

ENTERPRISE AND CULTURE COMMITTEE

Tuesday 19 September 2006

Session 2

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2006.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

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

CONTENTS

Tuesday 19 September 2006

Col.

ITEM IN PRIVATE.....	3265
BANKRUPTCY AND DILIGENCE ETC (SCOTLAND) BILL: STAGE 2.....	3266

ENTERPRISE AND CULTURE COMMITTEE

21st 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 GAVE EVIDENCE:

Allan Wilson (Deputy Minister for Enterprise and Lifelong Learning)

CLERK TO THE COMMITTEE

Stephen Imrie

SENIOR ASSISTANT CLERK

Douglas Thornton

ASSISTANT CLERK

Nick Hawthorne

LOCATION

Committee Room 4

Scottish Parliament

Enterprise and Culture Committee

Tuesday 19 September 2006

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

Item in Private

The Convener (Alex Neil): I welcome everybody to the 21st meeting of the Enterprise and Culture Committee this year. I thank the Deputy Convener, Christine May, for standing in for me last week.

Our first agenda item is to consider whether to take agenda item 3 in private. From talking to members, I believe that the consensus is to do so. Is that agreed?

Members *indicated agreement.*

Bankruptcy and Diligence etc (Scotland) Bill: Stage 2

14:01

The Convener: Agenda item 2 is the Bankruptcy and Diligence etc (Scotland) Bill. Today we will consider part 3 of the bill. I welcome the Deputy Minister for Enterprise and Lifelong Learning and his officials.

Schedule 1

MINOR AND CONSEQUENTIAL AMENDMENTS OF THE 1985 ACT

Amendments 65, 66, 97, 67 to 84, 98 and 85 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 99, in the name of the minister, is in a group on its own.

The Deputy Minister for Enterprise and Lifelong Learning (Allan Wilson): In general, a right to payment is cancelled after five years unless the creditor insists on payment within that time. In some cases, it is right to assume that a claim is insisted on even if the creditor does nothing to make that clear—bankruptcy is a case in point.

Creditors who claim a payment from the trustee at the beginning of a sequestration should be able to assume that they have done all that is needed to be paid a dividend from any money that becomes available. It should make no difference if it takes years to find enough money to make processing claims worth while, for example because the trustee struggles to find a buyer for land or buildings that he wishes to sell.

Section 48 of the Bankruptcy (Scotland) Act 1985 has the effect that a claim, once made, will not prescribe even if a trustee neither accepts nor rejects the claims for more than five years. Amendment 99 will do that by providing for claims to be deemed to be resubmitted for each accounting period if they are still outstanding or if they have been accepted in whole or in part but the money has yet to be paid out.

A recent court case decided that a claim prescribes if it is not rejected, rather than only if it is accepted. That is contrary to what was thought to be the law, and the result is consequently unfair to creditors who have, on the face of it, done everything they should have done. Amendment 99 will fix that problem.

I move amendment 99.

Amendment 99 agreed to.

Amendments 100, 86 and 87 moved—[Allan Wilson]—and agreed to.

Schedule 1, as amended, agreed to.

Section 43 agreed to.

Schedule 2

THE SCOTTISH CIVIL ENFORCEMENT COMMISSION

The Convener: Amendment 111, in the name of the minister, is grouped with amendments 113, 114, 118 to 124, 126 to 132, 134 to 153, 155 to 158, 160, 162 to 168, 170 to 191, 193 to 195, 199 to 211, 213 to 231, and 233.

Christine May (Central Fife) (Lab): Bingo!

The Convener: I am not going to read out that list again.

Allan Wilson: The group of amendments sounds more intimidating than it is. The bill will abolish the existing court enforcement professions of messenger-at-arms for the Court of Session, and sheriff officer for the sheriff courts, and would create the single office of messenger of court to serve all the courts of Scotland. That proposed name was intended to address the concerns that were raised with the Executive during the consultation. However, it was clear to the committee and to me, from the evidence that was provided at stage 1, that members of the existing professions are not entirely comfortable with the proposed name of the new office. They suggested the alternative title of judicial officer. As I intimated, I was happy to accept that proposition, so the amendments will make the necessary changes of name in part 3 of the bill, in later interpretation sections and in schedules 2 and 5. If the committee agrees to the name change, more consequential amendments will be lodged to change the name in the later parts of the bill.

