The Committee will meet at 2 pm in Committee Room 1.

1. Scottish Enterprise budget and restructuring plans: The Committee will consider progress with this matter, including a request from the Chief Executive of Scottish Enterprise to postpone evidence-taking.

2. Bankruptcy and Diligence etc. (Scotland) Bill: The adviser will brief the Committee at Stage 1 on parts 9 (Diligence against earnings) and 10 (Arrestment) of the Bill.

3. Bankruptcy and Diligence etc. (Scotland) Bill: The Committee will take evidence at Stage 1 on parts 9 (Diligence against earnings) and 10 (Arrestment) from—

   Susan McPhee, Head of Social Policy and Public Affairs, Citizens Advice Scotland, and Brenda Tamborini, Money Adviser, Glasgow Easterhouse Citizens Advice Bureau, Rob Beattie, Committee of Scottish Clearing Bankers, Dawson Lamont, Head of Exchequer Services, Highland Council, David Mair, Senior Solicitor, Chief Executive’s Department, and Lesley Pryde, Senior Revenues Officer, Financial Services Department, Glasgow City Council.

4. Scottish media and broadcasting industry: The Committee will consider trends and developments in the media and broadcasting industry.


Stephen Imrie
Clerk to the Committee
Tel. 0131 348 5207
enterprise.committee@scottish.parliament.uk
The following meeting papers are enclosed:

**Agenda Item 1**
Note by the clerk  
EC/S2/06/10/1

**Agenda Item 2**
Note by the adviser  
EC/S2/06/10/2

**Agenda Item 3**
Submission from Citizens Advice Scotland  
EC/S2/06/10/3
Submission from the Committee of Scottish Clearing Bankers  
EC/S2/06/10/4
Submission from Highland Council  
EC/S2/06/10/5
Submission from Glasgow City Council (Paper to follow)  
EC/S2/06/10/6

**Agenda Item 4**
Briefing paper from SPICe  
EC/S2/06/10/7

**Agenda Item 5**
Response by the Scottish Executive to the Committee’s 13th Report 2005 on Reform of Scottish Football  
EC/S2/06/10/8
Response by the Scottish Football Association to the Committee’s 13th Report 2005 on Reform of Scottish Football  
EC/S2/06/10/9

**NB.** A copy of the Committee’s report can be viewed at the following website:

[http://www.scottish.parliament.uk/business/committees/enterprise/reports-05/elr05-13-vol01.htm](http://www.scottish.parliament.uk/business/committees/enterprise/reports-05/elr05-13-vol01.htm)

**Papers circulated for information only**

Enterprise and Culture Committee

Scottish Enterprise budget and restructuring plans

Note by the clerk

Background

1. Members agreed at the most recent meeting of the Committee (28 March) to invite the Chairman, Chief Executive and Director of Finance of Scottish Enterprise to appear before the Committee on the 18 April to give evidence on Scottish Enterprise’s budget and restructuring plans. It was agreed also to ask for a full written report from Scottish Enterprise by 12 April and to invite the Deputy First Minister and Minister for Enterprise and Lifelong Learning to appear at the Committee on 25 April or 2 May.

2. Shortly after the meeting, the clerks received information from Scottish Enterprise that two of the three invitees would be on holiday prior to the 18 April, but would be willing to alter their personal arrangements if the Committee wished and to appear on the 18 April if requested. Following discussions with a number of Committee members, it was agreed to delay the appearance of the three representatives from today’s meeting to that of the 25 April.

3. However, following the issuing of a formal invitation to Scottish Enterprise for the 25 April meeting, the clerks received a further request from Scottish Enterprise. The note from the Chief Executive of Scottish Enterprise suggested that the body would not be in a position to fully answer all the questions that the Committee members may have at that time as audits and discussions with the Scottish Executive concerning budgets will not be completed until the end of April. Scottish Enterprise suggested that until these matters are resolved, any discussion with the Committee would likely to be inconclusive. As a consequence, the Chief Executive asked the Committee to consider postponing evidence-taking until 2 May when Scottish Enterprise will be better placed to provide a full and comprehensive account of its situation – including audit reports – to inform the Committee’s discussion. At that time, Scottish Enterprise suggests it will be able to present a full picture and also the proposed approach for the future as agreed with the Executive.

4. Members may wish to note that the proposed timetable suggests hearing from Scottish Enterprise after finalisation of the future approach to its budgets and restructuring plans with the Scottish Executive. The comments made by a number of members at the meeting of 28 March suggested that the Committee should be taking evidence from Scottish Enterprise and Culture Committee, *Official Report*, col 2867.

Subsequently extended until midday on 13 April with the agreement of the Convener to a request from Scottish Enterprise for an extension.
Enterprise before such decisions are reached in order to be able to influence the process\(^3\).

5. Members may wish to note also that on the 13 April, the clerks received a further email from the office of the Chief Executive declining the request to produce the written report as per the agreement of the Committee. The main thrust of the email is that the Board of Scottish Enterprise has determined that the report now prepared for the Enterprise & Culture Committee should not be released prior to its review by the Enterprise Minister. Scottish Enterprise indicated that the report will be provided to the Committee as will its Internal Audit report and associated report by the SE Audit Committee, at the earliest possible opportunity after review by our sponsoring Minister, and in advance of the appearance before the Committee.

6. Separately, members will have received a briefing paper from CoSLA outlining its views on the budgets and restructuring of Scottish Enterprise and requesting the opportunity to give oral evidence to the Committee.

**Action**

7. The Convener requested that these two issues (the timetable for evidence-taking from Scottish Enterprise and the request from CoSLA) be discussed at today's meeting.

8. It is suggested that members consider the following options with regards to the request from Scottish Enterprise:

   - **Option A:** agree to the request and hear from Scottish Enterprise on 2 May and the minister on either 2 May or 9 May
   - **Option B:** decline the request and hear from Scottish Enterprise only on 25 April and the minister on 2 May
   - **Option C:** decline the request and hear from Scottish Enterprise on 25 April with regards to any written report it may have submitted by that stage and again on 2 May, if necessary, for any follow-up questions, along with the minister on this date.

9. In light of the written report from Scottish Enterprise, members are asked if any additional information is requested prior to the appearance by representatives of this body at the Committee.

10. Finally, members are also asked to consider the request from CoSLA to appear before the Committee to give evidence on these matters and whether any other organisations should be invited at this stage.

**Stephen Imrie**, Clerk to the Committee

\(^3\) Ibid, col 2864-2866.
Diligence against earnings, arrestments in execution and actions of forthcoming

The Bill proposes to tidy up, rationalise but not necessarily simplify the law relating to these three methods of extracting money out of debtors. The current law on these matters is out of step with practice, is sometimes archaic, unhelpful for creditor, debtor and arrestee alike, and arguably requires unnecessary applications to court.

What is “diligence against earnings”? 
This is a form of arrestment of a debtor’s wages. The employer makes a deduction from the debtor’s wages, and this is paid to the creditor. There are three types of diligence against earnings, being:

- earnings arrestments
- current maintenance arrestments and
- conjoined arrestment orders.

Earnings arrestments involve the deduction of money from wages, although the debtor is allowed to retain a basic income for himself and his dependents. It continues in force until the debt and other expenses, interest etc. is repaid.

Continuous maintenance arrestments are used to obtain funds for the debtor’s spouse or ex-spouse(s) and his children. They are gathered in the same way as earnings arrestments, and continue in force until the dependents are no longer the responsibility of the debtor.

Conjoined arrestments arise where the debtor is due money to several creditors. The employer sends a regular sum out of the debtor’s wages to the local sheriff clerk who then divides up the funds between the various creditors. This is designed to minimise inconvenience to employers for whom the whole business of arrestment is a cost and inconvenience without benefit to the employer.

The current order of priority for payment of debts using diligence against earnings is as follows:

- deductions from earnings orders (initiated by the Child Support Agency)
- conjoined arrestment orders
- earnings arrestments
- continuous maintenance arrestments
- deductions from earnings order (student loans).
What is perceived to be wrong with the current practice of diligence against earnings?

There are various problems suggested with the current practice.

1. Originally it was thought that ordinary creditors should have a higher priority than spouses and children. This is not now considered so acceptable; under the revisions proposed in the Bill these two sets of creditors will be treated equally, although money separately due to the Child Support Agency will still remain a first claim on the employee’s wages.

2. Secondly, the formula in the Debtors (Scotland) Act 1987 for dividing up the amount deducted by an employer between an earnings arrestment and a continuous maintenance arrestment was not in practice strictly being followed, and indeed was not perhaps as well drafted as it might have been; a more sensible method, which the Executive endorses, and which was the original intention of the legislation, was in practice being followed. This method took account of the need for the debtor to retain some money for his own needs. The proposed change in the Bill tidies up the wording to give effect to what has been happening in practice.

3. Current practice does not require much disclosure of information between creditor, employer and employee. The Bill proposes that employers, debtors and creditors should all be better informed about the sums that are being deducted and the sums that are due. In addition, employers and employees will be put under a duty to tell creditors that the employee has moved job: there are sanctions for employers if they fail to pass on this information, though not surprisingly there is no proposed sanction against employees who do not pass on information about their changes of job.

What are there other controversial aspects amongst any of the other proposals in the Bill on this area?

There are a number of other areas worth highlighting:

1. The Executive and the Department of Constitutional Affairs have not yet been able to work out what to do with English attachment of earnings orders being levied on employees of an English company based in Scotland – especially if there is already a Scottish earnings arrestment in place. This has not yet resolved and may await changes in the law in England.

2. At present occupational pension schemes cannot be arrested (except in respect of child support payments), thus placing public sector workers at a considerable advantage. Given that the regulation of certain public sector worker pensions is a matter for the UK Parliament, and that the law on pensions generally is a matter of great complexity at the best of times, it was felt unwise to rush into legislation at this point.

3. A similar problem arises with student debt, with its difficult cross-border issues, and this was felt to be best left for mature consideration.

If these are not resolved fairly shortly, there may well be test cases which will expose these gaps in the law.
**What are “arrestments in execution” and “actions of forthcoming”?**
These are the seizing of the debtor's assets in the hands of a third party – such as furniture in a repository, money in a bank account, stock at an auctioneer's waiting to be sold. The commonest use is against money in a bank account. The creditor (through sheriff officers) serves a prescribed notice on the debtor's bank, and this effectively "freezes" the account until the debtor consents to the release of the frozen funds or the creditor obtains a further order from the court, known as an “action of forthcoming" to allow the arrestee (in this case, the bank) to pay the funds to the creditor.

**What is perceived to be wrong with the current practice of arrestment in execution?**
There are various problems suggested.

1. At the moment, if a debtor consents to having his arrested funds or assets released, s/he has to sign a mandate permitting the arrestee to release the assets to the creditor. There are questions as to the legality of this, but by setting up a statutory form of mandate, the practice will then undoubtedly be legal.

2. The secondary action of applying to court for a decree of forthcoming is laborious, time-consuming and adds costs to the debtor. The proposed new method of automatic release (within 14 weeks, subject to the protection of rights for debtor and arrestee alike) of arrested assets avoids the need to obtain a decree of forthcoming, although the action may still be raised if creditors wish to do so.

3. Current practice allows the debtor's entire bank account to be frozen. The new proposals will ensure that more money than at present stays in the bank account, and the debtor is not left penniless. The new proposals will give a safety net of money in a bank account (provided it is not a business account) that will not be arrestable.

4. At the moment, there is no obligation on the debtor or the arrestee to disclose whether or not an arrestment has arrested anything. To find out if the arrestment has been successful it is necessary to raise an action of forthcoming, which may disclose that nothing has been arrested. This adds costs without necessarily achieving anything. The new proposals are that arrestees must disclose if anything has been arrested, and do so within three weeks – though there is no obligation to disclose a nil return. Although this last provision is intended to minimise cost and inconvenience to the arrestee, it may still leave the effectiveness of an arrestment in doubt.

5. Some of the forms used in arrestment are archaic and unintelligible to the layperson. New forms indicating what has been arrested, how the arrestment could be lifted, what the permitted minimum protected balance is etc. are all intended to be provided under the Bill.

6. Notwithstanding the presence of a safety net, a debtor could still suffer the double misfortune of an earnings arrestment and the arrestment of a bank account.
What has consultation on these matters indicated?
There is general agreement that arrestment is a valid form of diligence, that in the interests of fairness to the debtor a minimum balance in a bank account should not be arrested, that business bank accounts of any sort are wholly arrestable (without the benefit of a minimum balance), that the automatic release of the arrested assets without an action of forthcoming is desirable and that more information all round can only be beneficial.

Where do the perceived problems lie?
There do not appear to be significant difficulties with diligence against earnings. But there are problems with arrestments in execution.

1. Protecting a minimum balance in an arrested bank account may restrict the ability of some creditors, particularly local authorities and HMRC, really to put pressure on some debtors to make them pay their council tax or other taxes. Local authorities and HMRC are involuntary creditors and are not in a position, unlike other creditors, to withhold services. They are also under political pressure to ensure that more debtors do pay. Every unpaid council tax or other tax bill is potentially less money available to the rest of the public.

2. Local authorities (and this includes all other involuntary creditors) also point out that the new proposals that a charge should be served first before proceeding to arrestment in execution will increase costs and cause further delay in payment. The costs will be initially born by the debtor, and given the distances some debtors live from sheriff officers, those costs could be considerable. Furthermore, if the debtor cannot pay his council tax/rates/taxes, s/he is unlikely to be able to pay the costs of the charge as well, so the local authority and/or the public purse, ends up paying the extra costs of the charge. Equally, CAB points out that one of the failings of the present system is that there is no notice of an arrestment of a bank account: it comes out of the blue and can cause hardship to debtors. There seems no easy way of reconciling these two positions.

3. The 14-week period before automatic release is 14-weeks during which the council could be earning interest on the collected money – though at current rates of interest this may not necessarily amount to much. Actions of forthcoming may have their difficulties, but at least the creditor does not have to wait for three months before getting the arrested asset. Under these circumstances, local authorities, and indeed other involuntary creditors, may find it more productive to proceed straight to sequestration, which may be a more drastic way of dealing with the unpaid tax bill than is really necessary – though of course it may have the benefit of concentrating people’s minds on paying their taxes when they should.

4. On a separate matter, banks dislike having to deal with arrestments. They are an inconvenience and an expense and although there have been suggestions that either the creditor (or possibly the debtor) should pay a fee to the arrestee, this has not been accepted by the Executive. In the long run banks may not prove as co-operative as so far they have been.
5. Although the new proposals set up a safety net of money in a bank account that cannot be arrested, anything in excess of that safety net could be arrested. This is a particular matter of concern for debtors receiving benefits. Most social security benefits etc are already protected at source, but they are not protected once they are in the debtor’s bank account. This is because at present a bank does not separate funds in a bank account according to where they came from. The CAB points out that safety net protection does not cover funds arising when there are extra payments for disabilities, such as when a substantial back-dated benefits award is paid to the debtor’s bank account, when tax credits are received specifically to help with child care, or when housing benefit is paid. These sums could be paid to the debtor and since they might exceed the safety net, they could be arrested even though they were designed to be used for particular purposes.

6. The CAB believes that there is a solution to this problem: it would involve earmarking benefits in such a way as they could not be arrested. On receipt of the money in the debtor’s bank account the sums due under these benefits would be paid into special accounts that could not be arrested. Alternatively a court order would be needed to arrest the money from benefits. While the first of these proposals no doubt could be done, it would require the considerable cooperation of banks, building societies, post offices etc., all of which would have to set up systems for the separation of the funds (and who would bear the cost of the administration of all this?) and it would serve as little incentive for people to pay the debts they should in any case be paying. It might even lead to a refusal or reluctance by certain banks to take on customers who are on benefits. It might require separate legislation to force the banks to separate funds if required to do so.

7. In any case, if the debtor’s bank account is overdrawn, the bank (at least in law) will have the first claim on any monies paid in anyway, and it is at the bank’s discretion to release those monies for the purposes for which they were paid.

And are there wider problems too?

These include:

1. At present, if there happens to be anything in the bank account on the day the sheriff officers arrive, that sum is arrested. But if it happens to be empty or overdrawn that day (as is in practice often the case), the bank is under no obligation to be helpful or informative about the matter, and the only remedy is to try again another day, at further expense and inconvenience to the creditor and ultimately the debtor. There is no provision for arresting the bank account in the expectation that some money might come in shortly; and indeed, it might be seen as draconian if such a provision existed, not to mention a breach of the duty of confidentiality. But it does mean that quite a number of arrestments are futile. The new arrangements will at least provide more information on the success of each arrestment than has been the case so far, but it still is not wholly satisfactory.

2. Furthermore a smart debtor, if s/he actually has any spare money, learns not to keep it in the bank, where it will be arrested. S/he can keep it in a building society, or if s/he is really ingenious, a building society based in England. S/he
can “hide” the funds in an account with which the debtor is not apparently connected, such as a company. Or better still, s/he keeps his money in cash, in a place where a money attachment order will be unlikely to find it.

3. One of the other problems with bank arrestments is that creditors serve simultaneous arrestments on all the leading Scottish banks, in a “fishing expedition”. An arrestment of a bank account can be successful where the creditor knows where the debtor banks, particularly if the creditor knows the actual branch, but most of the time, the creditor will have no idea where the debtor banks. Only a fishing expedition will reveal where the debtor banks. Not only will this incur unnecessary expense and inconvenience for arrestee and creditor alike, but the debtor may ultimately still have to pay for the unsuccessful arrestments when some money is arrested – although the debtor could, in theory, raise an action for wrongful arrestment (assuming it was worth the expense and inconvenience of doing so).

**Given that there are all these problems, is there still a need for arrestment?**

Arrestment is not very effective for the “can’t pays” who may not necessarily have a bank account, or if they do, it may well be overdrawn anyway, but it is an effective diligence for the “won’t pays” who can perfectly well pay but are refusing or delaying to do so.
Citizens Advice Scotland  
Scottish Association of Citizens Advice Bureaux

Bankruptcy and Diligence (Scotland) Bill  
A Briefing to the Enterprise and Culture Committee by Citizens Advice Scotland

based on the evidence of Citizens Advice Bureaux clients in Scotland

by Susan McPhee  
Head of Social Policy and Public Affairs

January 2006
Citizens Advice Scotland and its member bureaux form Scotland's largest independent advice network. CAB advice services are delivered using service points throughout Scotland, from the islands to city centres.

**The CAB Service aims:**

to ensure that individuals do not suffer through lack of knowledge of their rights and responsibilities, or of the services available to them, or through an inability to express their need effectively

**and equally**
to exercise a responsible influence on the development of social policies and services, both locally and nationally.

The CAB Service is independent and provides free, confidential and impartial advice to everybody regardless of race, sex, disability or sexuality.
Citizens Advice Scotland and its 78 CAB offices form Scotland's largest independent advice network. CAB advice services are delivered through 222 service points throughout Scotland, from the islands to city centres.

