# ENTERPRISE AND CULTURE COMMITTEE

Tuesday 26 September 2006

Session 2

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# CONTENTS

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## ENTERPRISE AND CULTURE COMMITTEE
**22nd 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

**CLERK TO THE COMMITTEE**

Stephen Imrie

**SENIOR ASSISTANT CLERK**

Douglas Thornton

**ASSISTANT CLERK**

Nick Hawthorne

**LOCATION**

Committee Room 2

# Scottish Parliament

## Enterprise and Culture Committee

*Tuesday 26 September 2006*

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

## Bankruptcy and Diligence etc (Scotland) Bill: Stage 2

**The Convener (Alex Neil):** Welcome to the 22nd meeting in 2006 of the Enterprise and Culture Committee. I remind everybody to switch off their BlackBerrys and mobile phones. I am glad that there are no apologies to report.

Agenda item 1 is stage 2 of the Bankruptcy and Diligence etc (Scotland) Bill. We continue from where we left off last week.

*Sections 68 and 69 agreed to.*

### Section 70—Land attachment

**The Convener:** Amendment 274, in the name of the minister, is grouped with amendments 275, 279 to 281, 299 to 301, 306 and 308 to 311.

**The Deputy Minister for Enterprise and Lifelong Learning (Allan Wilson):** The amendments in the group will make minor and technical changes to part 4 of the bill and will make land attachment a more effective diligence.

Amendments 274, 279, 280, 300 and 301 will correct the terminology of or improve certain provisions in the bill, or are consequential to such changes.

Amendments 275 and 306 will have the effect that a notice of land attachment or decree of foreclosure of attached land will not need to use a full description or provide a plan unless the requirements of the land register or the register of sasines—the appropriate property registers—mean that one or the other would already be needed.

Amendment 281 makes it clear that section 79 of the bill clarifies the existing law on subordinate real rights on property and will not replace that law in so far as the effect that the debtor's death will have on those rights is concerned.

Amendment 299 will make it possible for a notice to terminate the debtor's right to occupy land to be served by any lawful means, including personal service by a judicial officer, and not just by post.

Amendment 308 will remove a requirement on the Court of Session to prescribe the form of a discharge of a notice of land attachment or of a land attachment. Any lawyer who works in that field should be able to prepare a valid discharge, and the court could still step in using powers under other legislation, if needed.

Amendments 309 to 311 will amend the definitions in section 116, which is a guide to interpretation of the land attachment part of the bill.

I move amendment 274.

*Amendment 274 agreed to.*

*Section 70, as amended, agreed to.*

*Section 71 agreed to.*

### Section 72—Notice of land attachment

*Amendment 275 moved—[Allan Wilson]—and agreed to.*

**The Convener:** Amendment 276, in the name of the minister, is grouped with amendments 277, 283 and 294.

**Allan Wilson:** The new diligence of land attachment includes many robust debtor protections, which will be important to the committee's consideration. One of the most important of those protections is that land should not be sold for a small debt. The bill provides that land can be attached for a debt of any size, but can be sold only if the debt exceeds £1,500.

The amount of the lower debt limit has given some concern, particularly when the land attached is a home. In the wake of the stage 1 debate and the committee's representations, I have examined the issue closely and now agree that change is needed to stop land being sold for small debts. In addition, I believe that it is right and sensible to apply the lower debt limit at the attachment stage. That will not make a sale any more or less likely, but it will move the balance—which I know has concerned members—towards the debtor and away from the creditor.

Amendment 276 seeks to apply a new lower debt limit of £3,000 at the attachment stage. If it is agreed to, it will not be possible for creditors to attach land before the debt is such that the court can order any sale that is needed. Amendment 283 seeks to increase the existing lower debt limit from £1,500 to £3,000. If it is agreed to, it will not be possible to apply for a sale order unless the outstanding debt is more than £3,000. If those two key amendments are agreed to, I will introduce further changes later in the bill's consideration.

First and most important, I hope to lodge an amendment at stage 3 that will raise the qualifying debt limit in bankruptcy from £1,500 to £3,000. That will ensure that both debt limits stay at the

same amount, so that creditors do not find it easier to bankrupt debtors than to attach their land, which is an important consideration. The increase in the bankruptcy debt limit is not expected to make it too hard for people who need debt relief to become bankrupt, following the committee's agreement to low income, low asset access to sequestration a meeting or so ago. It will be possible to prescribe a lower bankruptcy debt limit in cases involving low income, low asset clients, if that proves necessary.

Secondly, the importance of the debt limits is such that Parliament should have a high level of scrutiny of any future changes, so I hope to lodge amendments later in stage 2 and at stage 3 that will change the status of the enabling powers in the bill and in the Bankruptcy (Scotland) Act 1985 by making them subject to the affirmative rather than the negative procedure, in line with the committee's recommendation.

Amendment 294 is consequential on the increase in the lower debt limit. The bill provides that the sheriff must refuse an application for sale if the proceeds of the sale will be too low—that is sometimes called the worth-it test. The bill as introduced set one leg of the worth-it test at £500, which was one third of the lower debt limit of £1,500. Amendment 294 seeks to increase the level of the worth-it test so that it is one third of the new lower debt limit of £3,000.

Amendment 277 is a minor tidying-up amendment that will correct the language in section 72(2) to make it consistent with that used in the other sections on land attachment.

If the proposed changes are agreed to, they will make a key debtor protection—several of which are built into the process—even more effective.

I move amendment 276.

**Murdo Fraser (Mid Scotland and Fife) (Con):** Given the concern about the land attachment process that we expressed in our stage 1 report, it is encouraging that the Executive has responded and we should welcome that.

**Christine May (Central Fife) (Lab):** I concur; I, too, welcome the movement. The minister said little about the reason for choosing £3,000 rather than £1,500 or any other sum. Will he explain why the figure was chosen?