I move amendment 111.

The Convener: Thank you, minister. The amendments will implement a recommendation that was made by the committee.

Amendment 111 agreed to.

The Convener: Amendment 112, in the name of the minister, is grouped with amendments 115, 116, 234, 117 and 272.

Allan Wilson: If the amendments in this group are agreed to, they will improve the governance of the proposed Scottish civil enforcement commission. The commission and its members must be—and be seen to be—politically impartial. Amendments 112 and 115 provide for disqualification from membership of the commission of members of the Scottish, UK and European parliaments.

Amendment 116 clarifies that the Scottish civil enforcement commission can delegate its functions to the chief executive.

We consider that Scottish ministers should be able to have the final say in where the new Scottish civil enforcement commission will be based. Amendment 234 will allow ministers to take into account the broader public interest in that regard.

Amendment 117 will expand the current powers in the bill for Scottish ministers to pay grants and make loans to the commission by enabling them to make such grants and loans subject to terms and conditions. The new commission should come within the jurisdiction of the Scottish public services ombudsman. Amendment 272 will make that happen and ensure that the people who are affected by the work of the commission can ask the ombudsman to step in.

I move amendment 112.

Amendment 112 agreed to.

The Convener: Karen Gillon will be with us shortly. She is on her way back from a funeral and apologises for being late.

Amendments 113, 114, 115, 116, 234 and 117 moved—[Allan Wilson]—and agreed to.

Schedule 2, as amended, agreed to.

Section 44—Information and annual report

Amendment 118 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 235, in the name of the minister, is grouped with amendments 236, 237, 239, 240, 270 and 271.

Allan Wilson: The amendments in the group will modify sections of the bill to deal in more detail with activities that may be undertaken by judicial officers. In the bill, “activities” are different from “functions”. Functions are conferred on officers by operation of law, but activities will be allowed either through rules that are made by the commission or by its giving express permission to an officer. Amendment 235 will extend the reporting functions of the Scottish civil enforcement commission, so that it may include in its annual report to Scottish ministers a statistical analysis of judicial officer activities.

Amendment 236 will enable the commission to inform and educate the public about officer activities. Amendments 237, 270 and 271 will bring the undertaking of activities into the code of practice regime that is set out in the bill, which will enable the commission to prepare and publish a code of practice relating to those activities, and to require officers to have regard to the code.

As the bill stands, a code of informal debt collection does not need to be laid before Parliament. In its stage 1 report, the committee

said that such a code should be laid before Parliament; I agree, so amendment 239 will ensure that that will happen. Amendment 240 is a minor technical amendment that will clarify the definition of informal debt collection, to make it clear what is meant by collection of debts by methods other than diligence.

I move amendment 235.

Amendment 235 agreed to.

Amendment 119 moved—[Allan Wilson]—and agreed to.

Section 44, as amended, agreed to.

Section 45—Publication of guidance and other information

Amendment 236 moved—[Allan Wilson]—and agreed to.

Amendment 120 moved—[Allan Wilson]—and agreed to.

Section 45, as amended, agreed to.

Section 46—Published information not to enable identification

Amendment 121 moved—[Allan Wilson]—and agreed to.

Section 46, as amended, agreed to.

Section 47—Register of messengers of court

Amendments 122 and 123 moved—[Allan Wilson]—and agreed to.

Section 47, as amended, agreed to.

Section 48—Code of practice

Amendment 237 moved—[Allan Wilson]—and agreed to.

Amendment 124 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 125, in the name of the minister, is grouped with amendments 238, 241, 154, 159, 192, 267, 212 and 232.

Allan Wilson: The amendments in the group are all relatively minor and technical amendments to part 3 of the bill. Amendments 125 and 159 are simple drafting amendments that will change the location of references to define terms in the bill. Amendments 192, 212 and 238 are minor technical amendments that will clarify the wording of certain sections.

