the chamber in response to a question that I asked that there would, basically, be no overspend. Five days later, ministers knew that there would be a substantial overspend. Why did no minister come back to the chamber and correct the misconception that had been created by the inadvertently misleading answer that was given?

Nicol Stephen: In January, although the scale of the overspend was significantly greater than had previously been indicated to officials, we still required Scottish Enterprise to take steps to come within its budget. Therefore, there was still an expectation, which turned out to be a hope, which turned out to be unfulfilled, that the budget would come within the figure that the Executive had allocated.

Scottish Enterprise was given a clear message about what was expected of it in managing its budget through to the end of the financial year. I do not know whether Jane Morgan would like to comment on the point at which it became absolutely clear that the budget would not be contained within the allocated amount. It is clear that, by the end of March, the projected figure of £77 million came down so that the likely end-year figure—we still do not have the final audited figure—that is now being assessed is £34 million.

Jane Morgan (Scottish Executive Enterprise, Transport and Lifelong Learning Department): I do not have much to add to what has been said. I gather that the figure was £77 million at the beginning of January. Even by the meetings on 24 January, Scottish Enterprise thought that the figure might go down to £40 million, or possibly lower. Its expectation in February was £30 million. We would have to look back at precisely what the First Minister and the minister said in the following weeks.

The Convener: There was certainly no indication of any overspend.

When it gave evidence last week, Scottish Enterprise said that one reason it ignored the warnings was that it believed that the door was still ajar—it believed that the Scottish Executive would still make additional funding available to cover at least some of the overspend. You are saying that the door was firmly shut and was not ajar at all.

Nicol Stephen: I have looked into all the papers and spoken to officials. I certainly never suggested that the door was open for additional spend. The end-year position for the department was tight. Eventually, we agreed to bring forward spend from the 2006-07 financial year to provide Scottish Enterprise with financial cover for the £34 million. We tried to be as helpful as we could be in difficult circumstances. If you are suggesting that some indication was given at an earlier point in the process, before the agreement on the pull forward of funding from 2006-07, that there would be flexibility or that there could be additional resources, my response is that I am not aware that anybody gave such an indication to Scottish Enterprise.

The Convener: Why do you think the chairman and the chief executive of Scottish Enterprise believed that the door was ajar?

Nicol Stephen: I do not know. Before I could offer an explanation for their evidence, I would need to know what discussions the chairman and the chief executive believe took place and whether such discussions involved those individuals directly or senior management at a lower level.

The Convener: For clarification, how much of Scottish Enterprise's cash and non-cash allocation has been taken out of this year's budget to make up for last year? How much extra do you need to give Scottish Enterprise this year to make up the cash and non-cash budget as originally agreed by ministers? What deficit is being carried forward this year?

Nicol Stephen: Jane Morgan or David Reid might comment. The simple answer is that Scottish Enterprise has overspent by around £34 million, of which some £25 million is a resource issue and £9 million to £10 million is a cash issue. We allowed the agency to cover the £34 million overspend by drawing forward funding from this year's budget. It seems clear that Scottish Enterprise has an on-going resource budget shortfall of around £25 million per year. As you know, Scottish Enterprise reported to its board on the likely outcome of its budget in cash terms rather than in resource terms until January this year. Scottish Enterprise has a resource shortfall of about £25 million for this year and last year and a £9 million cash overspend. The figures give an indication of the financial difficulty with which the agency must wrestle.

The Convener: Is it fair to say that Scottish Enterprise is starting this year roughly £60 million down?

Nicol Stephen: That is broadly correct, if we add the shortfalls of £25 million for this year and last year and the £9 million cash overspend.

The Convener: The crisis this year amounts to £60 million.

Nicol Stephen: That is why I have had discussions with Scottish Enterprise to ensure that the agency has appropriate resource cover for this year. The figure reflects the scale of the difficulty the organisation faces.

The Convener: The shortfall is not the drop in the ocean about which some people have said we should not be concerned.

Nicol Stephen: I have never suggested that—

The Convener: I did not mean that you had said that.

Nicol Stephen: The issue is serious. It is important that the national enterprise agency should have a sound budget and be able to deliver on the important projects and initiatives for which it is responsible. That is why I have worked extremely hard on the issue and had regular meetings with Jack Perry and John Ward. It is vital that the issues are resolved as soon as possible. I would have liked the issues to have been fully resolved by today, but the process will take until 12 May, partly because of the scale of the problem.

The Convener: Do you require the involvement of the Treasury if you want a change to the resource allocation?

Nicol Stephen: No. We do not require Treasury approval for such matters. There is no suggestion that we need to await Treasury involvement; responsibility rests with the Scottish ministers. Any agreement that will help Scottish Enterprise has potentially difficult consequences for other parts of the enterprise and lifelong learning budget. The balance is difficult to get right, but I am determined to make progress on the matter quickly. Many people might suggest that we simply accept that an overspend occurred and that Scottish Enterprise and its board should be responsible for managing the way forward in relation to the £60 million.

I believe that some support will be required. If support is not given, the consequences for many projects in which local businesspeople and local young people are involved—including training programmes such as skillseekers and modern apprenticeships—would be unacceptable. In those circumstances, as Minister for Enterprise and Lifelong Learning, I have a responsibility to ensure that appropriate action is taken.

14:30

Christine May (Central Fife) (Lab): Good afternoon, minister and officials. I have several questions, but I must first seek clarification on one thing. The minister mentioned that a shortfall of more than £70 million was first mooted, but Scottish Enterprise dealt with that by moving whatever could be moved from last financial year into this financial year. To what extent have projects that were originally scheduled for last year been moved into this year?

Nicol Stephen: Jane Morgan might want to answer that. The £77 million I mentioned was the size of the overspend that was projected in January. As I understand it, the figure had been higher in October, when it was about £100 million, but it came down towards £70 million. With the benefit of hindsight, more could have been done—I think that Scottish Enterprise accepts this—if stronger action to reduce the figure had been taken in October, November and December. By January, the projected overspend was about £77 million. By the year end, that figure had come down to £34 million, which is the current estimated overspend. To ensure that Scottish Enterprise was covered for the financial year 2005-06, we allowed the organisation in effect to borrow from the current financial year to cover the financial year 2005-06. That is the current position.

Christine May: I understand that, but I am trying to get to the bottom of the extent to which that overspend was fixed by moving projects from financial year 2005-06 to financial year 2006-07.

Jane Morgan: I do not have a precise figure for that. It was for Scottish Enterprise to decide to what extent the reduction in the overspend—which was initially £100 million and then £77 million—would be achieved by deferring projects into following years and to what extent it would be done by deciding not to pursue projects to which it was not fully committed. Decisions on whether to defer or not to pursue projects were for Scottish Enterprise.

Christine May: Is it reasonable to suppose that at least some of the reduction in the overspend was achieved by deferring projects?

Jane Morgan: Yes.

Christine May: But that could be said to exacerbate the budget problem for this year, given that Scottish Enterprise will now have less available to it than it would have had.

Jane Morgan: Under a standstill budget, that will be the case.

Nicol Stephen: I share Christine May's concern. Scottish Enterprise has made it clear to me that it is in a position to meet all its legal obligations for the projects to which it is legally committed. Even though some projects have been deferred into the current financial year, the full analysis of the financial position that has been carried out for Scottish Enterprise has confirmed that the organisation should still be in a position to allow the local enterprise companies some delegated budget for this financial year. Therefore, businesspeople who are involved in the boards of local enterprise companies will continue to be able to take genuine and meaningful decisions and their role will still be substantial. In addition, the business gateway will still be protected and the general level of activity within Scottish Enterprise will remain solid.

However, that is based on Scottish Enterprise receiving support for the resource accounting difficulty and support that will allow it to access its cash reserves. The details and amounts of that support have still to be finalised. Even if those issues are fairly and appropriately addressed, Scottish Enterprise will still face difficult issues partly because of the reasons Christine May identified.

Christine May: Although I hear what you are saying, I suggest that the definition of "legal commitment"—as I think that we found out last week—is something for which there are formal signatures on bits of paper. A point that I raised last week was that there were a significant number of matters that had not quite got to that stage or for which, as in the case of the training and skills development contracts, which tend to be annual and recurring, there was a reasonable expectation among providers out in the regions that they would continue.

I have two questions. First, you spoke about the future role of the LECs. If there is relatively little or almost no discretionary income, what meaningful role is there likely to be for folk? Secondly, what will happen to programmes—especially in skills and training—other than those that are in the guaranteed group? Serious concerns have been raised that, for example, programmes for the long-term adult unemployed, in which there has been quite innovative use of modern apprenticeships for older people, may not happen because they are not legally necessary.

Nicol Stephen: If the 2006-07 budget had to be contained within the current allocation to Scottish Enterprise, with insufficient resource cover and Scottish Enterprise expected to pay back the £34 million overspend from last year, some serious consequences could result. That is why there has been a lot of speculation among local enterprise companies, business units and contractors about the potential consequences. The most immediate and obvious consequence was that the business gateway would be significantly cut back. That is why, in my statement to Parliament, I reassured those involved in the business gateway and the many small companies and businesses that rely on the business gateway that the business gateway service will continue at the same level as last year. In other areas, my aim is to ensure that the worst consequences of the budget difficulties are tackled, addressed and removed, but I cannot pretend that, even with additional support, there will not be difficulties for Scottish Enterprise over the next few weeks. That is why getting the budget right for 12 May is important.

Christine May: I put it to you that people have not been speculating: they are worried sick about the consequences of this. What consideration, if any, have you given to making a change in the allocation of responsibilities in the structural review that Scottish Enterprise is carrying out? For example, have you considered leaving the Scottish Enterprise national board with the responsibility for the big, strategic stuff and making other arrangements for the delivery of the local enterprise functions?

Nicol Stephen: The position on changes of responsibilities and financial allocations is as I explained it in the statement to Parliament at the end of March. Scottish Enterprise is proceeding with its focus on the six key industry sectors, the formation of the metropolitan region planning approach and the metropolitan region boards. All 12 local enterprise companies will be retained and will have a key role in decision making on local projects and the identification and support of significant national projects.

We want to ensure that the Scottish Enterprise national board is fully supported in its new focus on the key industry sectors and projects of national and international significance. However, we recognise the fact that not all economic development happens at the strategic or national level and that many businesspeople give a great deal of time and invest a huge amount of effort and professionalism in the work that they do at local enterprise company level.

We want to ensure that the 12 local enterprise companies, which Scottish Enterprise asked me to retain, operate effectively. It has been suggested that Scottish Enterprise wants to reduce the number of LECs, but it should be remembered that it was the Scottish Enterprise board that made the request to me, as the Minister for Enterprise and Lifelong Learning, for all 12 LECs to be retained. I consider it important that we retain 12 strong and effective LECs. Again, given the financial pressures and the difficult decisions that remain for Scottish Enterprise, it will be difficult to achieve that—even if additional support is provided by the Executive.

Murdo Fraser (Mid Scotland and Fife) (Con): Good afternoon, minister. I will pick up on Christine May's last question on the impact of the overspend on forward programmes. You mentioned the modern apprenticeship scheme, which most people agree is a success story in terms of the expansion in numbers. I was concerned therefore to receive a communication at the end of last week from a constituent who runs a training company in Fife. He told me that he had heard via the Scottish Training Federation that Scottish Enterprise plans to cut the number of modern apprenticeships from 30,000 to just 9,000. Is that the case?

Nicol Stephen: That is not the case. As part of the discussions that have been taking place with Scottish Enterprise, it has been made clear that ministerial priorities and partnership agreement commitments are crucial and that reducing the number of modern apprenticeships from 30,000 would not be acceptable. We are seeking from Scottish Enterprise the sort of reassurances that committee members seek today on the business gateway, modern apprenticeships and a variety of other issues. However, it is simply too soon to give the committee all the detail on all the issues. We are working very hard to resolve the situation in order that a fair and appropriate budget can be put to the Scottish Enterprise board on 12 May.

Murdo Fraser: So your intention is that no cut should be made in the number of modern apprenticeships.

Nicol Stephen: Perhaps Jane Morgan will give some of the detail of the discussions.

Jane Morgan: I do not know precisely how many modern apprenticeships there are at the moment—it may be a little over 30,000—but the intention is very clearly that the figure for Scotland as a whole should stay at 30,000. The working assumption is that Scottish Enterprise contributes about 27,000 and Highlands and Islands Enterprise contributes about 3,000. That remains our intention.

Murdo Fraser: My next question is on the role and involvement of the minister in all of this. Peter Hughes, who is the chief executive of Scottish Engineering, was quoted in *The Scotsman* on Friday as saying:

> "The Scottish Enterprise board has lacked political support all along … My impression is that they are an unhappy bunch because the minister has lacked the balls to support them. As they were appointed by politicians, I firmly believe that politicians should get behind them. The fence-sitting and failure to support has been appalling."

Have you lacked the balls, minister?

The Convener: I am not sure whether I should rule that out on the ground of unparliamentary language. As it was in a quote, I will allow it.

Nicol Stephen: I have given very strong support to Scottish Enterprise. Indeed, Scottish Enterprise and its board do very good work for Scotland and for the economy of Scotland. I have signalled today not only my firm support but financial support for Scottish Enterprise. In my statement to the Parliament, I could not have been clearer in giving support to Scottish Enterprise and endorsing the chairman, chief executive and board members. I contrast that approach with that taken in the chamber by members of other political parties on the day of my statement.

