FINANCE COMMITTEE

AGENDA

6th Meeting, 2003 (Session 2)

Tuesday 16 September 2003

The Committee will meet at 10.00 a.m. in Committee Room 2 to consider the following agenda items:

1. **Budget Process 2004-05:** The Committee will undertake preliminary consideration of the draft budget for 2004-05. The Committee will also discuss its draft guidance for subject Committees’ stage two reports and two papers by the Budget Adviser.

2. **Budget Process 2004-05:** The Committee will consider a paper by the Clerk outlining the proposals for the Committee’s consideration of the 2004-05 budget.

3. **Consideration of Draft Reports:** The Committee will consider the issue of discussing draft reports in private or public.

4. **Vulnerable Witnesses (Scotland) Bill:** The Committee will take evidence on the Financial Memorandum of the bill from-
   - Barbara Brown, Head of Civil Justice and Evidence Branch; Lesley Napier, Head of Bill Team, and Merlin Kemp, member of Bill Team, Scottish Executive.
   - Lindsey Anderson, Principal Depute, Policy Group and Stephen Woodhouse, Finance, Crown Office

5. **Vulnerable Witnesses (Scotland) Bill:** The Committee will discuss the evidence it has taken on the Financial Memorandum of the bill, in advance of its report to the Justice Two Committee.

6. **Budget Process 2004-05:** The Committee will consider an issues paper setting out the arrangements for the Committee’s external meeting on 10 November.

Simon Watkins
Clerk to the Committee
The papers for this meeting are:

**Agenda item 1**

Paper by the Clerk  
Draft Budget Documents – Hard copies already issued

Paper by the Budget Adviser  
Paper by the Budget Adviser

**Agenda item 2**

Paper by the Clerk

**Agenda item 4**

**Vulnerable Witnesses Bill - Explanatory Notes only**

Submission from the Scottish Legal Aid Board  
Submission from the Scottish Court Service

Private Paper

**Agenda item 5**

Paper by the Clerk

**Agenda item 6**

Paper by the Clerk
Background
1. This paper sets out a brief background to the budget process and seeks the Committee’s agreement on guidance to be passed to the subject committees.

The Budget Process
2. The agreement between the Scottish Parliament and Scottish Ministers on the budgeting process sets out three stages:

   Stage One

   Stage one is a consideration of the Executive’s spending strategy. Its purpose is to enable the Parliament to express its views on future expenditure priorities, and follows the publication by the Executive of the Annual Expenditure Report in March/April each year.

   Stage Two

   Stage two is a consideration by the Parliament of the Scottish Ministers’ detailed spending proposals for the next financial year. It follows the publication by the Executive of the Draft Budget in September each year, and is concluded by a debate in the Chamber on the Finance Committee’s report (which brings together the subjects committees’ responses) in December.

   Stage Three

   Stage three is Parliamentary consideration of the annual Budget Bill. The three-stage legislative procedure is truncated for the budget, as the spending plans have been extensively scrutinised during stages one and two of the budget process. The Budget Bill must be introduced by 20 January, and stage three must begin between 20 and 30 days from its introduction.

3. This year the budget process has been affected by the election in May. Due to the election there was no publication of an Annual Expenditure Report and, therefore, no stage one. In effect both stages one and two of the budget scrutiny process have been merged.

The Role of the Finance Committee
4. Detailed consideration of the budget is carried out by the subject committees, which scrutinise the areas of the Executive’s budget within their remit. A number of subject committees have appointed advisers to assist their consideration. They report back to the Finance Committee, which has the role of considering and coordinating their responses and, in turn, reporting to the Parliament.

5. The timetable for budget scrutiny is tight and subject committees do not have a long period in which to carry out their work. The Finance Committee has for the
past few years issued guidance to the subject committees to assist them in their work.

6. The two following papers were prepared by the Budget Adviser as guidance to the subject committees. The adviser will speak to these papers, and on the budget as a whole, at the meeting.

**Recommendations**

7. The Committee is invited to agree that the attached papers be issued to the subject committees to assist them in their budget consideration.

Simon Watkins  
Clerk to the Committee  
10 September 2003
1. The budget process this year has been truncated because of the May elections. There has been no Annual Expenditure Report, although Committees had some opportunity to discuss strategic priorities prior to the 2002 Spending Review.

2. This means that no spending recommendations have been made at Stage One for Ministers to consider, and that as this is the midway point between Spending Reviews, there is only limited scope for adjusting the budget at the margins. There is, therefore, no need to ask for spending recommendations in the event of additional funding becoming available, as last year. Rather, the Committees should consider whether the pattern of expenditure within its portfolio is acceptable, or whether it wishes to recommend transfers between programme budgets.