14:15

Amendment 154 was intended to clarify the meaning of section 55(5) of the bill. Section 55(4)

will allow the Scottish civil enforcement commission to make general rules, applying to all officers, that will either prohibit or permit certain activities. Section 55(5) is intended to give the commission flexibility to deal with situations on which the rules are silent and an activity is neither prohibited nor expressly permitted. It was thought that the meaning of section 55(5) was unclear and amendment 154 was intended to clarify that, but it is now thought that section 55(5) will deliver the policy, which is that an application for permission should be allowed only when rules that are made under section 55(4) do not prohibit the activity—in which case an officer cannot seek permission—or when the rules already permit the activity, in which case permission is not needed.

Amendment 154 will not clarify the position, and might cause confusion where there was previously none. The amendment would make it more likely that an officer could argue that the commission could agree that a general prohibition does not apply to the officer. The committee will therefore be glad to hear that I do not propose to move amendment 154 when it is reached.

We have just discussed the proposed change of name from “messenger of court” to “judicial officer”. Amendment 232 is a consequential amendment that will give effect to the change of name in section 103(6) of the Civil Partnership Act 2004.

Section 63(3) sets out who must be told about certain orders that are made by the commission's disciplinary committee. Amendment 267 will add reference to that committee's powers to extend or revoke a period of suspension to the list of orders to be intimated to the Court of Session and every sheriff principal.

I move amendment 125.

Amendment 125 agreed to.

Amendment 238 moved—[Allan Wilson]—and agreed to.

Section 48, as amended, agreed to.

Section 49—Publication of information relating to debt collection

Amendments 239 to 241 moved—[Allan Wilson]—and agreed to.

Section 49, as amended, agreed to.

Section 50 agreed to.

Section 51—Messenger of court

Amendments 126 and 127 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 242, in the name of the minister, is grouped with amendments 243 to 246, 133, 247 to 250, 254, 169, 262, 265 and 196.

Allan Wilson: The amendments in the group have been lodged in response to a request by the Society of Messengers-at-Arms and Sheriff Officers that officers should be granted a commission or deprived of office by a senior judge rather than by the proposed Scottish civil enforcement commission. Having heard evidence at stage 1, I know that the committee was not persuaded by the argument that the new officers would lack independence from the Executive if they were appointed solely by the commission.

I am sympathetic to the argument that appointment by a judge will maintain the long and honourable connection of the professions with the courts and am therefore of the view that the new judicial officers should be appointed to or deprived of office by the Lord President of the Court of Session on the recommendation of the Scottish civil enforcement commission—I said as much during the stage 1 debate, as members will recall. If they are agreed to, the amendments will implement that change.

Amendments 242 to 244 and 246 to 250 will set up the process to allow the Lord President to grant judicial officer commissions, but only on the recommendation of the Scottish civil enforcement commission. They will also make consequential amendments that are necessary because of the new process.

Amendments 169, 196, 245, 254, 262 and 265 will empower the Lord President to deprive a judicial officer of office, but only on the recommendation of the commission's disciplinary committee. They will also, in consequence of the new procedure, modify current provisions on intimation and appeal rights.

Amendment 133 deals with the notification processes.

I move amendment 242.

Amendment 242 agreed to.

The Convener: Thank you minister. Again, the amendments will implement a stage 1 recommendation from the committee.

Amendments 128, 243, 244, 129 and 245 moved—[Allan Wilson]—and agreed to.

Section 51, as amended, agreed to.

Section 52—Appointment of messenger of court

Amendments 130, 131, 246, 132, 133, 247, 248, 134 to 136, 249 moved—[Allan Wilson]—and agreed to.

Section 52, as amended, agreed to.

Section 53—Annual fee

Amendment 137 moved—[Allan Wilson]—and agreed to.

Section 53, as amended, agreed to.

Section 54—Abolition of offices of messenger-at-arms and sheriff officer

Amendments 138, 250, 139, and 140 moved—[Allan Wilson]—and agreed to.

