FINANCE COMMITTEE

AGENDA

1st Meeting, 2006 (Session 2)

Tuesday 10 January 2006

The Committee will meet at 10.00 am in Committee Room 4 to consider the following agenda items:

1. **Subordinate legislation:** The Committee will consider the following affirmative instrument— the draft Budget (Scotland) Act 2005 Amendment Order 2006 and will take evidence from—

   George Lyon, MSP, Deputy Minister for Finance and Public Service Reform; and John Nicholson and Martin Bolt, Finance Expenditure Policy Division, Scottish Executive.

2. **Subordinate legislation:** George Lyon, MSP, Deputy Minister for Finance and Public Service Reform to move motion S2M-3763 in the name of Tom McCabe MSP – That the Finance Committee recommends that the draft Budget (Scotland) Act 2005 Amendment Order 2006 be approved.

3. **Bankruptcy and Diligence etc. (Scotland) Bill:** The Committee will consider its approach to the scrutiny of the Financial Memorandum for the Bankruptcy and Diligence etc. (Scotland) Bill.

4. **Scottish Commissioner for Human Rights Bill (in private):** The Committee will consider its draft report on the Financial Memorandum of the Scottish Commissioner for Human Rights Bill.

Susan Duffy
Clerk to the Committee
Room T3.60
Extn 85215
The papers for this meeting are:

**Agenda Items 1 and 2**

Paper from the Clerk

The Draft Budget (Scotland) Act 2005 Amendment Order 2006

PRIVATE PAPER

**Agenda Item 3**

[Bankruptcy and Diligence etc. (Scotland) Bill](http://example.com) and associated documents available online (circulated to members in hard copy only; electronic versions available via Parliament website)

Paper from the Clerk

**Agenda Item 4**

PRIVATE PAPER
Finance Committee

1st Meeting 2006 – Tuesday 10 January 2006

Procedure for Considering Subordinate Legislation

Introduction
1. The Finance Committee may consider subordinate legislation which seeks to amend Budget Acts (referred to as ‘budget revisions’). These budget revisions request parliamentary authorisation for a number of in-year changes to the allocations as set out in the Budget. For these items, the Minister or Deputy Minister responsible for the instrument gives evidence to the Committee, normally accompanied by officials from the Scottish Executive’s Finance and Central Services Department. Members may find this briefing note on the procedure for the consideration of subordinate legislation helpful.

Background
2. When passing legislation, the Parliament accepts the principles of a bill but often leaves much of the detail to be filled in by subordinate (or secondary) legislation via Scottish Statutory Instruments (SSIs) at a later date. The nature and extent of the powers which are delegated to Ministers are set out in the parent Act.

3. After a SSI has been laid before the Parliament, the Parliament has 40 days to report on it. The SSI is referred to the Subordinate Legislation Committee first, for consideration of its technical and legal aspects, and then to a nominated lead committee (this is the committee within whose remit the subject matter falls) to consider the policy issues.

4. SSIs are usually considered under either affirmative or negative procedures\(^1\). The draft order before the Committee is an affirmative instrument and thus requires the approval of the Parliament by motion before it can come into force. Negative instruments, on the other hand, automatically become law unless a member proposes a motion for annulment.

Procedure
5. It is the role of the lead committee to scrutinise the draft order and decide whether to recommend its approval to the Parliament. The Minister or Deputy Minister responsible for the instrument will speak to and move the motion calling on the Committee to recommend that the order be approved. The motion recommending approval of this motion is listed below. The Committee may then question the Minister and the debate on whether to recommend approval of the instrument must last no longer than 90 minutes (Rule 10.6.3). At the conclusion of the debate, the question will be put to committee members that they recommend to the Parliament that the SSI be approved.

6. The Committee will then report its decision to the Parliament. If it recommends the approval of the instrument, the Parliamentary Bureau shall, by motion, propose that the instrument be approved by the Parliament.

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\(^1\) For further information on the procedure for examining subordinate legislation, Members are advised to consult Chapter 10 of Standing Orders.
Motion

S2M-3763 Mr Tom McCabe: The Draft Budget (Scotland) Act 2005 Amendment Order 2006—That the Finance Committee recommends that the draft Budget (Scotland) Act 2005 Amendment Order 2006 be approved.

Supported by: George Lyon*

The Subordination Legislation Committee considered the instrument at its meeting on 20 December 2005 and had nothing to report. An extract from the Committee’s Official Report is attached below.

Subordinate Legislation Committee

Tuesday 20 December 2005

Draft Instruments Subject to Approval

Budget (Scotland) Act 2005 Amendment Order 2006 (draft)

The Convener: Agenda item 5 is draft instruments subject to approval. No points arise on the first draft order, but members will note that it was withdrawn and has now been re-laid. We welcome the fact that our points were picked up.
Finance Committee

1st Meeting – Tuesday 10 January 2006

Scrutiny of Financial Memorandum – Approach to the Bankruptcy and Diligence etc (Scotland) Bill

Background

1. The Bankruptcy and Diligence (etc) (Scotland) Bill (“the Bill”) was introduced to parliament on 21 November 2005. The Enterprise and Culture Committee has been designated the lead committee for the Bill at Stage 1.