Murdo Fraser: Nevertheless, it must be embarrassing for you that a senior business figure such as Peter Hughes makes such a comment about you as enterprise minister. He described your approach as "appalling". What is your response?

14:45

Nicol Stephen: That is why I welcome committee sessions such as this one, which allows me to put on record my support for Scottish Enterprise and to scotch the myths about a lack of support on the part of the Executive and Scottish ministers for Scottish Enterprise and its board. I assure everyone on the committee that my ministerial colleagues and I strongly support Scottish Enterprise.

Among many members, I see two main responses that are difficult to reconcile. The first is that they are critical of Scottish Enterprise for failing to keep within its budget and avoid an overspend in the past financial year. They suggest that no additional resources or support should be made available to Scottish Enterprise. However, those same MSPs are often quick to criticise if there is any threat to projects in their area or to national projects such as the modern apprenticeship scheme—on which Murdo Fraser just challenged me—or the business gateway. I can think of a list of other projects that are seen as important to Scotland's future economic success and the development of skills and training among young people.

It is difficult to reconcile those two approaches, although I understand the reason for the criticisms. However, as ministers, we must ensure that the worthwhile economic development projects that Scottish Enterprise develops and supports continue, while ensuring that there is sound financial management and that Scottish Enterprise's failure to keep within its budget last year was a one-off. We must get Scottish Enterprise back on track and ensure that it has a sound approach to budgeting and funding from now on.

Murdo Fraser: Do you believe that you are a hands-on enterprise minister? Peter Hughes's comments suggest that he does not think that you are.

Nicol Stephen: It is important that I am hands-on in giving strong support to Scottish Enterprise and to its chairman and its chief executive. I do not believe that economic development in Scotland would be improved if Scottish Enterprise's functions were taken away from the business leaders who give a great deal of time and expertise to the work of Scottish Enterprise and its local enterprise companies and centralised in the hands of one person, namely the enterprise minister. I come from a business background and I have a significant level of business experience, but it would be wrong if we did away with Scottish Enterprise and Highlands and Islands Enterprise, through which some of the most experienced, capable and professional individuals from Scottish industry are involved in the delivery of Scottish economic development policy.

That is why it is important that we assist Scottish Enterprise to get through its current difficulties and look to the future. Scottish Enterprise has a strong future. It has a strong reputation not just in the United Kingdom but internationally for the quality of its economic development work.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): I want to lead on from what you have just said. You rightly said that we should not underestimate the difficulties that Scottish Enterprise faces, but I want to turn to the future. It is fair to say that Scottish Enterprise's image has been damaged and that some people who possibly do not have the organisation's best interests at heart have leaped on that. I imagine that development agencies in other parts of Europe are rubbing their hands with glee. Assuming that, as we all hope, the rescue works, what can the Scottish Executive do to untarnish Scottish Enterprise's image and to get Scottish Enterprise out there again and being seen to deliver, despite the damage that has been done by some people?

Nicol Stephen: I understand the question and I agree with the concern. Scottish Enterprise has a strong reputation that has built on the reputation of the Scottish Development Agency in the 1980s. Nations throughout the world know about Scottish Enterprise; it has recently won international awards. That is not a new development: Scottish Enterprise, Locate in Scotland and Scottish Development International have, in the past, won a series of awards for the quality of their work. We must retain that reputation and maintain the quality of Scottish Enterprise's work, which is why we must get through the current difficulty.

It is clear to me now after reading the KPMG report that there was a significant problem which, as I said to the convener, I never sought to downplay. In October last year, the level of spend and number of projects that were being supported, if unchecked, would have led to an overspend of £100 million. That is a serious issue. Work has already been done to contain that overspend and, at the end of the financial year, the final figure was £34 million.

I want to ensure that the legacy of that serious problem does not damage the organisation in future and that, throughout 2006-07 and future spending years, Scottish Enterprise is able to get back on track and focus on the key issues, which must be its support for the development of the Scottish economy, its work on improving skills and training for young people and adults in Scotland and seizing on and making the most of global opportunities for Scotland, such as the new opportunities that exist in India and China, life sciences, the energy sector and financial services.

There are huge opportunities for the Scottish economy, but other nations will rub their hands in glee if the current difficulties handicap Scottish Enterprise's ability to seize on those opportunities. Therefore, we must get through those difficulties and work hard to try to reach consensus. It is fair to say that, in other nations, there is often a cross-party consensus on such economic development issues. Individuals from the different political parties work together to ensure that their nation's reputation is enhanced and improved. That should not mean that we avoid close and detailed scrutiny when we experience problems of the kind that have arisen with Scottish Enterprise but, equally, there should be a joint will to get through those difficulties and work positively for the future.

Shiona Baird (North East Scotland) (Green): In your opening remarks, you said that you were unaware of Scottish Enterprise's underspend in previous years. Did I hear you correctly?

Nicol Stephen: In the past two to three years, there has not been an underspend in Scottish Enterprise's outturn, which is measured in resource terms, rather than purely in cash terms.

Shiona Baird: The evidence that we took indicated that an important part of the position in which Scottish Enterprise now finds itself was the fact that, in ensuring that it did not underspend as happened in previous years, it overspent last year. As I suggested last week, there might be more cause to be critical of Scottish Enterprise if it underspent—in other words, if it did not provide the investment for the economy that it should have provided, which is worse than overspending.

Nicol Stephen: In past years, a lot of Scottish Enterprise's expenditure has come in a rush—there has been a sharp increase in expenditure towards the end of the financial year in an attempt to ensure that the budget is fully spent. I am sure that the Finance and Central Services Department would confirm that, but Audit Scotland could certainly confirm the situation.

Since the introduction of resource-based accounting, we have had the issue of resources to cover depreciation and capital charges as well as cash to spend on projects. There has perhaps been an underspend in the cash operating plan, but there has not been an underspend in the overall budget on which we require to report to the committee and the Parliament. There has been evidence of that public sector increase in spend to ensure that the budget is used before the end of the financial year.

Shiona Baird: Do you think that you need to provide more flexibility in the budget process? You said that you would consider giving access to the cash reserves. Is there any merit in investigating the possibility of three-year funding arrangements rather than having this annual budgeting problem? Giving Scottish Enterprise more flexibility might be beneficial in the long run. I believe that Scottish Enterprise had concerns about the fact that it had earned income that it was not allowed to access. That suggests that the Scottish Executive needs to consider introducing a more flexible budgeting system.

Nicol Stephen: In short, I agree with your comments and suggestions. I have already signalled that we are considering the issue of resource-based accounting and the resource cover for Scottish Enterprise and that we are considering ways in which Scottish Enterprise could access its cash reserves. Today, I discussed with Jack Perry and John Ward the possibility of moving to the system of three-year budgets that local authorities have. That in itself would not necessarily overcome the resource-based accounting problem, because as a result of the shift from cash to resource-based accounting, there is still the issue of containing spend within a given financial year. Rolling spend forward from one year to the next would still be an issue.

I would like to investigate having an approach that would provide more flexibility once we get through the next few days and weeks and ensure that we have a clear and appropriate budget for 2006-07. I know that the Finance and Central Services Department will work closely with Scottish Enterprise to ensure that, if possible, we improve the current system. I do not know whether David Reid wants to comment at this stage.

David Reid (Scottish Executive Finance and Central Services Department): I reinforce what the minister said about having a three-year settlement. That is possible, but there is still a year-on-year management issue. The challenge would be to define the scale of flexibility and manage that between one year and the next.

Michael Matheson: I turn to the findings of the KPMG report. First, am I correct in saying that of Scottish Enterprise's £34 million overspend in the past financial year, approximately £25 million is made up of the non-cash budget element?

Nicol Stephen: That is correct.

Michael Matheson: From the evidence that we have received from Scottish Enterprise and the KPMG report, it appears that there has been a persistent problem with the non-cash budget element. In 2003-04, Scottish Enterprise had an overspend in its non-cash budget of £27 million and in 2004-05, it had an overspend of £26 million, both of which were highlighted in the KPMG report.

In April last year, Scottish Executive officials agreed a cash budget of £431 million and a non-cash budget of £9.6 million for Scottish Enterprise, but I understand that discussions continued to consider how they could address the undervaluation of the non-cash budget and that those discussions continued after the overall budget had been agreed. Will you give us a flavour of exactly what was being discussed with Scottish Enterprise over what could be done to address that issue of a deficit in its non-cash budget?

15:00

Nicol Stephen: I may bring in officials to give some of the detail from that time. There is clearly a difficulty here. In relation to its resource cover, Highlands and Islands Enterprise has a non-cash element of about £14 million a year, although it has a budget of less than £100 million a year, which is significantly less than Scottish Enterprise's budget. When the resource-based accounting approach was established, Scottish Enterprise ended up with a figure of just over £9 million a year. That figure was not enough, which is why I am today indicating a willingness to do something to address that and to assist Scottish Enterprise, not with the cash element of its budget but with its resource-based budgeting—the non-cash element of its annual budget.

There have been discussions about assistance in previous years, since resource-based accounting was introduced in 2003-04. The issue was a problem for Scottish Enterprise in the two years prior to the overspend year of 2005-06: 2003-04 and 2004-05. There were discussions with the Executive—perhaps Jane Morgan would explain what occurred.

Jane Morgan: Although the figures that KPMG reports are accurate—they are the returns that were given in August after those financial years—at the end of 2004-05, we were still not clear about what the non-cash requirement was because the returns made to us had been quite variable. The operating plan was set without adjustment for non-cash items. In May, as soon as we had a clearer figure on non-cash, we suggested to Scottish Enterprise that it needed to adjust its cash spend. The operating plan was not redrawn and devolved budgets were not adjusted because last year Scottish Enterprise was not operating under a system of devolved budgets and the centre, if you like, decided to manage the need to underspend the cash budget by £25 million.

In May 2005, we made clear the need to underspend the cash. We had made it clear in March 2005 that Scottish Enterprise would not be able to access one aspect of its reserves that it had inquired about—what is called a voted loan surplus—and that the argument put forward on that would have equal application to other reserves. We do not really have any trace of discussions carrying on through the year on that. As far as we were concerned, we had made clear our position in May and in a letter to Jack Perry a month or two later. In November, we had a meeting to consider the forward use of reserves and we confirmed that those reserves could not be accessed. Scottish Enterprise had acknowledged that only a few days before the meeting. It is a little difficult to say that discussions were continuing. While discussions were continuing, we made it clear that we did not think that any resolution on reserves was possible.

Nicol Stephen: Does David Reid want to add anything?

David Reid: Jane Morgan has described the process and she was the person who led it.

Michael Matheson: I want to be clear about the timeline. From May 2005, when Scottish Enterprise's non-cash budget returns from the previous year were audited, it was clear to the organisation that it would have to find £25 million to cover its non-cash elements for the coming financial year.

Jane Morgan: Yes, and I think that Scottish Enterprise has acknowledged that. The difference in interpretation relates to the likelihood of the organisation being able to access reserves without that impacting on the resource budget. We feel that we made it clear that any access to reserves would need to be counted as part of resource spend, whereas Scottish Enterprise feels that that was not completely clear.

Michael Matheson: In your view, when was it made clear to Scottish Enterprise that it would not be able to access the cash reserves to which it was looking to gain access?

Jane Morgan: As far as I am aware—although I was not involved in all the discussions—we did not discuss that issue specifically in the first part of 2005-06. We discussed voted loans, which are one element of reserves, between about January and March 2005. It is clear in minutes from March

2005 that our view was that there could be no access to the voted loans surplus without that impacting on the resource budget.

Michael Matheson: Is it the Executive's position that, after May, when it was made clear to Scottish Enterprise that it would have to find the £25 million from its cash reserves, there is no record of dialogue about the possibility of Scottish Enterprise accessing other reserves that it holds?

Jane Morgan: There was such dialogue again in November. There is obviously a difference of understanding, but as far as we were concerned we were simply repeating what the previous understanding was. I guess that there are occasions on which different people take different things from the same conversation.

Michael Matheson: Right, but between May and November there were no discussions about Scottish Enterprise gaining access to other reserves.

Jane Morgan: We have not come across any record of such discussions.

Michael Matheson: I invite the minister to explain to us why Scottish Enterprise has not been able to access some of the stranded reserves to which it would like to gain access, when—from what he has said this afternoon—he is now considering allowing the organisation to access them in the future. What has prevented that in the past?

Nicol Stephen: The reserves could have been spent, but that would have counted as part of the in-year spend. For example, if £5 million of the reserves had been spent on projects last year, it would simply have increased the overspend from £34 million to £39 million. The reserves are available for use in any given year, but although their use would reduce the amount of funding or grant in aid that the Executive provided, it would still be classed as project spend. In other words, the problem of a projected overspend would remain.

The difficulty is the nature of the expenditure. What balances that out and suggests to me that the Executive should take action is the fact that the level of resource cover that Scottish Enterprise negotiated with the Executive is so different from that which is available to Highlands and Islands Enterprise. I say that the levels are different but, in fact, the amounts are similar, even though Scottish Enterprise is about five times the size of HIE. It is clear that the amount that is available to HIE is about right and that the amount that is available to Scottish Enterprise is continuing to cause significant difficulty.

When an organisation has built up cash reserves and a request is made to use them—especially when the organisation in question, Scottish Enterprise, will continue to face tough financial management decisions over the next few weeks and when the cash surpluses that it holds are quite significant—it is appropriate to try to allow them to be accessed, if at all possible.