Section 54, as amended, agreed to.

Section 55—Regulation of messengers of court

Amendments 141 to 153 moved—[Allan Wilson]—and agreed to.

Amendment 154 not moved.

Amendments 155 to 157 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 251 is in a group on its own.

Allan Wilson: The new commission will be able to make rules permitting judicial officers to carry out remunerated activities that are compatible with their functions, and prohibit them from carrying out incompatible activities. The rules might not be able to cover all the things that an officer might be paid to do, so an activity might be neither barred nor actively permitted; for example, it would on the face of it be reasonable to give an officer involved in informal debt collection permission to carry on that activity if the rules are silent.

Section 55(5) of the bill provides for the commission to be able to give permission for officers to carry out particular paid activities. However, what happens if that goes wrong? The commission might get a series of complaints about how the officer in question had behaved and should, in such a case, be able to revoke a permission once it has been granted. That is what amendment 251 provides for.

Amendment 251 agreed to.

Section 55, as amended, agreed to.

After section 55

The Convener: Amendment 252, in the name of the minister, is grouped with amendments 256 to 261.

Allan Wilson: The bill makes no mention of what should happen if an officer is made bankrupt, or if a business that employs officers' firms becomes insolvent. Such an event will obviously puts clients' money and businesses at risk. There might be a question about whether an officer in that position is fit, for the time being, to hold office

or to carry out the functions or activities of an office. The bill as drafted will make it possible for the commission to act only if the officer is convicted of a crime or if the behaviour is so serious that it amounts to misconduct; it does not provide for situations in which an officer is insolvent and he or she is not guilty of an offence or misconduct. In my view, there is a clear need for the commission to be able to deal with issues of that kind.

The amendments in the group will make it possible for the commission to act to protect the public interest, if it has concerns about the circumstances in which an officer or his or her business have become insolvent. The commission should be able to act as circumstances require. In most cases in which action will be needed, a short restriction from certain things—such as holding client money—or a short suspension from office should suffice. There will be a few serious cases in which the business failure is so severe that the public can be protected only by depriving the officer of office.

Amendment 252 provides that officers will be obliged to notify the commission if they are made bankrupt, if they sign a protected trust deed, if they make a bankruptcy restrictions order or if they are subject to a bankruptcy restrictions undertaking. Notification will also be required if the judicial officer's firm is in a similarly difficult financial position. Amendments 256 and 257 are consequential amendments.

Amendment 258 will allow the commission to refer the officer to the disciplinary committee if it has concerns after finding out that there is insolvency, even though there is nothing to suggest a crime or misconduct. Amendments 259 and 260 are consequential amendments.

Amendment 261 provides the powers that the committee will need to protect the public interest on a commission referral. The commission will be able to suspend an officer from practice, recommend that the Lord President deprive the officer of office or restrict the functions or activities of the officer.

When the insolvent event constitutes a criminal offence or misconduct, the commission will have access to the full range of available sanctions.

I move amendment 252.

Amendment 252 agreed to.

Section 56—Messengers of court's professional association

Amendments 158 to 160 moved—[Allan Wilson]—and agreed to.

Section 56, as amended, agreed to.

After section 56

The Convener: Amendment 253, in the name of the minister, is grouped with amendments 161 and 255.

Allan Wilson: One of the important duties of the Scottish civil enforcement commission will be to regulate the new officer profession, which will include investigations of alleged misconduct. The commission should therefore be made aware of all relevant information so that it can be as effective in the public interest as it should be. Amendments 253, 161 and 255 will make the commission a more effective regulatory body.

Amendment 253 will place a duty on the professional body to provide the commission with information and documents when the commission is investigating complaints. Amendment 161 will ensure that the officers' professional body informs the commission about any complaints that it has received against officers. Amendment 255 will enable the commission to investigate such complaints.

I move amendment 253.

Amendment 253 agreed to.

Amendment 161 moved—[Allan Wilson]—and agreed to.