**Allan Wilson:** A couple of issues are relevant. One is the effect of inflation in the period since the limit was last increased or reviewed, which we have discussed. The other is the Scottish Law Commission report, which recommended a limit of £5,000. We propose £3,000, which is in-between £1,500, where the limit was, and £5,000. I am not stuck on £3,000. If members had overriding reasons why the figure should be £3,500, for example, I would consider that.

It is important to keep the bankruptcy limit and the limit for land attachment the same, because part of the rationale of the process is that we do not want an increase in sequestrations if land attachment could encourage more people into the debt arrangement scheme and debt relief, which we intend to introduce, and away from bankruptcy. The £3,000 limit meets that test and maintaining the two limits at the same level satisfies the process.

**The Convener:** I understand that the figure can be changed by regulations.

**Allan Wilson:** That is right. We expect the effectiveness of the limit to be monitored over the piece. If it were seen to be militating against the policy objectives, it would be reviewed.

*Amendment 276 agreed to.*

*Amendment 277 moved—[Allan Wilson]—and agreed to.*

**The Convener:** Amendment 278, in the name of the minister, is grouped with amendments 305, 307 and 312.

**Allan Wilson:** Last week, the committee agreed to change the name for a court enforcement professional to "judicial officer". I explained that if the new name were agreed to, I would lodge further amendments to change the name as we reached later parts of the bill. The amendments in the group make the necessary changes to part 4.

I move amendment 278.

*Amendment 278 agreed to.*

*Section 72, as amended, agreed to.*

*Section 73 agreed to.*

**Section 74—Restriction on priority of ranking of certain securities**

*Amendment 279 moved—[Allan Wilson]—and agreed to.*

*Section 74, as amended, agreed to.*

*Section 75 agreed to.*

**Section 76—Assignation of title deeds etc**

*Amendment 280 moved—[Allan Wilson]—and agreed to.*

*Section 76, as amended, agreed to.*

*Sections 77 and 78 agreed to.*

**Section 79—Effect of debtor's death after land attachment created**

*Amendment 281 moved—[Allan Wilson]—and agreed to.*

*Section 79, as amended, agreed to.*

**Section 80—Caveat by purchaser under missives**

14:15

**The Convener:** Amendment 282, in the name of the minister, is grouped with amendments 284 to 293.

**Allan Wilson:** Section 80 allows a buyer who had contracted to buy land to register a notice of their interest in any land in the land register or the register of sasines as appropriate.

If the land is attached either at the time of the contract or later, the buyer who has registered a notice will be able to ask the court to suspend an application by the attaching creditor for a sale order. If the court agrees, the buyer and the debtor will be given time to complete their contract. If the amendments in the group are agreed to, they will improve how the system of buyers' notices works.

Amendment 282 will provide that a buyer's notice will be registered in the register of inhibitions rather than the appropriate property register. That will make the bill consistent with how those different registers are operated by the Registers of Scotland.

Amendment 284 will take out some details about the search in the appropriate property register that the attaching creditor must provide when applying for a warrant for sale. The amendment prepares the way for amendment 287.

Amendment 285 will provide for the attaching creditor to give the court a report on a search in the register of inhibitions when applying for a warrant for sale, which will allow the court to check to see whether any buyer's notice has been registered. Amendment 286 is a minor consequential change.

Amendment 287 will provide the Scottish ministers with a power to specify the form and content of the reports on searches in the register of inhibitions and the appropriate property register that the attaching creditor must provide when applying for a warrant for sale. That will allow the law to respond flexibly to changes in conveyancing practice. Such an approach makes more sense than putting details in the bill that may become out of date.

Amendment 288 will provide for the attaching creditor to give the court a continuation of the report on the search in the register of inhibitions seven days before the full hearing on the application for a warrant for sale, which will give the court another chance to check to see whether any buyer's notice has been registered. Amendments 289 to 291 are minor consequential changes.

Amendment 292 will give the sheriff a useful extra power to make any supplementary orders that may be needed when a full hearing on an application for a warrant for sale is postponed. In particular, the sheriff could order up-to-date reports on searches to be provided before the rearranged hearing takes place. Obviously, such information would be important.

Like amendment 287, amendment 293 will give the Scottish ministers the power to specify the form and content of the continued searches in the register of inhibitions and the appropriate property register that the attaching creditor must provide seven days before a full hearing on an application for a warrant for sale. Like amendment 287, amendment 293 will allow the law to respond flexibly to changes in conveyancing practice.

I move amendment 282.

*Amendment 282 agreed to.*

*Section 80, as amended, agreed to.*

**Section 81—Application for warrant to sell attached land**

**The Convener:** Amendment 107, in the name of Karen Gillon, is grouped with amendment 108.

**Karen Gillon (Clydesdale) (Lab):** The minister and members of the committee are aware of the concern that was expressed at stage 1 that, with unsecured debts, people in Scotland could lose their houses for small amounts of money. Concern that the threshold was too low was expressed. Like other members of the committee, I welcome the minister's move to raise the threshold to £3,000, but there are strong arguments for exempting family dwelling-houses from such legislation, and particularly from land attachments.

I have considered amendment 107 in detail and accept that it contains a potential loophole. While it would allow people in genuine difficulties who were at risk of losing their homes for small amounts of money to stay in their homes, it would also allow those who lived in large houses to stay in them without paying their debts and without any sanctions being taken against them. Therefore, I will not press the amendment.