David Reid: General guidance for all non-departmental public bodies was produced when we changed to the new full resource accounting and budgeting system in 2003. The guidance set out the limitations on the use of reserves among all the other factors that were introduced at the time. All of that was generally known.

I understand that the discussions that took place with Scottish Enterprise were more about the process governing the relationship between the use of reserves and the extent to which that might substitute for grant in aid. Although the KPMG report refers to the inability to use stranded reserves, there is a mechanism for releasing them. However, as the minister said, such resources would always count as part of the body's total resource expenditure.

Nicol Stephen: It comes back to the fact that, under the current accounting rules, we must report to Parliament on resource expenditure. That means that all spending, including spending from reserves, must be reported and must be in line with the budget that was allocated to the NDPB.

Michael Matheson: Historically, the problem started when the non-cash element of Scottish Enterprise's budget was set at just over £9 million. Clearly, that was an underestimate. By contrast, the budget for Highlands and Islands Enterprise includes a substantially larger non-cash element, despite the fact that it is a much smaller organisation. Given that, for the two financial years prior to the most recent financial year, Scottish Enterprise had an overspend against the non-cash element of its budget, is it not reasonable to say that the department should have taken action at an earlier stage to address the problem rather than allow it to linger on until it resulted in the current crisis?

Nicol Stephen: Both the KPMG report and Scottish Enterprise's internal audit report make it clear that the problem with last year's overspend was related not to the resource accounting issue directly, but to a new system of financial management and a new approach to devolving budgets to local enterprise companies. That led to a far greater level of spend by October of last financial year than had been expected. As Jack Perry and Sir John Ward explained, the increase in the pipeline of projects created a potential spend of £650 million within the financial year 2005-06. That was what created the difficulty.

The KPMG report makes it clear that the Scottish Enterprise board should have been in receipt of financial management information in resource accounting terms, but that it received management accounts and financial reports only in cash terms. That has now been changed. Scottish Enterprise has accepted that things should have been done differently and it has taken that different approach from January of this year.

The underlying question is, should Scottish Enterprise have had a more accurate and sensible level of resource accounting from when resource-based accounting was introduced? The simple answer is yes. Highlands and Islands Enterprise requested an amount that turned out to be more or less right. Scottish Enterprise was hampered by its request for a lesser amount. However, that predates my involvement with Scottish Enterprise as well as the involvement of Sir John Ward and Jack Perry.

I understand that there is not as great a trail of e-mails, correspondence and exchanges on these issues as I would like. However, it seems pretty clear that the initial problem resulted from a request by Scottish Enterprise for resource cover of about the amount—indeed, potentially less than the amount—that it was eventually allocated. That seems to be why the resource-based accounting problem arose. However, that should not necessarily have led to the overspend problems that were experienced last year. The problems are related, but distinct.

15:15

Susan Deacon (Edinburgh East and Musselburgh) (Lab): There is a wide range of views around the country about the seriousness of Scottish Enterprise's financial situation. Some people think that the issue is a storm in a teacup and others take the view that the agency faces a major financial crisis and heads should roll. None of us disputes that the situation has generated a damaging debate—as Jamie Stone said—and much controversy, which has eroded confidence not just in Scottish Enterprise but in the Executive's handling of aspects of economic policy. It is in no one's interests that the current, frenzied debate and the claims and counter-claims that go with it be allowed to continue.

How much responsibility do you take for the presentation and perception problems that have emerged? With the benefit of hindsight, which we know gives 20:20 vision, can you identify action that you should have taken to avoid our ending up in such a situation? I take as read the fact that you continue to address points of substance, but what can you and ministerial colleagues do to turn around perception? What role does the Parliament have in that regard?

Nicol Stephen: On the responsibilities of ministers, it is important that we have well managed agencies and non-departmental bodies such as Scottish Enterprise and that we trust the quality and professionalism of the senior management and boards of such organisations. It is also important that our relationship with such bodies involves checks, for example through regular meetings between leaders of organisations and Scottish Executive civil servants and ministers. That was our approach to Scottish Enterprise, which was aware of a potential overspend last October, but it expected—as did we—that the overspend would be brought under control by the end of the financial year, so that there would be a balanced budget and no £34 million overspend. When it became clear that the problem was continuing, ministers took action and a full investigation into the circumstances of the budget problem was undertaken. We are ensuring and will continue to ensure that the recommendations of the detailed KPMG report are properly implemented.

It is vital that ministers play a detailed role in ensuring that organisations are brought back on track and that budget problems are solved as quickly as possible. We must reach a stage at which we can again trust such organisations, by ensuring that a system is in place and by ensuring that the quality and professionalism of the people who lead such organisations are such that they develop and deliver effectively. I am confident that Scottish Enterprise can be in such a position early in the 2006-07 financial year, so that Jack Perry and Sir John Ward can get on with their number 1 responsibility, which is to grow the Scottish economy and deliver new jobs and economic opportunities for Scotland.

A balance will always need to be struck between the level of ministerial intervention and the degree to which we entrust the leadership of organisations with the delivery of key policies as set for them by the Executive. Over the past few months there has been far more ministerial involvement than normal, because there have been difficulties.

It is vital—as I said earlier—that, on economic development and other issues facing the Scottish economy, we find a way for politicians, ministers, the public sector and the private sector to work together to maximise opportunities for Scotland. We have some great opportunities. This morning, I announced an investment of £17 million by Invitrogen to secure its European headquarters in Inchinnan, and the Wyeth deal was announced recently. There have been lots of positive announcements for the Scottish economy in relation to life sciences and financial services.

Let us find a way of building our reputation and building the opportunities for Scotland's future.

That will require a different approach from the Enterprise and Culture Committee, from the Parliament and from me, as the minister who works with Scottish Enterprise. We must try to set aside party differences and ensure that we all work together in Scotland's best interests. As the Minister for Enterprise and Lifelong Learning, I would like to play a key role in securing that.

At the weekend, a leading business figure in Scotland criticised the Executive, saying that ministers had not approached him to involve him in business or in other initiatives. Let us get beyond that. A good example is the business in the Parliament conference. Where there are criticisms, let us bring businesspeople and politicians from other parties in and try to achieve a more consensual approach. We must ensure that, if business leaders feel excluded or feel that it is difficult for them to get involved, either through Scottish Enterprise or through me and the Enterprise, Transport and Lifelong Learning Department, we make them feel welcome and use their skills and experience to develop Scotland's economy.

Susan Deacon: Thank you, minister. I am grateful for your reply. In reminding us of some of the major opportunities and challenges that we face, you have reinforced my concern that many of the big, strategic issues have been masked by the claims and counter-claims in the noisy debate that is taking place around Scottish Enterprise. I am interested to know a little more about how you are going to create the climate to which—judging by your earlier answer—you aspire, which will move us on from here.

Let us be honest about it: there are echoes of the past. This is not the first time that there have been debates about goings-on in Scottish Enterprise and that questions have been asked about the extent to which ministers are supportive and so on. If we are serious about having an enterprise agency that is bold, strategic, decisive, innovative and not risk averse, surely the climate must change fundamentally? I am waiting to hear a little more about how you are going to make that happen.

Nicol Stephen: Let me make it clear that I want Scottish Enterprise to be bold and decisive, to be able to take appropriate risks and to do great things for Scotland's economy. Underpinning that must be an organisation that is efficient and professional and that keeps within its budget. It would be a wrong signal for a minister to give if I signalled to Scottish Enterprise, or to any other agency or organisation for which I am responsible, that sound budgeting is not important.

I want to get the organisation back on track and ensure that the recommendations of the KPMG report are implemented as quickly as possible. I am sure that Sir John Ward and Jack Perry want exactly the same thing. They have considerable experience in the private sector, and they know as well as anyone around this table that the best way for the organisation to deliver effectively in the future is to have the best and strongest financial management and to deliver within budget in 2006-07. That is the best way to ensure that the energies of the senior management in the organisation are released, so that they can deliver in a dynamic and effective way on major projects for Scotland's future.

I was with Jack Perry this morning, at the Invitrogen announcement. That is the kind of place where I would like to meet him over the next few months and years, not in discussions about the financial and budgeting difficulties that have been experienced within his organisation.

Susan Deacon: I have a final question on a separate matter—the future structural and decision-making arrangements within Scottish Enterprise, which you touched on in your opening remarks. The direction of travel at national level—within the Scottish Executive and Scottish Enterprise—has for some time been towards the idea of metropolitan regions. In your recent statement to Parliament you endorsed and embraced that. However, as you have said, in addition to its metropolitan region decision-making tier, Scottish Enterprise will still have the local enterprise company decision-making tier. How will you avoid duplication and slowing down the process?

Nicol Stephen: I continue to believe firmly that we should retain the opportunities that come from the creation of new businesses and new business opportunities; from the network of board members with business experience at local enterprise company level; and from developments at local enterprise company level. There are 12 local enterprise companies in Scotland and some of Scottish Enterprise's best work takes place at local level.

If we focused solely on strategic, national or international projects, we would lose the emphasis on stimulating an entrepreneurial culture and encouraging small businesses. We would suffer as a result, which is why I have always supported the enterprise trusts. Before local enterprise companies were established, enterprise trusts were created, usually by business people. I do not know whether committee members recall those days, but Scottish Business in the Community was central in developing enterprise trusts. Many senior businesspeople gave a great deal of time to the core enterprise trust network. They encouraged a lot of young people to come into business and helped a lot of new business start-ups.

I would like all those elements to be retained. That is not in any way inconsistent with metropolitan regions or projects of national significance. To have a successful economy, we need all those elements. In the United States, in areas such as Boston, the San Francisco silicon valley area and Seattle, we see huge organisations of global significance—some of the biggest companies in the world—but we also see strong support for small start-up businesses, for risk takers and for entrepreneurs. Some of those entrepreneurs will turn into the Microsofts or the Ciscos of tomorrow.

Scotland has to be ambitious, so we have to attract the big projects such as Wyeth or Invitrogen, but we also have to create the small, growing, successful companies—the Prostrackans, the Wolfsons, the Ardanas, the Axis-Shields, the Cyclacels and the Optoses of today and tomorrow. That is an important challenge, not only for Scottish Enterprise but for all 12 of the local enterprise companies.

Susan Deacon: I doubt whether anybody would question the need for effective involvement of businesspeople at a local level, but the jury is still out on whether we need the proliferation of tiers of decision making that we will have. Unfortunately, we do not have time to discuss that in detail today.

Nicol Stephen: I understand that, and there is a continuing debate. Earlier, I was asked whether I was giving strong support to Sir John Ward and Jack Perry, and my answer was yes. Part of that strong support is the endorsement of their proposal to retain the 12 local enterprise companies as well as establish the metropolitan regions. I was pleased to give strong support for that.

Susan Deacon: You have pre-empted the very question of clarification that I wanted to ask. You have just repeated what you said earlier: you endorse Scottish Enterprise's proposal to retain decision making at LEC level. In your statement to Parliament you said:

"I have therefore asked Scottish Enterprise to retain local decision making in Scotland's local enterprise companies."—[*Official Report*, 30 March 2006; c 24610.]

Can you clarify who asked whom what?

15:30

The Convener: And can you do it in two minutes?

Nicol Stephen: I can do that very succinctly. Scottish Enterprise asked me to retain the 12 local enterprise companies. The board of Scottish Enterprise endorsed that approach.

I feared that, given the current budget problems, the level of spend and discretionary budget approval given to local enterprise companies could be reduced to virtually nothing or could disappear altogether. Local enterprise company board members would find that difficult, particularly during the current financial year, and might withdraw their support or lose their enthusiasm for serving on LEC boards. I am still concerned about that. The next few weeks are going to be difficult for Scottish Enterprise.

I want to signal clearly that local enterprise companies should continue to exist and that there should continue to be a level of devolved budget to the business leaders. Not only do I strongly support Scottish Enterprise at the national board level, I support the dozens of business leaders who so freely give of their time and expertise to the local enterprise companies. I want them to be dynamic, motivated and involved in the enterprise network.

Richard Baker (North East Scotland) (Lab): I have two questions about local schemes. First, I appreciate your answer to Murdo Fraser about the Executive maintaining its targets for the number of modern apprenticeships. However, I have had a letter from four local companies in Grampian, which says that their skillseekers and modern apprenticeships training provider has said that the funding for those programmes

"is being severely restricted with immediate effect."

That follows a similar letter about the get ready for work programmes. There are clearly many local concerns about the issues. Once Scottish Enterprise finalises its budget, will there be sufficient funding to ensure that those local schemes continue into the future?

Nicol Stephen: Unfortunately, I cannot go through every budget head and scheme today and give you the sort of guarantee that you are looking for. All I can do is signal that where the Executive provides flexibility or support to Scottish Enterprise, a significantly better outcome will be achieved, particularly if the £60 million in savings through budget reduction that the convener identified earlier is achieved. Discussions will be completed in time for the Scottish Enterprise board to fix an appropriate budget by 12 May.

I want to ensure that a range of priorities, including the skills and training programmes, will be protected, in the same way that I have just assured you that the business gateway and modern apprenticeships will be protected. However, at the moment I cannot go through the full budget and give you all the assurances that you want, because the budget has not been finalised.

Richard Baker: I appreciate your answer. Those schemes are a particular priority.