3. Thirdly, it appears from messages emerging from the Treasury that next year’s Spending Review will bring the first tight settlement since devolution. The Finance Committee, therefore, advises the subject committees to be forensic in their questioning of Ministers, with a view to obtaining the best available supplementary evidence on the financial and policy assumptions underpinning the draft budget, so that they can begin to develop a systematic and rigorous ranking of their own spending priorities for the Spending Review 2004.

4. With these comments in mind, the Finance Committee would welcome responses from the subject committees on the undernoted key questions:

   a) Is the committee satisfied that any outstanding issues from last year have been addressed in the budget proposals (where appropriate)?

   b) Is the committee content with the additional funding proposals made by the Executive under the Partnership Agreement, or would it suggest alternative uses of such funding? (This relates to the new resources section.)

   c) Does the committee wish to recommend a spending priority for use of unallocated EYF funding in its portfolio?

   d) Does the committee wish to recommend any specific changes to programme budgets within the portfolio. If so, where should programmes be increased, and where should compensatory reductions be made?

   e) Does the committee feel that the portfolio priorities are appropriate
and are reflected in the budget proposals?

f) Is the committee satisfied with the performance information contained in the chapter, and does it feel that the links between aims, budgets and targets are properly integrated?

g) Does the committee have any comment on the sections covering the cross-cutting issues of closing the opportunity gap; sustainable development and equality?

h) Further to the above, each chapter contains a new section of specific initiatives under equality. Does the Equal Opportunities Committee have a view on the utility of the information in this section, and does it wish to make any comments or recommendations regarding specific spending proposals to enhance equality?

Professor Arthur Midwinter
September 2003
1. In this report, the focus is on the key trends and issues from a strategic perspective in the departmental chapters of the Draft Budget published on 11 September.

**Justice**

2. The Justice Budget proposals record an increase from £755m in the current year to £803m and of Justice support to local authorities from £487m to £519m by 2005-06. These broadly correspond to the figures set out in last year’s budget. There is a modest increase in Police Grant Aided Expenditure (GAE), to allow for modest growth in police numbers, rather than the standstill position which was planned last year.

3. New resources of £0.5m/£13.5m/£25m over the next three years have been allocated and combined with reallocation from budget lines to meet commitments in the Partnership Agreement. This will:
   - improve the range and quality of community disposals;
   - boost victim support and court support schemes;
   - extend witness service to other areas;
   - continue to fund Drug Courts;
   - cover the preparatory costs of a single agency to deliver custodial and non-custodial services;
   - meet rising costs of legal aid during transition to High Court;
   - meet additional costs of emergency planning post September 11;
   - contract out prison escort service;
   - cover High Court reform;
   - expand CCTV systems;
   - increase police numbers.

4. The document states that Justice contributes to closing the opportunity gap by working to reduce crime (which disproportionately affects disadvantaged areas) but does not say how resources will be targeted to achieve this objective. This should be pursued in Ministerial questioning.

5. By contrast, the chapter provides a systematic discussion of means for tackling inequality, and promoting sustainable development.
Crown Office and Procurator Fiscal Service (COPFS)
6. This budget is growing modestly in real terms. In resource terms, it will grow from £87.9m to £92.5m over the period. It summarises its approach to reducing crime and fear of crime. However, as with Justice, it assumes that a general increase in funding provision will help close the opportunity gap as “perpetrators of crime and victims of crime live for the most part in disadvantaged areas”. Speedier and more effective prosecution is assumed to reduce crime inequality, but again, no explanation of how this will work in practice is given which is a matter for worth taking up with the Minister.

Education and Young People
7. This chapter shows a further increase of around £22m over last year’s plans for 2004-05, growing from £280m to £372m in that year. The increases are in the Schools and Specific Grants programmes.

8. The sums stated in the “new resources” section are for additional funding of £29m in 2004-05 rising to £49m in 2005-06. This will cover the cost of additional teachers and the Spark Project. Transfers have also been made from the local government budget to the National Priorities Action Fund (the former Excellence Fund) for the inclusion programme, and to local government for the costs of McCrone.

9. The EYF contribution to the wider cross-cutting priorities is well summarised in the document, with particular emphasis on key groups in the equality strategy. Overall, this budget is experiencing significant growth of 32% over last year. However, the major growth in Specific Grants planned for 2005-06 of 60% seems to run contrary to the wider commitment to reduce specific grant funding to local authorities.