I will seek to bring a similar amendment forward at stage 3, but I also ask the minister whether he is prepared to consider the threshold ahead of stage 3. The committee is aware that the Scottish Law Commission suggested a figure of £5,000. I would like to explore that with the minister in advance of stage 3 to see whether there are ways in which we could move towards that threshold or could exempt from the land attachment process those who would become homeless as a result of an attachment being served on their house and it being sold. My colleague Michael Matheson raised

during stage 1 the particular case of somebody who became homeless in such a way but, under homelessness legislation, was considered to have become intentionally homeless and so did not qualify as homeless. There is a gap in the legislation. The situation then became difficult.

Although I continue to press for the spirit of the amendment, I accept that there is a technical difficulty and I will not press it.

I move amendment 107.

**Allan Wilson:** I have some sympathy with what the member is trying to achieve, albeit that she has herself identified the loophole that would run contrary to what the committee has effectively indicated to me that it wants.

I will take the opportunity to comment on the process more generally. A sale application, were that to be the outcome of the process, comes after a very long period. We have built a number of strong debtor protections into the attachment process. I am happy to consider what the member has suggested, where that is sensible. For example, we have just agreed a £3,000 limit, but I added a caveat that I was happy to consider the figure in the context of other comparable regimes. I will not read out all the other debtor protections. Depending on how you count them, there are about 21.

The court has wide powers to refuse or delay the sale of a home. It can postpone a sale for up to a year, even if it is satisfied that a home should be sold. Those powers are taken directly from section 2 of the Mortgage Rights (Scotland) Act 2001. The court cannot even look at an application to sell land for at least six months after it is attached and it obviously then takes more time to sell the land. The debtor would know that they have a problem at the point—I presume even before the point—that their home is attached.

The debtor is then given six months to work out an arrangement to pay the debt. They will have been given a copy of our debt advice and information package, which will tell them what land attachment is and how they can help themselves. It will also give them the name and address of a free local money adviser. The adviser may well be able to help them get into the debt arrangement scheme. We have already said that we will use the bill to improve the scheme by adding the power to bring debt relief and we have introduced that important change. If a debt repayment programme is approved between the parties, the land attachment stops. There is an incentive, which was not there previously, to go down that particular route.

You can carry on adding protections along the way, as Karen Gillon's amendments 107 and 108 propose, but there comes a time when we must strike the balance between the interests of the creditor on the one hand and the debtor on the other. We must jointly agree what is fair and relevant to both. We have reached that point to an extent. Creditors also have rights and a sale under a land attachment is only possible when the creditor has proved that the debt is due and is still not being paid. The Institute of Revenues, Rating and Valuation represents many public servants who collect, for example, council tax debts here in Scotland. If those debts are not paid and public services suffer, that could lead to fewer money advisers and less advice. Representations have been made to us from that source, too. We have been told that the amendments go too far in the opposite direction.

My third point, which is important, is that if a debt problem is bad enough people will lose their homes anyway. That is sad but true. I readily admit that land attachment and sale are at the harder end of the enforcement scale, but attachment is not the worst thing that can happen to someone in debt. At present, creditors move from diligences such as earnings arrestment, which have a limited impact, straight to bankruptcy. There is nothing in between, apart from the old and very unfair diligence of adjudication, which is even worse. The bill abolishes adjudication and introduces land attachment. I have examined how that works in jurisdictions in North America and other parts of the world. A key reason for having land attachment is that it provides creditors with a debt tool that gives them a reason to stop short of bankruptcy, which is prospectively much worse for the debtor.

In bankruptcy, the right to a debtor's home automatically passes to the creditors, along with almost everything else that the debtor owns. There is no guarantee that the debtor will get their home back, even with the changes to the bill, and they may have to wait two or three years to find out what is happening. There are all sorts of intrusive investigations into the debtor's affairs, and if they do not co-operate in the process they can be prosecuted. In that context, what we propose is a better option for debtors than bankruptcy, with which land attachment must be compared.

If attached homes cannot be sold, creditors can and will bankrupt debtors. That is not speculation on my part. In the past two years, there has been a sharp increase in the number of creditor-led bankruptcies, many of them by local authorities that are looking to recover council tax debt. That is not good. Land attachment is a better process and strikes a better balance between debtors and creditors.

This is not an easy issue. No one wants to see the process reach its conclusion, but it is our job to

strike a balance. In my view, our proposals, rather than the amendments, do what the committee wanted us to do when it discussed the matter after taking evidence at stage 1. Karen Gillon has said that she will not press her amendment, but we are happy to discuss the issue and its implications between now and stage 3.

*Amendment 107, by agreement, withdrawn.*

*Amendments 283 to 287 moved—[Allan Wilson]—and agreed to.*

*Section 81, as amended, agreed to.*

*Sections 82 to 84 agreed to.*

**Section 85—Creditor's duties prior to full hearing on application for warrant for sale**

*Amendments 288 to 293 moved—[Allan Wilson]—and agreed to.*

*Section 85, as amended, agreed to.*

**Section 86—Full hearing on application for warrant for sale**

14:30

**The Convener:** Amendment 315, in the name of Shiona Baird, is in a group on its own.

**Shiona Baird (North East Scotland) (Green):** The purpose of amendment 315 is to ensure that the sheriff can consider whether a petition for land attachment is reasonable, in line with the provisions in the Mortgage Rights (Scotland) Act 2001 and other housing legislation.

Section 86(3) provides that the sheriff has only two options in considering whether it would be unduly harsh to grant a warrant for sale. He can either delay the sale by one year or refuse outright. However, there might be circumstances in which neither of those options is appropriate. My amendment 315 would give the sheriff the flexibility to consider other options such the debt arrangement scheme. That is what happens in most eviction and mortgage repossession cases, with the cases ultimately being dismissed. My amendment would enshrine in the bankruptcy legislation something that is already enshrined in other legislation.

The amendment would give the sheriff the opportunity to consider whether it is reasonable for a debtor to lose their home as the result of a relatively small debt. I welcome the fact that the threshold has been increased to £3,000. However, that can still be considered a small debt and it might result in the loss of the person's home.