Because of the issues with Scottish Enterprise's budget, the employability framework, which several organisations have been eagerly expecting, has been delayed. Is it your hope that we will be able to build on the success of schemes such as that?

Nicol Stephen: Clearly, the employability framework is important, as is the support given to those who are not in education, employment or training. You know the Scottish Executive's priorities, because they are contained in our policy documents and the partnership agreement.

The committee is part way through an important investigation into Scottish Enterprise and its budget, and if it wished to express or pass on particular concerns—either the concerns in the correspondence that members have in front of them, particular concerns of individual MSPs or the committee's collective concerns—it would be appropriate for it to do so, but it would require to act quickly, because we will reach decisions on all the issues in the timescale that I described.

Richard Baker: I appreciate that offer from the minister and I hope that the committee can take it up. One thing that the committee can do is impress on those involved the importance of making speedy progress on the employability framework, because it has been a priority for some time and those who are involved in training and getting people ready for work have been expecting it for a long time. I hope that the committee can do that.

The Convener: I just want to clarify a couple of things before you go, minister. First, you say that the Scottish Enterprise board will be able to take its decision on 12 May. Obviously, you will have to have told the board before then how much of the £60 million you can make up either in cash or in non-cash items. When do you hope to announce that decision?

Nicol Stephen: I hope that it can be discussed and agreed with Scottish Enterprise over the next few days and in good time for the board to take a decision on 12 May. Essentially, that means that it will have to be agreed before the middle to end part of next week.

The Convener: Will you make a statement to Parliament once the decision is taken?

Nicol Stephen: No decision has been taken, but I realise the importance that the committee may attach to any decision. I would be prepared to have discussions with you and others about the most appropriate way for the decisions to be made public.

The Convener: Just to get some kind of handle on this, you mentioned earlier that you had been given an assurance that Scottish Enterprise can meet all its legal financial commitments. Scottish Enterprise starts this financial year £60 million down, so once it has met all its legal financial commitments, how much money is left in the kitty?

Nicol Stephen: Clearly, there are areas that could have been reduced legally, but doing so would have had significant policy consequences. We discussed some of those during the meeting when we talked about modern apprenticeships and other training provision. There would also have been consequences for a range of international projects, which I think are extremely important to Scotland's economic future. Further, major opportunities may come up within the financial year that we would not want to miss out on.

The Convener: I am sorry, but I just want to know how much is left in the kitty. As things stand, with Scottish Enterprise being £60 million down, how much is left for discretionary spend, which is what you are referring to? Once Scottish Enterprise has met its legal requirements, how much is left?

Nicol Stephen: I understand. That is a slightly different question, but I think that it is a more helpful way to look at the matter. Given the level of cuts that you talked about—the £60 million—there was not very much for discretionary spend. It would be wrong of me to put a figure on that until we have agreed the budget that Scottish Enterprise is negotiating with us. I would prefer not to be drawn further on that.

The Convener: Surely, as things stand, you must know how much is available for discretionary spend.

Nicol Stephen: That would imply that a £60 million reduction in budget would be implemented. As I said, I believe that it would simply reinforce the concerns and fears that have been talked about around the table if I was to start to shade in the impact of that level of budget reduction. We hope to avoid that and to have a sound Scottish Enterprise budget for 2006-07. However, that will not be done without difficulty; the organisation will still have to take difficult decisions.

The Convener: It sounds as though there are still a number of unanswered questions.

Nicol Stephen: Some appropriate discussions still need to take place, but I fully appreciate that they need to happen quickly. That is why all the work must be done in time for the board meeting on 12 May. To be frank, I am not sure that a full ministerial statement on the issue would be justified. What I would be able to announce next week would be purely the financial settlement. The detail of the budget proposals would require to go to the board, first and foremost. It seems to me that it would be inappropriate for me to announce to the Parliament first what the board will discuss at its meeting on 12 May. However, it is entirely appropriate for the Parliament to know as soon as possible that I have agreed a budget with Scottish Enterprise to present to its board on 12 May. As I have said, I hope that we can have further discussions about the most appropriate way of bringing that into the public domain and making it known to members of the committee.

The Convener: Okay. I think that we have covered all the points that we wanted to raise with the minister today. We may invite him back at a future date to discuss matters further but, in the meantime, I thank him and his officials.

We had pencilled in 9 May as the date on which Scottish Enterprise would come back to speak to us, but it is clear from what the minister has said that that is far too early. Will members leave it to me and the clerk to rearrange a date?

Christine May: The minister suggested that the committee could write to him to outline its concerns, which have been well expressed today. Perhaps a letter that highlights the need for a proper balance between skills and training and support for small and medium-sized enterprises and major national strategic projects, for example, could be sent on behalf of the committee.

The Convener: Christine May, the clerk and I could prepare a draft, which we will circulate to committee members before it is finalised and sent to the minister. A copy could be sent to Scottish Enterprise. Are members happy with that proposal?

Members *indicated agreement*.

The Convener: Do members want to suspend the meeting for five minutes for a comfort break?

Members *indicated agreement*.

The Convener: Okay.

15:41

Meeting suspended.

15:49

On resuming—

Subordinate Legislation

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

The Convener: We reconvene for agenda item 2. I welcome Fiona Hyslop, who has joined us for the item, the Deputy Minister for Enterprise and Lifelong Learning, Allan Wilson, and his officials, whom I am sure he will introduce before he explains the draft order.

The Deputy Minister for Enterprise and Lifelong Learning (Allan Wilson): Thank you very much, Presiding Officer—I mean convener.

Richard Baker: That would be an unlikely elevation.

Allan Wilson: I should say that I am not a well man. That might explain my momentary lapse.

On my left is Gill Troup and on my right is Hugh McAloon. I am sure that they will be happy to help by supplementing what I say.

I welcome the opportunity to discuss our higher education tuition fees proposals and the draft Student Fees (Specification) (Scotland) Order 2006, which we intend to lay on 11 May. First, I will run through our proposals, which will probably take a wee bit longer than doing so normally takes. However, I am sure that members will bear with me.

The proposals relate to tuition fees for 2006-07. We propose to increase the annual tuition fee for new entrants to full-time degree courses and initial teacher training courses from just under £1,200 to £1,700 and to introduce a separate, higher fee of £2,700 for entrants to full-time medical degree courses. I will explain how doing so will affect the various groups of students that are involved.

Students who are already on courses, including students who are transferring from another institution, will not experience the proposed increase—their fee will be set at £1,200. Students articulating with advanced standing from a full-time sub-degree course, such as a higher national certificate or a higher national diploma course, to a full-time degree course will not experience the increase either—their fee will also be set at £1,200. Students who have decided to defer their studies for a year and agreed to do so with their institution before 1 August 2005 will likewise not experience the increase—their fee when they enter the course will be set at £1,200.

New and existing Scotland-domiciled students will be unaffected by the changes. Those who are currently eligible for full tuition fee support from the

Student Awards Agency for Scotland will continue to be eligible for full support. Self-supporting Scotland-domiciled entrants, including those who have previously received support from SAAS, will have to pay only what they would have paid under the previous fee regime. The difference between the £1,200 that will have to be paid and the higher fee will be paid on their behalf by SAAS. Non-United Kingdom European Union-domiciled students will receive the same support as Scotland-domiciled students receive. The only students who will have to pay the new, higher fee will be entrants to full-time courses that are covered in the order who are domiciled in the rest of the UK. Those students will not have to pay up-front fees, as they can choose to defer their fees by means of a student loan.

I will outline the thinking behind our proposals. From 2006-07, a new fee regime will begin to emerge in the rest of the UK with the introduction of variable fees. That regime will allow institutions to charge fees of up to £3,000 a year on the proviso that at least £300 of that fee is spent on student bursaries. As members know, we are not going down that path in Scotland. The Executive is committed to not introducing variable fees in Scotland and to providing full fee support for the majority of Scotland-domiciled students who are studying in Scotland.

However, the higher education market is UK-wide—indeed, it is an international market. Students move freely around the UK and more widely within the EU. Many students from around the UK and the EU choose Scottish institutions because of the excellence of teaching that they offer—we can proudly boast of the international research reputations of Scottish institutions. We are immensely proud of our institutions and regard their being able to attract the best students from throughout the UK as a good thing for them and for Scotland more generally. Even with the changes that are taking place elsewhere in the UK, Scottish institutions will remain a good choice for students from throughout the UK.

Our overriding interests are in maintaining our institutions' ability to attract the best students from throughout the UK, while protecting the interests of Scottish students. That is a balance that we are keen to strike. Generally speaking, those interests coincide, as Scottish students are best served by institutions that are internationally competitive and capable of attracting the best. That feeds into the teaching input and ensures that Scotland-domiciled students are in receipt of the best possible teaching. However, there must be some equilibrium in cross-border student flows.

We have no evidence that suitably qualified Scotland-domiciled students are currently unable to obtain places at Scottish higher education institutions. However, if the current fee regime for students from the rest of the UK who come to Scotland were to be maintained, for a degree course, a gap of up to £5,400 would open up between the cost of tuition at Scottish higher education institutions and the cost at higher education institutions elsewhere in the UK. Therefore, in crude terms, the cost of a degree in Scotland could be 40 per cent of the cost of a degree in the rest of the UK. Of itself, that would not necessarily be a problem because, as I have stated, we will not enter the fee regime that will emerge in the rest of the UK. However, the concern is that that fee differential between Scotland and the rest of the UK could create a temptation for students from the rest of the UK to make decisions on the basis of cost alone. That would be against Scottish students' interests, if they were subsequently displaced from our institutions in significant numbers. On that basis alone, we propose to increase general tuition fees to £1,700 a year. We do not want to exclude students from the rest of the UK; in fact, we welcome them and offer them opportunities to study at some of the best universities anywhere.

Even with fees of £1,700 a year, for a degree course, we will still offer an average saving of £1,300 compared with the cost in the rest of the UK. The proposed fee takes account of the cost of an extra year's study and gets us as close as possible to a level playing field on overall study costs with the rest of British higher education. At this early stage, evidence is emerging that our approach has been successful. The earliest indications are from the Universities and Colleges Admissions Service applications data for 2006-07 entry, which show a 1.1 per cent increase in the number of applications to Scottish higher education institutions from students who are domiciled in the rest of the UK. That figure is well within the historic fluctuation for the data, so I am encouraged that we are on our way to achieving the objective of maintaining the equilibrium in cross-border flows. In the coming few years, we will continue to monitor closely data from UCAS and the Higher Education Statistics Authority as changes throughout the UK bed in.

We propose a significantly higher fee for medicine than for other subjects, for the simple reason that the situation in our medical schools is significantly different. If I may, I will take some time to explain in detail the rationale behind our proposal for medical fees. Medical degrees generally last for five years, whether they are undertaken at Scottish medical schools or at medical schools elsewhere in the UK. Therefore, an increase in fees in the rest of the UK without a response in Scotland would lead automatically to deeper disparities in the costs of study for medicine than the disparities in other areas of study.

Although some other degree courses do not follow the general degree model, we have chosen to leave the fees for them at the same level as those for other courses, but we believe that medicine is different. The ratio of applications to places at Scottish medical schools stands at 10:1. The costs of provision are significant and fall on NHS Scotland and our HEIs. More than 40 per cent of entrants to our medical schools already come from the rest of the UK. Research that was published as part of the Calman review of basic medical education shows that Scotland-domiciled entrants to our medical schools are 2.25 times more likely to be working in NHS Scotland 10 years after graduation. All those factors make medical training an issue of national importance that moves beyond the interests of higher education and into the realm of long-term public health provision in Scotland. That is why we will treat medicine differently.

From an early stage in our deliberations on cross-border flows, we knew that medical fees in the rest of the UK were likely to attract the maximum fee possible. That was predictable, given the high demand for places, and our prediction has been borne out by subsequent decisions. Similarly, it was predictable that any bursaries that were made available to attract students from disadvantaged backgrounds to HEIs in the rest of the United Kingdom would not be directed specifically at high-demand subjects such as medicine.

16:00

From an early stage, it was apparent that the average fee for medical courses in the rest of the UK would tend to be no less than £2,700. A five-year course with a fee of £2,700 a year will cost the student £13,500 in fees over the course of their studies. If fees remained unaltered in Scotland, the cost advantage for students who chose to study in Scotland would be £7,500. Even if medical fees were raised to £1,700 a year, the cost advantage would come to £5,000. The only conceivable outcome of either approach would be more pressure on places at Scottish medical schools, which would be likely to result in a reduction in Scottish entrants to the profession in the short term and a possible shortage of doctors in NHS Scotland in the long term.

The consultation on the draft order has been useful for tightening the order up. In the draft order that the Scottish Executive will lay before the Scottish Parliament on 11 May, there will be some significant technical changes. First, we will define the courses to which tuition fees for the 2006-07 academic year relate. Previously, those have been defined as courses that commence before the end of the calendar year 2006. However, as Universities Scotland pointed out in its response, many of our institutions offer flexible start points for their courses throughout the academic year. Therefore, for the purposes of the order, we have defined the academic year as running from 1 August until 31 July.

We will also be much clearer on deferring students than in the previous version of the order. Universities Scotland made some useful comments on that matter, and we have acted on them.

We also plan to tighten up the definition of the postgraduate courses that will have their fees regulated by order. Those will be only the initial teacher education courses, which have traditionally been charged at the undergraduate rate and are of national significance.