Tourism, Culture and Sport
10. The budget for this portfolio is broadly in line with last year’s plans. It will grow from £207m to £233m, or by 12% in 2004-05, and by a further 14% next year, equivalent to real terms growth of 23% over two years from the current baseline.

11. The section on “what the budget does” emphasises the commitment to tackle disadvantage in culture and sport, although the major spending commitments in the latter are for sporting facilities. This is expanded on in the “closing the opportunity gap” section, to report targets for increased participation in such groups. As in the Justice chapter, there is no indication of the scale of resources committed to tackling disadvantage.

12. The portfolio is receiving additional funding of £14m over two years for sports facilities, previously earmarked for Euro 2008 in the central reserve. The coverage of the equality issue reports the provision of £100,000 funding to
develop a comprehensive equity strategy for sport in Scotland, listing nine key groups. Other funding seeks to tackle gender imbalance in golf and football.

**Health and Community Care**

13. The Health and Community Care chapter is more informative than in previous years. The budget figures are broadly in line with last year's draft budget, recording a growth of 12% in real terms over two years. In resource terms, it will rise from £7252m to £8531m.

14. Health and Community Care will receive £32m additional funding towards the cost of implementing the Partnership Agreement. However, there is no indication of even the broad purposes for which these resources will be used.

15. On the cross-cutting priorities, the narrative is a statement of policy and practice, rather than an exposition of specific spending commitments which will contribute to these objectives. By contrast, the section on equality meets the needs of scrutiny by identifying and costing specific initiatives to promote equality.

16. The financial data on the NHS is much improved, listing specific allocations by health board, and spending on national priorities, neither of which were included last year. Each Level 2 programme also includes a statement of priorities.

**Food Standards Agency**

17. This budget is exactly the same as in last year's document. It will provide for significant growth in spending on food and safety standards. It has received no new resources, and its narratives on the cross-cutting priorities are statements of policy and practice, without any exposition of resource implications.

**Enterprise and Lifelong Learning**

18. The ELL Programme has been expanded to include responsibility for European Structural Funds. The planned increase in expenditure is 4.8% in 2004-05; and 3.9% in 2005-06. This represents a growth in real terms of 3.7% over two years, which is well below the budget average. *This modest overall increase seems inconsistent with the new political emphasis on growing the economy.*

19. The Department's programme is focussed on post-school education and training and jobs and it states that "much of our spending is aimed at closing the opportunity gap in employment and training". This figure is not quantified and should be pursued with the Minister.

20. New resources of £20m are made available for the current year, or which £2m will provide matching funding for The Hunter Foundation, and £18m to
part fund promotion of broadband services across Scotland. In 2004-05, £10m will be provided for student support, increasing to £15m by 2005-06, in anticipation of growing pressure on the budget.

21. The Department appears to treat Opportunity and Equality matters as the same issue, recording modern apprenticeships as contributing to both objectives, by targeting on under-represented groups. There are several examples provided of action on equality, including a national unit for Women’s Enterprise.

22. The Higher Education Budget will grow by 6% and Further Education by 8.6% in 2004-05. However, funding on economic development programmes such as Scottish Enterprise; Highland and Islands Enterprise; Regional Selective Assistance and European Structural Funds will fall in real terms. Other level two programmes will grow significantly by 31% this year and 28% next year, focused mainly on Education Maintenance Allowances (£8m), Enterprise in Education (£6m) and Miscellaneous (£8m). ESF funding will fall by £12m from £65m to £53m next year, whilst European Regional Development Fund funding will grow by £20m from £74m to £94m. These budgets support job creation and training, especially in declining areas, but the Executive’s role is mainly one of implementing the programmes through resource allocation.

Communities

23. The Communities programme did experience significant growth in earlier budgets, but these proposals provide only 3% real growth over two years. It may be, however, that this is a reflection mainly of the accounting changes contained in the footnotes, as the figures are significantly less than in last year’s budgets (£839m, £921m and £945m). It may also reflect RAB changes, so the Committee should raise this with the Minister during his evidence.

24. A second issue is the fall in the regeneration programme over the period, of 24% in real terms.

25. The narrative on new resources is confusing. It identifies £45m as a new funding allocation over 3 years, which is part of an overall package of £65m of new funding for tackling anti-social behaviour. This needs clarification.