The CAB service aims:

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EXECUTIVE SUMMARY

1. Citizens Advice Scotland (CAS) welcomes many of the proposed reforms contained in this Bill, in particular:
   - The introduction of a reduced bankruptcy period and other related reforms
   - Increased information provided to debtors
   - The formation of the new Scottish Civil Enforcement Commission, and particularly their public information role
   - Protections for debtors in relation to land attachments
   - Reforms to earnings arrestments (diligence against earnings) including greater information exchange between the relevant parties
   - Reforms to bank arrestment procedure (arrestment in execution), including the introduction of a protected minimum balance in bank accounts
   - Reform of summary warrant procedure in respect of the issuing of a charge, and the plans to extend time to pay

2. However, CAS would like to see the following reforms included in the Bill:

   **BANKRUPTCY**
   - An increase in the debt levels for creditor petitions beyond the current figure of £1,500
   - A link between sequestration proceedings and the debt arrangement scheme to include, where applicable, a deferment or sist of sequestration proceedings pending approval of a debt payment programme
   - Introduction of the proposals put forward by the Working Group on Debt Relief in relation to no income no assets (NINA) clients
DILIGENCE

3. Land Attachments
   • An exemption of the main dwellinghouse from the second (sale) stage of land attachments
   • Otherwise, the introduction of a debt limit that needs to be reached before an attachment can be effected and
   • A substantial increase in the level of debt from £1,500 whereby a home can be sold and
   • An introduction of a hierarchy of diligence to be attempted by the creditor before allowing the sale of the dwellinghouse

4. Bank Arrestments
   • An earmarking of benefits and tax credits to ensure they cannot be arrested
   • Otherwise the introduction of a procedure to allow a debtor to apply to court for the release of benefits or tax credits
   • A clause that will prevent creditors being able to carry out more than one form of diligence for the same debt
   • Otherwise a clause to prevent creditors from carrying out a bank arrestment when an earnings arrestment is already in place

5. Debt Arrangement Schemes (DAS)
   • An amendment to the current DAS scheme to allow for the freezing of interest to be applied to all debts from the issuing of a form 4, binding on all creditors
   • The setting of an upper limit of 10 years for the DAS to run, after which time the debts to be discharged
   • The composition of debts to take place at the beginning of the DAS as agreed by creditors with deemed consent
6. Citizens Advice Scotland (CAS) is the umbrella organisation for Scotland’s network of 78 CAB offices. These bureaux deliver frontline advice services throughout the country, from the city centres of Glasgow and Edinburgh to the Highlands, Islands and rural Borders communities.

7. In 2004/05 Scottish bureaux dealt with just under 75,000 new enquiries relating to debt, accounting for over 17% of all new enquiries – a 9,000 increase from the previous year. Although comparable figures for this year have not yet been compiled, last year (2003/04), the total amount of new debt dealt with by the service amounted to over £130,500,000.1

8. In 2003, CAS conducted research into our Scottish debt clients in order to explore the extent and types of debt as well as the reasons behind it, and in February 2004, we published our report – “On the Cards – the debt crisis facing Scottish CAB clients”2. Our research allowed us to make a direct comparison with our earlier 2001 report published in conjunction with our sister organisation in England and Wales3.

9. Our 2003 research showed that:

   • There has been an explosion in consumer debt problems brought to bureaux in Scotland over the last two years. The average debt is now £13,380 – a 64% increase since 2001

   • Four in every five debt clients have multiple debts - the average number of debts has increased to approximately five, with one in every five clients servicing eight or more debts

   • On average, for every £1 of monthly income, clients owed almost £22 of debt, excluding mortgages. This level of debt stress had nearly doubled in two years between the publication of our 2001 and 2003 reports

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1 This figure is based on the average new debt handled by the 59 bureaux that reported this information, extrapolated to estimate the overall new debt for all 78 bureaux

2 On the Cards: The Debt Crisis Facing Scottish CAB Clients, Citizens Advice Scotland, February 2004

3 In too Deep: CAB Clients’ Experiences of Debt, Citizens Advice and Citizens Advice Scotland, May 2003
High interest rates, credit charges and easy access to credit are all contributing factors to debt. More than half of CAB debt clients face regular charges for being in arrears, which exacerbate the problem.

One in every four debt clients has at least one storecard debt, or owes council tax, or has an overdraft.

Over half of CAB debt clients have monthly household incomes of less than £800, almost one quarter live on less than £400 per month, and half have no income other than pensions or benefits.

It is with this background that we welcome many of the reforms outlined in the Personal Bankruptcy and Diligence Etc (Scotland) Bill. CAS have been campaigning on a number of areas of diligence for many years, in particular:

- The introduction of a debt arrangement scheme
- Reform of bank arrestments
- Reform of summary warrant procedure

Although this Bill is in four parts, this briefing will look at the relevant parts that relate to our client group. In particular we will comment on two parts of the bill: - bankruptcy and diligence.

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Creditor Petitions

12. We have responded to two separate consultations on these issues\(^5\) and are pleased to see that many of the reforms we supported are contained in the Bill, specifically:

- The introduction of a reduced bankruptcy period
- The introduction of time restrictions for trustees in dealing with a bankrupt’s heritable property
- The introduction of time restrictions on trustees’ rights to claim legal rights and inheritances

13. In our submissions however, we indicated that we would like to see an increase in the debt levels for creditor petitions beyond the current figure of £1,500. It is our experience that the current debt limit is too low in relation to average debt levels, leaving debtors vulnerable to sequestration for relatively low levels of debt. This is borne out by the increase in creditor lead petitions from April – October 2005 (see Annex 1).

14. Bankruptcy remains a very serious step for debtors to face, and can result in the loss of their home. To lose one’s home for a figure of £1,500 can be extremely harsh when there may be other more appropriate options such as a debt payment programme under the debt arrangement scheme. At the very least, we would like to see a link with the debt arrangement scheme and sequestrations. For example the issuing of a form 4 under a DAS could result in a sheriff having to defer or sist any sequestration proceedings raised by a creditor pending the approval of a debt payment programme.

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No Income No Assets (NINA) Clients

15. Last year we sat on the Scottish Executive Working Group on Debt Relief that looked specifically at problems for the no income no assets (NINA) client group. Citizens Advice Scotland carried out a “rough and ready” piece of research on our debt clients who fell into this category – defined as having less than £20 per month disposable income. We found that: -

- There were around 4350 – 6450 new NINA debt clients coming to the Scottish CAB service every year
- They had average debt levels of around £9,800, owing 5.5 debts to just over 3 different creditors
- Just under two thirds of a NINA client’s sole income was from benefits only

16. This client group has insufficient income to enter into a debt payment programme under the debt arrangement scheme, and so their only hope for debt relief is bankruptcy. However, under existing legislation, they cannot access this because they do not fit the criteria for “apparent insolvency”. This is because creditors generally do not pursue their debts through the formal court process. This client group is left vulnerable to creditor harassment, as they do not get the formal protection offered under the debt arrangement scheme.

17. The Working Group – chaired by an academic and consisting of representatives of both creditor and debtor interests – produced a report earlier this year\(^6\) having explored all of the issues. The Working Group suggested a “fast track” route to sequestration for NINA debtors, with safeguards that provided a moratorium if there was a possibility that their circumstances could change, and built in money advice. The recommendations of the group are not incorporated into the Bill.

18. In answer to a PQ in October this year\(^7\), the Deputy Justice Minister said “….It is necessary to consider what impact these reforms [relating to the current Bill] will have before deciding whether it is appropriate to introduce further reforms which have the potential to markedly increase the numbers of Scottish sequestrations”.

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\(^6\) Report of the Working Group on Debt Relief, June 2005

\(^7\) PQ S2W-19371 4 October 2005
19. While allowing NINA clients access to sequestration will undoubtedly increase the overall number of Scottish bankruptcies, nevertheless the Bill as it stands offers very little for this client group. Currently, these clients cannot pay their debts, nor can they enter into a debt payment programme. As a result, they are subjected to creditor harassment – see the Citizens Advice Scotland evidence report on this issue, and our recent response to the Office of Fair Trading. Interest and charges continue to be added onto their overall indebtedness. Their only option is to let their debts increase in the hope that a creditor will eventually take formal action that will allow them access to sequestration.

20. England and Wales are looking at introducing a new procedure to provide debt relief for people who are not able to access any of the available remedies because they are financially excluded. While the proposals are in their initial stages we would not want to see Scotland being left behind in terms of providing debt relief for this particularly disadvantaged client group. We would argue strongly that this Bill needs to incorporate the recommendations of the working group.

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9 Relief for the indebted – an alternative to bankruptcy Summary of responses and government reply The Insolvency Service November 2005
DILIGENCE

Land Attachments

21. Section 70 of the Bill creates a new diligence entitled land attachment. This is a two stage process, involving the attachment of land followed by a court process to secure the sale of the property. Land – including a debtor's main dwellinghouse – can be attached for a debt of any amount, however the house cannot be sold unless the debt is at least £1,500.

22. In July 2002\(^{10}\), we indicated our opposition to this new form of diligence, and met with the Scottish Executive to discuss our concerns in January last year\(^{11}\). Although we are pleased to see that a number of protections have been introduced to the sale aspect of the diligence, nevertheless we are disappointed that the main dwellinghouse has not been excluded.

23. The sale process itself contains a number of protections for debtors, and it is uncertain whether many actual sales will take place using the new procedure. However, we consider that many creditors will use the first stage of land attachment, as it will work in the same way as the old diligence of poindings. The threat to the debtor of losing their dwellinghouse will act as a “spur to payment” which will elicit payment of the debt by whatever means they can. This could mean debtors agreeing to unsustainable repayment plans, or being bullied into paying one creditor at the expense of others, even when this non payment may have other severe consequences. Under the old poindings and warrant sales system, very few warrant sales were carried out – for example in 2002\(^{12}\), approximately 13,500 poindings were carried out but only around 420 warrant sales were actually completed. We consider that this new diligence will operate in a very similar way.

24. There are proposals to disseminate information about this new diligence – the new proposed Scottish Civil Enforcement Commission will be charged with this role – but it is our experience that debtors simply do not know how diligences work or their impact,

\(^{10}\) Enforcement of Civil Obligations in Scotland – a response from Citizens Advice Scotland, July 2002

\(^{11}\) Land Attachments: A Memorandum from Citizens Advice Scotland, January 2005

\(^{12}\) Civil Judicial Statistics Scotland 2002
and they will respond to the threat of losing their home. Effectively land attachments will provide creditors with a powerful means of manipulating debtors in order to elicit payment. Charging orders are the English equivalent of land attachment and are on the increase – there has been a 178% increase in their use over the last five years (see Annex 2). We consider that many English creditors will recognize this new form of diligence and use it.

25. Our view is that the new diligence effectively turns an unsecured loan into a secured one. Secured loans normally require the explicit consent of a debtor and in addition, debtors usually get the benefit of preferential interest rates. This new diligence will effectively provide creditors with the ability to reap the benefits of charging high levels of interest, yet still get their risk secured through the back door by using a land attachment in the event of default. It is worth noting that the new Consumer Credit Bill proposes “wealth warnings” on credit advertisements. In the case of secured loans, this means creditors must alert debtors to the fact that they might lose their home if they do not keep up with repayments, but unsecured creditors are not under the same obligation. If this diligence is introduced and remains applicable to the main dwellinghouse, this risk will now effectively apply to all debts – secured or not.

26. The Scottish Law Commission’s Report on Diligence\(^1\) considered that the effect of registration of a land attachment would create a “real right over the land” for the creditor – effectively turning an unsecured debt into a secured loan. They argued however that while the diligence of land attachment should include the debtor’s main dwellinghouse – possibly operating along the lines of an inhibition – they considered that there were good grounds for exempting the debtor’s house from the sale stage of the diligence. Ultimately they left this recommendation to “political and social policy”. We would argue that the main dwellinghouse should be exempted from the sale part of this diligence. This would allow a land attachment to operate as a more modern version of inhibition, effectively ensuring that a creditor would receive payment on the sale of a dwellinghouse, but they would not be able to force the sale of the debtor’s main home. The right of sale would then apply to second and subsequent dwellinghouses and any land owned by the debtor.

\(^{13}\) Scottish Law Commission – Report on Diligence, April 2001
27. Furthermore, although the debt must be at least £1,500 before the home can be sold, the attachment itself applies to any amount of debt. A debtor having their property attached will not realize that a sale cannot take place until the debt has reached at least £1,500. We would argue that at the very least, a limit needs to be set before an attachment can be effected.

28. In any event, the level of debt whereby a home could be lost is only set at £1,500. We consider that this is far too low a figure for such a harsh and drastic measure, despite the debtor protections built into the procedure. Our 2003 research\textsuperscript{14} found that 79% of bureau debt clients owed £1,500 or more to at least one creditor. While the majority of CAB debt clients do not own their own homes, nevertheless our findings mean that this diligence could impact on a number of CAB debt clients.

29. The policy memorandum accompanying the Bill suggests that the limit of £1,500 has been set to create a disincentive for creditors to opt for sequestration. However, one of the reasons why debtors who can opt for sequestration don’t, is due to the fear of losing their dwellinghouse. Although there are many downsides to bankruptcy, nevertheless in opting for this route, the debtor will generally obtain relief from their other debts. This diligence as it stands will in effect implement the debtor’s main fear – losing their home, but will leave the debtor with the rest of their debts outstanding. The Executive has indicated that the figure may be reviewed as part of the implementation process, and we would argue that at the very least this amount is increased considerably. If at the same time the limit for creditor petitions for bankruptcy were increased, then no disincentive would apply.

30. Finally, we would hope that before agreeing to the sale of the dwellinghouse, the sheriff must consider what other diligence options a creditor has implemented first – in this way creating a hierarchy of diligence. Not only are earnings arrestment a very effective form of diligence (and indeed are widely used), they are the least invasive from the debtor’s perspective. We would hope that a creditor would be required to attempt this form of diligence first before being allowed to carry out a sale of the dwellinghouse.

\textsuperscript{14} On the Cards: The Debt Crisis Facing Scottish CAB Clients, Citizens Advice Scotland, February 2004
Bank Arrestments

31. Bank arrestments are the most commonly used type of diligence in Scots Law and are mainly used by local authorities in relation to council tax debt. In 2003, the last published statistics, 155,432 bank arrestments were carried out (150,431 under summary warrant procedure). This compares with 121,161 earnings arrestments (110,534 under summary warrant procedure).

32. Bank arrestments are very much a Scottish form of debt collection. The English equivalent is called “third party debt orders” and is rarely used, as their procedure is far more complex. For example, in 2004, only 6,396 third party debt orders were issued compared with 309,521 warrants of execution against goods issued – their most common form of diligence. To put these figures into context there were 1,364,866 money claims that year\(^\text{15}\). Accordingly, bank arrestments - and more particularly benefits being arrested through the use of bank arrestments - are a particularly Scottish issue.

33. Citizens Advice Scotland has campaigned for changes to this form of diligence for many years\(^\text{16}\). In addition, some years ago we worked with the Bank Arrestments Group in relation to the development of a private members bill\(^\text{17}\) that sought to deal with this issue by providing some protection for debtors.

34. The issues at present are:

- Arrestment of benefits and other protected payments in bank accounts
- Bank accounts arrested with no prior warning
- Creditors freezing the full amount of money in a bank account leaving the debtor – and sometimes families - penniless

\(^\text{15}\) Judicial Statistics Annual Report 2004 Department of Constitutional Affairs


\(^\text{17}\) Bank Arrestment (Scotland) Bill – a private members bill lodged by Alex Neil MSP on 26 April 2000
35. We are pleased that the Scottish Executive have taken on board a number of these issues and have included reforms in the draft Bill that will have a beneficial impact on this particularly punitive form of diligence.

36. These are:

- A protected minimum balance
- Service of charge following summary warrant
- Limiting the sum attached (to either the total debt due or a lesser amount)

37. The two issues not being dealt with, however, are double diligence and the arrestment of social security benefits and tax credits.

38. Problems with arrestment of benefits in bank accounts were outlined in our most recent briefing on the issue\(^{18}\) (see Annex 3). Despite the intention of the law to exempt benefits and tax credits from arrestment\(^{19}\), in practice these funds are arrested. This is because some banks argue that once benefits are paid into an account they lose their identity, becoming part of the generic pool of money in the account, and are therefore arrestable.

39. While the proposal to introduce a minimum level that will be “unarrestable” in a bank account will prevent debtors on very low incomes becoming destitute, nevertheless it will not address:

- Debtors with disabilities who receive relatively high levels of income comprising benefits, premiums, independent living funds and direct payment awards for paying a carer’s wages. These funds are essential for meeting the extra costs associated with a disability, and arresting this income could compromise the ability to pay for medical needs or fulfil obligations as an employer of a carer
- Situations whereby a debtor receives a backdated benefits award - which can be substantial

\(^{18}\) Bank Arrestments – Briefing Paper 19 by Citizens Advice Scotland, November 2005

\(^{19}\) s187 of the Social Security Administration Act 1992 and s45 of the Tax Credits Act 2002
• Situations where a debtor receives the childcare element of tax credits, designed to pay a nursery or childminder in order that the debtor may take up employment

40. In addition, the new proposals will not address the issue of housing benefit/housing allowances, which if arrested, could leave a debtor unable to pay their rent and potentially facing homelessness.

Local Housing Allowance

41. Since November 2003, the Department for Work and Pensions (DWP) has been piloting reform to the housing benefit (HB) system in nine local authority pathfinder areas (including Edinburgh). The reforms have two key elements – they change the way HB is calculated, introducing a flat rate Local Housing Allowance (LHA), and they change the way benefit is paid. In most cases payment is made direct to the tenant rather than the landlord. Payment of benefit to the landlord is the exception and is down to the discretion of local authorities where the client is considered vulnerable or has rent arrears.

42. One of the main changes introduced by the LHA regime relates to the method of payment. Although under current HB regulations a claimant can choose to receive the money themselves or have it paid directly to the landlord, this is not the case with tenants on LHA. LHA is paid directly to claimants unless s/he is considered vulnerable or has rent arrears. This is in line with other government initiatives to ensure that all benefits are paid directly into bank accounts. In any event, in practice a number of local authorities – including Edinburgh – have always operated a system whereby claimants are paid directly by cheque even under housing benefit unless the claimant has actively opted out.

43. While some claimants have their DWP benefits paid into a post office card account (POCA) rather than a bank account, this option is not available under LHA (for a number of reasons, including the fact that it is not possible to set up a standing order/direct debit facility with a POCA). DWP research shows that after the first six...
months of Pathfinders, 93% of LHA claimants were using bank or building society accounts to receive their benefit.\(^{20}\)

44. The total amount of LHA paid to a single person under the age of 25 is unlikely to be arrested, given the proposals to protect up to £304 (soon to be uprated) in a bank account. However, it is possible that a family could find themselves in receipt of an LHA of around £1,000 per month – meaning that the bulk of this could be frozen even with the new proposals. National roll out of the LHA system without protection from arrestment means more debtors could face eviction for rent arrears.

45. We consider that these issues could be resolved by either earmarking benefits and tax credits in such a way that they cannot be arrested, working along the lines of a reverse standing order. In implementing a standing order, an account holder can have monies paid out of their bank account into a range of different accounts. We consider that this can work in reverse, whereby monies paid into an account that form benefits, tax credits or other types of protected payment could easily be identified.