Another matter on which we will introduce greater clarity is the distinction between full-time and part-time courses. Fees for part-time courses have never been regulated, and there are no plans to change that. The documentation that accompanies the order will be much clearer on that than it was in the previous draft. Again, Universities Scotland made a valuable contribution to our thinking on that.

Apart from making technical comments on the draft order and accompanying documentation, a range of respondents have restated their positions on our proposals. The National Union of Students Scotland and other student representative bodies have restated their principled opposition to tuition fees in general and variable fees in particular. As I stated earlier, the Executive is committed to paying tuition fees for Scotland-domiciled students and will not introduce variable fees in Scotland. That position is similar to that of NUS Scotland, but we differ in our position on fees for students from the rest of the UK. Our position on tuition fees for Scotland-domiciled students is delivered through the student support system and each Administration in the UK is responsible for student support irrespective of where in the UK the students study. We are not in a position to provide fee support for rest-of-the-UK students who study in Scotland and, for the reasons that I have outlined, it would be counter to the interests of Scottish students to do so.

The NUS Scotland makes a good case about the cost of an extra year's study in Scotland. If we accept the data that the NUS uses in its consultation response—I have no reason to doubt them—under the current system, the extra cost of studying in Scotland relative to the rest of the UK stands at £3,190. Under our proposals, the gap narrows to £990.

Were the Executive to maintain its current fees regime, according to the NUS's figures, it would be

£2,210 cheaper for rest-of-the-UK students to study in Scotland than at an institution in the rest of the UK. That would be a turnaround of £5,400 in favour of rest-of-the-UK students on the current situation. That would present clear risks to the interests of Scottish students, and we would rightly be accused of inaction at their expense if we did not respond appropriately—indeed, my former boss, Jim Wallace, said that that was not an alternative.

The NUS also made some good points on medical students. The mix of socioeconomic backgrounds of students who enter Scotland's medical schools does not reflect the mix of society. That situation does not benefit our students, medical schools or the national health service. However, it would not be in the interests of Scots applicants to medical schools, whatever their background, if we were inactive in the face of significant change in the rest of the UK. Increases in applications from the rest of the UK if a gap were to open up of up to £7,500 between the cost of studying in Scotland and the cost of studying elsewhere would further reduce opportunities for Scotland-domiciled students from disadvantaged and non-traditional backgrounds to enter our medical schools. We should not undermine the good work that is going on in our medical schools to widen access to medicine by making an illogical decision on fees.

The response from Universities Scotland makes many useful points, but we disagree on the timing of the proposed changes. Universities Scotland argues for a year's delay on the ground that there is a need for more evidence and more time to introduce such complex changes. We all agree that the move towards the introduction of variable fees in the rest of the UK is generating uncertainty throughout the British higher education system. Risks will be attached to any change amid such uncertainty but, as I said, doing nothing would carry much greater risk. We have outlined what we believe are moderate proposals and, even at this early stage, UCAS data appear to show that we have maintained historic levels of applications from the rest of the UK. There is a suggestion that there is a drop in the number of applicants from the rest of the UK to our medical schools, but I have not yet seen those data and, as far as I am aware, UCAS has not published them. However, even if there is such a drop in applicants for 2006-07, there will be no shortage of suitably qualified Scotland-domiciled applicants who are desperate to take up medical school places and—dare I say it—are perhaps keener to work in the NHS in Scotland in the long term. There will be no shortage of high-calibre applicants to our medical schools.

I have sympathy with the institutions, in that it is impossible to make changes to fees such as we have proposed without additional operational complexity during the transitional phase. However, I am reassured that the Scottish Further and Higher Education Funding Council, SAAS and the Student Loans Company have been working closely with the Executive to minimise disruption to institutions.

I thank the committee for its indulgence in giving me the time to explain fully our proposals on fees. I look forward to hearing members' comments and to the debate in the Parliament that will take place when the order is laid. I remind the committee that our overriding motivation is to protect the interests of Scottish students and to ensure that our institutions can continue to attract the best students from throughout the UK. That is a balanced judgment and the measured proposals that I have outlined will achieve both aims.

The Convener: Thank you for your comprehensive explanation. I invite members' questions.

Murdo Fraser: I tried as hard as I could to follow your explanation, minister. You mentioned many figures, which I tried to jot down.

Fees for medical students are perhaps the most controversial aspect of the proposals. You said that Universities Scotland argued that the introduction of the increased fee for medical students should be deferred for a year. I have sympathy with Universities Scotland's position. You said that doing nothing carries risks; will you expand on that? You propose to introduce increased fees in the academic year 2006-07, in other words, for students who arrive at university in September this year. Applications for places in 2006-07 will have closed a long time ago—at least last autumn—and I presume that most places have been awarded, so where does the risk lie? How can more people apply for places, given that all the places have already been awarded?

Allan Wilson: As I have mentioned, there are two levels of risk—short-term risk and long-term risk. When the former Minister for Enterprise and Lifelong Learning, Jim Wallace, said that doing nothing was not an option, that sent out a clear signal that we intended to balance cross-border flows. Subsequent UCAS data show that we have been largely successful in doing that, albeit that there has been a 1 per cent plus increase in the number of applications from students in the rest of the UK to Scottish institutions at the same time as there has been a decline in the number of applications from England-domiciled students to English universities. If we had not acted, there was a genuine risk that, in the short term, that disparity would lead to our getting out of kilter with our intention to maintain a balance in cross-border flows. That statistic shows that our action was correct.

In the longer term, there is a clear risk that doing nothing—and thereby opening up a gap of £7,500 in the cost of studying for the category of student that you mentioned—could mean that Scotland-domiciled students would be displaced from Scottish medical schools. We were not prepared to take that risk with the interests of those students. As you know, there is an argument about the knock-on effect that says that Scotland-domiciled students who qualify in Scottish medical schools are 2.25 times more likely to practise in the NHS here in Scotland. The displacement of Scottish students presents a longer-term risk that we might not have a sufficient flow of medical graduates into Scottish hospitals to meet our current or future requirements for doctors in our health service. I think that you will appreciate that someone in my position would not wish to take a risk either with the future of the NHS in Scotland or with the interests of Scotland-domiciled students.

Murdo Fraser: With respect, I do not follow your argument. Let us consider Universities Scotland's proposal, which was to defer the change for a year and to see what happened. If all the places at Scottish university medical schools have already been awarded, how could Scotland-domiciled students be deterred from applying and England-domiciled students be given an incentive to apply? If all the places have been awarded, there will be no impact on applications for 2006-07. What would be the risk in delaying the change for a year?

Allan Wilson: We had no intention of introducing a measure that would deter Scotland-domiciled students from applying this year.

Murdo Fraser: I am sorry; that was probably the wrong way to put it.

Allan Wilson: We were intent on maintaining a balance in cross-border flows. The statement that we made in advance of the closure date for applications to Scottish universities made clear our intention to introduce the order. We believe that that has had the effect of maintaining a manageable balance in the cross-border flows, albeit that the number of applications from prospective students in England for places in Scottish medical schools is still on the increase at a time when the number of applications to English institutions is decreasing. However, the disparity is within the historical margins for the flows and we believe that it is manageable.

Murdo Fraser: What risk would be created by delaying for a year?

Allan Wilson: There would have been a risk if we had not indicated our intention to introduce the order.

Murdo Fraser: I appreciate that, but we are where we are. If you were to take Universities Scotland's advice and to delay for a year the introduction of the additional fees, surely there would be no risk attached to that.

Allan Wilson: In the longer term, there would be the risk of a much more substantial increase in the number of applications that were made to Scottish institutions by England-domiciled students.

Murdo Fraser: We may have to agree to disagree on that point.

Allan Wilson: Do you not think that a difference of £7,500 between the cost of studying medicine here and the cost of studying it in England would serve to increase the cross-border flow of students from England?

Murdo Fraser: If you were to take the advice of Universities Scotland and to defer for a year the introduction of the additional fee for medical students, what possible damage could that do? If you signalled that you were going to bring it in a year later than is proposed, what effect could that have on the number of applications from students in England to study medicine here in 2006-07?

Allan Wilson: If we were to defer it, it would only delay the prospective increase.

Murdo Fraser: Which is what Universities Scotland proposes.

Allan Wilson: And we have said that we are not prepared to take that risk with the supply of doctors into the Scottish NHS.

16:15

Murdo Fraser: I have to say that you have not made the case that there is a risk, but we will agree to disagree.

Christine May: At a number of events that I have attended, NUS Scotland in particular has expressed the fear that by introducing the fee increase, a strong signal is being given that a door is open to implementing fees and fee increases across the board. What can you say to further reassure folk such as NUS Scotland that that is not the case?

Allan Wilson: I thought that I went to some lengths in my opening statement to point out that the only increase in fees beyond that which we propose would apply to medical students for specific reasons to address the issues about which I have just spoken. There are no plans to replicate that increase for any other group of students. I have reiterated that yet again. Special circumstances prevail in the medical schools that have to be addressed.

Christine May: My second question relates to higher education courses that are delivered in further education colleges—I have raised the matter before. Will the increase in support apply to those as well as to courses that are being delivered in universities?

Hugh McAloon (Scottish Executive Enterprise, Transport and Lifelong Learning Department): When you say "increase in support", do you mean the higher fee?

Christine May: The higher fee.

Hugh McAloon: It will be higher if colleges offer full-time degree courses. For HND and HNC courses, which make up the overwhelming number, the fee will be set at £1,200, which is an increase of just below inflation. We are resetting that level.

Christine May: Will colleges in which elements of university courses are delivered, but which are currently not supported at the same level as universities, get the same support?

Hugh McAloon: The fee level will be the same for the same level of provision. If a degree course is delivered in a college, the fee level will be £1,700, which would come from SAAS.

Christine May: That will be reflected in what is paid back to the college.

Hugh McAloon: It is a small proportion of the HE that colleges offer.

Christine May: I recognise that.

Shiona Baird: I return to Murdo Fraser's point. I agree with him that the evidence you offer is not logical. Turning that on its head, the situation seems grossly unfair to people who have already applied for medical courses this year. Because they do not know what fees they will be asked to pay, it will be much harder for them to plan their course.

I am concerned that the need to ensure that there is an adequate number of Scottish students to fill NHS places is not being best served by the proposed method. There was a suggestion that one of the reasons we do not have enough Scottish doctors is that we simply do not have enough registrar posts. Quotas were also discussed—and then dismissed without being fully investigated. I would like to know a wee bit about that.

My third question concerns the additional £7,500 of debt that would accrue to other UK students. I gather that that money is not being ring fenced at the moment to provide bursaries. Would it not serve the medical students and your inclusion agenda better to ensure that the money is ring fenced to provide bursaries to medical students?

Allan Wilson: The extra money that comes in goes towards student support more generally. The interesting statistic in terms of broadening out access to students from disadvantaged backgrounds and areas is that there is more likelihood of that happening to people who are domiciled in Scotland than those who are domiciled in England. We believe that measuring both circumstances helps to broaden access in general and helps to broaden access to medical school to disadvantaged students, albeit that that happens at the margins of the statistical base.

There are undoubtedly issues of supply and demand. We know that the ratio of demand to supply in terms of places is somewhere around 10:1. Of course, that is a reflection of wider demand in the NHS in Scotland. Calman examined that issue and, to a certain extent, that is why we are where we are.

The measures that we have proposed are directly related to Calman's recommendations about the need to maintain a supply of Scotland-domiciled students to Scottish medical schools to provide for the future needs of the NHS. If a Scotland-domiciled student is 2.25 times more likely to remain in Scotland after they have qualified than an England-domiciled one, it is important that we ensure that Scotland-domiciled students have a good chance of studying here. Undoubtedly, despite what Murdo Fraser said, if we did nothing, there would be a great risk that that figure would decrease.

We made it clear in statements during the consultation process that was carried out in advance of this order that it was our intention to regulate cross-border flow to protect the interests of Scottish students. Undoubtedly, that regulation will impact on the decisions of students and others. That is an inevitable consequence of the situation that we find ourselves in, which we are in through no fault of our own. Inevitably, there is a degree of uncertainty.

Had Jim Wallace not said that doing nothing was not an option, the demand from potential England-domiciled medical students would have been greatly exacerbated and there would have been a much bigger increase than 1 per cent in the number of applications from England-domiciled students to Scottish institutions. As I said, the rise is manageable, even though it has happened when the number of applications from England-domiciled students to English institutions has decreased by more than 3 per cent.

Shiona Baird: We will just have to agree to differ on this point. On the delay issue, if the consultation document responses suggest that a delay would be beneficial, we must ask why a decision is being taken that ignores that view. I do not think we have been given a clear answer to that question.

Allan Wilson: We did not ignore that response. In fact, I have said that I wholly appreciate the operational difficulties that these changes impose on higher education institutions in Scotland in the midst of their preparation for their next intake. I entirely appreciate that and hope that agencies and institutions will co-operate to ensure that the process is managed as effectively as possible. That was the primary reason behind the view that the proposals should be deferred for a year. We could not introduce quotas because of the constraints that that would place on academic freedom.

Shiona Baird: Will increasing student fees not have a similar effect on academic freedom? It seems to me that the aim will just be achieved in a different way.

Allan Wilson: No. I believe that the increase will protect the interests of Scotland-domiciled students who wish to enter medical school. In the longer term, it will also protect the interests of our national health service, which will undoubtedly continue to demand a supply of qualified medical personnel to practise in Scottish hospitals. That is a legitimate interest that is devolved to the Administration.