Even more important for us on the Enterprise and Culture Committee is the fact that amendment 315 would give the sheriff the opportunity to consider the circumstances when the debtor's home is combined with his business. The debt could be a business debt or a personal debt. If the debtor's business is combined with his home, which is often the case in small businesses and farms, the debtor loses not only the opportunity to carry on his business, but his home. Amendment 315 would enable the sheriff to make a judgment because it would give him the opportunity to consider how the debt could best be discharged.

The provision would help to avoid clients becoming homeless in cases where there are opportunities for different solutions. It could be argued that the word "reasonable" is open enough to be challenged in court, but I do not accept that because the concept of reasonableness is now well enshrined in legislation. Another argument that has been made is that land attachment is an extreme diligence that does not apply to many people, but similar legislation in England resulted in an increase of almost 300 per cent in its use. Without a provision on reasonableness, land attachment could have a considerable impact on a great number of people.

I would welcome the minister's comments on and reaction to my amendment, but I urge members to give due consideration to the introduction of the simple word "reasonable".

I move amendment 315.

**Murdo Fraser:** I thank Shiona Baird for lodging amendment 315, which is sensible. In introducing a test of reasonableness, the amendment would give a fair balance between the rights of creditors and debtors. It would also avoid some of the concerns that we discussed at stage 1 about creditors moving too quickly to seek the sale of a home. For those reasons, I am inclined to support amendment 315.

**Christine May:** I, too, welcome amendment 315. However, I have a number of points to raise with regard to Shiona Baird's introduction. First, she said that there is evidence from England of a 300 per cent increase in creditors moving to seek the sale of a home. I seek more detail about that increase—from what figure to what figure?

Secondly, there is evidence—I think that we heard it at stage 1—that businesses in particular find it impossible to get the funding that they need for their business without first putting up their home as security. In drafting her amendment, did Shiona Baird consider the likely impact of its success on the ability of a business person to raise finance?

Thirdly, given what the minister said in moving the amendment to raise the threshold to £3,000 and indicating the other steps that the Executive plans to take, what impact if any will the raising of the threshold have in helping to prevent the

situation that amendment 315 is designed to address?

**Allan Wilson:** I have a couple of things to say, the first of which is that amendment 315 is technically defective. In itself, that is a good enough reason for rejecting it, although it is not the principal reason why the committee should do so.

It is not right to give the court the wide discretion of refusing to allow a sale. Shiona Baird said that, when compared with the Mortgage Rights (Scotland) Act 2001, the change is needed because the bill is unfair to debtors. Amendment 315 would go a lot further than the provisions of the Mortgage Rights (Scotland) Act 2001, which apply only to land that is used for residential purposes, because its provisions would apply to all sale applications. I am not sure whether that was Shiona Baird's intention in lodging the amendment, but that would be the practical impact of its implementation. In that context, the debtor protections to which I referred also apply to land where there is mixed use—whether that includes a farm or business use. The debtor protections in the bill will work.

I refute the simple comparison that has been made between the debtor protections in the bill and the 2001 act. I accept that there is a reasonableness test in the 2001 act, but the debtor has to persuade the court that it is reasonable to halt the sale of the home. There is no reasonableness test in the bill, although 22 debtor protections have to be passed in advance of the proceedings moving to the sale of a home. The Scottish Law Commission considered the proposition, but rejected it. Under the bill, the creditor must persuade the court to make a sale order. As I said, in this context, that is a significant balance in favour of the debtor.

The Scottish Law Commission was properly concerned to ensure that the enforcement of proven debt would be governed by rules. If amendment 315 were to be agreed to, it would lead to a lack of certainty. People would have to go through the process that Shiona Baird has proposed, but they would not know whether the test of reasonableness had been passed. In many circumstances, that would not be in the interests of the debtor.

The 2001 act provides some important debtor protections, but the bill goes a good deal further. I have counted that it makes available 21 protections to a debtor whose land is attached. That number has now increased to 22, given that the committee has agreed that the lower debt limit will apply at the attachment stage. In addition, the committee has agreed to improve one of the most important debtor protections by increasing the lower debt limit to £3,000. Shiona Baird was gracious enough to accept that change.

It is right that the burden of showing that a sale order should be made will be on the creditor and that land attachment will come with many debtor protections. However, a balance has to be struck. Creditors have rights, too. It will be possible to enforce a sale only at the end of a lengthy process when all the debtor protections have been applied and the court is persuaded to make an order. Amendment 315 would make it too hard to get a sale order in cases in which that would be the right thing to do. In its stage 1 report and subsequently, the committee recognised that although such occasions are rare, a sanction should be available to creditors to enforce decrees.

My information is that in 2004 there were 45,562 applications for charging orders in England and Wales, which related to the attachment of all types of properties, including homes, but that there were fewer than 500 sale orders, not all of which turned into sales. Extrapolating from the English figures—I acknowledge that doing so is not a precise science—would suggest equivalent figures for Scotland of about 4,500 land attachments and fewer than 50 sales. That is the scale and nature of the issue that we are discussing.

Although the introduction of a broadly based reasonableness test is superficially attractive, it could introduce long delays and a great deal of uncertainty. There are already 22 built-in debtor protections. Shiona Baird's proposal would increase expense for creditors and debtors and would not be practicable or fair from either party's perspective. For all those reasons, I ask Shiona Baird to seek to withdraw amendment 315.

**Shiona Baird:** The figures to which I referred were supplied to me by Citizens Advice Scotland, so I have no reason to doubt them. In England, there has been a 279 per cent increase in the use of charging orders over the past five years. The new diligence is likely to have a considerable impact on home-owning debtors.