46. Alternatively a procedure could be introduced that will allow a debtor to apply to court for release of the funds. This was the proposal suggested by the Bank Arrestment (Scotland) Bill, and something similar could be developed along the same lines.

47. In cases where clients receive a mixture of tax credits and benefits, the principle founded in “Clayton’s Case”\(^{21}\) could be applied. This case established the principle of first incurred, first discharged. In other words, whichever monies the client withdrew first could be attributed to benefits, leaving the income free to be arrested if applicable.

48. Additionally there remains the issue of double diligence. At the moment, debtors can have their earnings arrested – although this procedure currently offers some protection - then have the protected sum frozen by use of bank arrestments. The reforms outlined in the Bill mean that the protected figure of £304 will not be arrested when it is paid over into a bank account.

49. Although these proposals will ensure that a debtor is not left destitute, nevertheless an earnings arrestment is designed to protect people on very low incomes. It works on a

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\(^{20}\) LHA Evaluation 6: Receiving the LHA – Claimants’ early experiences of the LHA in the nine Pathfinder areas, DWP 2005

\(^{21}\) Devaynes v Noble (1816) 1MER 572
sliding scale, ensuring people on low incomes only have a designated amount paid over to their creditors.

50. For example, a debtor earning £304 per month has the full sum protected, and no deductions can be made. A debtor earning £410 per month can only have a deduction of £13 made. Under the current proposals, this would mean that this debtor would be left with £397 per month. When this sum is paid into his/her bank account, only £304 of this amount is unarrestable, with the remaining £93 being available for creditors. In addition, any additional payments into their bank account (such as child benefit, savings or any other additional income) can then be arrested.

51. While we accept that the proposals under the Bill in relation to bank arrestments are a major step forward, nevertheless they still leave some significant issues unresolved. Preventing double diligence and protecting benefits and tax credits from arrestment are essential to ensure that the most vulnerable Scottish debtors are protected from the harsh consequences and unnecessary hardship currently associated with bank arrestments.

**Debt Arrangement Schemes**

52. The Debt Arrangement Scheme (DAS) was introduced by the Debt Arrangement Scheme and Attachment (Scotland) Act 2002. The actual scheme itself was launched in November 2004.

53. Citizens Advice Scotland has been involved in the development of a debt arrangement scheme for almost fourteen years. In 1992, CAS put forward an amendment to the Bankruptcy (Scotland) Act 1993, in an attempt to introduce a debt arrangement scheme. The amendment was rejected, on the basis that protected trust deeds were considered a suitable alternative.

54. In 1999, CAS again attempted to introduce a debt arrangement scheme onto the agenda, by providing the Scottish Law Commission with a briefing on the topic. The briefing was made during the course of the Scottish Law Commission’s deliberations on an alternative to poinding and warrant sale, and a proposal to introduce a debt arrangement scheme.

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22 Hansard, Parl Debt HL 1992-93 vols 540 and 541

23 Briefing on Debt Arrangement Schemes by Citizens Advice Scotland, 1999
scheme was included in their final report\textsuperscript{24}. CAS was also a member of the working group set up by the Scottish Parliament to look at an alternative to poindings and warrant sales, which also recommended the introduction of a statutory debt arrangement scheme\textsuperscript{25}.

55. We also vigorously campaigned on this issue both during our evidence sessions on the Abolition of Poindings and Warrant Sales Act 2000, and the Debt Arrangement and Attachment Scotland Act 2002 and in submissions to the committees of the Scottish Parliament\textsuperscript{26}.

56. Citizens Advice Scotland remain firmly committed to the concept of a debt arrangement scheme, and consider it to be an extremely valuable tool in terms of debt management and debtor relief. We are pleased to see that one year on from its introduction, the Scottish Executive have announced a review in terms of how the debt arrangement scheme is operating now, and is looking at improving the scheme to ensure it operates more effectively.

57. In October last year, we consulted with all Scottish CAB on the current scheme, and its operation. CAB advisers were asked to provide their views on two key areas amongst others:

- The barriers that prevent CAB debt clients and CAB No Income No Assets (NINA) debt clients using DAS now
- What improvements could be made to allow CAB debt clients and CAB NINA debt clients to use DAS

\textsuperscript{24} Report on Poinding and Warrant Sale Scottish Law commission April 2000 (Scot Law Com no. 177)


\textsuperscript{26} Memorandum by Citizens Advice Scotland to the Justice & Home Affairs Committee of the Scottish Parliament on the Abolition of Poindings and Warrant Sales Bill 1999, October 1999; Briefing to the Social Justice Committee of the Scottish Parliament on the Abolition of Poindings and Warrant Sales bill 1999, December 1999; Memorandum to the Social Justice Committee of the Scottish Parliament on the Abolition of Poindings and Warrant Sales bill 1999, December 1999; Memorandum to the Social Justice Committee of the Scottish Parliament on the Debt Arrangement and Attachment (Scotland) Bill, June 2002; Debt Arrangement and Attachment (Scotland) Bill briefing for stage one debate, September 2002; Memorandum to the Communities Committee of the Scottish Parliament on the secondary consultation on draft regulations for a debt arrangement scheme, September 2003; Briefing to the Communities Committee of the Scottish Parliament on draft regulations for a debt arrangement scheme, February 2004.
58. In summary, bureau advisers found the lack of freezing of interest and composition of debts to be the biggest barrier to the scheme in terms of CAB debt clients, followed by the recommended length of time for the operation of a DAS.

59. Following this consultation, bureau advisers attended a special meeting in order to develop a proposal to make the existing scheme more effective for CAB debt clients.

60. The solutions developed by the group are as follows:

- Freezing of interest to be applied to all debts from the issuing of a form 4, binding on all creditors
- The DAS to run for an upper limit of 10 years, after which time the debts will be discharged
- Composition of debts to take place at the beginning of the DAS as agreed by creditors
- Creditors to be deemed to consent if they fail to respond
- The debtor to be issued with a formal discharge from the DAS administrator at the end of the scheme

61. The fuller version of the CAS proposal is included in Annex 4. CAS is of the view that some of our concerns in relation to this Bill would be addressed by an effective debt arrangement scheme provided our proposals for reform were adopted.

62. This Bill provides the opportunity for reforming the DAS to make it more relevant to those poorer debtors who are unable to access any form of debt relief at the moment, however the Bill is effectively silent on these issues. We would hope that reforms of the DAS will be introduced at a later stage in relation to this Bill.
CONCLUSION

63. Our 2003 research found that changes in circumstance and chronic causes of poverty – such as a drop in income, job loss, illness, low income or disability – are major contributing factors to debt problems, as are high interest rates, credit charges and easy access to credit. While we welcome many of the reforms proposed in this Bill, we consider that further reforms, as outlined, are needed in order to address vulnerable clients who face hardship on a daily basis.

Citizens Advice Scotland

January 2006
## Annex 1: Bankruptcy Statistics

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Information provided by the Accountant in Bankruptcy’s office 6 December 2005
## Annex 2: Charging Orders

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Annex 3: Bank Arrestments Briefing

Bank Arrestment

What is a bank arrestment?

A bank arrestment is a particularly harsh form of diligence, or formal debt recovery. Citizens Advice Scotland (CAS) has been campaigning for change in this area for a number of years. Under a bank arrestment:

• All the money in the debtor’s bank account is frozen and becomes inaccessible. Despite legislation designed to protect benefits and tax credits\(^1\), client evidence shows that they do get arrested.

• The money remains inaccessible until the debtor signs a mandate releasing funds to the creditor, or the creditor raises a court action to force the release of funds.

Case evidence shows that this can cause already vulnerable people severe financial hardship, as they are left without access to any funds for periods of days or even weeks.

The current situation

• Bank arrestments are the most frequently used form of diligence. In 2002 – the most recent year for which figures are available - nearly 80,000 bank arrestments were executed in the Scottish courts.

• The English equivalent of bank arrestments – third party debt orders – are not an equivalent at all. They are far more complicated to apply for, and in 2002 only 5,449 were carried out. This means that fifteen times as many bank arrestments were carried out in Scotland, from a significantly smaller population.

• The Bankruptcy and Diligence etc (Scotland) Bill proposes that a minimum sum in a bank account is protected from arrestment. Whilst we fully support this proposal, it does not address the fundamental issue of benefits and tax credits being arrested.

\(^1\) Section 187 of the Social Security Administration Act 1992 and Section 45 of the Tax Credits Act 2002
Current concerns
Case evidence highlights a number of specific issues relating to bank arrestments:

- Benefit and tax credit payments are theoretically exempt from bank arrestments, as long as they are identifiable as such. However, some banks argue that once benefits are paid into an account they lose their identity, becoming part of the generic pool of money in the account, and are therefore arrestable.
- The arrestment of benefits in bank accounts is an area of increasing concern since the advent of direct payment of benefits into bank accounts. This means that many more vulnerable people are now susceptible to this form of diligence.
- Bank arrestments are most frequently used by local authorities in respect of council tax arrears. This is a particular concern for two reasons. Firstly, in 2004/05 client enquiries relating to tax debt represented the third biggest category of debt enquiry. Secondly, bureaux are reporting an increasingly hard-line approach in debt recovery by local authorities.
- Client evidence shows that some banks charge administration costs for implementing a bank arrestment, causing clients further financial hardship.
- People with severe disabilities can receive a relatively high level of income, comprising benefits, premiums, independent living funds and direct payment awards for paying a carer’s wages. These funds are essential for meeting the extra costs associated with a severe disability, and arresting this income can therefore compromise the ability to pay for medical needs or fulfil obligations as an employer of a carer.
- Double diligence occurs when people simultaneously face more than one form of formal debt recovery. This is a particular problem for bureau clients on very low incomes who can be faced with both a bank arrestment and an arrestment of wages at the same time.

CAS calls for change
In order to address the issues raised by bureau client evidence, CAS calls for:
- Benefit and tax credit income to be exempt from arrestment.
- A provision that would prevent a creditor carrying out a bank arrestment if they have already arrested someone’s wages.
- Any sum protected from bank arrestment to be safeguarded from erosion by the application of bank charges.
- Payments related to disability to be exempt from arrestment.

Case evidence
A North of Scotland CAB reports of a lone parent with two young children whose bank account was arrested the week before Christmas. She had received no paperwork from her bank, the creditor or the sheriff officers. Her only income was income support and child tax credit, both of which were clearly identifiable in her account. Furthermore, the arrestment had been carried out in respect of a two-year old parking ticket which the client was adamant she had never received.

A West of Scotland CAB reports of a female client with a young baby who had recently split from her partner and moved out of the family home. She tried to access her account and discovered it had been arrested by a debt collection company for council tax arrears. Her ex-partner had not forwarded her mail and she was therefore unaware that an arrestment order had been issued. The arrested account comprised wages, child benefit and child tax credit. The client was very distressed about how she would take care of her small baby without access to any money, but the debt collection company was unsympathetic.

A West of Scotland CAB reports of a client whose account was arrested for council tax arrears. The account contained £92, made up entirely of the client’s incapacity benefit payment. The bank charged £35 for administering the arrestment and the debt collection company charged a fee of £42. Consequently, the arrestment only reduced his debt by £15 but meant he had no money to live on for a fortnight.
Annex 4: Debt Arrangement Scheme: Consultation with Bureaux, November 2005

Debt Arrangement Scheme Review: Consultation with Bureaux, November 2005

By Susan McPhee, Head of Policy and Public Affairs

Citizens Advice Scotland and its 77 bureaux offices form Scotland's largest independent advice network. CAB advice services are delivered through 216 service points throughout Scotland, from the islands to city centres.

The CAB service aims:

to ensure that individuals do not suffer through lack of knowledge of their rights and responsibilities, or of the services available to them, or through an inability to express their need effectively

and equally
to exercise a responsible influence on the development of social policies and services, both locally and nationally.

The CAB service is independent and provides free, confidential and impartial advice to everybody regardless of race, sex, disability or sexuality.
BACKGROUND

1. The Debt Arrangement Scheme was introduced by the Debt Arrangement Scheme and Attachment (Scotland) Act 2002. The actual scheme itself was launched in November 2004.

2. Citizens Advice Scotland has been involved in the development of a debt arrangement scheme for almost fourteen years. In 1992, CAS put forward an amendment to the Bankruptcy (Scotland) Act 1993, in an attempt to introduce a debt arrangement scheme. The amendment was rejected, on the basis that protected trust deeds were considered a suitable alternative.\(^\text{27}\)

3. In 1999, CAS again attempted to introduce a debt arrangement scheme onto the agenda, by providing the Scottish Law Commission with a briefing on the topic.\(^\text{28}\) The briefing was made during the course of the Scottish Law Commission’s deliberations on an alternative to poinding and warrant sale. The case for a debt arrangement scheme was accepted by them, and included in their final report.\(^\text{29}\)

4. In addition, CAS was a member of the working group set up by the Scottish Parliament to look at an alternative to poindings and warrant sales, which also recommended the introduction of a statutory debt arrangement scheme.\(^\text{30}\)

5. We also vigorously campaigned on this issue both during our evidence sessions on the Abolition of Poindings and Warrant Sales Act 2000, and the Debt Arrangement and Attachment Scotland Act 2002 and in submissions to the committees of the Scottish Parliament.\(^\text{31}\).

\(^{27}\) Hansard, Parl Debt HL 1992-93 vols 540 and 541

\(^{28}\) Briefing on Debt Arrangement Schemes by Citizens Advice Scotland 1999

\(^{29}\) Report on Poinding and Warrant Sale Scottish Law commission April 2000 (Scot Law Com no. 177)


\(^{31}\) Memorandum by Citizens Advice Scotland to the Justice & Home Affairs Committee of the Scottish Parliament on the Abolition of Poindings and Warrant Sales Bill 1999 – October 1999; Briefing to the Social Justice Committee of the Scottish Parliament on the Abolition of Poindings and Warrant Sales bill 1999 – December 1999; Memorandum to the Social Justice Committee of the Scottish Parliament on the Debt Arrangement and Attachment (Scotland) Bill June 2002; Debt Arrangement and Attachment (Scotland) Bill
6. One year on from its introduction, the Scottish Executive have announced a review in terms of how the debt arrangement scheme is operating now, and what improvements could be made to the scheme to make it operate more effectively.

CONSULTATION WITH BUREAUX

7. In October this year, we sent a memorandum to all Scottish CAB including named advisers who had gone through the DAS training asking for views. As changes had already been made in respect of the certification procedures for money advisers the focus of the questionnaire was on the scheme itself, and its operation.

8. CAB advisers were asked to provide their views on two key areas amongst others:
   - The barriers that prevent CAB debt clients and CAB No Income No Assets (NINA) debt clients using DAS now
   - What improvements could be made to allow CAB debt clients and CAB NINA debt clients to use DAS

9. Following this consultation, bureau advisers were invited to attend a special meeting to discuss the outcome of the consultation, and to try and develop a proposal to adapt the existing scheme and make it more effective for CAB debt clients. This meeting took place on 1 December 2005, and was attended by twelve representatives from bureaux all over Scotland. A note of those bureaux attending is annexed hereto.

10. The solutions developed by the group are as follows:-
    - Freezing of interest to be applied to all debts from the issuing of a form 4, binding on all creditors
    - The DAS to run for an upper limit of 10 years, after which time the debts will be discharged
• Composition of debts to take place at the beginning of the DAS as agreed by creditors

• Creditors to be deemed to consent if they fail to respond

• The debtor to be issued with a formal discharge from the DAS administrator at the end of the scheme
THE PROPOSALS

11. The results of the October consultation had brought forward four main areas for improvement which were:

- Freezing of interest
- Waiving of interest
- Composition of debts
- Fixed term for DAS

FREEZING OF INTEREST

12. The CAS proposals in relation to freezing of interest are that:

- Freezing of interest should be applied from the issuing of a form 4
- Freezing of interest would be binding on all creditors – regardless of whether or not the debt had been assigned

13. Consideration was given as to whether freezing of interest should apply retrospectively. This was considered to be a complex area to look into, and too labour intensive for a money adviser.

14. Additional consideration was given to either interest being frozen at the point of approval from the DAS administrator, or interest being frozen following a court hearing. However, as the freezing of interest is crucial to the success of the scheme, it was considered that the issuing of the form 4 was the best place to start.

15. It was also considered that a compulsion on creditors to freeze interest could well result in more voluntary agreements taking place outwith DAS, thus reducing bureaucracy and overall cost.

16. Consideration was given to the different types of interest that are applied to different loans.

- Credit cards apply rolling interest
- Doorstep lenders apply front loaded interest
- Bank loans apply interest on the total loan

Even so, it was felt that the proposal will work only if it is kept simple.

17. Accordingly, the CAS proposal is that interest is frozen at the time the money adviser issues form 4. This will mean that in some cases, the creditor would get the full debt including interest (such as doorstep lenders and banks) and in others they wouldn’t i.e. credit cards. However it was thought that in the latter cases, the creditors would already have benefited by the imposition of charges for late payments and so on. It was also noted that when creditors agree to freeze interest voluntarily now, then interest is treated in this way. Accordingly this proposal would not be proposing anything different to what currently operates by agreement now.

WAIVING OF INTEREST

18. After careful consideration, it was felt that the waiving of interest would be too difficult to operate.

19. Firstly, it would be retrospective, which would mean looking backwards at the agreements. Some creditors take a payment and divide it between the charges applied and the repayment figure, so it would be very complicated to work out the level of interest to be waived. Secondly, interest and charges could have been applied over a very long time.

20. It was also noted that there might be other possible solutions for unreasonable levels of interest and charges i.e. OFT debt collection guidance.
COMPOSITION OF DEBTS AND LENGTH OF TIME

21. Both of these are linked and need to run together. Composition cannot operate in isolation from the length of time of the agreement, because it would mean that a composition for each individual debt would have to be worked out for each client by an adviser. In practical terms this is not possible.

22. The CAS proposal is that a DAS would run for an upper limit of 10 years. Ten years was considered a suitable proposal on the grounds that one CAB had already had a DPP agreed for 9 years. In addition, consolidation loans can often extend a five year loan into a seven year one and beyond, so this principle already operates in terms of debt management.

23. Composition would take place at the beginning of the DAS as agreed by creditors (and provided that interest was frozen) with a view to the debt being extinguished at the end of ten years.

24. The issue of deemed consent would be applied – so that creditors who failed to respond would be deemed to consent and it would be binding. Creditors would continue to have the right to either agree to the DPP (or be deemed to agree) or withhold their consent or object under the fair and reasonable test. This would mean that the existing process for creditors wouldn’t change.

25. The legislation would need to ensure that the debts would be discharged at the end of the 10 year period – or earlier if agreed - with a formal discharge issued by the DAS administrator.
OTHER ISSUES

Freezing of Interest without composition

26. The 10 year period would not work unless freezing of interest was adopted as well. Bureaux advisers consider that the freezing of interest on its own would make little or no impact on CAB clients where they were either low income clients or else had very high levels of debt. In either case, they have little prospect of paying a loan back within a five to seven year period, even where interest was frozen. It is the combination of freezing of interest and a fixed term for repayment of the debt that will be most applicable to CAB debt clients.