The Convener: We will need to watch our time as we still need to take evidence from the minister on the Bankruptcy and Diligence etc (Scotland) Bill.

Shiona Baird: I will end by saying that I see quotas as a more positive measure and the top-up fees as a negative measure. That is my interpretation of the matter, but I will leave it there.

Allan Wilson: We are not introducing top-up fees.

Richard Baker: Although the minister has said that no Scottish student will pay more under the proposed arrangements, NUS Scotland expressed concern that Scottish students who are studying a second degree might be affected. The Executive was asked to resolve that issue. Has it now been resolved?

Allan Wilson: I referred to that situation specifically. No one who is studying a second degree will pay more than they would have done under the previous regime.

Richard Baker: It has been suggested, I think, that there has been a fall in the number of applications to study medicine in Scotland for the coming year. Is there any evidence on that?

Allan Wilson: No published evidence is available as yet. I have seen anecdotal evidence saying both that there has been an increase and that there has been a decrease. UCAS figures on applications for medical schools have not yet been published, so no definitive evidence is available. However, even if the number of applications has gone down, we have an imbalance between supply of and demand for those places, as Richard Baker will know. The Executive would be irresponsible if it did not seek to match supply and demand to protect the interests of Scotland-domiciled students. That is what I believe I am here to do.

Richard Baker: Finally, I know that there has been a debate over whether places should have been offered by now, but some of those places will not yet have been accepted or achieved. I presume that that issue will also feature in the minister's thinking.

Allan Wilson: Obviously, there is a difference between applications and acceptances.

Susan Deacon: I am conscious of the fact that many of the wider issues have already been subject to considerable debate in the committee, in the full Parliament and through consultation. Therefore, I will confine my question to a practical point of detail concerning the implementation date of the draft order. If the order as drafted secures the necessary parliamentary approval, what will be the practical timescale for its implementation and what are the administrative implications of that? What communications will need to be put in place to implement the order?

Hugh McAloon: If the order as drafted is approved, it will come into force on 3 July. The people in Scotland's higher education institutions who would implement the changes have already been involved in discussions with us at a Universities Scotland seminar, at which representatives of the Executive, the funding council, the Student Awards Agency for Scotland and the Student Loans Company were able to speak. The seminar took place on, I think, 13 February this year and was fairly well received.

There has been a flow of information about what will happen in the institutions if the Parliament accepts our proposals and approves the order. The process has already started and the response has generally been pretty positive. So that people could see their own part of the process, various people who will be affected, including student finance officers and people who work in registry departments, came to the event. All the higher education institutions in Scotland were represented.

16:30

Susan Deacon: In simple terms, are you saying that the Executive can convey an instruction—in whatever shape or form that would take—to the institutions fairly quickly and that the institutions have the machinery in place to implement and communicate the revised arrangements?

Hugh McAloon: To students or within those organisations?

Susan Deacon: Both.

Hugh McAloon: We have liaised widely with the Student Awards Agency for Scotland, the Student Loans Company, the Department for Education and Skills and other organisations that are involved in the provision of information, advice and guidance to students around the UK. We have been doing that since we made our original proposals public, last July. We think that there has been sufficient information, advice and guidance for students.

In terms of communication with institutions, there has been regular liaison with Universities Scotland, which has been involved in the process since 2004, when we set up the implementation advisory group. A seminar was held in February at which all institutions were represented, and there will be discussions as and when issues come up. If institutions have specific issues or problems relating to students from elsewhere in the UK that they want to discuss with us, with the Scottish Further and Higher Education Funding Council, with the Student Awards Agency for Scotland or with the Student Loans Company, that is possible.

Fiona Hyslop (Lothians) (SNP): The minister said in his statement that there is no evidence that Scottish students are unable to obtain places in higher education institutions. We believe that there should be evidence-based policy making in the Parliament and the Executive. If there is no evidence that Scottish students are unable to obtain places, on what evidence are your proposals based? The increase in applications will result in only about 50 extra students, at most, coming across the border. There is not going to be a flood of fee refugees, yet you are moving the balance in higher education funding from grant-based funding to student fee-based funding. That is a fairly fundamental shift to make simply because 50 extra students will be coming from England to Scotland.

Allan Wilson: As I explained, applications are not the same as acceptances. The most recently published figures from UCAS show that the number of applications to Scottish higher education institutions from students in the rest of the UK is 1.1 per cent higher than the figure for the previous year, that the number of applications from Scotland-domiciled students dropped by 1.9 per cent, and that the number of applications to higher education institutions in the rest of the UK dropped by 3.7 per cent. UCAS figures on the number of applications to medical schools are yet to be published.

Had we done nothing—as, I presume, you are suggesting—those figures would have been further skewed by virtue of the fact that, instead of the difference to an English student of studying in Scotland being reduced to £990, it would have increased to £5,400. That would have acted as a further incentive and would have stimulated further applications from English students to Scottish universities.

Fiona Hyslop: I will try to follow your logic. Are you saying that the threat of your doing something was enough to make a change this year? That relates to Murdo Fraser's question about the threat of something. Was the threat of increasing the fees for English students communicated to every school in England? Did those students understand that there was that threat in Scotland, and was that part and parcel of their considering whether to apply this year for a place at a higher education institution in Scotland?

Allan Wilson: The de facto position is that it is cheaper to study in Scotland. I am sure that in some, although not all, instances that will influence the decision making of English students. Were we to maintain that position and increase the benefits to English students of studying in Scotland, not only would we lose much-needed revenue for wider Scottish student support; we would increase the incentive for English students to apply to study in Scotland. Even with the proposed increase in tuition fees, there is a difference between the cost to English students of studying at Scottish universities and the cost to their Scotland-domiciled counterparts, which benefits English students.

As I have said, the process remains within the limits of sound management—that has been proven—but it is a fact that there is still an increase. Fiona Hyslop mentioned a perceived threat. Jim Wallace made a clear statement of intent that we would seek to balance cross-border flows to maintain stability.

Fiona Hyslop: I am still not clear about what you actually did. You claim that an equilibrium was kept, but what was done to achieve that equilibrium?

Allan Wilson: I have said that taking no action to address the potential imbalance was not an option.

Fiona Hyslop: I want to ask about medical students. You have talked about having to ensure that there is no reduction in the flow of medical graduates into our hospitals. Are you aware of answers to parliamentary questions that Bristow Muldoon has been given that show that we lose English students not at the point of graduation, but later on, as a result of job opportunities and people wanting experience elsewhere?

You have stated that, regardless of whether there are variable fees in England, there might be a case for arguing for increasing fees for English students. Do you stand by the claim that the problem of the percentage of English students who are studying medicine is such that you would be prepared, regardless of variable and top-up fees in England, to increase their fees? The Calman report said that we have to expand the number of medical school places for Scottish students, but where does it point to increasing fees for English medical students as a solution?

Allan Wilson: We said that we would maintain the supply into the NHS in Scotland of Scottish doctors. Doing so is important in the context of our wider aspirations for the NHS of reducing waiting times, improving the quality of service and so on.

On the basis of the evidence that we have from Calman and elsewhere, we know that Scotland-domiciled medical students are 2.25 times more likely to remain in Scottish hospitals for the critical period of 10 years. Therefore, to maintain that supply and ensure that Scottish hospitals can continue to attract and retain doctors in an increasingly competitive medical environment, it is important to regulate the cross-border flow of medical students and ensure that Scotland-domiciled medical students—who, as I have said, are 2.25 times more likely to remain in Scotland—are not inadvertently or otherwise disadvantaged in the process. That is a logical and credible approach that will protect the interests of the national health service and of Scotland-domiciled applicants to Scottish medical schools, bearing in mind that the ratio of applications to places at Scottish medical schools is in the region of 10 to one.

Fiona Hyslop: May I ask a final, quick question on teaching, convener?

The Convener: If you make it quick.

Fiona Hyslop: Will students who want to go on to an initial teacher training course as a second degree pay £1,200 or the increased fee of £1,700?

Hugh McAloon: Fees will be paid for Scotland-domiciled students. Students domiciled elsewhere in the UK will be charged £1,700, which compares with £3,000 for students in the rest of the UK.

The Convener: Do you want to add to that, minister?

Allan Wilson: No. The matter has been covered.

The Convener: Thank you. The evidence has been helpful.

The committee must now decide what recommendations, if any, it wants to make to the Executive before the Scottish statutory instrument is laid—it is due to be laid on 11 May. Do members have any recommendations or comments to make?

Murdo Fraser: I have previously made the point that while I understand the need to address cross-border flows and do not object to the general principle of bringing in additional fees, I do have a particular difficulty with additional fees for medical students. In particular, I have not heard from the minister today a justification for bringing in additional fees for medical students from the academic year 2006-07. In line with submissions that we received in evidence, I cannot see any risk in delaying the implementation of that for a further year. My view is that the committee should say that to the Executive.

The Convener: Are there any other comments? Shiona, you obviously agree with Murdo Fraser.

Shiona Baird: Yes, I do, but I am concerned about the timescale because we do not have much time. Trying to change the established thinking of the Executive is asking a lot, but if we feel that we should do so, we should stand on our principles.

Richard Baker: I appreciate that committee members hold genuine concerns, but the minister is genuinely concerned that if a pre-emptive measure is not taken, there could be an uplift of applications that could exclude Scottish students from places in medical schools that they could take up with the benefit of bursaries—which I for one campaigned for. I have to say that on this occasion I do not agree in essence with the concern expressed by other committee members.

The Convener: Are there any other comments?

Christine May: I agree with Richard Baker.

The Convener: Okay. Given the number of times we have been through this argument, I suspect that it falls down party lines. I suspect that the non-Executive parties take a different line from the Executive parties. Would it be fair to say that?

Susan Deacon: I do not think that it is fair to make assumptions about people falling down on party lines. We have been through this matter repeatedly, but I am assured by some of what I heard in response to my question about the amount of work that has been done on a week-to-week basis, which we have not tracked, to set up the situation for the future. I am happy for us to go ahead and support the Executive's position, but I do not think that you should make assumptions, convener, about the basis on which people reach their views.

The Convener: Do you want to come in on this, Fiona?

Fiona Hyslop: Obviously, I do not get to vote on this committee, but the issue is whether to proceed on the basis of speculation and projection or on the basis of evidence.

The consultation proposals were made last July, but the Executive's case has been weakened by the latest UCAS figures, because we do not know what the medical application figures are—although there is speculation about them. We heard from NUS Scotland that they may have gone down, but that there is no evidence of that—the minister confirmed that. We either proceed on an evidence-based policy or we do not. Whether we agree with increasing fees is a point of principle, anyway. Obviously, as Susan Deacon said, people have taken a position on that.

Now that we have the evidence—or the lack of it—we must make a decision. We must decide whether we agree with the Executive and whether there is any justification whatsoever for increasing fees for medical students.

Mr Stone: I think that I am known to colleagues as not being an automatic Government-ticket man. Speaking as a parent of two students who are at Scottish universities, I think that the interests of our Scottish students are paramount. We already see considerable cross-border flow. On the balance of risk, I would rather err on the side of our students.

Richard Baker: I agree with what Jamie Stone and Susan Deacon said. Like them, my view is held genuinely and not because of party lines. We are equalising the position for English students who wish to study in Scotland or England. I hope that by doing that we are protecting university places that could be taken up by Scottish students.

Fiona Hyslop referred to a lack of evidence. The committee heard that although there might be a drop in the number of applications from English students to study medicine here, there is no evidence from UCAS about that. What we do know is that there was a big increase the previous year, so I do not think we can say that applications from English students to study medicine have fallen. Someone may take that line, but the evidence for it does not exist. I will maintain the position that I expressed earlier.

The Convener: Would it be fair to ask the clerks to draft a letter to the Executive that reflects the different views held by the committee? Or does the committee want to push this to a vote?

Susan Deacon: We have the *Official Report* for that purpose. That is the device that is normally used in these circumstances to make ministers and the wider Parliament aware of our views.

The Convener: I am happy to do it that way, but the issue is whether the *Official Report* will be ready in time: the order is being laid next Tuesday. Is everybody happy either to use the *Official Report* or to have a letter drafted if the *Official Report* will not be ready in time?

16:45

Murdo Fraser: There is no consensus around the issue and there is little point pressing the matter to a vote. If we cannot get the *Official Report* in time, we need to communicate the different views that have been expressed to the Executive.

The Convener: Okay. Is everybody happy with that?

Shiona Baird: Did Murdo Fraser say that he did not want to press the matter to a vote?

Murdo Fraser: That is correct.

Shiona Baird: I am inclined to press it to a vote—or do we not need one?

The Convener: We do not need a vote today, I am advised.

Fiona Hyslop: I suggest that this is quite important. This is a new procedure.

The Convener: Remember that the actual order will come before the committee, and we can make a recommendation to the Parliament. That might be the best time to vote on it. I suspect that the Executive is fairly well aware of the views around the table, as its officials have been sitting listening. Are we agreed on that?

Members *indicated agreement.*

The Convener: Okay—we agree not to agree.

Bankruptcy and Diligence etc (Scotland) Bill: Stage 1

16:46

The Convener: Given the time that we have, we wish at this stage in proceedings to narrow our discussion down to the key issues, or rather to highlight them. I have received a request from one committee member on the possibility of delaying our consideration of the bill until next week. From our point of view, as we are not having a session on Scottish Enterprise, that would not be a problem, provided we were pretty near to agreeing our report. I believe that the Deputy Minister for Enterprise and Lifelong Learning will be in Australia next week, however.