26. Once again, the discussion of cross-cutting priorities is in terms of policy and practice rather than funding decisions. The Committee’s interest is in how resources are being targeted on these priorities, and by what amounts, but the chapter also fails to provide this information, whilst the equality section does so with clarity.
Transport
27. This programme will grow by 11% in real terms over two years (although spending on the roads GAE will only grow by about 2% in real terms).

28. The major Level 2 increase is in Other Public Transport of 55% in real terms. Most programmes face broadly standstill or modest falls in resources in real terms. The growth is for the Integrated Transport Fund, from £159m to £328m by 2005-06 and the Departmental allocations include significant additional funding of £43m per annum by 2005-06.

29. The treatment of the cross-cutting priorities follows the pattern of other chapters, with statements of policy and practice on closing the opportunity gap and sustainable development, and specific projects listed in the equality section.

Environment and Rural Development
30. This chapter shows modest decreases from last year’s document, which may simply be accounting changes. The increase from £1137m to £1153m in the net budget is 1.5% - less than inflation. A similar change is planned for 2005-06.

31. There will be new resources of £8.6m in the current year, rising to £9.4m in 2004-05. These are Barnett consequentials of transferring the landfill tax credit scheme to a public scheme.

32. Under closing the opportunity gap, however the department simply describes several activities which will assist the rural dimension of this cross-cutting issue. It offers no explanation as to how these activities will do so in practice, nor any indication of additional resources being provided for this purpose. This should be pursued with the Minister in Committee. For sustainable development, the department highlights waste management reform by reducing landfilling as its main contribution.

33. By contrast, the equality section highlights two programmes which provide support for people with disabilities, and the Green Space for Communities initiative for areas of urban deprivation. In general, there is too much inference that core programmes benefit all, including disadvantaged groups, rather than specific initiatives.

34. Waste Initiatives are the major growth area, nearly trebling in real terms over SR2002 – with a further £14m per annum contributing to flood defence works in local authority finance.

35. Big increases are planned for the Countryside Premium Scheme, and the Rural Stewardship Scheme (both of which are partly funded by the EU) and also the Farm Business Development Scheme, (housed in the Rural
Development Programme). Other Level 2 programmes are broadly in line with Draft Budget 2003-04, but there are significant reductions in CAP Market Support from £377m to £348m for 2004-05 and 2005-06 – reflecting EU Reforms of CAP. I have asked Finance Coordination to confirm that these are real reductions.

**Finance and Public Services**

36. The chapter contains a new statement of overall aims for Finance and Public Services. However, grant funding to local authorities is the main source of expenditure within the budget. The first three are broad aims for the use of the Scottish Budget as a whole. These are:

- plan and prudently manage the public finances;
- deliver excellence in public services;
- support growing Scotland’s economy;
- create a framework in which accountable local democracy can flourish;
- promote Scotland in Europe and the wider world.

37. The Budget will grow from £8.1b to £8.9b, or by 10.1%, by 2005-06 or 5% in real terms. These figures are broadly in line with last year. Net new resources of £62.6m in 2003-04; £36.1m in 2004-05; and £41.15m in 2005-06 have been added to the programme, although the narrative includes police and fire, which are also set out in the Justice Budget.

38. Cross-cutting priorities are all discussed as matters of policy and practice rather than resource allocation. The Committee cannot tell if these priorities are reflected in the budget on the basis of the information presented here. The only costed item in the three sections is the £15millions for modernising government. This is disappointing given past exchanges with the Minister about the need for costed options.

39. The local government capital budget will grow by 4%, compared with 10% for revenue spending and Specific Grants share of revenue spending will grow from 8.24% to 8.38%, despite recent commitments that it should fall.

40. Finally, there is a significant growth in pension payments for teachers and NHS staff, of 19% and 22% respectively. Does this reflect early retirement schemes; enhanced pay levels or other factors? (This is particularly relevant given problems of reforming and improving these key services and staff shortages in health.)

**Scottish Executive Administration**

41. The administration budget figures are broadly in line with last year’s plans for 2004-05. These allow for a small proportion of the Scottish Budget, which will
reduce from 1.1% in 2003-04 to 1.0% by 2005-06. This requires standstill budgets in real terms.

42. The Administration has introduced a rolling programme of Best Value Reviews. To my knowledge, these are not published and reported to relevant parliamentary committees, but constitute important reviews of baseline expenditure, and members may wish to raise this with the Minister. This would strengthen financial scrutiny for, as the process involves Ministers, customers and delivery partners at the moment, not involving committees seems a major omission.

43. The chapter contains a number of examples of action to further the cross-cutting priorities, with priority given to gender, ethnic and disability dimensions. It would be helpful to know if similar data could be available for government agencies and reported to the Parliament.