Christine May mentioned the raising of finance. Amendment 315 would build in an element of flexibility that would give debtors time and space to seek alternative means of paying back their debt. My amendment acknowledges that a balance must be maintained between the rights of creditors and those of debtors, but it would give the sheriff the flexibility to consider whether it would be reasonable to grant a warrant for sale. Although "reasonable" is just a simple word, its inclusion in the bill would have a significant impact because it would offer the sheriff more flexibility than is provided by the existing two alternatives. Amendment 315 is extremely important and, if it is agreed to, would make a considerable difference. I press amendment 315 and urge members to agree to it.

14:45

**The Convener:** The question is, that amendment 315 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Baird, Shiona (North East Scotland) (Green)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Matheson, Michael (Central Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)

**AGAINST**

Baker, Mr Richard (North East Scotland) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Gillon, Karen (Clydesdale) (Lab)
May, Christine (Central Fife) (Lab)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 315 disagreed to.*

*Amendment 294 moved—[Allan Wilson]—and agreed to.*

*Section 86, as amended, agreed to.*

### Section 87—Application for warrant for sale of sole or main residence

*Amendment 108 not moved.*

*Section 87 agreed to.*

### Section 88—Protection of purchaser under contract where creditor applies for warrant for sale

**The Convener:** Amendment 313, in the name of Murdo Fraser, is grouped with amendments 314, 295 and 296.

**Murdo Fraser:** Amendments 313 and 314 would have the same effect so I will speak about both of them. I am indebted to the Law Society of Scotland for preparing the amendments. I should declare an interest—I am a member of the Law Society, although not currently a practising one. The amendments do not deal with an area of great policy, unfortunately; they deal with what the Law Society identified as an omission from the bill, which would create difficulties for property lawyers and, as a former property lawyer, I am anxious to avoid that.

The effect of amendment 313 would be to oblige the sheriff, when considering an application under section 88(2), to sist the application for warrant for sale and require the respective purchaser to pay the price under the contract to the creditor where missives for the purchase of the land have been entered into before the land attachment was registered. In all other cases, the discretion of the sheriff would remain. The reason for that is that the bill, as currently drafted, recognises that a warrant for sale following upon effective land attachment might adversely affect the position of an innocent third party who has in good faith contracted to purchase the property prior to the attachment.

Following the recommendations of the Law Commission's report on diligence in 2001, the bill includes a dual mechanism to protect such purchasers by providing that a warrant for sale cannot be granted until six months have elapsed since the registration of the attachment and allowing purchasers to make representations to the sheriff, who may sist the application to allow the purchase under contract to be completed.

In most standard conveyancing transactions, six months will be a sufficient period and, therefore, the mechanism would provide adequate protection for purchasers. However, a significant minority of transactions will not be able to be completed within six months because the transaction depends on the granting of planning consent, which can often be a lengthy process, especially if an appeal is involved.

Although it would still be open to the sheriff to sist the application in such cases, there is a legitimate concern that the legislation leaves open the possibility that an application will not be sisted and a warrant for sale granted. The effect on transactions of that kind, which often involve the investment of large sums of money in the planning process, might be greatly prejudiced if the purchaser has little in the way of guarantee that the transaction will be safeguarded against the intervention of a land attachment.

It is recognised that risks already exist in all land purchases, particularly where the seller might be declared insolvent, but the important difference is that the trustee dealing with such an insolvency requires to maximise the benefits for all creditors and would therefore be more likely to continue with the sale involving planning permission whereas the land attacher will be more likely to be motivated to recover only their own potentially small debt. The risk to a purchaser is that of spending potentially large sums of money on the planning process that is then lost because of the intervening land attachment.

It should be noted, moreover, that a land attachment could also have an adverse effect on a prospective purchaser in other situations in which the process will last a lot longer than six months, for example, the purchase of a new-build property that is paid for in instalments.

In its 2001 report, the Law Commission recommended that measures should be introduced to counter those difficulties. The

amendment has been designed to provide the protection envisaged to purchasers who have completed missives and protected their position by lodging a caveat under section 80. It will do that by requiring the sheriff to sist the application for grant of warrant for sale to allow the purchase to proceed. I hope that that is an adequate explanation.

I move amendment 313.

**Allan Wilson:** Amendments 313 and 314 are an interesting proposition. My officials were approached informally by the Law Society. They looked at the proposal, but eventually rejected it.

As Murdo Fraser said, amendments 313 and 314 would take away part of the sheriff's discretion under this part of the bill. If they were approved, the sheriff would no longer be able to order the sale of land under the bill if the land had been sold by the debtor before the attachment and the contract had not been completed by the time that the attaching creditor applied for an order.

I agree whole-heartedly that the best way forward in such a case is for the contract to be completed. That is one reason why there is a minimum six-month gap between attachment and sale and why the bill allows a buyer to ask the court to suspend an application for a sale order. That six-month period was actually the Law Society's suggestion and was approved by the Law Commission—the provision is a direct response to the Law Society's points.

I do not agree that stopping a sale order under the bill would be the right way forward in every case. In some circumstances, I accept that it would be the right way forward, and if the case was well made by members of the Law Society or whoever, the sheriff would have the discretion to recognise that. However, the corollary of the position in the amendments is that the contract may have no definite date for completion, for example if it was contingent on planning permission. If so, the attaching creditor could have to wait years for payment, which would not be fair or reasonable.

We propose that the courts should have the discretion to decide. If the potential buyer makes a good case for the purchase to go ahead, the sheriff will sist the application. If not, he will not. That is the basic proposition in the bill, and I argue that amendments 313 and 314 are unnecessary.

Amendments 295 and 296 also follow from a suggestion of the Law Society, but in this case it is right to change the bill. They will take away an unnecessary barrier to the court being able to suspend a sale application to allow a contract to be completed. The purchaser and the debtor will no longer need to give undertakings to the court. That will take away any risk that the debtor might be able to derail a purchase of attached land by not giving the undertaking, and it will help to simplify the court process. The court will still need to be satisfied that there will be no undue delay in completing the contract, which will give the attaching creditor all the protection that they need.