Allan Wilson: Yes, I will be.

The Convener: That would make things quite difficult.

As part of our discussions, we can proceed with our report and we can pursue some more issues. It might be useful to start by asking the minister to focus on the areas where the Executive might be changing its mind, altering its position or drafting amendments. We have identified 14 major areas that we want to ask you about. I suspect that you are aware of most of them, as your officials have been listening to the evidence. It might be useful if you could kick off the discussion, minister. We can then try to clarify what the key areas are. Is that all right, Jamie?

Mr Stone: I am happy with that as long as I can come in with a question.

The Convener: Of course.

Allan Wilson: I am happy to proceed according to that constructive approach. There are certain areas where we are reviewing the current position with Cabinet colleagues, and that may or may not result in changes. I cannot give details on those today, although there are a couple of areas where I can say that we have decided to make changes, and I could indicate in general terms the areas where we are reviewing what might go into regulations, assuming that the powers are given to us. Perhaps we could have a useful discussion around that. The committee will have been subject to the same representations from various interests as we have.

Four principles guide us in that regard. There should be more sharing of information in the enforcement system, with better-quality information; old and arguably ineffective diligences should be modernised; barriers to business, which we talked about last time, should go; and the right balance should be struck between the interests of debtors and those of creditors.

On sharing better information, people are often surprised to learn that the Executive does not collect debts for people, never mind guarantee their payment. On occasion, that lack of understanding can cost people time and money. For instance, people who can pay their debt but who do not know that they can get money advice are less likely to get time to pay, meaning that they will struggle on in a situation that they would be better advised to get out of.

The bill will fix that situation by establishing the new and independent Scottish civil enforcement commission, which the committee has discussed; creating a new information disclosure scheme, which we feel is important; and making better use of our dealing with debt package, which is linked to all the new money advisers that we have set up over the past few years. We are looking at the matter as part of our review of the operation of the entire debt arrangement scheme.

Modernisation of the system has long been needed; indeed, the bill will repeal acts of the old Scottish Parliament. Perhaps that is appropriate in the year in which we celebrate the union of the Crowns.

Murdo Fraser: The union of the Parliaments.

Allan Wilson: My mistake.

The Convener: Did you use the word "celebrate", minister?

Allan Wilson: Indeed. How could I make that mistake?

We are sharpening old, but still effective tools. Moreover, the bill replaces adjudication with land attachment and residual attachment, and we are considering the implications of such measures for creditors and debtors. The bill also modernises the law on floating charges, helping businesses that lend or borrow money, and new diligences such as land attachment will make it harder for the "can pay, won't pays" to avoid their debts.

We need to strike the right balance. As I said at the beginning of the process, I intend to carry that approach through all three consideration stages. After listening to the concerns that have been expressed and considering the representations that we have received, I can say publicly that, in light of sheriff officers' concerns, we will change the name of the new profession to judicial officer. The new officers will be appointed by a senior judge on the recommendation of the Scottish civil enforcement commission. I know that, like me, the committee has received other representations. I hope that these measures will not only modernise but clarify the process.

We are looking closely at issues such as debt arrangement, land attachment and apparent insolvency and expect to bring forward proposals for members' consideration at the stage 1 debate.

The Convener: Have you had time to look at the Finance Committee's report? If so, have its comments on the proposed new commission caused you to rethink that part of the bill?

Allan Wilson: In the light of others' comments, we looked again at the report. However, we still believe that the commission remains the best route for addressing these matters.

Michael Matheson: If the commission is the best route, what other options were considered?

Andy Crawley (Scottish Executive Justice Department): The first option was, of course, to leave the existing system as it was. However, we were persuaded that that was not a good approach, and the committee has heard from witnesses who acknowledge that there are difficulties with the current regulation of enforcement and support the commission's establishment.

Once we had decided that it was best to reform this area, we considered a range of options from expanding the civil service and carrying out more work in-house to establishing a system of independent or quasi-independent regulators. For example, we considered whether it would be appropriate to add the functions to an existing public body such as the Scottish Court Service or the Accountant in Bankruptcy. We considered co-hosting the commission with an existing public body so that the commission would be a separate legal entity, but it would share offices with the Scottish Court Service or some other existing public body. The final option we considered was a fully independent commission, which is the model that appears in the bill. We considered six options in total, and I believe that a letter that sets those out will be sent to the committee so that you can see what they are and how we costed them.

The key point about value for money, which seems to be what you are driving at, but you will correct me if I am wrong—

Michael Matheson: It might be.

Andy Crawley: In that particular area, because we are dealing with court functions and because debt is a very large area of economic activity—hundreds of millions of pounds are at stake; the figures might be surprising—we concluded that by far the best way to tackle it was to have an independent commission that would be clearly separate from the Executive and which would have an independent voice. Most of the other options would not provide that. Compared with that of most of the other options, the additional cost of having an independent commission was getting on for £100,000 per year; I think that we projected a figure of £98,000. We concluded that that would be good value for money. Independence in this area is so important that it is worth paying that much extra over the other options that we considered, not least because as well as regulating court offices, which is the main thrust of what the commission will do, it will provide other information and research benefits and the kind of evidence-based policy to which we will all aspire in the future as well as today.

Michael Matheson: It will be interesting to receive that letter and to see the detailed analysis of the six different options. I am not necessarily persuaded that the commission's independence would be compromised by its cohabiting with another body in the same building. It might be that some economies could be gained through the sharing of some common resources, which could help to reduce the operating costs of such a body.

Allan Wilson: I was not persuaded of that either.

I was labouring under the misapprehension that the committee had received the letter, but obviously not. It will address in some considerable detail the issues that I and others have raised about the process, and I hope that it will allay some of the concerns that have been expressed about how we came to the conclusion that not only is this the optimum means of addressing the issue, but a cost-effective means of so doing.

Michael Matheson: I presume that we will have the letter before we start our stage 1 report.

The Convener: I hope that it will be circulated before the *Official Report* is.

Michael Matheson: My second point is about land attachments and the introduction of a form of diligence in that area. The minister will be aware that the committee has expressed concerns about the matter and the possibility of someone's house being sold as part of the process of recovering debts that they have acquired.

I have no problem with someone who has accrued debts and has property being properly pursued for the recovery of the debts. I am, however, concerned about the possibility of a family losing their house and potentially being left homeless, especially if, under current homelessness legislation, they could be considered to be intentionally homeless. Minister, have you considered the possibility of some type of homelessness test for when this form of land attachment could be used, so that we can make sure that families do not find themselves being considered to be intentionally homeless if a land attachment is made on their property?

17:00

Allan Wilson: I undoubtedly share some of those concerns. Revisions have been made to current proposals on debtor protection and the provisions of the Mortgage Rights (Scotland) Act 2001.

We are considering land attachment more generally. If the measures in the bill were introduced, and if we compared what would probably happen here with what has happened south of the border, we might find that the number of people affected here was very small. However, I accept that among that cohort of people would be people whom no one in the process would wish to be made homeless. We have to consider the existing legislation on people's rights to be rehoused if they have found themselves in such a position. We also have to consider the interests of special groups of people within that cohort and ensure that the number of people affected is minimised. However, we have to do that in such a way as to ensure that the interests of creditors are protected—especially as there is support for debtor protection measures among creditors.

We propose a number of safeguards, not least of which is a process by which any land attachment could be stopped if the debtor entered into an arrangement through the debt arrangement scheme. That is tied into our general review of debt arrangement. We are considering ways of incentivising the process and avoiding the threat of land attachment.

I assure the committee that all those issues are being considered and that—if not at stage 1, shortly thereafter—we intend to introduce proposals that address all the concerns that have been raised.

Michael Matheson: That was a helpful answer.

My next question on this issue concerns the minimum level of debt that should enable a debtor's home to be sold. Have you decided what that minimum level of debt should be?

Allan Wilson: No, but we are considering whether the proposed minimum level is appropriate and how it relates to the minimum level for sequestration. The convener has raised a point in that regard and, without pre-empting the outcome of our considerations, that point has some merit.

Michael Matheson: Will that sort of information be available before we start stage 2?

Andy Crawley: It should be.

Michael Matheson: It will be or it should be?

Andy Crawley: It is not for me to say.

Allan Wilson: I would like to be able to give a definitive yes, but as I said when talking about judicial officers and appointments, I cannot give you a definitive yes. I would hope to be able to provide such information at stage 1, but the issue is out of my hands. It has to go through the Cabinet process for approval, which it does not yet have.

Michael Matheson: So if we do not have it by stage 2 we will blame the Cabinet.

Allan Wilson: I would hope and expect that you would have it by stage 1, not stage 2.

Michael Matheson: If I want to introduce amendments at stage 2, it is helpful if I understand where the Executive is going. The danger is that I could go away and expend energy drafting amendments only to find that the Executive intended to do everything that I wanted to be done anyway. I and other committee members would find it helpful if we could receive information as early as possible, before we start stage 2, so that we can decide whether we want to lodge amendments.

Allan Wilson: It would also make things easier from my point of view—I have been through this process before. I would want you to have information as early as possible so that, when you come to consider stage 2 amendments, you do so with the information that you need. That would help me as well as helping the committee.

The Convener: It might be useful to mention the informal discussions that we have had about the timescale for stage 2. If we assume that the bill passes stage 1, I hope to take at stage 2 the second and third themes of the bill before the summer recess and the first and fourth themes—what you have said relates to them—after the summer recess. The likely changes are all to the first and fourth themes. You and I have discussed that informally.

Allan Wilson: I am happy with that.

Andy Crawley: Much depends on the Executive's processes. I am happy to share with the committee clerks our thinking about when we will release information, which depends on ministerial decisions. That might also assist the committee.

The Convener: That would be extremely helpful.

Allan Wilson: I am confident that the timescale that you and we envisage can be met and that the process will be improved as a consequence. The last thing that I want is for members to produce stage 2 amendments that are uninformed by our proposals.

The Convener: Many matters will not lend themselves to substantial amendment at stage 3 in such detail; amendment must happen at stage 2.

Allan Wilson: I agree entirely. We want to sort out matters as far as possible at stage 2.

Mr Stone: I will take up an issue that relates to court or sheriff officers, which I raised at a previous meeting and which members will recall. What evidence led the Executive to say in paragraph 380 of the policy memorandum that each partner in an officer firm or sheriff officer will be required to be a messenger of court? I do not quite follow the logic. I note that Stirling Park referred to that in its evidence.

Allan Wilson: I am familiar with the representations that Stirling Park has made to the committee; it has made the same representations to me. I have said publicly that we do not intend to be restrictive. We want to take a flexible approach and we do not want anything that we introduce to interfere with officers' ability to function effectively. I ask Andy Crawley to outline the thinking behind our proposal.

Andy Crawley: Perhaps it would help if I gave an example, although I cannot use names because of confidentiality in the enforcement system. Two officers from a firm of sheriff officers were disciplined by the courts—the existing regulatory authority—for cutting corners in enforcement practices, which meant that debtors did not receive the notice that they needed to try to protect their position. The courts decided that a large part of the reason for cutting corners was the actions of the sheriff officer firm's owners. However, the owners were not sheriff officers or members of any other profession, so the courts could not discipline or regulate them. That is a structural problem in the enforcement system. People who make money from enforcement services are not necessarily subject to regulation, unlike their colleagues, which is wrong in principle. That is part of the evidential background to our decision to make the reform. I suggest that even one example was a sufficient reason for reviewing the policy.

Christine May: Minister, you spoke about the debt arrangement scheme in a reply to Michael Matheson. I will ask about the proposed cascade of arrangements, which involves protected trust deeds, on which consultation continues, and the debt arrangement scheme. It is suggested that because you are still consulting on protected trust deeds, we will be far into the bill process before we have clarity about how the cascade might work.

The no income, no assets group is not covered by protected trust deeds and the debt arrangement scheme, which rely on some income and assets. What is your thinking on that group?

Finally, I have a specific point. The credit unions have made representations to me and, I think, to you, about the potential impact of a minimum repayment level of 20-odd pence in the pound, given the market in which they operate. Where has your thinking got to on that?

Allan Wilson: We discussed that matter earlier this afternoon, partly in anticipation that I might be asked about it. Obviously, we are happy to consider suggestions from the credit unions, among others, about their ability to function in the revised environment. However, some of the issues that they have raised have cross-departmental implications. As I understand the matter, there is pressure for them to operate more commercially, as lenders of finance as well as creditors. It is important that we co-ordinate our response with other ministerial portfolios. However, we will consider seriously the proposed solution and examine whether a case can be made for the credit unions to be treated separately from other creditors, given what they see as their important role in the wider social inclusion agenda.

As the member knows, we are involved in discussions on protected trust deeds with insolvency practitioners and others who have responded, vociferously in some cases, to the proposals, particularly that for a minimum payment. We are considering the proposals that practitioners have made, which might continue to meet our objectives but which, from their perspective, would be a more workable solution. We are engaged in parallel discussions with organisations such as Citizens Advice Scotland on the workings of the existing debt arrangement scheme and on whether the introduction of an element of debt relief into that process might be possible in the package that I wish to achieve. We want the package that we ultimately present to Parliament to cater for everybody, from those with no income and no assets right through to those who have the ability to meet their debts but refuse to do so—I hope that the Parliament will support that.