44. Finally, the Department mentions a ‘rigorous benchmarking review’ which reports favourably on Executive performance relating to the transition to devolution and the expansion of administrative workload thereafter. I am not sure whether this report has also been made available to the Parliament – but it should have been in the interests of transparency.

Professor Arthur Midwinter
September 2003
Background

1. This paper sets out a number of proposals for the Finance Committee’s consideration of the budget at stage two. It has been prepared in consultation with the budget adviser.

Budget Consideration

2. The role of the Finance Committee in stage two of the budget process is to co-ordinate the subject committees’ reports and to take an overview of the budget proposals.

3. During the first session, the Committee took evidence from bodies or experts to assist it in forming this overview. These have included, for instance, the CBI, STUC etc.

4. There are significant constraints on the Committee’s ability to take evidence on the budget overall. It will receive reports from the subject committees by 5 November and consider them at its meeting on 10 November.

5. Prior to this, and within the committee’s agreed work programme, there are two dates on which the Committee may take evidence, 30 September and 28 October. The agenda for the latter date will also include consideration of the October Holyrood Monthly Report. It is suggested that these dates could be used in the following way.

6. This year, for the first time, the announcement of the End Year Flexibility (EYF) figures has not been made independently, but as part of the draft budget process. The Committee has already invited the Minister of Finance to give evidence on the budget towards the end of the stage 2 process (as is usual) on 10 November. However, it would also be possible for the Committee to invite the Minister to attend on 30 September to question him on the EYF figures.

7. The previous Finance Committee had expressed concerns about the budgetary arrangements for this year, including the merging of the EYF announcement with that of the budget. And evidence session with the Minister on 30 September would permit the Committee to raise these issues with him and help inform subsequent thinking on the budget process.

8. In the past the Committee has found it helpful to receive views on the budget overall from ‘independent commentators’, for example Peter Wood of DTZ Pieda. It is suggested that the remainder of the session on 30 September be utilised in this way to hear views from independent commentators. In the interests of continuity it might be helpful to take evidence again from Peter Wood, and perhaps an economist from one of the main banks.
9. In view of the cross-cutting expenditure reviews that the committee has agreed to undertake, these witnesses could be asked to give a view on the extent to which the budget proposals as a whole contribute to economic development and sustainable development. The session might, therefore, provide useful background for the Committee’s future inquiry work.

10. The session on 28 October could be utilised to examine how performance assessment is being developed as part of the budget process within the Executive and beyond. It is suggested that the area of health is where this process has been most developed, and that evidence could be taken on this area, which might have lessons for other services, or areas of the budget. The Health Committee has appointed an adviser, Dr Andrew Walker, a senior lecturer in health economics, who has undertaken work in this area and would be a suitable witness.

11. In addition written evidence could be requested from other bodies from whom the Committee wished to receive a view.

Recommendations

12. The Committee is invited to agree the arrangements for its consideration of the budget overall, and in particular to:

- agree to take evidence from the Minister on EYF
- agree to take evidence from independent commentators of the budget overall, and with a focus on the topics chosen for the committee’s future cross-cutting expenditure reviews.
- consider whether it wishes to focus a session on the implementation of performance assessment.

Simon Watkins
Clerk to the Committee

10 September 2003
VULNERABLE WITNESSES (SCOTLAND) BILL -

SUBMISSIONS FOR THE SCOTTISH LEGAL AID BOARD

1.1 INTRODUCTION

The Scottish Legal Aid Board (“the Board”) welcomes the opportunity to make representations to the Justice 2 Committee regarding the Bill. The Board’s submissions focus upon the financial and administrative implications of the Bill for the Board and the Scottish Legal Aid Fund (“the Fund”). The Board has serious concerns that the Bill will increase the cost and complexity of legally assisted civil and criminal litigation.

1.2 CRIMINAL PROCEEDINGS

The definition of a vulnerable witness in Section 1 of the Bill is extremely wide, and could result in the Board receiving requests from solicitors to obtain expert reports to confirm the mental condition of the witness, or test the extent of any fear or distress which the witness might experience. Any increase in requests to obtain such evidence would have resource implications both in terms of administration and cost to the Fund.