14:30

Section 57—Inspection of messenger of court

Amendments 162 and 163 moved—[Allan Wilson]—and agreed to.

Section 57, as amended, agreed to

Section 58—Investigation of alleged misconduct by messenger of court

Amendments 164, 254, 165, 255, 166 to 170 and 256 moved—[Allan Wilson]—and agreed to.

Section 58, as amended, agreed to.

Section 59—Suspension of messenger of court pending outcome of disciplinary or criminal proceedings

Amendments 257, 171 and 172 moved—[Allan Wilson]—and agreed to.

Section 59, as amended, agreed to.

Section 60—Commission's duty in relation to offences or misconduct by messenger of court

Amendments 173 to 176 moved—[Allan Wilson]—and agreed to.

Section 60, as amended, agreed to.

After section 60

Amendment 258 moved—[Allan Wilson]—and agreed to.

Section 61—Referrals to the disciplinary committee

Amendments 259 and 177 to 183 moved—[Allan Wilson]—and agreed to.

Section 61, as amended, agreed to.

Section 62—Disciplinary committee's powers

Amendments 260, 184, 185, 261, 186, 187, 262, 188 and 189 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 263, in the name of the minister, is grouped with amendments 264, 266 and 268.

Allan Wilson: The amendments in the group relate to the powers of the commission's disciplinary committee. The committee should be able to make an order that restricts an officer's functions or activities when that officer commits an offence or is guilty of misconduct, or when an insolvency event is cause for concern.

Amendment 263 will add the new power that will enable the commission to do justice, which in minor cases may mean a small restriction on what an officer can do. The restriction might not need to be in place for long, so the amendment will also give the commission the power to fix the duration of any such restriction.

Amendment 264 will remove from the bill the power for the Scottish ministers to prescribe the level of fine that the committee can impose on an officer. That power is no longer considered to be necessary, because section 62(4)(c) links the level of a fine to the standard scale, which is reviewed and changed by ministers from time to time, as necessary.

Finally, the professional association should know if the commission takes action against one of its members. Accordingly, amendment 268 will add the association to the list of bodies that the commission must notify.

I move amendment 263.

Amendment 263 agreed to.

Amendments 190, 264, 191 to 194, 265, 195 and 266 moved—[Allan Wilson]—and agreed to.

Section 62, as amended, agreed to.

Section 63—Orders under sections 59 and 62: supplementary provision

Amendments 267, 196 and 268 moved—[Allan Wilson]—and agreed to.

Section 63, as amended, agreed to.

Section 64—Appeals from decisions under sections 52, 59 and 62

The Convener: Amendment 269, in the name of the minister, is grouped with amendments 197 and 198.

Allan Wilson: The amendments in the group will modify the provisions on appeal rights. The changes are needed as a result of other amendments that we have just debated. They take account of the new procedure whereby the Lord President may deprive a judicial officer of office, and the new power of the commission in respect of insolvency events.

I move amendment 269.

Amendments 269, 197 and 198 moved—[Allan Wilson]—and agreed to.

Section 64, as amended, agreed to.

Section 65—Messenger of court's actions void where messenger has interest

Amendments 199 to 211 moved—[Allan Wilson]—and agreed to.

Section 65, as amended, agreed to.

Section 66—Measure of damages payable by messenger of court for negligence or other fault

Amendments 212 and 213 moved—[Allan Wilson]—and agreed to.

Section 66, as amended, agreed to.

Section 67—Effect of code of practice

Amendments 214, 270, 271, 215 and 216 moved—[Allan Wilson]—and agreed to.

Section 67, as amended, agreed to.

The Convener: That concludes the consideration of amendments for today and lets the minister away in time to hear Charlie Kennedy's speech, which I am sure he will be delighted about.

Allan Wilson: I cannot wait.

The Convener: Item 3 on our agenda will be taken in private.

14:39

Meeting continued in private until 14:43.

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

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

The deadline for corrections to this edition is:

Wednesday 27 September 2006

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscriptions: £350.00

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

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by Astron and available from:

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

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

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

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

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

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

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

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

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by Astron