As you know, we now have the report of the working group on no income, no asset clients and we are considering what proposals we will make to accommodate those people's specific needs. Those proposals must match our proposals for debt arrangement and debt relief, protected trust deeds as a softer form of sequestration, land attachment and, ultimately, sequestration. We want a clear path that creditors and debtors can understand and from which both parties will get the optimum value. The process will be difficult and will involve balancing different interests, but we are confident that we can achieve that. Credit unions will be a part of the process.

Christine May: You were asked earlier about when the information on the changes and the results of all the consultation will be available to us. It is obvious that the information on protected trust deeds will not be available in advance of the stage 1 debate on the bill, unless you say differently. When might we have sight of a coherent package?

17:15

Allan Wilson: We will be able to publish information from the consultation exercise, but we are unlikely to have finalised our conclusions on what that is likely to mean for the shape of the regulations. It is important that we continue to consult the interested parties—insolvency practitioners, credit unions and others—on different sides of the various divides.

More generally, on policy, I intend to be able to make definitive statements in the stage 1 debate on where we intend to go with the regulations—certainly on matters such as land attachment, debt arrangement and apparent insolvency. I also hope at least to be able to outline where protected trust deeds fit into the process.

Christine May: I have one last caveat. As I have sat on the Subordinate Legislation Committee, I do not like matters being left to subordinate legislation. Can you say what will appear in the bill about those regulations?

Allan Wilson: I am happy to brief the convener and committee members informally on the difficulties that arise and on where our thinking on the general direction of travel is taking us. I point out that I require to take Cabinet colleagues with me on the matter.

Andy Crawley: Christine May's question is a fair one and it is one that many stakeholders have asked us. We can certainly say that the direction of travel on trust deed reform is that the number of trust deeds will fall. That seems pretty clear, whether we bring in the scheme that is in the draft regulations or develop an alternative model in our on-going discussions with the insolvency profession.

The number of trust deeds will fall because many are poor value for creditors. One argument is that trust deeds cannot be justified as a soft form of bankruptcy because nobody wins, apart from the people who do not deserve to win. If the number of trust deeds falls, the obvious question—it is the one that Christine May poses—is what happens to people who are getting debt relief through them. We have given the matter a lot of thought. As the minister has said, many of the matters on which we are developing policy relate to such issues.

Some people who would get debt relief through a trust deed might be able to get into the debt arrangement scheme, but perhaps not into the scheme as it stands—for some of the reasons that have been brought before the committee. We are examining the matter closely and the Cabinet will consider the new policy.

We are conducting a separate and very extensive review with the money advice sector to examine all sorts of issues around the debt arrangement scheme. We may well bring forward other changes, including administrative ones, in secondary legislation to make the scheme more attractive to money advisers and to debtors. That would deal with some of the people who might otherwise have got debt relief through a trust deed.

Some of the people who might have signed a trust deed will be able to bankrupt themselves, but only if they are apparently insolvent. A person can go bankrupt themselves only if a creditor has tried to enforce a debt. That brings us back to the first point that you raised. What happens to people whose creditors have not chased them, perhaps because they have no income and no assets?

That has always been a problem in the Scottish system, which has not been joined up in that sense. The problem is that people who are actually insolvent cannot go bankrupt because they are not apparently insolvent. That is an odd situation. We set up the debt relief working group to examine the problem. We are considering closely what we should do through the debt relief working group because, first, we have always known about the problem and we are trying to find the best way to tackle it; and, secondly, as stakeholders and committee members have fairly pointed out, if we cut down the number of trust deeds and people are not apparently insolvent, what happens to them? We are, rightly, being pushed in two directions. We all agree that there are questions that we need to resolve, as far as we can, although they are not easy ones. Therefore, we are talking to as many people as we can about how best to tackle the problem, and we welcome people's views.

Murdo Fraser: I have a couple of questions that, for the purpose of brevity, I will ask together. When the Executive introduced the bill, the justification for it was that it would encourage a more entrepreneurial approach to business. It is pretty clear from the evidence that we have taken that there is little to support that view. The minister may disagree, but I am sure that committee members agree with me that any effect that the bill will have on entrepreneurship will be entirely marginal. In the light of that, what is the point of changing the period of bankruptcy from three years to one year except to bring Scots law into line with English law? As a unionist, I would not disagree with that policy objective, but I am interested to hear the minister's comments on that.

My second question is about the time period for payment. Although the bill will reduce the period of bankruptcy to one year, the period for payment will remain three years. A lot of the evidence that we have heard suggests that people will find that confusing. However, it is in line with the position in

England. Has the Executive considered that and has it thought about lodging an amendment to bring the period for payment into line with the period of bankruptcy?

Allan Wilson: I think that we have, but that is another area in which we are considering the bill's implications. The substantive point was raised the last time that I was before the committee, when I said that we would look for more empirical evidence that might convince you of the case, irrespective of what was being argued in the rest of the UK. As I said at that meeting, the bill is part of the process of the Lisbon agenda in general across the European Union. It is seen as one measure, although not the only measure—

Murdo Fraser: I should clarify that the European Union was not the union that I was talking about.

Allan Wilson: I am sure that that is the case.

For the purpose of evidence taking and for policy formulation, the Lisbon agenda is important not only in Scotland but throughout the UK and in Europe, regarding how we stimulate entrepreneurial activity. Part of that process, as it was represented to me, came down in favour of the one-year discharge. We are working on a response for you.

There is also anecdotal evidence. David Watt, of the Institute of Directors Scotland—who, I am sure, is known to you—has welcomed the bill. He said:

> "To be successful in business you have to be prepared to take risks, yet Scotland tends to have a rather risk-averse culture … these reforms will help to lessen this attitude."

I do not always agree with David Watt but, on this occasion, I do. It is important that we address Scotland's historically risk-averse culture and seek to change it. The bill is only one measure by which we hope to do that.

Murdo Fraser: I also asked about the time period for payment.

Andy Crawley: Are you referring to the idea that all the periods in the bill should be synchronised at one year?

Murdo Fraser: Yes.

Andy Crawley: We gave a lot of thought to that. In my view, that idea is superficially attractive but does not stack up. When one starts to think about how such a system would be made to work, one can see the holes. For example, what would one-year payment, one-year discharge mean? Experience of the system in England has shown that it would take between four and six months of the one year to set up an income payment arrangement. Would that mean that the one-year payment period would continue for six months after the discharge, or would the person pay for six months and then be discharged—which would mean that it was not a one-year payment period?

There are many other connections that are obvious to people who work here, but which might not be so obvious to people who gave evidence to the committee. For example, the whole point of having a one-year discharge period is to encourage restart, not to make things hard for creditors. If we move from a system of three-year payment to a system of one-year payment, creditors will pay. If the debtor can afford to pay towards their debts, they should. If they can afford to pay over three years—the court will judge whether that is the case—they should.

Another reason why synchronisation would cause difficulty relates to protected trust deeds, which we still want to have because we think they are valuable and perform a useful service. Under a protected trust deed, payment is made over three years. Why should someone who is bankrupt have to pay for only a year when someone who is subject to a protected trust deed has to pay for three years? Essentially, both sets of people are in the same position—they cannot pay their debts. For all those reasons, our view is that there is no merit in synchronising the period for discharge and the period for payment.

In many ways, we are not moving to a system of one-year discharge; we are moving from a system of three-year discharge to a system of flexible discharge. For most people, the discharge period will be one year, but some people—those whom we might call the culpable debtors—could be subject to bankruptcy restrictions for up to 15 years. Does that mean that they should pay towards their debts for 15 years? Our view is that obviously they should not. That shows why the synchronisation argument, although superficially attractive, does not stack up when one considers what its consequences might be for the behaviour of debtors and creditors.

Murdo Fraser: Thank you; that was very helpful.

Allan Wilson: Another consideration that you might be interested in is that, in the scenario that you propose, we estimate that smaller businesses would be more likely to be losers than their larger counterparts. I am sure that that is just as important a consideration for you as it was for us.

Susan Deacon: You will be pleased to know that some of the broader issues that I wanted to raise have already been covered. I will focus on money attachment—on which we had an extremely interesting evidence session—and wider, related matters. Nearly everyone to whom we spoke said that money attachment had its place but what was important was how the regime that was put in place operated in practice. The safety of sheriff officers and how heavy-handed creditors were in using that form of diligence were issues that were raised.

I have two questions, the first of which is specific. Where has your thinking gone on money attachment? My second question is more general and it echoes previous discussions that we have had. How will you bottom out some of the practical issues? In particular, how will you minimise the use of secondary legislation? On money attachment, as with other aspects of the bill, there is a genuine concern—which the committee shares—that too much of the detail will be left to secondary legislation.

Allan Wilson: I can understand that concern. Ideally, we would want to minimise the use of secondary legislation, but the bill undoubtedly covers areas in relation to which we need to take powers and, through secondary legislation, regulate for their enforcement. I will let Andy Crawley talk about our direction of travel on money attachment. It is a form of diligence that, in general, continues to be supported by creditors. We are aware of the issues that it raises and have discussed them with sheriff officers and others.

17:30

Andy Crawley: We were quite surprised by the strength of feeling that was evident in some of the evidence that the committee took. As you will appreciate, the legislative process does not happen in a vacuum. We have had extensive discussions with many stakeholders and, although we may have been wrong, our view was that money attachment was a fairly technical measure that some creditors—especially public creditors—found useful and, as such, was a useful addition to the toolkit. That is still our view. However, given that people have expressed those views to the committee, I am happy to say that we will go away and have discussions with them, in particular with the sheriff officers who have to do the deed on the ground. We will ensure that their concerns about health and safety are addressed.

I am not sure that I agree that the issue that you raised is to do with secondary legislation. Money attachment is not an area of the bill in which we are trying to do a lot by secondary legislation—what you see is what you get in this regard. Although the committee may disagree, I suggest that in this regard we are looking at administrative issues such as the way in which people will go about using the diligence. Perhaps we need only to provide reassurance that the Executive does not expect anyone to put their life and limb at risk. We would also want to reassure people that we recognise the duty that employers have to their staff not to send them into dangerous situations.

Most people who become sheriff officers probably accept that there is an element of what we might call hardness in what they do. After all, sheriff officers have to take people's property away from them and that is never going to be a popular thing to do, whether we are talking about money or anything else. The Executive wants to see a modern and effective system of enforcement. We no more want sheriff officers to come off badly than anyone else wants them to do. We will review the provisions and consider whether we need to bring forward changes at stage 2.

Some of the other things that were said in evidence are covered in the bill. For example, I recall that someone said that it was not much use having money attachment if the process had to stop at 8 pm. We have covered that by saying that someone can apply to a sheriff for permission to execute a money attachment at some other time. As far as possible, we have tried to build flexibility into the bill. That said, we may have to speak to stakeholders to bottom out their concerns and ensure that we have discussed changes with them—and perhaps with the committee—before we bring those changes forward.

Susan Deacon: I am grateful for the reply. I am reassured by much of what was said, but it raises a number of wider questions about how we can get to the bottom of and resolve what are essentially practical issues—as distinct from differences of opinion about policy, which are obviously quite another matter, or differences between vested interests, which will always occur. If we are in terrain where people right across the different interest groups are broadly in agreement on the policy intent and are agreed that the bill is something that we want to do, surely all of us need to work together to resolve the issues. I accept the point that all the issues may come down to legislative detail and administrative arrangements.

The bill is exceptional in the number of issues that it raises that fall into those categories. I believe that we—by which I mean the collective "we"—should work together through the stages of the bill that lie ahead and the months to come to ensure that we come up with solutions that are as effective as possible. Frankly, I believe that we should also not waste—I use that term advisedly—hours and hours of everybody's time and energy, and taxpayers' money, in raking over practical details. We should instead ensure that we use the due process of committee scrutiny to bottom out views about policy. You touched on some of that earlier, minister, but what are your thoughts about where we should go from here?

Allan Wilson: It will not surprise Susan Deacon to hear that I agree entirely with what she has said. However, to some extent, she and the convener will have to come to their own conclusions. Michael Matheson mentioned the process for lodging stage 2 amendments, but the dichotomy that he highlighted always arises in any piece of legislation. Questions such as what should be in the bill, what should be put into regulations and what are administrative matters are always raised. I agree entirely that, in this instance—as in most others—there are clear dividing lines. I suggest that, as legislators, we should stick to policy and its implementation through regulations. We should try to minimise the type of manuscript amendments that put things in the bill simply to complicate the process.

Susan Deacon: I will leave it at that for now, convener.

The Convener: That covers all the questions and points that we wanted to put to the minister. No doubt there will be others, particularly in our report in more detail. We will complete our report on 16 May for publication on 17 May. I believe that the stage 1 debate is on 24 or 25 May. I thank the minister and his officials once again for coming before the committee. That was a useful session.

Allan Wilson: I reiterate our willingness to engage in off-court discussions, so to speak, on the issues. We are happy to discuss the issues that Susan Deacon and others raised. We want to try to secure consensus on the issues.

The Convener: Good. Thank you again, minister.

We move to item 4. Do you have anything to highlight, Nicholas?

Nicholas Grier (Adviser): No. I am sure that no one wants me to highlight anything. I know my place.

The Convener: I think that we are fairly clear about everything. The clerks will produce a draft report for consideration next week and we will finalise it the following week. Are we agreed?

Members *indicated agreement*.

Meeting closed at 17:35.

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