The procedure set out in the proposed Section 271A of the Criminal Procedure (Scotland) Act 1995 would appear to relate to both Crown and defence witnesses. In solemn cases, additional costs will be incurred to the Fund where the defence solicitor has to frame a Child Witness Notice and attend at any hearing where the court requires to hear the parties on the issues raised in the Notice. Equally, where the witness is a Crown witness, the solicitor will require to consider any Notice lodged by the Crown and attend the hearing. In solemn cases, this will lead to additional charges for framing or perusing documents, and preparing for and attending court. In a Sheriff Court solemn case in which the Board has approved the involvement of counsel, there will be additional charges for work undertaken by counsel. In High Court cases, there will be additional charges for work undertaken by counsel or solicitor-advocates. Consideration should be given to prescribing the fees for work undertaken by counsel or solicitor-advocates in this regard.

In summary cases, the additional work in framing or perusing documents and attending hearings will need to subsumed within the core fixed payment. The fixed payment was not designed to deal with additional hearings of this nature, and this may result in pressure to either increase the level of the core fixed payment or prescribe a separate block fee for all work in connection with a Child Witness Notice. If no amendments are made to the criminal legal aid (Fixed Payments) (Scotland) Regulations 1999, then the Board envisages that it will face an increasing number of requests to treat any case involving a child witness as an exceptional case, which would be remunerated on a more expensive detailed fee basis.

Identical issues arise in the proposed Section 271C in respect of other vulnerable witnesses.
Procedures in the proposed Section 271D for reviewing arrangements for vulnerable witnesses appear to envisage further court hearings, which will increase the cost in solemn cases and put further pressure on fixed payments in summary cases.

In Section 271E, a party citing the witness or, the case may be, the court shall take into account views expressed by the witness and the witness’ parent, where the witness is a child. The Board envisages that this may involve the taking of additional precognitions, creating additional cost in solemn cases. It will also place additional pressure on the core fixed payment, which subsumes all work in connection with the taking of precognitions. The additional work involved might again result in an increase in requests to the Board to have these cases treated as exceptional cases.

It can be envisaged that by treating the accused as a vulnerable witness in Section 271F, the Board will receive requests to fund the obtaining of expert evidence, or to treat a summary case as an exceptional one.

The Board considers that inadequate explanation and costings have been provided in relation to the special measures in Section 271H.

Where evidence is to be taken by a commissioner, it is not clear whether the accused’s solicitor or counsel will be present in the same room as the commissioner, or at a remote location. The Board has historically considered the taking of evidence on commission to be work of an unusual nature or likely to involve unusually large expenditure. Such work requires the Board’s prior authority before the solicitor requests the court’s permission to initiate the step. The Board therefore envisages it will see an increased number of requests for such work, which has administrative resource issues for the Board. Furthermore, the costing provided in the Financial Memorandum does not appear to reflect the true cost of a commission. The commissioner is entitled to reasonable professional remuneration for the time spent in the task. There will be a cost involved in transcribing evidence and it can be envisaged that the solicitor will wish to review video evidence. There will be a cost involved in attending at and travelling to a commission, particularly where the commission is at a remote location from either the court or the solicitor’s office. The Board does not consider that a figure of £500 is an accurate reflection of the true cost of a commission, and that the costs are likely to be considerably higher.

The Financial Memorandum suggests that the party calling the vulnerable witness will bear the cost of live television links, but it is unclear what costs will be involved. These costs may also constitute work of an unusual nature or likely to involve unusually large expenditure, which will require the Board’s prior approval before the step is suggested to the court. No costing has been given as to the size of any outlay which the Fund might require to bear if the vulnerable witness is a defence witness.

Inadequate information has been provided regarding supporters in Section 271L. It is not clear what purpose the supporter will serve, given that they are not allowed to prompt or otherwise seek to influence the witness in the course of giving evidence. It is not clear whether the witness will personally bear the costs of a supporter attending court, or whether this will be passed on to the parties. The Board is
concerned that if the Fund has to bear the cost of a supporter to a defence witness, how these costs will be calculated. There would also appear to be nothing to prevent the supporter being a person in an expert professional capacity, such as a psychologist, or someone offering some form of treatment or therapy for a witness. The use of supporters for defence witnesses has administrative implications for the Board, since their involvement may well constitute unusual work or work likely to involve unusually large expenditure requiring the prior authority of the Board. Their involvement also has financial implications, particularly if the Fund would be expected to bear travel, accommodation or professional charges. No provision has been made in the Financial Memorandum for costs associated with supporters.

It can be envisaged that further work will be required of the defence solicitor where evidence is given in the form of a prior statement. Given that any work in connection with the taking of statements is subsumed within the core fixed payment in a summary case, this may well result in pressure to have such cases treated as exceptional cases. This will have administrative and financial implications for the Board and the Fund.