Freezing of interest six months into the programme

27. Consideration was also given to the possibility of freezing the interest six months into the programme. However this was not felt useful. Failing to freeze interest at the outset would mean that fewer clients would qualify for the scheme. In addition, it was considered that it would prolong the debt, as six months worth of payments would simply be applied as interest and would not be used to reduce the capital sum owing.

28. Additionally, in six months time the money adviser would have to apply for a variation, and there would be a burden on them to recalculate the DPP for all of the debts.

DAS and sequestrations

29. The legislation could be amended so that the issuing of a form 4 could be used as a defence against any sequestration proceedings when they called in court. An additional form could be issued to the debtor by the money adviser when the form 4 was submitted for the debtor to show in court. This would require the sheriff to defer or sist the sequestration proceedings, pending the approval of a DPP.

Citizens Advice Scotland
December 2005
LIST OF BUREAUX ATTENDING DECEMBER 2005 MEETING

Citizens Advice Rights Fife
Clackmannanshire CAB
Cumbernauld CAB
Edinburgh Central CAB
Falkirk CAB
Glasgow Easterhouse CAB
Haddington CAB
Kilmarnock CAB
Motherwell & Wishaw CAB
Musselburgh CAB
Penicuik CAB
Shetland CAB
The Committee of Scottish Clearing Bankers (CSCB) is the representative body of the four Scottish clearing banks (Bank of Scotland, The Royal Bank of Scotland plc, Clydesdale Bank PLC and Lloyds TSB Scotland plc). The Committee represents Scottish clearing banking in the financial structure of Britain and seeks to promote the industry by providing an authoritative voice on Scottish matters to ensure that they are adequately recognised and safeguarded.

In accordance with the Enterprise and Culture Committee’s thematic approach to consideration of the Bill, the CSCB has previously submitted evidence relating to Part 1: Bankruptcy. CSCB is pleased have the opportunity now to provide its comments and observations regarding the remaining parts, namely:

- Floating Charges
- Enforcement
- Diligence

**Part 2 - Floating Charges**

The Policy Memorandum which accompanies the Bill states in paragraph 312 that "the aim of the reform of the law of floating charges is to increase transparency, and provide a quick and simple process that will benefit the business community". This falls within the modernisation, restart and growth themes of the Bill. The CSCB endorses this principle, but has reservations as to whether the implementation of the changes proposed by the Bill will achieve this aim.

Having considered the position at length the Scottish Law Commission reported that the principal unsatisfactory features of the current law are:

- The period of 21 days allowed for registration of a floating charge creates an 'invisibility' period which makes the register unreliable for creditors, as a 'hidden' charge may have priority.
- The Register of Charges is unreliable as the particulars of charge may be inaccurate or out of date due to later changes in the security, and
- There is unnecessary duplication as some charges are registered at Companies House and in other specialist registers such as the Land Register for Scotland.
In light of the Scottish Law Commission's report, the Executive concluded that it is desirable to reform the law to remove uncertainty and to increase transparency, which would benefit the business community in Scotland. The Scottish Law Commission's recommendations, as outlined in paragraph 323 of the Policy Memorandum, are:

- A new register of floating charges set up and maintained by the Keeper of the Registers of Scotland.
- An option for an 'advance notice' which, if followed by registration of the charge within 21 days, would backdate the charge to the date of the notice.
- The text of the charge document itself, rather than just particulars, to be registered.
- Registration to be essential to constitute a floating charge.
- Floating charges generally to rank by date of registration.
- Any variation, assignation or discharge of a floating charge to be registered before it will affect any third party interest.

The CSCB fully supports any move which will remove uncertainty, increase transparency and will benefit the business community in Scotland. However, from a secured creditor’s position, and indeed from a business supplier/customer point of view, the establishment of a new Register could be counterproductive. In this regard, we consider that it may be beneficial to explain to the Committee the arrangement that currently exists in Scotland for the registration of floating charges.

The Companies Act 1985 Section 410 applies to Scotland and provides details of those charges granted by a company which require to be registered with the Registrar of Companies in Edinburgh. In addition to a floating charge, the list includes a charge over land, a security over a ship or an aircraft or any share in a ship, a security over the book debts of a company, patents, trademarks and copyrights. Particulars of the charge are submitted to the Registrar of Companies together with a certified copy of the actual charge document.

At the moment, all the charges listed above, if granted by a Scottish company, require to be registered with the Registrar of Companies if they are to be effective against a liquidator, administrator or any creditor of the company. The Registrar of Companies maintains a register of all charges and issues a Certificate of Registration of any charge which he registers. The Register of Charges is a public register and consequently it is possible for all shareholders, creditors and prospective creditors of a company to search the Register of Charges in an effort to establish the current financial health of the company, i.e. whether its assets are charged to a bank or any other third party. This is of significant importance to a lender or potential lender and indeed may be equally important to a potential supplier to, or customer of, a company. At the moment therefore there is one public central register of all registered charges granted by Scottish companies.

Part 2 of the Bill, Section 31, envisages the establishment of a new Register to be known as the Register of Floating Charges. If this new Register is brought into force it will result in a floating charge being registered in the Register of Floating Charges and, unless Section 410 of the Companies
Act 1985 is amended, it will remain necessary to register a floating charge with the Registrar of Companies. Consequently dual registration of a floating charge will become necessary resulting in additional work and expense. It is difficult to see how this will benefit the business community in Scotland.

Even if the requirement to register a floating charge with the Registrar of Companies is removed, an interested party would still have to search an additional register to discover the true financial position of a Scottish company. This inevitably creates a greater burden on business. The CSCB suggests that, to achieve the Scottish Executive’s objectives of reducing unnecessary burdens on business and creating certainty and transparency, this area of the law might be improved by requiring, as a prerequisite to any change, the establishment of an electronic feed of all registrable charges into one of the existing Registers. Electronic access, using a single search (say via Companies House), would then provide details of all registered charges, thus reducing the administrative burden on business of multiple registrations (to the benefit of both the company which has granted the charge and the company wishing to access another company’s financial position). At the same time, it would create greater transparency and hence certainty.

Section 33 of the Bill proposes that, provided the company agrees, an advance notice of the possible grant of a floating charge in favour of a third party may be registered in the Register of Floating Charges. That will provide the proposed grantee with a priority period of 21 days within which to register the floating charge in his favour. The CSCB welcomes the principle of an advance notice being capable of registration for the grant of a floating charge.

The CSCB agrees that there is scope for improving the law relating to floating charges in Scotland. However, the members of the CSCB and their customers are involved in considerable cross border transactions and, until it is known what changes will be made to the registration provisions for charges granted by companies incorporated in England and Wales, and by companies incorporated out with England and Wales over assets falling within the jurisdiction of the English courts, it would be premature to enact new legislation in Scotland which might be dependant for efficiency on a change or changes to the Companies Act 1985, which is a matter reserved to Westminster. The lack of synchronisation between the two jurisdictions would also add complexity and, by enacting this legislation ahead of time, Scotland could lose the opportunity to make some extremely useful changes which could make it easier for English registered companies to do business in Scotland and for Scottish registered companies to expand their business interests cross border. There is also a real risk that “black holes” may inadvertently be created when trying to get a single view of charges created by a Scottish registered company over assets located in England and Wales.

In addition, it does seem to us inappropriate to include provisions for the establishment of a new Register of Floating Charges, and changes in the law relating to floating charges, generally in a Bill dealing with the reform of bankruptcy and diligence. With the passage of time it is likely to become less conspicuous to both companies and lawyers alike.

While not forming any part of this Bill, the Committee should be aware of the Scottish Law Commission proposal that only floating charges and standard securities over land would require to be registered in a public register in Scotland with registration in Companies House being unnecessary. The loss of one central register, as currently maintained by the Registrar of Companies, containing
details of all charges requiring registration under the Companies Act, would be a considerable loss to everyone dealing with a company. The loss of a central register of charges would result in searches being required in separate registers with additional expense and delay. Certain charges would cease to appear in any public register. If this were to come to fruition, there would be a substantial reduction in transparency which, in the view of the CSCB, would not benefit the business community in Scotland.

Part 3 – Enforcement
The CSCB notes with interest the creation of the new Scottish Civil Enforcement Commission and the establishment of the office of “messenger of court”. The CSCB generally supports the proposals contained in the Bill.

Parts 4 to 11 – Diligence
The CSCB welcomes the steps that have been taken to modernise the law of diligence as set out in Parts 4 to 11 inclusive of the Bill. The abolition of the diligences of adjudication for debt, maills and duties and sequestration for rent are noted. The creation of the new forms of diligence of land attachment, residual attachment, interim and money attachment are viewed with much interest. The CSCB will be interested to see how creditors will use these new forms of diligence in practice.

The CSCB would however wish to take this opportunity to comment on the following specific aspects.

Part 4 – Land Attachment and Residual Attachment
The new diligence of Land Attachment, which must be specific to a particular property, is a welcome replacement to the diligence of adjudication which has fallen into virtual disuse. It also provides protection to the debtor as it can only be enforced provided the creditor follows a very specific procedure and timetable and obtains the authority of the court.

The CSCB also welcomes the new diligence of Residual Attachment, which can be used to attach both heritable and moveable property, but only if it is transferable and is not attachable by or exempt from any other diligence. Once again, the debtor is protected by the procedures and timetable to be followed by the creditor.

Part 5 – Inhibition
The CSCB is pleased to note that the opportunity has been taken to clarify and to modernise the law in relation to inhibition.

The CSCB is also interested to note the introduction of two further new forms of diligence namely, Interim Attachment and Money Attachment. The CSCB does, however, have one concern arising from the diligence of Money Attachment.

Where a messenger of court attaches and removes cheques from a debtor, such cheques will be drawn in favour of the debtor and will invariably be crossed account payee only. In the circumstances, any Bank collecting such a cheque for the account of the messenger of court would lose the protection of Section 4 of the Cheques Act 1957 and Section 3 of the Cheques Act 1992. Consequently, the CSCB requests that a collecting Bank be indemnified by the Scottish Executive when asked to collect cheques attached by a money attachment order for a party other than the true owner.
Part 6 – Diligence on the Dependence

The CSCB is interested to note the new provisions which are being inserted into the Debtors (Scotland) Act 1987 by Sections 156 and 192 of the Bill. A new Section 15H deals with arrestments served on the dependence of an action and a new Section 73D with arrestments served in execution of a decree or document of debt. The CSCB, whose member Banks received between them in excess of 130,000 arrestments in the course of 2005, seek confirmation that responsibility for any calculations required in terms of the foregoing two sections and for specifying the amount actually sought under the arrestment should rest with the pursuing creditor. As the Committee will readily appreciate, the administrative burdens in dealing with arrestments, many of which are simply fishing exercises covering the entire Scottish branch network of the four member Banks, is considerable. Ensuring that responsibility for specifying the actual sum seeking to be attached by an arrestment should rest with the creditor (as the only beneficiary of the procedure) is only reasonable and will greatly assist the members of the CSCB in carrying out their obligations to the Court.

Jim McGuigan
Operations Manager
The Scottish Parliament Enterprise and Culture Committee, 18 April 2006

Bankruptcy and Diligence etc (Scotland) Bill, - Part 10 Observations on Bank Arrestment Proposals

Local Authority as Involuntary Creditor

Local Authorities are required by law to collect local taxation, principally Council Tax (including Scottish Water Charges) and Non-Domestic Rates. In addition, there are powers to charge for some mandatory and discretionary services, and charges for these sundry debts are collected by pre-payment, direct debit, or through the issue of an invoice.

The arrangements for local taxation billing and collection in particular are prescribed by law. The normal method of enforcing payment of local taxation is by seeking a Summary Warrant and employing Sheriff Officers to collect those debts not paid to the Council itself.

Sundry debt invoices are rarely enforced by Court action. Local Authority staffs have a continuing, often lifelong relationship with customers; as a rule, customers should be vetted for their ability to pay before any services are delivered. With the exception of invoices for overpaid Housing Benefit, the relationship is very much a traditional one of customer and service provider.

On the other hand, local taxation administration is, by its very scale, often more remote from individual customers. Despite the fact that the Highland Council has an extensive network of (Charter-marked) local offices and has recently increased its Council Tax “in-year” collection rate for the tenth continuous year in a row to 95.1%, there is still a significant minority of taxpayers who refuse to co-operate. We consider that, as “involuntary creditors” (i.e. where certain goods and service cannot be withdrawn) Local Authorities should retain the right to carry out diligence against individual debtors after obtaining a Summary Warrant, but without a new Charge for Payment being served as proposed in the Bill. Serving of a Charge would result in increased costs for the customer, and introduce delay into the recovery process at a time when Councils are being exhorted to become more effective in pursuing unpaid debts.

The Highland Council, Bank Arrestments

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<th>Financial Year 2005-2006</th>
<th>Non-Domestic Rates</th>
<th>Council Tax</th>
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<tr>
<td>Net Amount Billed</td>
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<td>£83.6m</td>
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<tr>
<td>Decree for Payment/Summary Warrant</td>
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<tr>
<td>Total Value</td>
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<td>Average Value</td>
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<td>Bank Arrestments lodged</td>
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<tr>
<td>“Successful”</td>
<td>22 (5%)</td>
<td>2,926 (32%)</td>
</tr>
</tbody>
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General Comments on the Bill

Comments on the proposed reforms set out in Part 10 of the Bill need to be considered within the context of the Bill as a whole.

The Council accepts that the policy intention is to make the law of diligence more effective; for creditors to get more from those who can pay but won’t pay, while increasing protection for those who cannot pay.

The position of a local authority is somewhat different from that of voluntary credit providers (e.g. banks and loan companies who analyse the risks before lending money and have a full information disclosure that can be used to facilitate the recovery process in the case of a default). From a Local Authority perspective, we are not generally in possession of this quality of information about our many customers, and consider some of the proposals in the Bill will make the collection of local taxation less effective and more expensive.

In relation to the instigation of bankruptcy proceedings the Highland Council finds that proceeding in a targeted manner against high value debtors who have the resources but not the will to meet their liabilities, will often either induce payment or else, through the bankruptcy process achieve a recovery of all or part of the outstanding liability. Experience shows that only a small proportion of these debtors served with a statutory demand will allow themselves to be subjected to bankruptcy.

The positive aspects of the Bank Arrestment reforms are:

1. The arrestee, in most cases the bank, will be obliged to inform the arresting creditor or the creditor’s agent of any sums attached under an arrestment. There is a requirement to disclose the information within three weeks of service of the schedule of arrestment. This is an improvement on the present situation.
2. The automatic release of arrested funds is to be welcomed. There is currently no automatic release, and this can mean an action of forthcoming (incurring delay and further cost) if a mandate is not signed voluntarily by the debtor.

3. As in the case of Earnings Arrestments, a protected minimum level of funds will not be attached in future. While this will reduce the effectiveness of Bank Arrestments (in cash collection terms), this corrects an anomaly from the customer’s point of view and is again to be welcomed.

4. The proposal to limit by formula the funds attached by arrestment is reasonable. Blanket arrestments mean that the whole balance in an account can be frozen, leading to debtors defaulting on payments to third parties, and making matters worse overall.

The negative aspects of the Bank Arrestment reforms include the following:

1. In Summary Warrant cases, it will now be necessary to serve a Charge for Payment prior to instructing an arrestment in execution. The Bank Arrestment can only follow 14 days after the date of service. This will delay recovery, which currently proceeds without the need for the service of a Charge for Payment. The interest costs on borrowing by Councils during the 14 day delay could be considerable across Scotland.

2. To serve a Charge in the remoter parts of Scotland will mean that, in addition to the statutory Bank Arrestment fee of £43.25, the defaulter incurs a cost of £80.75, and if it is a joint and several liability a further £14.05 for each additional (jointly and severally liable) defaulter. The Bill assumes the debtor will pay these fees, but the reality is that if some have not paid their local taxation why would they pay the fees for a Charge being served on them? In many cases, this will be an additional cost to the Council which the taxpayers will have to fund. This will bear most heavily on widespread rural authorities such as Highland. Even where funds are arrested, these additional costs together with any sum requiring to be left in the bank account as a protected minimum balance, will mean that Bank Arrestment becomes less effective (i.e. realises less funds) from the creditor’s point of view.

3. If the debtor does not pay after the Charge has been served, apparent insolvency will have been constituted. For efficient debt enforcement, Councils in these circumstances and in the absence of employment or bank account details may be more inclined to go down the route of bankrupting defaulters.

W D D Lamont, CA, IRRV
Head of Exchequer
The Highland Council
11 April 2006
BANKRUPTCY AND DILIGENCE ETC  
(SCOTLAND) BILL

SUBMISSION  
BY GLASGOW CITY COUNCIL  
TO THE  
ENTERPRISE AND CULTURE COMMITTEE  
OF 18 APRIL 2006

12 April 2006

Prepared by David Mair, Senior Solicitor,  
Chief Executive’s (Legal),  
Glasgow City Council,  
George Square, Glasgow G2 1DU
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INTRODUCTION

In general, Glasgow City Council is in favour of the new legislation and believes that it is a significant step forward in the reform of bankruptcy and diligence in Scotland. The Bill, once passed, will bring the regulation of bankruptcy and diligence in Scotland into the 21st century and will ensure that creditors, even when involuntary creditors such as Glasgow City Council, will have a modern set of principles and procedures with which to enforce payment of sums due to them whilst, at the same time, ensuring that the best interests of the debtor are protected.

With regard to the various parts of the Bill, Glasgow City Council would comment as follows:-

PART 1: BANKRUPTCY

Glasgow City Council has no specific observations to make in respect of Part 1 of the Bill.

PART 2: FLOATING CHARGES

Glasgow City Council has no specific observations to make in respect of Part 2 of the Bill.

PART 3 ENFORCEMENT

Glasgow City Council has no specific observations to make in respect of Part 3 of the Bill.
PART 4: LAND ATTACHMENT AND RESIDUAL ATTACHMENT

Chapter 1

Glasgow City Council has no specific observations to make in respect of Chapter 1.

Chapter 2

Glasgow City Council believes that land attachment may be of benefit in recovering debts where Glasgow City Council is an involuntary creditor, such as in respect of Council Tax or Non-Domestic Rates.

Chapter 3

Glasgow City Council is pleased to note the introduction of residual attachment. Glasgow City Council is however concerned to note that it will not be a diligence available under Summary Warrant.
PART 5: INHIBITION

Glasgow City Council is pleased to note that it will no longer be necessary to arrange for Inhibitions to be signed by the Session Clerk at the Court of Session. This will substantially reduce the period it will take to make the Inhibition effective and it will also assist in reducing the costs of the whole process.

Glasgow City Council is however disappointed to note that it will not be possible to proceed to register an Inhibition on the basis of a Summary Warrant, especially given the proposal to ensure that a charge for payment is served before any diligence is carried out. Inhibitions are a valuable tool for the recovery of Council Tax on the sale of the property. At present, Councils face time delays because the statutory addition has to be removed and Court proceedings need to be raised before it is possible to proceed with an Inhibition. In addition, Councils are unable to raise Court proceedings in respect of any Summary Warrant on which diligence has been effected. This means that, if it is necessary to proceed with an Inhibition, the whole debt due may not be secured. Councils will be unable to collect the 10% statutory addition if they are not allowed to create Inhibitions on the basis of Summary Warrants. There may also be an extra cost to the debtors because they will have to meet the expense of obtaining the Extract Decree in respect of those financial years where no diligence has been effected whilst, at the same time, having to pay the Statutory Addition for those financial years where diligence has been effected.