2. This paper has been prepared to assist the Committee to determine its approach to considering the Financial Memorandum for the Bill.

The Bill

3. The Bill is in 16 parts. Part 1 – Bankruptcy – deals only with personal bankruptcy, including sole traders and partnerships. Corporate insolvency is reserved to Westminster.


5. Part 3 – Enforcement – will establish a new non-departmental public body, the Scottish Civil Enforcement Commission, to regulate and supervise court messengers, who are to enforce court rulings on diligence.

6. Parts 4-16 provide a broad range of arrangements for enforcing decisions of the court in respect of diligence.

7. The policy objectives of the Bill are to:
   • modernise the legal framework for personal bankruptcy and diligence to strike a better balance between the rights of debtors and creditors;
   • support business risk, thereby promoting an entrepreneurial culture and supporting economic growth; and
   • modernise the law of floating charges to remove existing uncertainties and improve transparency in arrangements, thereby supporting both secure lending and business risk.

8. By reforming bankruptcy and diligence together, the Bill seeks a unified and more effective system of: debt recovery for those who can repay debt but choose not to; debt management for those who can repay debt but who may need more time and support to do so; and debt relief for those who cannot repay their debt.

9. The Financial Memorandum sets out the anticipated costs arising from the Bill, which it states will fall largely on the Scottish Administration. Estimated costs
for 2006/07 total £1,681,787, rising to £2,137,263 in 2007/08, and then £2,936,438 recurrent from 2008/09.

10. Costs have been provided according to key provisions in the Bill, as follows:

11. **Bankruptcy**: Costs of £1.442 million in 2006/07 and then £536,000 per annum thereafter for administration by Account in Bankruptcy. This includes initial and ongoing staffing and training costs. Against this, an estimated £102,213 per annum is expected to be recovered from student loans, which will no longer be able to be written off in bankruptcy. In addition, annual savings of £60,000 are expected to arise from the movement of business from the Court of Session to sheriff courts.

12. **Floating Charges**: Costs of £375,000 in 2006/07, £412,500 in 2007/08 and £75,000 in 2008/09 and subsequent years have been estimated for maintenance of a new Register of Floating Interests by Registers of Scotland.

13. **Enforcement**: Costs of £27,000 in 2006/07, £868,000 in 2007/08 and £632,000 per annum thereafter for are estimated for staffing and administration costs for the new Scottish Civil Enforcement Commission. Savings of £32,000 per annum from 2007/08 are expected to arise in the court system. As the Commission is to be a non-departmental public body it is assumed that it will be funded by the Executive.

14. **Diligence**: Costs of £141,725 in 2007/08 and £566,900 in 2008/09 and subsequent years are expected for administration within the Scottish Court Service, including staff and judicial time, plus £10,000 for IT as a one-off in 2007/08. From 2008/09, an estimated £967,500 per annum will be required for administration of an Information Disclosure Scheme.

15. **Implementation by the Scottish Executive**: Additional costs of £363,251 per annum from 2007/08 are anticipated for implementation, including staffing and programme costs.

16. The FM notes that additional costs for other organisations are anticipated in relation to:

- increased costs of recovery for creditors
- requirement of creditors to provide debt advice; and
- information packs to debtors, and reform of bank arrearsment arrangements.

17. These costs have not been estimated in the FM.

18. The extent to which the Bill’s reforms will reduce the funds recouped by creditors is not clear, although the FM states that debtors and creditors will not be significantly affected as these parties already bear the costs of any formal enforcement used. For this reason the Executive did not consider it necessary to undertake a regulatory impact assessment.
Conclusion

19. In sum, the resource implications of the Bill for the Scottish Executive are reasonably significant and relatively complex. In addition, it is anticipated that there may be some debate about the costs arising from the Bill for other organisations including local authorities and business creditors.

20. For these reasons, the Committee is invited to agree to adopt level 3 scrutiny for this Financial Memorandum. This would involve seeking written and oral evidence from selected organisations and bodies along with Executive.

21. It is proposed that the Committee seek written evidence in the form of the questionnaire from:

- Accountant in Bankruptcy
- Scottish Court Service
- COSLA
- Credit Services Association
- Council of Mortgage Lenders
- Institute of Chartered Accountants of Scotland
- Registers of Scotland
- Society of Messengers-At-Arms and Sheriff Officers
- Scottish Chamber of Commerce
- Committee of Scottish Clearing Banks
- Association of Business Recovery Professionals

22. In addition to the Executive Bill Team, it is proposed that the Committee seek oral evidence from:

- Accountant in Bankruptcy
- Scottish Court Service

Merrin Thompson
Assistant Clerk