I ask the committee to accept amendments 295 and 296, and I ask Murdo Fraser to withdraw amendment 313 and not to move amendment 314.

**Murdo Fraser:** I listened with interest to the minister's response. He is right that the six-month period identified for completion of transactions, which was proposed by the Law Society, will be appropriate in the great majority of transactions. However, as I pointed out, a significant minority of transactions will last longer; they will tend to be the more complex, involved and potentially more valuable transactions, which will be dependent on planning consent.

I hear everything that the minister says, but the difficulty is that the bill creates uncertainty because the purchaser is dependent upon the sheriff's discretion on whether the purchaser can complete. Having practised in this field of law for many years and having advised developers and those who seek planning consent, I can tell the minister that the last thing people want is uncertainty. They are investing large sums of money—potentially hundreds of thousands of pounds—in seeking planning consent for development and performing all sorts of other preparatory work, and they simply will not invest that money if they are not certain that the transaction can proceed. Allowing the sheriff discretion, as the minister proposes, will not solve that problem; it will create uncertainty for purchasers and it will not be good for business. For that reason, I will press my amendment.

**The Convener:** The question is, that amendment 313 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Fraser, Murdo (Mid Scotland and Fife) (Con)

**AGAINST**

Baker, Mr Richard (North East Scotland) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Matheson, Michael (Central Scotland) (SNP)
May, Christine (Central Fife) (Lab)
Neil, Alex (Central Scotland) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)

**ABSTENTIONS**

Baird, Shiona (North East Scotland) (Green)

**The Convener:** The result of the division is: For 1, Against 7, Abstentions 1.

*Amendment 313 disagreed to.*

*Amendment 314 not moved.*

*Amendments 295 and 296 moved—[Allan Wilson]—and agreed to.*

*Section 88, as amended, agreed to.*

*Sections 89 and 90 agreed to.*

**Section 91—Warrant for sale of attached land owned in common**

**The Convener:** Amendment 297, in the name of the minister, is in a group on its own.

**Allan Wilson:** Amendment 297 is concerned with situations in which land is owned in common by the debtor and a third party. As introduced, the bill does not take proper account of the rights of any creditor of a third party who has security over the third party's share. If agreed, amendment 297 will protect the interests of such a creditor. The solicitor who acts in the sale of attached land will need to ensure that any payment to the third party takes into account the third party's secured creditor's rights.

I move amendment 297.

*Amendment 297 agreed to.*

*Section 91, as amended, agreed to.*

*Section 92 agreed to.*

**Section 93—Supplementary orders as respects sale**

**The Convener:** Amendment 298, in the name of the minister, is grouped with amendments 302 to 304.

**Allan Wilson:** The bill does not allow the attaching creditor to sell land directly. Instead, an independent solicitor is appointed by the court to carry out the sale. The appointed person represents the court and is intended to have a duty of care to all persons who have an interest in the sale of the property. The amendments in the group will, if agreed, make the provision on appointed persons work more effectively.

Amendment 298 makes it clear that the creditor, the debtor, or any other person with an interest, can ask the court to appoint a new appointed person if there is a reason to replace the previous one.

Amendment 302 adds a co-owner of attached property to the list of people to whom the appointed person has a duty of care, as the appointed person might have to sell land that is owned in common by the debtor and a third party.

Amendment 304 ensures that the appointed person is able to deduct reasonable fees and outlays from a payment to the creditor under section 105, rather than having to pay the money only to have to ask for it back; obviously, we would wish to avoid that.

Amendment 303 is a minor amendment that is consequential on amendment 304.

I move amendment 298.

*Amendment 298 agreed to.*

*Section 93, as amended, agreed to.*

*Section 94 agreed to.*

**Section 95—Termination of debtor's right to occupy land**

15:00

*Amendment 299 moved—[Allan Wilson]—and agreed to.*

*Section 95, as amended, agreed to.*

**Section 96—Consequences of giving notice under section 95(1)**

*Amendments 300 and 301 moved—[Allan Wilson]—and agreed to.*

*Section 96, as amended, agreed to.*

**Section 97—Appointed person**

*Amendment 302 moved—[Allan Wilson]—and agreed to.*

*Section 97, as amended, agreed to.*

*Sections 98 to 104 agreed to.*

**Section 105—Proceeds of sale**

*Amendments 303 and 304 moved—[Allan Wilson]—and agreed to.*

*Section 105, as amended, agreed to.*

**Section 106—Foreclosure**

*Amendments 305 and 306 moved—[Allan Wilson]—and agreed to.*

*Section 106, as amended, agreed to.*

*Sections 107 to 109 agreed to.*

**Section 110—Termination by payment etc**

*Amendment 307 moved—[Allan Wilson]—and agreed to.*

*Section 110, as amended, agreed to.*

**Section 111—Discharge**

*Amendment 308 moved—[Allan Wilson]—and agreed to.*

*Section 111, as amended, agreed to.*

*Sections 112 to 115 agreed to.*

**Section 116—Interpretation**

*Amendments 217 and 309 to 311 moved—[Allan Wilson]—and agreed to.*

*Section 116, as amended, agreed to.*

*Sections 117 to 126 agreed to.*

**Section 127—Termination by payment etc**

*Amendment 312 moved—[Allan Wilson]—and agreed to.*

*Section 127, as amended, agreed to.*

*Sections 128 to 132 agreed to.*

**Section 133—Interpretation**

*Amendment 218 moved—[Allan Wilson]—and agreed to.*

*Section 133, as amended, agreed to.*

**The Convener:** That concludes our consideration of amendments for today.

# European Structural Funds

15:04

**The Convener:** Agenda item 2 is consideration of a paper on research on European structural funds. This is Christine May's baby, so I ask her to introduce the paper.