Glasgow City Council submits that the Bill should be changed to allow local authorities and other statutory bodies to proceed with the registration of an Inhibition on the basis of a Summary Warrant, especially if a charge for payment has first been served.

Glasgow City Council is also concerned to note that Inhibitions will no longer confer a preference in ranking, which can be an effective way of securing the Council’s debt when it is an involuntary creditor.
PART 6: DILIGENCE ON THE DEPENDENCE

Glasgow City Council has no specific observations to make in respect of Part 6 of the Bill.

PART 7: INCIDENTAL ATTACHMENT

Glasgow City Council has no specific observations to make in respect of Part 7 of the Bill.

PART 8: ATTACHMENT OF MONEY

Glasgow City Council is pleased to note that the new diligence of money attachment will be available on the basis of a Summary Warrant.

Glasgow City Council believes that money attachment may become a useful diligence, especially in respect of the recovery of arrears of non-domestic rates.

PART 9: DILIGENCE AGAINST EARNINGS

Glasgow City Council notes the changes to the diligence against earnings.

The only concern for Glasgow City Council as an employer is in the implementation of the requirement to intimate on the debtor, the creditor and possibly also the Sheriff Clerk. This may result in increased resources being necessary to comply with this requirement.
PART 10: ARRESTMENT IN EXECUTION AND ACTION OF FURTHCOMING

Glasgow City Council is concerned to note that arrestment and action of forthcoming or sale in execution of a Summary Warrant shall be competent only if the debtor has first been charged to pay the debt due by virtue of the Summary Warrant. Please see Part 12 below.

Glasgow City Council is pleased to note that, subject to certain conditions, the sum arrested will be automatically released after a period of fourteen weeks. This should substantially reduce both the amount of time and the expense it takes to recover all sums arrested.

PART 11: MAILLS AND DUTIES, SEQUESTRATION FOR RENT AND LANDLORDS’ HYPOTHEC

Glasgow City Council, as a commercial property landlord, is pleased to note that, while the diligence of sequestration for rent has been abolished, the landlords’ hypothec continues in certain specific circumstances. Glasgow City Council however is concerned to note that the principle of ranking has been allowed to continue in respect of the landlords’ hypothec for rent, although it is apparently going to be abolished in respect of Inhibitions.
PART 12: SUMMARY WARRANTS, TIME TO PAY AND CHARGES TO PAY

Glasgow City Council is concerned that the debtor is being given a number of additional opportunities to make a payment arrangement after the Summary Warrant has been granted. Prior to the Summary Warrant being granted, the debtor has already been given a number of different opportunities to make payment by instalments and Glasgow City Council will always allow a request to pay by instalments after the Summary Warrant has been granted, provided that the proposal is reasonable.

The requirement to serve a charge for payment will result in additional delays before being able to effect diligence, especially in the collection of Council Tax and non-domestic rates where Councils may already have had to wait between three and five months before being able to proceed with recovery of all outstanding sums due by the debtor. Glasgow City Council also believes that it will result in additional expense being incurred, whether for the debtor if payment is made or for the Council if no payment is made.

Glasgow City Council is unable to agree that it is reasonable to grant a time to pay direction in respect of a Summary Warrant.

Glasgow City Council is concerned to note that it will now be necessary to serve a charge for payment prior to effecting any diligence in respect of a Summary Warrant. This will only result in additional delays for the creditor and increased costs for either the debtor or the creditor, all as explained in Part 10 above.
PART 13: AMENDMENTS OF THE DEBT ARRANGEMENT AND ATTACHMENT (SCOTLAND) ACT 2002

Glasgow City Council has no specific observations to make in respect of Part 13 of the Bill.

PART 14: ADMIRALTY ACTIONS AND ARRESTMENT OF SHIPS

Glasgow City Council has no specific observations to make in respect of Part 14 of the Bill.

PART 15: DISCLOSURE OF INFORMATION

Glasgow City Council awaits the Scottish Executive’s proposals in respect of this matter.

PART 16: GENERAL AND MISCELLANEOUS

Glasgow City Council has no specific observations to make in respect of the Part 16 of the Bill.
Enterprise and Culture Committee
10th Meeting 2006

Media and broadcasting in Scotland

SPICe Briefing Note

Background

1. During 2005, the Enterprise and Culture Committee undertook investigations into the implications for Scotland of the internal reviews within the BBC and the review of public service broadcasting by Ofcom.

2. In December 2005, the Committee received a request by the National Union of Journalists (NUJ) to look into recent announcements by Trinity Mirror Group regarding its operations in Scotland. The NUJ also raised concerns with regard to other indigenous Scottish newspaper titles. These announcements were part of a series of reforms announced by the Group.

3. At its meeting on 17 January 2006, the Committee agreed to seek an overview briefing paper from the Scottish Parliament Information Centre (SPICe) on developments in the media and broadcasting industry in Scotland and to consider then whether to take further evidence.

4. A SPICe briefing paper on the media and broadcasting in Scotland is attached.

Action

5. Members are invited to consider the issues within the SPICe paper and the concluding comments on page 15 and decide what, if any, action the Committee may wish to take.

Stephen Imrie
Clerk to the Committee
MEDIA AND BROADCASTING INDUSTRIES

STEPHEN HERBERT

This briefing, produced at the request of the Enterprise and Culture Committee, provides an overview of the media and broadcasting industries in Scotland.
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INTRODUCTION

This briefing was produced at the request of the Enterprise and Culture Committee who requested an overview of the media and creative industries in Scotland on 17 January 2006. Details of the Committee’s discussion on this issue can be accessed at: http://www.scottish.parliament.uk/business/committees/enterprise/or-06/ec06-0102.htm#Col2611

As well as being an industry in its own right the media sector in Scotland is also widely recognised as having a key role in articulating and reflecting Scottish economic, social and cultural issues providing a key forum for debate in post-devolution Scotland. The central role of the Scottish media in Scottish society which in part reflects and also distinguishes Scotland from the rest of the United Kingdom is well recognised. For example, Kellas (1989) commented on the role of the media in Scotland pre-devolution in the following terms:

“Scotland has a strongly differentiated mass media network, which reflects and emphasises the particular characteristics of its society and its political system. … All the communications media in Scotland assert varying degrees of independence from London, and they are able to achieve it to a greater extent than any other media output centres in Britain. Scots demand, and support, a separate newspaper press and separate broadcasting, and their tastes are reflected in the strongly Scottish content of the press, TV and radio” (Kellas, 1989, p.197).

The recent Department for Culture, Media and Sport (DCMS, 2006) White Paper ‘A Public Service for All: the BBC in the digital age’ establishes, as one of the six purposes of the BBC, a new representative purpose of ‘representation of nations, regions and communities’. This purpose is defined in the White Paper as:

- Reflecting and strengthening our cultural identity through original programming at local, regional and national levels, on occasion bringing audiences together for shared experiences
- Making us aware of different cultures and alternative viewpoints through content that reflects the lives of other people and other communities within the UK (DCMS, 2006, p.18)

The White Paper goes on to comment that:

“It will perhaps be more important for this than for any other of its purposes that the Trust engages in genuine dialogue with licence fee payers from all sections of the community in setting its priorities. And it will be particularly important for the Trust to work hard to capture the views of those whom the BBC’s relationship requires most development” (DCMS, 2006, p.19).

This paper provides an overview of some of the principal policy drivers in these sectors, considers statistical data relating to the sector and has been informed through discussions with stakeholders. Whilst there are a plethora of policy documents available, notably in relation to broadcasting, statistical data on trends in the sector is limited. For instance a 2005 report on the digital, media and creative industries (EKOS, 2005) commented on the availability of data on the sector in the following terms:

“However, the lack of reliable and robust economic data on the DMCI\(^1\) has been a persistent market failure and constraint, evident not only at Scottish and UK levels, but also internationally. The limitations of official datasets and industry classifications are well known, and are such that it is not possible to identify clearly the component sectors of the DMCI at national or regional levels. This creates obvious challenges for policy making” (EKOS, 2005, p.1).

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\(^1\) DMCI refers to the ‘Digital, Media and Creative Industries’. Data relating to DMCI is discussed later in this paper.
The paper considers developments within the broadcasting sector before reviewing recent trends within BBC Scotland, as one of Scotland’s largest media organisations, Gaelic broadcasting and issues relating to potential development of local TV in the digital age. An overview of the media and creative industries in Scotland is then developed and lastly the newspaper industry is considered within the context of recent media coverage of job losses and changes of ownership within the sector.

BROADCASTING

The broadcasting environment is currently undergoing a period of transformative change principally driven by the development of new technologies changing the means of delivery of communications. Accordingly the structure of the sector is changing as synergies between technologies are developed. The Enterprise and Culture Committee summarised this process previously in the following terms:

“The pace of change in broadcasting over recent years has accelerated with a proliferation of channels and new, computer-based technologies. There has been an emergence of what has been termed a ‘teleputer’ culture, characterised by a convergence of telecommunications, computing and broadcasting media. By 2010, 13.5m homes will have broadband connections and a growing proportion of broadband connection will be video capable. Ofcom expects that by switchover there will be £300-400m per year less in the system than today. Consumers’ attitudes to TV are changing fast, public service broadcasters face challenges from consumers having access to a much greater choice of channels with over half the UK population now having access to digital TV” (Enterprise and Culture Committee, 2005, p.2).

Whilst these changes are impacting upon service providers, the actual impact upon the majority of Scottish consumers of broadcasting has perhaps to date been more limited. For example the Scottish Consumer Council comment:

“In the colourful language that has greeted the information revolution, it is perhaps easy to overlook the fact that Internet users and digital television subscribers are still a minority. Scotland’s media are dominated by relatively few major news providers and a significant number of people are likely to be excluded from the broadband network for many years to come” (Scottish Consumer Council, 2002, p.4).

Nevertheless, it is widely recognised that the pace of change in the sector is increasing with the following trends influencing change in the broadcasting sector:

1. The number of TV channels is increasing exponentially, increasing competition for advertising and reducing audience share for channels
2. Alternative means of advertising are increasingly available notably via the Internet
3. Public service broadcasters are facing regulatory pressures that require that an increased proportion of TV production is provided by independent TV production companies and commissioned to companies based outwith London creating significant opportunities for growth in the independent television production sector.

The DCMS (2006) White Paper, ‘A public service for all: the BBC in the digital age’, proposes an extension of the level of competition for BBC programming. It is proposed that 50% of programming will be reserved to in-house programming, 25% of programming will be guaranteed for production by the independent sector and the remaining 25% will be subject to open competition. At present the BBC aims for 25% of programming to be produced by independent companies although this quota is not always reached (p.41).
The OFCOM (2005) ‘Statement on Programming for the Nations and Regions’ set out the parameters for broadcasting in the nations and regions. The main decisions affecting Scotland in this Statement were:

- Minimum requirements for regional and non-news programmes will be standardised at 5.5 hours per week for news and 4 hours per week for non-news programming
- To enable greater flexibility in scheduling, OFCOM will allow the National licensees to broadcast regional current affairs in place of some network current affairs
- OFCOM will allow a further reduction to minimum non-news requirements, when the first UK regions achieves digital switchover (in 2012) to 3 hours per week in Scotland

Table One details UK audience share for the terrestrial TV channels and for all of the non-terrestrial channels combined between 2002 and 2005. While the table clearly indicates that the majority of TV viewers continue to watch ‘traditional’ terrestrial channels, the impact of non-terrestrial channels is clearly reducing audience share for the terrestrial channels. Between 2002 (Quarter 4) and 2005 (Quarter 3) terrestrial TV channels share of UK audience fell from 77.8% to 69.5% and correspondingly non-terrestrial channels increased their audience share from 22.2% to 30.5% over the same period.

### Table One – Trends in Audience Share by Channel, UK, 2002-2005, %

<table>
<thead>
<tr>
<th></th>
<th>BBC 1</th>
<th>BBC 2</th>
<th>ITV 1 + GMTV</th>
<th>CH 4</th>
<th>Five</th>
<th>Non-Terrestrial</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002 – Qtr 4</td>
<td>26.6</td>
<td>11.6</td>
<td>23.9</td>
<td>9.5</td>
<td>6.2</td>
<td>77.8</td>
<td>22.2</td>
</tr>
<tr>
<td>2003 – Qtr 1</td>
<td>26.4</td>
<td>11.2</td>
<td>24.0</td>
<td>9.2</td>
<td>6.4</td>
<td>77.2</td>
<td>22.8</td>
</tr>
<tr>
<td>2003 – Qtr 2</td>
<td>25.5</td>
<td>10.7</td>
<td>23.6</td>
<td>9.8</td>
<td>6.5</td>
<td>76.1</td>
<td>23.9</td>
</tr>
<tr>
<td>2003 – Qtr 3</td>
<td>25.1</td>
<td>11.0</td>
<td>23.2</td>
<td>10.1</td>
<td>6.5</td>
<td>75.9</td>
<td>24.1</td>
</tr>
<tr>
<td>2003 – Qtr 4</td>
<td>25.4</td>
<td>11.1</td>
<td>23.8</td>
<td>9.6</td>
<td>6.5</td>
<td>76.3</td>
<td>23.7</td>
</tr>
<tr>
<td>2004 – Qtr 1</td>
<td>24.9</td>
<td>10.9</td>
<td>24.0</td>
<td>9.4</td>
<td>6.6</td>
<td>75.8</td>
<td>24.2</td>
</tr>
<tr>
<td>2004 – Qtr 2</td>
<td>24.8</td>
<td>9.7</td>
<td>22.5</td>
<td>10.1</td>
<td>6.9</td>
<td>74.0</td>
<td>26.0</td>
</tr>
<tr>
<td>2004 – Qtr 3</td>
<td>25.4</td>
<td>9.8</td>
<td>21.0</td>
<td>10.5</td>
<td>6.4</td>
<td>73.1</td>
<td>26.9</td>
</tr>
<tr>
<td>2004 – Qtr 4</td>
<td>23.8</td>
<td>9.6</td>
<td>23.3</td>
<td>9.0</td>
<td>6.4</td>
<td>72.1</td>
<td>27.9</td>
</tr>
<tr>
<td>2005 – Qtr 1</td>
<td>23.7</td>
<td>9.6</td>
<td>22.3</td>
<td>9.7</td>
<td>6.4</td>
<td>71.7</td>
<td>28.3</td>
</tr>
<tr>
<td>2005 – Qtr 2</td>
<td>23.8</td>
<td>9.6</td>
<td>20.9</td>
<td>9.7</td>
<td>6.7</td>
<td>70.7</td>
<td>29.3</td>
</tr>
<tr>
<td>2005 – Qtr 3</td>
<td>22.2</td>
<td>9.3</td>
<td>20.5</td>
<td>11.0</td>
<td>6.5</td>
<td>69.5</td>
<td>30.5</td>
</tr>
</tbody>
</table>

Source: Editors Media Directory (March 2006) p.vii

A comprehensive overview of the broadcasting sector was conducted by David Graham Associates (2003) and found that total programme spend in Scotland totalled £149m in 2001. This total consisted of the following component parts:

- Total spend on network programming from Scotland was £66m in 2001. BBC Scotland and Scottish Media Group (SMG) accounted for £37m (56.1%) of the total spend.
- Non-network programming made for broadcast in Scotland (including Gaelic language production) is valued at £75m, or £9m more than network production.
- Multichannel contributed a further £8m to Scottish programme spend in 2001.

Source: PACT / David Graham Associates, 2003, p.15
In addition to the significant technological change occurring within the sector the BBC has also had to deal with significant changes in its regulatory environment notably via the passage of the Communications Act (2003). The Department for Culture, Media and Sport recently published a White Paper on BBC Charter Review. Table Two displays the actual income of BBC Scotland for the period 1999/00 to 2004/05. Figure One displays BBC Scotland Income in real terms for the period 1999/00 to 2004/05. It can be seen that the income of BBC Scotland increased considerably over the period 1999/00 to 2002/03 and then decreased for the next two years.

<table>
<thead>
<tr>
<th>Year</th>
<th>BBC Scotland</th>
<th>Network TV</th>
<th>Network Radio</th>
<th>Other</th>
<th>External</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999/00</td>
<td>69.8</td>
<td>25.9</td>
<td>3.6</td>
<td>4.4</td>
<td>4.8</td>
<td>108.5</td>
</tr>
<tr>
<td>2000/01</td>
<td>68.1</td>
<td>35.1</td>
<td>3.4</td>
<td>7.1</td>
<td>6.7</td>
<td>120.4</td>
</tr>
<tr>
<td>2001/02</td>
<td>79.2</td>
<td>44.5</td>
<td>4.1</td>
<td>5.8</td>
<td>9.8</td>
<td>143.2</td>
</tr>
<tr>
<td>2002/03</td>
<td>87.5</td>
<td>62.2</td>
<td>4.1</td>
<td>5.8</td>
<td>9.8</td>
<td>169.4</td>
</tr>
<tr>
<td>2003/04</td>
<td>88.7</td>
<td>52.9</td>
<td>4.2</td>
<td>4.5</td>
<td>10.1</td>
<td>160.4</td>
</tr>
<tr>
<td>2004/05</td>
<td>90.3</td>
<td>60.4</td>
<td>4.3</td>
<td>6.2</td>
<td>8.4</td>
<td>169.6</td>
</tr>
</tbody>
</table>

Source: BBC Scotland Annual Review 2002 p.34; 2005 p.35

Figure One - BBC Scotland Income 1999/00 to 2004/05 Real Terms

BBC Scotland’s output, in terms of hours of television, for a number of programming areas for the period 2000/01 to 2004/05 is presented in Table Three and Figure Two presents the same data in graphical form.
Table Three and Figure Two indicate the following trends in relation to the hours of BBC Scotland TV output for the period 2000/01 to 2004/05:

- Total TV output by BBC Scotland has declined since 2002/03
- News and current affairs and sport and leisure constitute the largest component of BBC Scotland TV output
- News and current affairs output has varied over the period with a decline in output in the last two years
- Sport and leisure output declined in 2004/05 presumably due to the loss of SPL football coverage

Table Four details the number of employees of BBC Scotland for the period 2001/02 to 2004/05. It indicates that staffing levels increased during the period 2001/02 to 2003/04 and have subsequently declined in the last two years albeit that the number of staff employed remains higher than 2002/03 levels.
TABLE FOUR – BBC SCOTLAND STAFFING 2001/02 TO 2005/06

<table>
<thead>
<tr>
<th>Number of Staff</th>
<th>2001/02</th>
<th>2002/03</th>
<th>2003/04</th>
<th>2004/05</th>
<th>2005/06</th>
</tr>
</thead>
<tbody>
<tr>
<td>Programme Making</td>
<td>1,027</td>
<td>1,185</td>
<td>1,297</td>
<td>1,260</td>
<td>1,215</td>
</tr>
<tr>
<td>Support staff</td>
<td>203</td>
<td>205</td>
<td>224</td>
<td>210</td>
<td>184</td>
</tr>
<tr>
<td>Total</td>
<td>1,230</td>
<td>1,390</td>
<td>1,521</td>
<td>1,470</td>
<td>1,399</td>
</tr>
</tbody>
</table>

Source: Personal Communication with BBC Scotland, 21 February 2006

BBC Scotland provided the following comment on staffing changes over the next three years:

“In moving from a multi layered approach to a more centralised one, some individual roles will change and a number will be lost. Between 2005 and 2008 staff in BBC Scotland content and output departments will reduce by 176 posts, representing 13.5% of the 2005 staff levels of 1,300. Redeployment, natural turnover of staff and voluntary redundancies will be utilised where possible” (BBC Scotland, Personal Communication, February 2006).