The provisions relating to proofs on victim’s statements in Section 3 of the Bill also have implications for the Board and the Fund. In cases where a solicitor has provided an accused with assistance by way of representation (ABWOR) for a plea of guilty, the Board may have to process a higher number of requests for increases in authorised expenditure to cover such work. The cost of ABWOR for a guilty plea may rise substantially. In cases for which summary criminal legal aid was granted, there is presently no separate fixed payment to cover this work, which may result in increasing numbers of requests to have summary cases treated as exceptional cases. In a solemn case, the cost of work relating to special measures could substantially increase the cost of work relating to the final disposal of the case.

The ability to lead expert evidence as to the behaviour of the complainer in Section 5 of the Bill will no doubt lead to the Board receiving an increasing number of requests to authorise the employment of an expert psychologist or psychiatrist for the defence.

Section 6 of the Bill will allow the court to prevent the accused conducting his own defence in cases involving vulnerable witnesses. It is not clear what legal aid provision is to be made for representation of an unrepresented accused. Automatic criminal legal aid is available where the court appoints a solicitor to represent an unrepresented accused in sexual offences cases. It is not clear whether that provision is also to apply in circumstances covered by Section 6. No amendment to Section 22 of the Legal Aid (Scotland) Act 1986 is proposed in the Bill.

Finally, the Board has concerns regarding the methodology for estimating the likely number of cases in which there might be a vulnerable witness. In view of the wide range of factors which may give rise to fear or distress, the number of cases where witnesses may be vulnerable may be substantially higher than the estimates given. In any event, those estimates fail to give any recognition to the number of cases which may involve vulnerable defence witnesses, including cases where the accused wishes to give evidence on his or her own behalf.
CIVIL PROCEEDINGS

The Board is concerned that the Financial Memorandum suggests that there will be little or no cost implications in civil proceedings. It is suggested that the cost will be marginal because much of the cost may be recovered from judicial expenses. Whilst there may occasionally be vulnerable witnesses in personal injuries cases, the Board envisages that the majority of vulnerable witnesses are likely to be found in family actions. Awards of expenses are rare in family actions and, even where made, are likely to be more difficult to enforce than an award against an insured opponent in a personal injuries action. Furthermore, civil proceedings also cover children’s referral proceedings, where legal aid is available to parents and children. No awards of expenses can be made in such cases. The Financial Memorandum does not give any costing for the effect on legal aid in those proceedings.

The Board does not consider that there are little or no cost implications for civil or children’s legal aid. The problems identified above in relation to criminal proceedings will also arise in civil and children’s cases. The bulk of Fund expenditure in relation to civil legal assistance is in family cases. It can be envisaged that expenditure will be incurred in relation to obtaining expert reports in relation to vulnerability, as well as the costs of applying for and pursuing special measures. Those measures are likely to be regarded as work of an unusual nature or likely to involve unusually large expenditure, which will require the Board’s prior authority before the application is made to the court to approve such a measure. The Board will therefore receive an increasing number of requests to undertake such work, which has resource implications.

If the costs of these measures cannot be recovered from the opponent, the applicant may ultimately have to bear the cost by not being able to obtain a refund of contribution, or the Board having to exercise a greater degree of clawback in any case where an applicant has recovered or preserved property. Assisted persons will therefore have to be fully aware that there may be cost implications to themselves in seeking to have special measures put in place for vulnerable witnesses.

In any civil or children’s case where the solicitor may charge detailed fees, it is anticipated that the case costs will increase as a result of the measures proposed in this Bill. Furthermore, most civil cases in the Sheriff Court will be moving to a block fee system from 1 October 2003. The measures in this Bill were not factored into those block fees. In the absence of any amendment to the new block fees, the additional work created by this Bill will need to be subsumed within the fees which have already been prescribed. The Board may also be faced with requests to allow additional fees to be paid to the solicitor. Any additional fee could substantially increase the cost of the case.

1.3 CONCLUSION

The Board recommends the Committee give consideration to the financial and administrative implications for legal aid created by this Bill. The Board is happy to assist the Committee with any further information it may require.

Philip Shearer/lw - 30 July 2003
VULNERABLE WITNESSES (SCOTLAND) BILL
FINANCIAL MEMORANDUM

During the evidence session before the Finance Committee on 9 September, the Convenor invited the Scottish Court Service to read the written submission made by the Scottish Legal Aid Board on the above Bill and offer comments upon it if we wished.