**Christine May:** I am pleased to introduce the paper, which comes to us following a discussion that we had at a previous meeting. I thank Stephen Herbert and the team at the Scottish Parliament information centre for liaising with me on amendments to the paper.

The sentence that captures what I am trying to do is in section 2:

"The research will also look at the capacity of the programmes and projects to lever in additional funds and investments."

To my mind, that is not covered in the end-of-term assessments of the individual strands of individual programmes. As I have said to the committee before, when European funding is obtained for a regeneration initiative, funds are often brought in from a number of European strands which, in turn, attract funding from Government or private sector sources. What I am trying to capture—and what I think the committee will want to capture from the enterprise perspective—is the funds' ability to create a lasting framework for economic development and the extent to which they have done that.

I hope that the committee agrees that the research will be worth our while and will not replicate work that has been done by other committees or in project evaluations to date.

**Susan Deacon (Edinburgh East and Musselburgh) (Lab):** I do not underestimate the importance of the issue and I acknowledge the level of public expenditure that is involved. Given that we are talking about £2.5 billion of public money, my point might seem insignificant, but I want to know and understand a bit more about what we will commit ourselves to if we go ahead with the research. I am thinking both about the costs—although I realise that there are issues about the tendering process—and about the outcome of the work relative to the time, effort and direct costs that would be involved, not least given that Parliament is nearing the end of a session. I would be grateful for some clarification on those matters.

As I said, I realise that in the scheme of things we are talking about a substantial amount of public money, but it is none the less important—before we commission external reports, or reports from our clerks or SPICe—that we consider whether the

exercise will bear fruit and, therefore, will represent value for money.

**The Convener:** I will hear other members' comments and ask Christine May to sum up at the end. I ask Stephen Herbert to join us at the table so that he can answer factual questions if Christine needs assistance with them.

**Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):** Given the area that I come from, and notwithstanding the difficulties in which we are engaged at the moment, I would welcome the research. There has been an element of confusion and, perhaps, opaqueness about the issue over the years. That is nobody's fault, but it would be good to get the facts out.

I am keen to make two points. The first will come as no surprise to the committee because I have raised it before: it is on the importance of drawing boundaries. I remind members that, in Wales, funding is directed according to the intelligent drawing of lines on maps. In the Highlands we have the Inverness effect. Inverness is buoyant, to say the least, and its growth is, if anything, accelerating and the graph getting even steeper. Other parts of the Highlands—not only in my constituency but in the constituencies of members of all political colours—are feeling the Inverness effect.

The second point is a slightly newer one. I have been examining funding—I will meet officials in a week or two—with a view to anticipating what will happen in the future. The radar is switched on. To be absolutely parochial, I am thinking of the post-Dounreay scenario, which we heard about in Thurso and which is of major concern to all politicians. We have heard that decommissioning is accelerating and that the problem is coming at us quicker than we had thought it would, so to what extent can one anticipate problems in respect of funding and know what will come on to the radar soon? I am sure that the best of intentions are held, but I need that to be demonstrated for my peace of mind.

**The Convener:** No other members have questions; I would bring in Stephen Herbert, but he is indicating that he does not want to add to or answer any questions.

**Christine May:** Susan Deacon raised a valid point about the amount of work, which I have discussed with SPICe. Post-session evaluations have been done on all the more recent structural fund elements—on individual funds and individual strands. It is all out there. The proposal is that we examine those evaluations across a range of projects. We will use programme management executives, which are the local managers of funds, and their intelligence. The intention is not that vast quantities of new research be done, but that existing research findings be collated and exemplars used, rather than examples of every project in every programme.

I do not expect the proposal to cost a huge amount of money, but when the tenders are submitted, the committee will have the opportunity to consider costs and will have a better idea of whether the cost can be put up with.

Jamie Stone raised two points. The research will not give us any steers for the next round of funding; work on that has already been done and it is far too late for us to exert any influence in respect of boundaries. However, the research might show whether the lines on maps have been detrimental or advantageous to some areas, although I suspect that most of us know the answer to that.

For the future radar, when we consider the development of regeneration policy, economic development and economic investment, the research might suggest what types of collaborative programme work best and have the most lasting effects. However, I am speculating—I am not sure that that will be in the research.

**The Convener:** Before an invitation to tender can be made, the proposal will go to the Conveners Group for consideration along with other committees' bids against the research budget. The Conveners Group is highly aware of the need for value for money and for operating within the overall research budget for committees. As a member of that group, I will ensure that the committee's concerns that we obtain value for money and that cost is not excessive are taken into account.

With those provisos, are members happy to proceed with the proposal?

**Members** *indicated agreement*.

**The Convener:** We have unanimous agreement. I suspend the meeting to give the Minister for Tourism, Culture and Sport time to arrive and sit down for agenda item 3.

15:13

*Meeting suspended.*

15:16

*On resuming—*

# Tourist Boards (Scotland) Bill: Stage 2

### Section 1—Scottish Tourist Board: change of name

**The Convener:** Agenda item 3 is stage 2 of the Tourist Boards (Scotland) Bill. Members have copies of the marshalled list of amendments for the bill. I welcome to the meeting the Minister for Tourism, Culture and Sport, Patricia Ferguson.

Amendment 1, in the name of Murdo Fraser, is in a group on its own.

**Murdo Fraser:** I am delighted to speak to amendment 1.

Members who recall the committee's stage 1 debates, which were conducted in preparation for our report, will not be surprised that I have lodged amendment 1. The amendment deals with an issue that is dear to my heart and which I raised at that stage. Its purpose is to delete section 1 of the bill and therefore ensure that the Scottish Tourist Board will not be renamed VisitScotland, but will remain as the Scottish Tourist Board.