BBC Scotland also highlight the opportunities that are available to the organisation as a result of the OFCOM review of Public Service Broadcasting whereby a larger share of BBC network programming will be required to be produced outside of London. BBC Scotland comment:

“In the coming years, BBC Scotland, BBC Wales and BBC Northern Ireland will compete for up to 17% of network BBC output – a 50% increase on the current level. The BBC is also committed to making 50% of all its network drama outside of London. This enhanced level of commissions from around the UK is also open to independent producers” (Personal Communication with BBC Scotland, February 2006).

GAELIC BROADCASTING

Although broadcasting is a reserved issue, responsibility for the Gaelic Media Service (GMS) is devolved to Scottish Ministers. The Gaelic Media Service was established by the Communications Act (2003) to replace the Gaelic Broadcasting Committee. The GMS summarise their role as follows:

“In addition to the former mandate to fund programme production and development, training, audience research and related activities, the new Service was given new powers to make, schedule and commission programmes and the authority to seek a broadcast licence. This gave GMS the impetus to pursue its vision of managing a sustainable Gaelic media service that is vibrant, comprehensive, cost-effective, contemporary, and reflective of the finest quality of public service broadcasting. It also enabled the pursuit of the key objective: the establishment of a dedicated Gaelic television channel. This is essential if Gaelic broadcasting is to thrive in a multi-channel and multi-media environment on the one hand and to provide effective support to Gaelic linguistic and cultural development on the other” (GMS Website - http://www.gms.org.uk/index.php).

OFCOM (2005) made the following recommendations in relation to Gaelic broadcasting:

“Sufficient funding and in-kind support for a Gaelic digital channel could now be secured from a number of sources. We recognise the BBC’s vital role in supporting the Gaelic language over many years and concur with other stakeholders that it would be the preferred broadcast partner for any new channel.

Given the potential for a new digital channel, SMG’s role should now begin to switch from being one of the main broadcast providers of Gaelic programming to providing support for the new service and establishing an analogue contribution. SMG should make a significant cash-and-kind
contribution to the new channel, in return for reductions to its broadcast commitments, in particular initially to its requirement to broadcast Gaelic programmes in peak time. Over time its other Gaelic obligations should gradually be removed, subject to [UK] Parliament agreeing the necessary changes to primary legislation (p.4).

At present the BBC and GMS are engaged in negotiations regarding forming a partnership to manage a Gaelic digital TV service. The Scottish Executive provides funding for Gaelic broadcasting. In 2006-07 the Executive has allocated £8.7m for Gaelic broadcasting (Scottish Executive, 2005, p.63). However the Executive has also agreed, in principle, to increase funding for Gaelic broadcasting by £3m in order to establish a Gaelic digital service subject to a satisfactory agreement being reached between the BBC and the Gaelic Media Service (Personal Communication with the Scottish Executive, 4 April 2006).

In terms of Gaelic broadcasting, total production was estimated as being worth £9.1m in 2001 of which £7m came via public funding with the remaining spend coming from the BBC and SMG. Fourteen companies were involved in Gaelic TV production - 5 in Glasgow, 2 in Edinburgh, 3 in the Highlands and Islands, and 4 in the Rest of Scotland (Source: PACT et al. 2003, p.50-51).

**LOCAL TV**

The expansion of digital technology presents significant opportunities for local television as the new technology provides the opportunity for a wider range of broadcasters to deliver programming than was previously the case with analogue television. Research conducted by OFCOM reached the following conclusion with regard to the potential of local TV:

“Local service continue to matter to people, despite technological, social and cultural changes in the last 20 years that might have been expected to reduce our attachment to locality. Digital local content could deliver a range of benefits in future, including more relevant local news, improved access to local services, better consumer information and advice, stronger involvement in community affairs, enhanced democratic participation, greater capacity for individuals and local organisations to make and distribute their own content, support for local production and training, and advertisers' access to local markets” (OFCOM, 2006, p.3).

OFCOM went on to consider whether commercially funded local services could be economically sustainable via digital technology, particularly services delivered to larger urban areas. However it was considered such services would have limited scope for commissioning high quality local original content which would be more likely to meet public service purposes. OFCOM considered that local digital services delivered in other areas would rely, to some extent, on support from public agencies or community organisations. OFCOM considered that, at present, there was no scope for public sector investment commenting that:

“We do not at this stage suggest that any specific policy or regulatory intervention is required or justified in this emerging market. Our principal objective here is to contribute research and analysis to help inform the wider debate about the future of local content services, rather than to set out new policy proposals or regulatory initiatives, which would require consultation. However our analysis implies that it is possible that there is a case for public investment to support the delivery of local services that meet public purposes, although it is difficult to quantify the likely benefits of digital local content services at this early stage” (OFCOM, 2006, p.4).

The OFCOM perspective is disputed by the ‘Institute of Local Television’ who consider that regulatory action is required now to ensure that providing access for local TV channels to digital technology is an integral part of the planning for digital switchover. The Institute of Local TV propose, what is termed, an ‘add / drop’ solution which would enable local channels to be
inserted into national or regional Digital Terrestrial Television multiplexes (DTT muxes). The Institute of Local TV contend that:

“add / drop might not be the only solution that is required for local TV in the UK but it takes us a significant step forward – enabling local TV to be introduced in the Scottish Borders and Dumfries and Galloway with the DTT roll out in 2008. But if local television is not part of an overall DTT plan and left until after switch over it is likely to prove a very expensive and unwieldy option for all but a handful of large semi-regional scale local channels or regional channels by another name” (Rushton, D, 2006, p.1).

Members will be aware of a letter from the Minister for Tourism, Culture and Sport, Patricia Ferguson MSP, which commented on this issue. It noted that whilst the final decision on the issue rests with DCMS, the Scottish Executive would work with DCMS and OFCOM to ensure that they take account of any specific Scottish circumstances in the development of policy on local TV. More generally the Minister commented that:

“My officials are also looking at other potential solutions made possible by advances in digital technology. Broadband, for example, offers new opportunities for delivering interactive and on-demand services. In addition, most broadband services do not require licences. Local authorities may wish to consider whether there would be benefits in delivering programmes relating to their activities via broadband rather than digital terrestrial television. Glasgow City Council has already done so and established an internet television service, Glasgow.tv, which offers local television content and information online” (Scottish Executive, 2006, p.2).

CULTURAL COMMISSION

The Cultural Commission consulted on the role of the broadcasting sector in Scotland and considered the sector in some depth. The findings of the Commission in relation to broadcasting are reproduced in Annex One.

MEDIA AND CREATIVE INDUSTRIES

Given the rapid expansion in the number of television channels and the growth in independent production within the broadcasting sector, independent media and creative industries are widely viewed as being a growth sector within the broadcasting industry at present. This is reflected in a range of public sector support, notably via Scottish Screen and Scottish Enterprise, being available in Scotland to assist in the development of digital and creative industry businesses. For example Scottish Enterprise provide a range of support tailored to the needs of the digital media and creative industries for example via the Digital Media and Creative Industries Project Co-Investment Fund. Details of Scottish Enterprise and Scottish Screen support for creative industries can be accessed at:

http://www.scottish-enterprise.com/sedotcom_home/sig/digitalmedia.htm?siblingtoggle=1


Screen Academy Scotland was established in 2005 to provide tailored education and skills development courses and qualifications for the Audiovisual industry. The Academy, the only organisation of its kind in Scotland, is one of seven being established across the UK by Skillset, the sector skills council for the audiovisual industry. The Scottish Executive is providing
£300,000 in funding over two years to support the development of the Screen Academy. A Scottish Executive press release issued at the launch of the Academy can be accessed at:


The recent DCMS White Paper (2006) ‘A public service for all: the BBC in the digital age’ again highlighted the increased role for independent production companies in developing programming for the BBC and made the following comments in relation to dispersing programming outside of London:

“we repeat our welcome in principle for the BBC’s proposals to move a significant amount of production to cities outside London, in particular to the North West of England. It is potentially a powerful means of furthering the BBC’s representative purpose. It also has the potential to stimulate the regional media industry enormously, with benefits for the wider economy” (p.45)

Research by David Graham Associates (2003) estimated the total value of Scottish television production in 2001 as £149m in comparison to a total for the UK of £4,340m. Scotland therefore accounted for 3.4% of the total value of UK TV production. The report found that the television production sector in Scotland had grown in size by 73% between 1997 and 2001 and that the sector was highly concentrated in Glasgow. Of the 71 companies in Scotland in 2001, 39 (55%) were located in Glasgow, 16 (22.5%) in Edinburgh, and 16 in the rest of Scotland (p.16 and 24).

In 2001 Scotland ranked sixth out of the 12 UK ‘regions’ in terms of the level of network TV production spend valued at £46m. Unsurprisingly London had the highest level of network spend accounting for 56%, of the total network programming budget, of £1,643m and the North West of England was ranked second accounting for £241m (Source: PACT et. al. 2003, p.60-61). The PACT report found that Scotland, in comparison to other UK ‘regions’, contained a relatively larger number of independent TV companies producing fewer hours of TV output and summarised the position of Scottish sector in comparison to the rest of the UK as being a situation where:

“Scotland falls between these two poles, in a group that includes West Midlands, East, Yorkshire and South West England, with a smaller number of total hours than the West Midlands or Yorkshire. It is therefore generating less output than these regions, with more companies. A second group, consisting of East Midlands, North East England, Northern Ireland and Wales is characterised by a significantly smaller number of both companies and hours” (Source: PACT et. al. 2003, p.62).

In terms of programmes produced for the increasing number of non-terrestrial channels in 2001 production in Scotland was estimated to be worth £7m or 3.2% of the total market in the UK which was estimated to produce programming worth £250m (Source: PACT et. al. 2003, p.40). In total, the report found that twenty-four TV production companies were operating in Scotland, of which 17 were based in Glasgow. Given the concentration of TV production companies in Glasgow the city is frequently identified as having the potential to develop a significant media cluster. The PACT report made the following comments on the potential for such a cluster in Glasgow:

“Glasgow has some of the ingredients of a strong potential cluster. The audit has already raised the issue of effective scale. The genre mix is reasonable but a weakness in the Scottish mix is the lack of consistency in genre production between the broadcasters and the independent producers … Competition within genres, in a local market, is a strength, because it sustains a pool of skilled people not dependent on any one employer. The documentaries and features cluster in Scotland is working well, but there may be opportunities to create more effective
clusters around genres such as drama, children’s and light entertainment, all genres with high production values and opportunities to exploit rights and secure series commissions” (PACT et. al. 2003, p.39).

The report found that independent television production companies in Scotland employed 236 full-time staff in 2001. 31% of these companies employed one full-time employee, 43% between two and five full time staff, 16% employed between six to 10 staff and 10% employed more than 10 staff (Source: Ibid, p.71). The PACT report drew the following conclusions with regard to the provision of training and skills to the TV sector:

“There is a general view that, while the scale of training available in Scotland is relatively good, there is a mismatch between supply and demand, and some losses to other parts of the UK. It will be seen that the range of stakeholders and interested bodies is large and, possibly, confusing. Major concerns include:

- The need to maintain the skill levels of the freelance workforce
- The shortage of business skills in the media sector
- Shortages in specialist areas such as script writing
- The need for cross-platform training

There are also references to a mismatch between media courses at universities and the needs of a creative industry”³ (Source: Ibid, 2003, p.75).

Given the increasing synergies between media formats and the platforms via which they are delivered a broader consideration of the scale of the Digital Media and Creative Industries in Scotland will provide a context to the environment in which the communications sector is located. EKOS Economic Consultants were commissioned by Scottish Enterprise to define and measure the economic value of the Digital Media and Creative Industries (DMCI)⁴ in Scotland. Table Five summarises the main findings from the EKOS for DCMI and the sub-sector of TV and radio⁵.

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³ The launch of Screen Academy Scotland is mentioned earlier in this paper and will have a key role in addressing issues of this kind.

⁴ EKOS defined DMCI as consisting of: advertising, architecture, arts and cultural industries, design (including fashion and crafts), film, software (including interactive software), multimedia, music, publishing, and, television and radio

⁵ TV / Radio is defined as: reproduction of video recording; manufacture of electronic valves and tubes and other electronic components; manufacture of radio and electronic capital goods; manufacture of television and radio receivers, sound or video recording or reproducing apparatus and associated goods; wholesale of radio and TV good and electrical household appliances; renting of radios, television and DVD players; retail sale of electrical household appliances and radio and TV goods (includes records, tapes and CDs); Radio and Television (includes production and broadcasting).
TABLE FIVE – KEY FINDINGS FROM EKOS REPORT

<table>
<thead>
<tr>
<th>DCMI SECTOR FINDINGS</th>
<th>TV / RADIO FINDINGS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Employment</strong></td>
<td></td>
</tr>
<tr>
<td>1. 93,392 people employed in DMCI in Scotland in 2002</td>
<td>1. 25,564 people were employed in TV / Radio in 2002</td>
</tr>
<tr>
<td>2. Employment in DMCI increased by 4,186 or 4.7% between 1998 and 2002 compared to overall employment growth in Scotland of 5.4%</td>
<td>2. Employment decreased by 5,151 employees or 16.8% between 1998 and 2002</td>
</tr>
<tr>
<td>3. Scotland accounted for 6.9% of UK DMCI employment in Britain in 2002</td>
<td>3. TV / radio accounted for 9.8% of UK employment in this sector</td>
</tr>
<tr>
<td><strong>Business Stock</strong></td>
<td></td>
</tr>
<tr>
<td>1. 11,260 DMCI businesses in Scotland in 2004</td>
<td>1. 1,345 TV / radio businesses in Scotland in 2004</td>
</tr>
<tr>
<td>2. A 4.2% increase (450 businesses) between 2000 and 2004 compared to a 0.2% decrease for all businesses in Scotland</td>
<td>2. A 18% decline, 295 businesses, in the number of businesses between 2000 and 2004</td>
</tr>
<tr>
<td><strong>Gross Value Added</strong></td>
<td></td>
</tr>
<tr>
<td>1. DMCI contributed an estimated £2,832m in 2002 to Scotland’s GVA</td>
<td>1. TV / radio contributed an estimated £841.7m in 2002 to Scotland’s GVA</td>
</tr>
<tr>
<td>2. This represents a 9.7% increase between 1998 and 2002 compared to a 16.5% increase for Scottish GVA</td>
<td>2. This represented a 21.2% decrease between 1998 and 2002</td>
</tr>
</tbody>
</table>

Source: EKOS (2005)

The Cultural Commission considered the role of creative industries in some detail (p.189-201) and their commentary in relation to the sector can be accessed at:


The Cultural Commission made eight recommendations relating specifically to the creative industries as follows:

1. “Partnership with business should be integrated at all levels of cultural planning and government across Scotland
2. That a national creative industries sectoral council should be created. Its function would include: developing national standards for the sector, a more coherent approach to development of the sector, improving the public profile and status of the creative industries, assisting strategic coherence between existing initiatives and identifying areas of the sector requiring new initiatives
3. That schools should be encouraged to make visual and design literacy prominent and present cultural and creative industries as viable career choices
4. That the Scottish Executive should develop a digital media strategy. It should address connecting professional training with the needs of the industry, promoting and rewarding excellence, encouraging partnership work with private sector investors
5. That the Scottish Executive should continue to lobby for commissioning by broadcasters to be located in Scotland
6. That the Scottish Executive should explore options for using Scotland as a digital broadcasting test bed, with the support of the broadcasters and DCMS
7. That Cultural Enterprise Offices should be developed further, and integrated with any new cultural infrastructure development
8. Increased public sector investment in indigenous creative industries to deliver digitisation projects for the public sector, and digital programmes

NEWSPAPER INDUSTRY

Many of the trends outlined above in relation to broadcasting have been impacting, perhaps to an even greater extent, on the print journalism sector. These trends have included:

- A decline in advertising sales as alternative sources are increasingly available, notably the Internet and also increasingly affordable and localised TV advertising competing with newspaper advertising space
- Decline in readership of newspapers over 10 to 15 years as alternative sources of news became available such as teletext, Internet, expansion of TV news coverage (‘24 hour news’) and increased readership of magazines
- Proliferation of free newspapers
- Increased competition from London based newspapers in the Scottish market

Table Six details UK average net circulation by newspaper type and for some selected Scottish newspapers between August 2005 to January 2006. The table provides an indication of the scale of current newspaper sales and the recent trends in sales figures which has taken place over the last year.

<table>
<thead>
<tr>
<th>Newspaper Type / Title</th>
<th>Average Net Circulation</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Aug '04 – Jan '05</td>
<td>Aug '05 – Jan '06</td>
</tr>
<tr>
<td>National Morning Popular</td>
<td>6,410,887</td>
<td>6,247,193</td>
</tr>
<tr>
<td>Daily Record</td>
<td>476,517</td>
<td>454,340</td>
</tr>
<tr>
<td>National Morning Mid Market</td>
<td>3,331,674</td>
<td>3,189,288</td>
</tr>
<tr>
<td>National Morning Quality</td>
<td>2,782,688</td>
<td>2,812,270</td>
</tr>
<tr>
<td>The Herald</td>
<td>79,418</td>
<td>76,249</td>
</tr>
<tr>
<td>The Scotsman</td>
<td>69,293</td>
<td>66,629</td>
</tr>
<tr>
<td>National Sunday Popular</td>
<td>7,589,232</td>
<td>7,254,668</td>
</tr>
<tr>
<td>Sunday Mail</td>
<td>585,896</td>
<td>548,952</td>
</tr>
<tr>
<td>National Sunday Mid Market</td>
<td>3,395,382</td>
<td>3,175,195</td>
</tr>
<tr>
<td>National Sunday Quality</td>
<td>2,848,106</td>
<td>2,865,521</td>
</tr>
<tr>
<td>Scotland on Sunday</td>
<td>82,165</td>
<td>82,396</td>
</tr>
<tr>
<td>Sunday Herald</td>
<td>57,198</td>
<td>60,552</td>
</tr>
</tbody>
</table>


Recent media coverage has highlighted job losses at newspapers in Scotland, notably at ‘The Herald’, ‘Scotsman’ and ‘Daily Record’ newspapers as well as changes in ownership of Scottish newspapers. Despite the trends highlighted above, some media commentators have highlighted that significant profits are being made by media groups owning newspapers but that cut-backs are being made due to concerns about the impact of technological change on the sector as the following quotes indicate:

“To get the sort of return wanted by shareholders, the Scotsman’s and the Herald’s respective owners, Johnston Press and Gannett, may require their papers to post returns of 30 per cent or

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6 Some examples of recent media coverage of this kind attached: ‘Jobs go at Herald newspaper group’, ‘Johnston cuts jobs at Scotsman titles’, ‘Johnston Press Buy Scotsman’, ‘Thomson breaks silence after making it Oor P&J to tie up northern newspaper market’
more, three times as much as their London competitors. If so, coverage, especially foreign, will suffer and the papers will cease to be national. They will take on the distinctively regional flavours of the Dundee Courier and the Aberdeen Press and Journal” (Nicoll, R, 5/2/06)

“We are told that regional newspapers are in crisis and all the talk is of sell-offs, redundancies and closures. Yet the sector generated revenues of £4.3bn last year, Metro-style freesheets have been the print revelation of recent years and in the main, sales are robust. As so often, it is fear of the unknown that is forming a cloud over one of Britain’s most powerful and profitable media industries. ….. Old hands are dismayed by the trends long evident from the shift to weeklies and freesheets from daily evening titles – less original journalism, more wires copy and fewer journalists covering larger areas. The internet will only exacerbate the situation, they fear, with owners paring resources to the bone in an effort to determine what they can get away with, and more concentration on services than content. Yet to attract users to your site over a Google or MSN, you need strong content and services. And for those you need local knowledge and journalists. So in the most optimistic prognosis, regional groups continue to compete to create engaging content, with relevant local ads appearing automatically in context – the model remains the same, only the medium changes” (Milmo, D and Gibson, O, 27/2/06).