I have now read the submission made by SLAB. The extent to which the cost to Legal Aid has been addressed within the Financial Memorandum is a matter for the Scottish Executive Justice Department. However, I would offer the following observations which may assist the Committee in setting the SLAB concerns in context.

I understand that the detailed procedural arrangements to give effect to the Bill’s provision will be set out in subordinate legislation and rules of court. It is to be hoped that these will provide for arguments relating to the use of special measures to take place during one of the existing procedural hearings which apply in most criminal or civil cases, such as the intermediate diet in summary criminal cases. The proposed introduction of mandatory preliminary hearings in the High Court will also provide an opportunity for these matters to be addressed without the need for an additional hearing for this purpose. Since the Legal Aid Board
already funds the appearance of defence agents at such hearings, this should help reduce any incremental cost of implementing the provisions in the Bill.

The Committee were concerned about the overall estimate of the number of applications, particularly in summary cases which I suggested might vary by up to 1,000 from the total quoted. It might be helpful to set this in context if I point out that in recent years the sheriff courts have dealt with around 100,000 summary criminal complaints each year. Thus a variation of 1,000 applications in summary cases represents only 1% of the total cases coming to the courts and well within the level of fluctuations seen year on year.

The figures used in the Financial Memorandum can only be an estimate at this stage since the eventual impact of the legislation will be influenced by a range of unquantifiable factors, including future decisions by the courts on the acceptability of the use of special measures in individual cases.

JOHN EWING
Finance Committee
Vulnerable Witnesses (Scotland) Bill
Discussion of Evidence

Background
1. On both the 9 and 16 September 2003 the Finance Committee considered the Financial Memorandum for the Vulnerable Witnesses (Scotland) Bill.

2. The Committee heard oral evidence from the Scottish Children’s Reporters Administration, Scottish Courts Service, Scottish Legal Aid Board, Crown Office and the Scottish Executive.

3. At its meeting on 9 September, the Committee agreed to consider in public the key points from all evidence. This consideration would take place at its meeting on 16 September.

4. Under the normal conventions, the Finance Committee must report to the Justice 2 Committee (the lead Committee on this Bill) by 25 September in order that its report can be circulated to members of the Justice 2 Committee prior to the Minister giving evidence to that Committee on the 30 September 2003.

Draft Report consideration

5. Members are invited to consider the evidence from the meetings of 9 and 16 September and identify any specific issues or recommendations they wish to see incorporated in the report.

6. A draft report on the Financial Memorandum of the Vulnerable Witnesses (Scotland) Bill, prepared by the clerks, will be brought before members at the Finance Committee meeting on 23 September 2003 for their consideration and agreement.

Jane Sutherland
10 September 2003
Finance Committee
External Meeting for Stage Two of the 2004-05 Budget Process

Background
1. During the first session of the Parliament, the Finance Committee adopted the principle of holding meetings outwith Edinburgh to gain a local perspective on the Executive’s national spending plans and learn how local organisations engage with the budgetary process.

2. At its meeting on 9 September, the Finance Committee decided to continue this practice in this Parliamentary session, and agreed to hold an external meeting on Monday 10 November 2003. It was agreed that the Convener and Deputy Convener would agree the location and format.

Location
3. The Convener and Deputy Convener requested that venues in the North Lanarkshire area be investigated. The Council Chambers in Motherwell is available for that date, and as this is an approved venue of the Parliament, it has been provisionally booked.

4. Members are requested to agree that the Committee meet in Motherwell on Monday 10 November as part of its consideration of Stage Two of the 2004-05 Budget Process.

Format
5. The last Finance Committee held all day meetings as part of their external meetings for both stages one and two for the 2003-04 budget. The morning sessions consisted of workshops with representatives from local organisations, MSPs and a Clerk, which reported back to a full Committee meeting in the afternoon before taking evidence from the Minister.

6. The venue has a main chamber with seating for 80 members of the public, and three committee meetings suitable for the morning workshop sessions. The Minister has been invited to give evidence to the Committee in the afternoon.

7. Members are requested to agree to continue this format, and to hold workshops with local organisations in the morning session, and a full Committee meeting in the afternoon.
Procedure

8. A fully costed request to hold a meeting outside Edinburgh must be approved by the Parliamentary Bureau and (other than in exceptional circumstances) it will not consider such a request unless it has been referred from the Conveners’ Group (CG).

9. Members are requested to authorise the Convener to liaise with the Clerks in finalising the arrangements for the meeting, and to seek the approval of the CG and Parliamentary Bureau.

September 2003
Emma Berry