I lodged my amendment for three reasons. First, we should all sign up to the principle that we should seek to legislate only where doing so is absolutely necessary, and thereby set our faces against unnecessary legislation. The proposal that has been made is unnecessary. There is no earthly reason why the Scottish Tourist Board should be renamed VisitScotland. If the organisation's name is retained, it can trade under any name that it wants to trade under. Currently, it trades under the name VisitScotland, but it could trade under any name now or in the future. There is no legal reason why there must be a change of name.

Secondly, the Scottish Tourist Board's name is perfectly appropriate in the light of what the organisation does. It is immediately obvious what a person is talking about when they talk about the Scottish Tourist Board—he or she will not have to go into a long explanation about what it does. People might be becoming familiar with the name VisitScotland, but when that name is used, what the organisation does must often be explained because it is not immediately apparent; what it does must often be explained to people from overseas, for example. The Scottish Tourist Board's name perfectly describes the organisation, so it is unnecessary, at best, to change it. The name VisitScotland was probably dreamed up at great expense by marketing consultants—no doubt the same people who devised the new Tory party logo. I dare say that they reached the conclusion that the name is attractive—as the Tory party logo is, of course—and that it will attract headlines, but it is very much a marketing name. I am not sure that it necessarily follows that the organisation's legal name should be the same as its attractive marketing name.

The final reason why I oppose the measure is that if we now change the name from the Scottish Tourist Board to VisitScotland, we will set a precedent such that when we inevitably rename the organisation in the future—I suspect that VisitScotland is a name that is very trendy at the moment, but which may need to be changed in 10 or 20 years—we will have to pass a similarly unnecessary act of Parliament to change the organisation's name once more.

For the three reasons that I have outlined, I oppose the change of name. I am pleased to support the amendment in my name.

I move amendment 1.

**Shiona Baird:** I agree with everything that Murdo Fraser said. While listening to him, it occurred to me, as a former member of the Angus and Dundee tourist board who has holiday accommodation, that I would like the minister to say what the regional boards will be called. Perhaps I should know that already. I do not see myself lifting up the phone and saying that I am a member of VisitScotland Dundee. Many of the visitors to my accommodation came from within Scotland. The Scottish Tourist Board is a name that provides a much rounder description, which implies that many visitors come from within Scotland. The new title of VisitScotland implies that people are coming in from the outside.

**Mr Stone:** I am getting on—I am an old bloke of 52. However, the word "board" seems to be terribly backward looking. It is synonymous with the 1930s, 1940s and 1950s. "VisitScotland" means precisely what it says—by cleverly putting together two words it invites people to visit Scotland, which is what we are all about. We lose that by using old-fashioned English. I accept Murdo Fraser's point about the oak tree and so on, but I will disagree with the amendment for the sake of it.

**The Convener:** If the same marketing executives produced the Tory logo, they are going from success to success. Would the minister like to say a few words?

**The Minister for Tourism, Culture and Sport (Patricia Ferguson):** Certainly, convener. Thank you for having us along this afternoon.

It is true that the Scottish Tourist Board is already calling itself VisitScotland and could and would continue to do so, even if we did not change

the name legally. However, the bill in its entirety provides a new start for tourism in Scotland. It is about consolidating the work that has been done over the past few years to make the Scottish Tourist Board into a 21st-century tourism organisation, and about putting that integrated organisation on a proper legal footing. For that reason, it is right that the Scottish Tourist Board's new name, VisitScotland, will also be put on a proper legal footing. As Mr Stone correctly said, the name "Scottish Tourist Board" belongs in the past. This is a fresh start for the organisation, so it is right that its new name will be made official.

I can reassure Mr Fraser on at least one of the points that he made: we are committing ourselves to a name that will not need to be changed by more primary legislation if, in years to come, we and VisitScotland decide that the name is no longer appropriate. The bill does not prohibit a future name change—we can make such a change without resorting again to legislation.

It is true that it is not vital that we change the legal name of the organisation to VisitScotland, but the committee will agree that this is a good opportunity to put the new name on a legal footing and to confirm VisitScotland as the way forward for Scottish tourism.

**Murdo Fraser:** I will sum up briefly. I was interested in my colleague Mr Stone's comment that the name VisitScotland perfectly describes what we want it to do. As Shiona Baird pointed out, that may be the case for people from overseas, but it is a strange admonition to urge people who are already in Scotland to visit Scotland.

Nothing that the minister had to say convinced me to change my mind on the issue. With respect, I suggest that she argued against herself, because she said that it would be possible in the future for the organisation to call itself anything that it wants, without new legislation. That is the case at the moment, which means that legislating on the matter is unnecessary. The minister conceded that it was not vital to change the name by legislation, so I rest my case. Section 1 is unnecessary. Accordingly, I will press amendment 1.

**The Convener:** The question is, that amendment 1 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Baird, Shiona (North East Scotland) (Green)
Fraser, Murdo (Mid Scotland and Fife) (Con)

**AGAINST**

Baker, Mr Richard (North East Scotland) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Gillon, Karen (Clydesdale) (Lab)
May, Christine (Central Fife) (Lab)
Neil, Alex (Central Scotland) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)

**ABSTENTIONS**

Matheson, Michael (Central Scotland) (SNP)

**The Convener:** The result of the division is: For 2, Against 6, Abstentions 1.

*Amendment 1 disagreed to.*

*Sections 1 to 3 agreed to.*

*Schedule 1 agreed to.*

*Section 4 agreed to.*

*Schedule 2 agreed to.*

*Section 5 agreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2 of the Tourist Boards (Scotland) Bill and completes our meeting this week. I look forward to seeing members again next week.

*Meeting closed at 15:26.*

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