CONCLUDING COMMENTS

The preceding discussion clearly illustrates that the communications sector is undergoing a period of considerable change which is being driven by a number of sources notably, new technology, market changes and regulatory drivers. Although broadcasting is a reserved matter discussions with stakeholders during the process of preparing this briefing highlighted a considerable demand that the Scottish Parliament, and more particularly the Enterprise and Culture Committee, engage in a dialogue with the various branches of the sector. In addition the scope for the Committee to act as a advocate / regional animateur with regard to the specifically Scottish dimension of issues affecting the sector was flagged up by some stakeholders. The Committee may wish to consider, when determining whether or not to undertake any activity in relation to this issue, whether there is scope for a more informal framework of relations to be developed with the sector, under the ambit of the Committee, as opposed to more formal evidence taking which may also form part of the Committee’s discussions.
ANNEX ONE – CULTURAL COMMISSION FINDINGS ON BROADCASTING

Broadcasting in Scotland

The context of broadcasting
Public service broadcasting should be aligned with the shape of contemporary society and should work in sympathy with the nation without prejudice to the proper enquiring stance of its journalism.

BBC Scotland is a constituent part of Scottish culture. It is both participant in the nation’s affairs and it is an important ambassador in offering versions of Scotland to the British network. BBC Scotland paints the picture of the nation that influences both the casual viewer and the potential investor or immigrant from elsewhere in Britain.

There are bound to be continuities of strategy, development, talent, and ambition between the programming developed for the home audience and material sent to network. Strong national services for Scotland underpin the Scottish contribution to the network and produce a stronger BBC. If there are deficiencies in the funding of domestic services in Scotland, then there are bound to be weaknesses in the development matrix for creating successful offers to the British network.

A new society
BBC Scotland has flourished by engaging with its audiences, sometimes reinforcing their beliefs and ideals and ambitions and at other times challenging Scottish society to examine itself. The BBC carries out its work through its programme services. It is vital that they are responsive to the main currents in their society.

There are institutional and programme consequences of nationhood that the BBC has traditionally observed through, for example, governance, in the Broadcasting Council for Scotland. The BBC has over the last ten years observed a policy of devolution to the regions and nations of the UK. The latest proposals from BBC promise further devolution with some benefits to Scotland.

Yet the structure of the Scottish television industry – BBC and ITV - has not substantially changed since becoming established 50 years ago. All Scottish television is essentially an opt-out service sustained by a UK-national schedule.

These changes however have not been calibrated against the changes in Scottish society but in line with BBC corporate policies. BBC has, of course, made provision for Parliamentary broadcasting in Scotland in the best traditions of its distinguished history of carrying Westminster affairs to the UK audience. However, the changes in Scottish society are deep and broad and go beyond Holyrood. Changes in Scottish society culminated in the restoration of Parliament. The new constitutional arrangements in Scotland are not in themselves the change in society; they are the political arrangements to cope with that change.

The country has new ambitions and new levels of performance. For example, in science, the city of Dundee is host to two universities with outstanding British records in scientific and entrepreneurial achievement. In the arts, Edinburgh leads the world as the first UNESCO city of literature and the country has a new National Theatre based in Glasgow. Scotland needs programming to feed those levels of ambition and achievement. Actors and playwrights, for example, succeeding in the National Theatre should expect to work on BBC Scotland as part of the nation’s talent management. The Artistic Director of the NTS should be part of BBC Scotland’s strategic discussions when planning programmes for home and network

Television and radio from BBC Scotland
BBC1 and BBC2 are managed in Scotland as channels that have local continuity and the power to substitute Scottish programming within the basic British network service. Because BBC Scotland operates this opt-out system, the overall tone and configuration of the networks are set in London and
are unalterable. BBC Television in Scotland produces and transmits culture-specific programmes to reflect the separate institutions, traditions, climate, and social posture in Scotland. Scottish news and politics are obvious examples. The Beechgrove Garden is broadcast because this country has a climate different enough to warrant different horticultural advice. Soccer, rugby and many other sports are specific to the nation.

Scotland has a new political and cultural context and urgent claims on the BBC licence fee to make high grade programmes aligned with its circumstances. As Ofcom frees ITV companies from their obligations to provide non-news programming for local consumption, BBC Scotland’s importance to the nation grows.

Radio Scotland
Radio Scotland is commissioned managed and broadcast from Scotland. The shape, tone and content of the network are all within the gift of BBC Scotland but subject to the funding available from network. Of course it might be said that BBC Scotland has the power to configure its budgets to favour any policy derived from the Broadcasting Council for Scotland. In fact such change can only ever be marginal within the proportion of the BBC Licence Fee allocated to Scotland and between the urgent claims of an increasing number of BBC Television channels and other new platforms.

Radio Scotland was set up as the national network 30 years ago. It has concentrated on high-grade news coverage together with conversational programmes, extensive sporting coverage, and niche broadcasting of musical forms popular in this country. The higher-value programmes forms such as features, documentaries, drama, story and other narrative forms are available on Radio Scotland sporadically or not at all. The network is simply not financed at a level that would allow consistent commissioning of these expensive genres. Consistency is the essence of radio. Speech radio listeners in particular gravitate to and accumulate around regular, trusted, high-quality programming.

Traditional BBC UK policy placed Radio Scotland as part of the totality of BBC speech radio in Scotland, offered in portfolio with Radio 4 and Radio 5 to provide complementary aspects of the UK service. In fact Radio Scotland is still financed in line with policy adopted in Scotland to promote a Scottish version of the local radio being set up in England thirty years ago. There are new social, cultural, scientific, and economic features of Scottish life that need to be examined and explained regularly on air on Radio Scotland and the feature and narrative forms need to available to programme makers. Scotland’s playwrights poets, prose-writers, historians, musicians, actors need regular and frequent outlets for their talents in Scottish public broadcasting.

Radio Scotland must be re-positioned within the BBC and given higher priority for funding that will allow it to provide a richer programme mix suited to the needs of the nation in this new century. This will need new funding from BBC Radio UK.

A new programme portfolio for Radio Scotland may have to be developed across a number of years but, nevertheless, programming ambition needs to be in kilter with the nation’s ambitions.

News on television and radio
Very many consultations held by the Commission involved spontaneous discussion of the media in Scotland. The Royal Society of Edinburgh held in a seminar in 2004 to discuss the matter. The widespread perception is that the media – and the press figures largely in this judgement – is divorced from the people and their ambitions. There is marked disillusion and indeed disaffection from the Press in Scotland. It is vital that BBC keeps in touch with its audience.

There should be an appraisal of news reporting across all platforms in tandem with the necessary revision of programme services. BBC Scotland is the nation’s agenda setter. It makes sense to ensure that the correspondents and the general expertise of the News services are appropriately configured in line with Scottish society’s intellectual and social currents as well as the political vectors. It also makes sense to extend the BBC’s reputation for being close to its audience by consulting about this matter in the wider community.
Gaelic

BBC Scotland responded with appropriate vigour when Gaelic culture was in danger of irretrievable decline. It has served the Gaelic audience, and thus Scotland, well with astutely scheduled programmes of high quality. Indeed some programmes, such as the Television series Eorpa, have led the UK in exploring new subject matter and providing a new focus for the audience. Scotland adopted exceptional measures to inject much-needed monies into Gaelic broadcasting.

There is now a parallel need to for an urgent and radical re-assessment of Scotland’s needs – including those of Gaelic culture. There should be no separation of the two.

Music from Scotland – a new radio channel

Among the many cultural flowerings in the last decade has been the burgeoning of wide interest in traditional music forms. Often these span Scots, English and Gaelic culture. They are part of Scotland’s heritage and identity. This music has cultural and economic value. What they do not have is room to flourish on the air. BBC Scotland has been quick to exploit new technology and that is applauded.

There is surely an unanswerable case for at least one digital radio service devoted to music in contemporary Scotland. This music is ours alone. It will not be promoted elsewhere.

The ambition of music producers ought to be to “explode” Scottish musical talent on air. BBC Scotland is a champion of Scottish culture. It is proper that there should be close working relationships with other agencies that advance arts and culture.

Television for the networks

Britain will benefit from more commissioning from Scotland to fill the terrestrial and digital television networks. The different perspective from this country is important to Britain. It is also important for Britain that public service broadcasting root itself in the communities of the UK. The Commission approves the devolution of BBC production to Manchester.

In that context, there is surely no argument against a fairer share of the licence fee being spent in Scotland too, both on intellectual tasks such as commissioning and in the location of resources and production.

Where the large network production centres can expect talent to be thrown up in the flux of sheer numbers, Scotland can capture the best talent only by turning over more programmes with fresh talent each time, in some cases disobliging those who have tried but have not made enough of a mark. Intolerance of the average is bold but can also be de-stabilising. However, selling into the networks is very, very difficult and it will take exceptional measures to change that situation.

BBC Scotland has a new Controller with a distinguished track-record in encouraging programme quality and embracing new technology. He will recognise that Scottish content on all British networks is at a low level. Network expectations of Scottish programming it has to be said are also low. One part of the solution is the deserved increase in funding for more, high-grade programmes on radio and television to serve the Scottish audience. That is the demand by the Scottish audience but in itself that increases patronage by Controller BBC Scotland and helps with turnover. Thus, in meeting Scotland’s needs, BBC can also ensure better contributions to network from Scotland.

There is another vital matter at stake here. The main series drama programmes BBC Scotland has made for network have been family material for Sunday evenings. These have been high in entertainment and low in artistic risk. It is only when there is a critical mass of high value material commissioned for broadcast in Scotland that programme makers will be able to exercise their talents to the full.

ITV, Channel 4 and the Independent sector

SMG has produced Scotland’s longest running television drama, Taggart. This a network show of great importance in Scotland as a source of work for writers, actors and production crew. It has shown remarkable resilience but in time will come to an end. It is vital that drama production remain in Scotland. Both BBC and Scottish Television have mined formulae that have proven lastingly successful with network. It may be significant that an incomer, an American, has written more adventurous short series

providing research and information services to the Scottish Parliament
drama on Channel and set in Scotland. There are very few outlets for new ideas in the expensive programme genres. That has been a contributory factor in Scotland’s talent drifting to London, the centre of the television industry.

Scotland has a number of independent television production companies. These share the same problems as BBC in drawing commissions from network centres. Gaining a regular place at the discussion tables and in front of the London-based commissioners is the most important task; maintaining that position is entirely dependent on quality product. The struggle is intense and much depends on the energy and willingness of Scottish managers to shuttle back and forth to London weekly. Channel4 has made a good contribution to the industry in Scotland by siting the Nations and regions office in Glasgow. There is also the prospect of a cluster of companies joining BBC, SMG and some Indies on Pacific Quay in Glasgow.

Nevertheless, commissioning remains in London. In this broadcasting economy, Scotland does not fare well. With over 9% of the UK’s population, Scotland wins around 1.5% of the UK’s television production. As a result, the Scottish public has a very limited amount of its own culture reflected back to it with almost minimal coverage on television of artistic and creative activities in Scotland, or of essentially Scottish interest topics such as traditional music.

It is not defeatism to remark that talent alone will not change the situation in Scotland. Any raft of high value commissions that accrue to Scotland are part of economic calculation in a UK based company that has to balance obligations to other deserving parts of the UK. There will always be limits.

The only thing that will transform the scene in Scotland is an element of devolution of broadcasting. There is a case, recognised partially by OfCom, to protect public service broadcasting as multi-channel television takes over during the next few years. In this context, there is a strong case for the establishment of at least one channel based in Scotland. The experience of Channel 4 and Five, which commission all of their programmes from independent producers, shows that it would be possible to build such a channel rapidly, but also that such a development would inevitably lead to the creation of a strong indigenous television production industry. Some of the resulting production companies could then be expected to build the production capacity to begin to win commissions from national or international sources, building a strong Scottish production sector.

With the switch to digital it will be possible for one or more channels to be brought into existence. The Scottish Parliament would have to be given responsibility and might wish to subsidise the venture. S4C has a government subsidy of £85m. That is of course money voted form the public purse for cultural rather than economic purposes, though there are of course economic effects. In Scotland, the principle drive would again be cultural but any channel set-up ought to be calculated for its economic influence too. It is difficult to estimate an appropriate channel budget because the variations are considerable according to purposes: More4 is receiving £35m at start-up and E4 budget is about £50m.

**The Commission recommends that Scottish Ministers should consider how a separate channel for Scotland might be financed and set up.**
SOURCES


Nicoll, R (5/2/2006) ‘Scotland is losing its voice, and McConnell should be worried’ In ‘The Observer’, Observer Newspaper: London


Scottish Executive (2006 ‘Letter from Minister for Tourism, Culture and Sport to Enterprise and Culture Committee – February 2006’ Scottish Executive: Edinburgh

Memorandum by the Scottish Executive

Introduction

1. The Scottish Executive welcomes the report of the Enterprise and Culture Committee on the reform of Scottish Football. The Committee has gathered and assessed a lot of valuable factual and other evidence from organisations and individuals within the game and others involved with it. The Executive considers that the Committee has produced a balanced, wide-ranging and thought-provoking report. Its conclusions and recommendations merit careful consideration by all the stakeholders in the game who wish to see Scottish football at all levels thrive; enjoy success at club and representative levels on the international stage; have long-term financial and organisational stability; and play its full part in the life of communities throughout Scotland.

2. The main part of this Memorandum contains the Executive’s response to the Committee’s main conclusions and recommendations as set out in the Executive Summary of the report. The Annex contains supplementary information and comments which we hope the Committee will regard as helpful and an appropriate acknowledgement of the thoroughness of the Committee’s investigations and findings.

3. We fully recognise the place, status and potential for football in its own right as a sport, and also its currency and massive potential in contributing to the broader social agenda.

4. We are pleased that we have already been able to respond positively to the Committee’s recommendation about further funding for the work of Supporters’ Direct in Scotland (see also paragraph 10 below). The Executive’s support will help to ensure that Supporters Trusts become further established as an important contributor to the financial health and well-being of clubs and their local communities.

Governance – vision and principles

5. The Scottish Executive generally endorses the Committee’s conclusions and recommendations and joins the Committee in calling for the SFA and its affiliated organisations and partners to consider the Committee’s recommendations carefully. In particular, we agree that the regional structure currently being developed for the administration of youth football should provide a useful model for changes to the structures in place for adult football. We also agree that further consideration should be given to putting in place structures and procedures which more readily enable clubs to progress within football according to ability and ambition.

Finances

6. The Scottish Executive agrees with the Committee that the football authorities and professional football clubs in Scotland and at a European level need to work together to secure financial stability and viability for the game. We welcome the recent initiative of the UK Government, during its Presidency of the EU, to enter a dialogue with UEFA, FIFA and other bodies about reviewing corporate and social governance in football.
We welcome the decision of UEFA to conduct a review which will involve consultation with its members (including the SFA) and others. We will keep in touch with the SFA and the UK Government on the progress and outcome of this review.

**Football’s future (youth/women’s football and the role for supporters)**

7. The Scottish Executive welcomes the Committee’s support for the Action Plan for Youth Football. We and sportscotland are closely involved in its implementation and have arranged for substantial sums of lottery and Exchequer funds to be invested in it and associated developments such as the National and Regional Sports Facilities Strategy and consider how best to contribute to it.

8. The Implementation Steering Group and the Implementation Manager are responsible for monitoring and evaluating achievement of the outcomes of the Action Plan and progress with implementation against agreed timelines and targets. The Implementation Steering Group regularly considers detailed progress reports prepared by the Implementation Manager. Progress with implementation will continue to be communicated to stakeholders through newsletters and other means. The level of funds identified by the SFA and its partners is sufficient at present to take forward all elements of the Action Plan but this will be kept under review.

9. The Scottish Executive agrees that further investment in facilities for football (and other sports) in Scotland is required for all levels of the game. We have no plans to reintroduce a specific football academy programme. The football academy programme was superseded by the National and Regional Sports Facilities Strategy which recognises the need for a regional network of high-quality indoor and outdoor facilities which our most talented young players can access. A strategy of setting aside funds for football academy developments by only the top clubs is not desirable when the majority are not, or may not be, in a financial position to implement such projects. The regional development model should provide a more sustainable and inclusive approach to how youth football can be developed in the future. It is however open to any club (whether or not working with a local authority or other partner) to apply for funding for a football academy proposal under sportscotland’s Building for Sport programme. The Executive and sportscotland also remain committed to working with partners to fill remaining gaps in the geographic coverage of regional sports facilities, including indoor facilities for football training. We consider that this may be the most productive route for some top clubs to follow to access the facilities they require.

10. The Scottish Executive values the work of Supporters Direct in Scotland and we were pleased to announce on 6 February that we have agreed to provide funding of £190,000 over the next two years to enable it to continue and develop its role in Scottish football. We agree that most professional and semi-professional clubs play an important role in their local communities but we also agree that there is scope to do more. In developing its work in Scotland, Supporters Direct will aim to assist the football industry to reinvigorate itself by embracing the assistance of supporters and bringing clubs closer to their local communities.
Infrastructure and facilities

11. As noted above, the Scottish Executive agrees that further investment in facilities for football in Scotland (and other sports) is required, for all levels of the game. Local authorities have a statutory responsibility for ensuring adequate provision of facilities for sport and recreation in their area. In relation to youth football, local authorities will benefit from the structural and strategic developments taking place as part of the Action Plan for Youth Football (see also comments in the Annex).

12. The audits of the condition of local sports facilities will inform the development of local and national strategies for improving facilities for football and a range of other sports. sportscotland is committed to publishing the results of the audits as soon as possible. Some important detailed work is still being finalised but sportscotland has agreed that detailed summaries of the audits will be published by mid-May at the latest.

Other Areas of Public Policy

13. The Scottish Executive is pleased to continue its support for the Show Racism the Red Card campaign in Scotland and welcomes the support which the campaign receives in Scotland from the football authorities, the Scottish Professional Footballers’ Association and individual clubs.

14. The First Minister launched on 30 January an Action Plan on Tackling Sectarianism in Scotland. One element of that plan is that the Executive will work in partnership with the SFA and sportscotland to develop a strategy for tackling sectarianism in football. The strategy will build on the work already being done by the football authorities, individual clubs and others and will be launched by the end of 2006.

Wider sports policy

15. The Scottish Executive notes that, in addition to welcoming our commitment to increased provision for PE in the curriculum and to Active Schools, the Committee recommends that we look at ways of promoting more inter-school competition. There are no plans to change legislation affecting the curriculum to facilitate this. We will ask sportscotland to pull together information on current activity in this area with the help of the Active Schools network, the Scottish Schoolsport Federation and others. We understand however that a lot of competitive school sport already takes place. Indeed one of the main findings of the independent review of youth football in Scotland was that many of the more talented players of school age are overplayed when they ought to be spending more time developing their fitness and skills on the training ground. There are similar issues in other sports.

16. The Scottish Executive also notes the Committee’s recommendation that the Sports Minister should provide more detail on how pathways can be better developed and promulgated.

17. In relation to football, the rationalisation of the player pathway (to use the jargonistic expression) is at the heart of the Action Plan for Youth Football. There are other strategic issues relating to governance, support services and funding which are also crucial. However the central aim of the Plan is to provide a clear pathway for player
development. For sports in general, we have been working with and through sportscotland for several years on measures to strengthen the infrastructure of Scottish sport with the twin aims of:

1. increasing participation; and
2. identifying and developing the most talented players and athletes through structures that allow them to progress at their individual levels and be supported in that process.

18. Active Schools and the Institute of Sport network are now integral parts of the framework for Long Term Player Development (LTPD) and sportscotland is currently piloting work on Sports Partnerships which will address another necessary part of the development pathway.

19. The Executive has asked sportscotland to provide the Committee with a paper describing the work currently being developed in this area. sportscotland’s series of “Player Improvement” consultation documents are at the heart of these developments, covering in particular, LTPD, Sports Partnerships and Regional Academy of Sport Programmes.

20. The Scottish Executive notes the Committee’s view that there is scope for more joined-up thinking across Executive departments in relation to sports policy; and its recommendation that the Executive should make further strides in this respect. We entirely agree that the Executive’s aims and objectives for sport can only be achieved with appropriate input from a range of policies and programmes across the Executive, in addition to the support of partner organisations at national and local level. The Executive continues to review how well other Ministerial portfolio areas and Executive departments are supporting and assisting delivery of Ministers’ objectives and policies on sport.

21. The Scottish Executive understands the importance of giving young people interesting and innovative activities in their area and the positive impact this has for them and their communities in keeping them off the streets and in some cases diverting them from antisocial behaviour or even crime.

22. The New Opportunities in PE and Sport programme in Scotland includes substantial provision for the support of out of school sporting and cultural activities including activities aimed at attracting young people at risk of offending.

23. The Scottish Executive has made £5 million available to local authorities in 2004-05 until 2007-08 to support voluntary sector organisations and sporting and cultural organisations who work with young people to provide or increase good facilities and services in their area.

24. The criteria for the fund have been drawn up so that local authorities can decide who to allocate funds to according to local need and demand. Many local authorities – including Dumfries and Galloway, Falkirk, Perth & Kinross, Stirling and South Ayrshire - have supported midnight football, usually with SFA qualified coaches on a Friday evening.
A role for Ministers

25. The Scottish Executive acknowledges that it has a role to play, directly or through encouraging others, in following up some of the issues identified in the Committee’s conclusions and recommendations. We do not consider however that it would be appropriate for the Executive to report annually to the Committee on all these issues. The Minister for Tourism, Culture and Sport would be happy to consider with the Committee other options which would enable the Committee to monitor and assess progress on issues to which it attaches particular importance.

Scottish Executive Education Department
21 February 2006

Memorandum by the Scottish Executive: Supplementary Information and Comments

Governance of Football – vision and principles (paras 28-57)

The Scottish Executive considers that there should be one national governing body for each recognised sport in Scotland. That is the best way to ensure that there is satisfactory governance and one coherent and co-ordinated plan for the development of each sport – i.e. one vision, one policy and one strategy and the organisational structure to deliver at national and local level.

The PMP review of youth football identified the need for the SFA to be restructured to promote, foster, develop, govern and represent the whole game. The key question (as stated by Mr Campbell Ogilvie in his evidence to the Committee) is what structures and organisations exist below the national governing body and how are they and their interests represented within it in ways which are fair and just and generally seen to be so. Significant changes in governance within the SFA have taken place in recent years, following the report of the Independent Review Commission in the mid-1990’s.

The Scottish Executive respects the wish of the SFA to make further changes in the governance of Scottish football in an evolutionary rather than a revolutionary way. Following the most thorough and inclusive review of youth football in Scotland ever undertaken, further major changes in structures and governance are in train. Implementation of the Action Plan for Youth Football will go a long way in streamlining structures and governance; forming a more integrated national governing body; providing a stronger voice for the recreational game; ensuring a single national strategy for developing youth football; and putting in place a regional structure where all parties can work together, thus making it easier for the national strategy to be delivered at local and regional levels.

The conditions attaching to investment of public funds in the Action Plan for Youth Football will stipulate that the SFA will be required to maintain Fit for Purpose status as defined by the requirements of the sportscotland Modern Sports Programme and to respond to related recommendations.

The Scottish Executive considers that the SFA should give further consideration to reducing the potential for conflicts of interest which arise from the present constitutional and governance arrangements. In particular, in addition to ensuring that the Executive Board contains members drawn from all levels of the game with an appropriate balance and range of skills, we would encourage the SFA to introduce independent members. This would increase objectivity and assist the Board to focus on the strategic direction of the SFA.

The Youth Action Plan is governed by a Heads of Agreement document between the SFA, the Scottish Executive and sportscotland. The agreement identifies a set of principles, actions and conditions required to be put in place over the life of the Plan’s ten years. The Implementation Steering Group will require to ensure adherence and direction where governance matters (amongst others) are to the fore.
The move to a pyramid structure for professional and semi-professional football requires careful consideration and the Executive and sportscotland would be willing to consider how we might appropriately contribute to a review by the SFA. As the SFL noted, any new arrangements need to allow clubs to move down as well as up a ladder of progression without their existence being threatened. As the SFA noted, any system based on sporting merit will need to take into account also issues relating to ground capacity and safety.

Finances (paras 58-94)

The Scottish Executive agrees that much remains to be done to ensure the financial well-being of many clubs and provide some long-term financial stability for the professional football industry in Scotland. We are also concerned that SPL and more particularly SFL clubs are experiencing further financial problems through the loss of income from the football pools companies and related sources.

While welcoming UEFA’s decision to undertake a review of corporate and social governance in football, we consider that meanwhile the SFA should continue to develop the Club Licensing Scheme as a robust mechanism for improving financial management and discipline. We also consider that sanctions need to be available to deter clubs from seeking an unfair advantage through financial mismanagement. Best practice would however involve an early warning system that would alert the football authorities to an emerging problem.

We consider that in the current financial climate it will be difficult for the top clubs in Scotland to be more redistributive. Redistribution is a key element of solidarity (as referred to in the Declaration of Nice* and elsewhere) and needs to be kept under review by the SFA and others. The top end of football depends on the health of the game at grassroots and youth levels and cannot expect the public sector to take sole responsibility for supporting the development of the game at these levels.

Investment in youth football through the Youth Action Plan will be monitored and evaluated closely by sportscotland with the SFA and reported to the Implementation Steering Group. The seven Youth Action Plan areas together with the SFA National Plan present real opportunities to build a solid foundation and fund grassroots and youth level football to good long term effect.

Infrastructure and Facilities (paras 95-117)

The implementation of the Action Plan for Youth Football includes the development of a facilities strategy but the budget does not include provision for the development or upgrading of facilities. A facilities strategy developed by football’s governing body, combined with the National Plan for Youth Football Development currently in preparation, will provide a sound foundation for a more strategic partnership between the Regional Committees for Youth Football and local authorities on facilities provision and management. For many years, sportscotland has encouraged local authorities to produce sports and recreation strategies incorporating playing fields and sports pitch strategies and we would expect them to do so making use of the support available from sportscotland.

* Declaration by the European Council on the specific characteristics of sport and its social function in Europe, Nice, December 2000
The audits of the condition of playing fields and sports pitches will show very clearly that the problems to be addressed are not so much about the loss of pitches but primarily about the need to improve the standard and management of the existing stock. Allied to this is the issue of affordable access because in some areas a major barrier to development is pricing policies that inhibit access to pitches, particularly for youth and volunteer groups.

There has been a very substantial investment in football-specific and multi-sports facilities such as Multi-Use Games Areas (MUGAs) in the last decade and this is continuing through implementation of NOPES and other programmes. Just before Christmas last year sportscotland announced a £2m package of investment in local facilities with 4 awards worth £1.2m in total being football related.

The Scottish Executive's policy position on PPP school facilities is set out in the Committee report. The very significant investment in the school estate, through PPP and other forms of procurement, is leading to improved schools and school sports facilities. The use of these facilities, matters relating to the cost of hiring them, and questions of reviewing existing contracts are issues for local decision. Local authorities are the procuring body for all forms of school building works and PPP contracts are between them and their partners. The Scottish Standard Schools Contract (SSSC) contains appropriate provision for authorities and PPP operators to change service requirements at any point during the operation of contracts, taking account of the circumstances locally.

Football's Future (paras 118-162)

In relation to sport in schools, we consider that the top priorities for education authorities and individual schools are:-

- to provide a minimum of 2 hours of quality physical education in the core curriculum for every child every week, so that schoolchildren develop the physical literacy which helps them to participate effectively and enjoyably in sport (and physical activity more generally);

- to provide or facilitate the provision of opportunities for all schoolchildren to engage in physical activity, including sport, in and around the school day;

- to develop appropriate links with local sports clubs to increase opportunities for schoolchildren to participate in sport, receive appropriate coaching and other support and provide a pathway for continued involvement in sport after leaving school.

- to use the potential of sport to contribute to individual achievement and the ethos of the school including raising standards and reducing truancy and indiscipline.

Inter-school competition has a role to play but it is essential that children, especially of primary school age, see sports participation as fun and that an appropriate balance is struck between competition and fitness training and skills development. The priority at primary school level should be that everyone gets the opportunity to play.

The implementation of the Action Plan for Youth Football and the SFA’s National Plan will integrate and accelerate the development of the women’s and girls’ game. We agree that
clubs regarded as being in the forefront of youth development should be required to demonstrate some commitment to the development of the women’s and girls’ game.

On player pathway, the Action Plan for Youth Football and other initiatives aim to avoid the disillusionment and drop-out rate we currently experience. We want to retain players in the game, whether as players, coaches, referees or officials and fully integrate football developments within regional initiatives, such as sportscotland’s pilot Sports Partnerships, to ensure life-long participation and longer term athlete development.

The SFA’s Club Licensing Scheme should ensure that the top clubs pay appropriate attention to education and welfare issues in their youth development programmes.

Scottish Executive Education Department
21 February 2006
ENTERPRISE AND CULTURE COMMITTEE

REPORT ON SCOTTISH FOOTBALL

SCOTTISH FA RESPONSE
INTRODUCTION

The Scottish FA (SFA) have been invited to respond to the recommendations of the Enterprise and Culture Committee following their inquiry into Scottish football. The SFA were happy to co-operate with the Inquiry, and contributed an extensive written submission. The Committee is referred back to the original written submission, and subsequent oral evidence from the SFA Chief Executive, as the basis for the SFA position on the future of Scottish football.

This response will therefore concentrate on the particular recommendations made by the Committee in its published report.

It should be observed that the title of the report has altered a number of times during the course of the 18-month long inquiry into Scottish football. It is now entitled the “Report on Reform of Scottish Football”, whereas previously the inquiry was into “the future of football in Scotland”. The original remit of the Inquiry was to look specifically at –

(i) the kinds of financial advice available to football clubs and supporters organisations.

(ii) how to get supporters more involved in decision-making.

(iii) What the Government in Scotland had been doing to date to support the development of Scottish football and what more could be done.

The SFA welcomed and encouraged the broadening out of the Inquiry from its initial remit based around the financial problems of clubs and the involvement of supporters’ organisations. These matters are important for the future of Scottish football, but there are many other more important factors that affect the long-term health of the game in Scotland.

This response follows the 5 sections of the published report and offers comments on the recommendations contained therein.
1. GOVERNANCE – VISION AND PRINCIPLES

1.1 The public acknowledgement by the Scottish Executive that the structures and administrative procedures within the game are a matter for the football authorities themselves is welcome. Political interference in sports governing bodies – which happens in other parts of the world – is not acceptable. However, if public funds are being made available then, of course, government has a legitimate interest in ensuring that certain standards are met by recipient bodies.

1.2 Until recently, the amount of Government funding received by the SFA from public sector sources was a very small percentage of overall turnover (under 2%). Our partnership with the Scottish Executive in terms of the Youth Action Plan will raise this percentage to over 5% per annum. This is still not a large percentage, but the sums of money are vital if the SFA is to do more to encourage youth football in Scotland. In order to receive Youth Action Plan funding, the SFA had to undergo an independent audit to achieve Fit for Purpose status. This has been obtained and will be maintained throughout the 10-year planning period.

1.3 The SFA welcomes the recognition that there is only one governing body in Scottish football. To think otherwise flies in the face of international football structures and is the stuff of tabloid journalism. We were moreover surprised at the undue prominence given in the report to the comments of the former Project Director of the Scottish Football Museum, who, given the circumstances of his departure from the SFA, is hardly likely to be an unbiased commentator.

1.4 Considerable reforms have, in fact, been made to the internal management structure of the SFA over the past five years. Further changes are anticipated through implementation of the Youth Action Plan. New Regional Committees have already been established, and youth football needs to have a greater place in the decision-making structures of the SFA as the governing body of football.

1.5 The SFA is on record as supporting the principle of a true pyramid league system in Scottish football. This is not the same idea as an expanded Scottish Cup in which junior clubs might be allowed to participate. Proposals along those lines were, as the Report notes, defeated by the membership of the SFA in a vote at the 2005 AGM. A new Board
Sub-Group has, however, been set up to examine amended proposals for an expansion of the Scottish Cup in future years. Furthermore, the SFA are currently discussing the establishment of a Pyramid League Review Group to examine financial and organisational options for league structures in more detail.

1.6 Last year, for the first time, the SFA produced a 5-year Strategic Plan. This was mentioned by the SFA Chief Executive in his evidence to the Committee. The Strategic Plan has now been firmed up into a document which has recently been approved by the SFA Board, and will now be communicated more widely. At its heart, is the following Vision Statement:-

Scotland recognised as a football nation which produces skilful, athletic players able to achieve success for both club and country.

A copy of the Strategic Plan is available, in confidence, on request. It will be presented for the first time at the SFA AGM in 2006.

2. FINANCES

2.1 The SFA is linked into developments at FIFA and UEFA in terms of the Task Force for the Good of the Game. Regular reports are received which are shared with the Scottish Executive.

2.2 We welcome the recognition that further investment for facilities in football is required for all levels of the game. The National and Regional Sports Facilities Strategy is key to improving facilities at the top end of the game if the Scottish Executive are unable to support a Football Academy Programme for clubs. It is essential that the football elements of these major new regional facilities are planned with the involvement of SFA and senior clubs so that these facilities are designed with both elite and recreational football in mind.

2.3 Club Licensing – both for European and domestic competition – is the modern form of regulation introduced by the SFA in the last three years. Developments are still ongoing as the new system beds down but it covers a range of financial and administrative matters which will raise standards of governance and administration at all senior football clubs in Scotland.
2.4 The SFA notes the support that the Scottish Executive continues to give to Supporters Direct to enable its work to be taken forward.

3. INFRASTRUCTURE AND FACILITIES

3.1 The SFA appreciates the support of the Scottish Executive for the Youth Action Plan. We note that the Committee has picked up on the source of the financial commitment being made by the Scottish Executive. Provided that commitment is made good, and there are no undue bureaucratic problems, then the SFA has no other comment to offer on this point. The SFA also notes the Committee’s view that the overall level of public support for the Youth Action Plan may not be sufficient. Whilst programmes will be undoubtedly tailored to the budgets available so no overspend occurs, there is no doubt that much more could be achieved if additional resources were made available to the new Regional Committees across Scotland.

3.2 As part of the Youth Action Plan, a National Football Facilities Strategy is being prepared. At Regional level, each Regional Committee will be undertaking their own investigations into the quantity and quality of local facilities.

3.3 Strategies are all very well, but they will not of themselves make much difference. Given the widespread view that there are serious deficiencies in both the quantity and quality of football facilities in Scotland, any strategy is likely to recommend significantly increased investment by the public sector. The SFA would re-iterate the points raised in its submission that the Scottish Executive or Sportscotland should be prepared to make a longer-term funding commitment to the Scottish Football Partnership to assist in facilities provision. This would mirror what has happened south of the border with public sector support of over £60million having been provided to the Football Foundation since its inception around 4 years ago.

3.4 The SFA is disappointed that, in its report, the Committee did not emphasise this contrast between Scotland and England in terms of public sector support for football facilities provision, and call for more immediate and specific action to be taken.
4. **FOOTBALL’S FUTURE**

4.1 The SFA have been one of the main driving forces behind the successful anti-racism campaigns in Scotland in recent years. We remain committed to this initiative and, we will look at further ways we can offer support in future.

4.2 The SFA is also committed to working with the Scottish Executive and Sportscotland to produce an Action Plan to deal with Sectarianism within Scottish football. This Action Plan will require the SFA to examine its own powers and procedures. It will be produced by the end of this calendar year.

4.3 The SFA is keen to encourage more inter-school competition as part of our wider Youth Action Plan. Significant sponsorship funding has just been obtained by the SFA to allow new programmes and competitions to be set up for Secondary One pupils.

4.4 Much work is being done on player pathways through the Youth Action Plan. A National Plan for Youth Football Development is currently out for consultation.

4.5 The SFA is pleased that our initiative in supporting the Midnight Leagues programme is held up as an example of the power of football to help deal with wider societal issues. This project is to be extended with welcome support from the Bank of Scotland. The SFA is very willing to work with central and local government on projects of a similar nature.

5. **A ROLE FOR MINISTERS**

5.1 Football is our national sport and Ministers should be interested in its well-being. Our National team is a flagship for the country and there is a role for Government in helping the sport invest for future success. This is being done with the Youth Action Plan, with milestones and monitoring as part of this project.

5.2 The facilities problem for football in Scotland remains a major obstacle to future success. The SFA re-iterates that, since the abolition of the Football Trust, government in England has seen fit to make significant resources available to the Football Foundation for a variety of community and facilities projects. Without such investments
in Scotland, our facilities problem will not be resolved and there is an increasing danger that our sport will be constrained in its future appeal to young people.

5.3 The Committee, in responding to comments on its report, is invited to urge Ministers to give their support for further investment in football facilities on the basis of the National Football Facilities Strategy which will be completed later this year.

Scottish FA
April 2006