



Deputy First Minister & Minister for Justice
The Rt Hon Jim Wallace QC MSP

St Andrew's House
Regent Road
Edinburgh EH1 3DG

Telephone: 0131-556 8400
scottish.ministers@scotland.gsi.gov.u
<http://www.scotland.gov.uk>

18th July 2001

Dear Consultee

STRIKING THE BALANCE: A NEW APPROACH TO DEBT MANAGEMENT

As you may know, following the enactment by the Scottish Parliament of the Abolition of Poindings and Warrant Sales Act 2000, the diligence of poinding and warrant sale is to be abolished by 31 December 2002. When considering the general aims and principles of the Bill, however, the Justice and Home Affairs Committee recognised that to do so without first putting in place an alternative would create a loophole in the Scottish legal system which unscrupulous debtors could use to evade payment of their debts. The Committee called on the Scottish Executive to bring forward legislation for a humane and workable alternative.

I announced to Parliament on 8 June 2000 that we would accept that challenge, and set up a broadly-based working group to identify the essential elements of such an alternative, and report to me this summer with its recommendations. I also promised to publish the report as part of a wide-ranging consultation on the way forward.

The working group was set a very difficult task. I know that the members of the group have worked long and hard to devise a new approach. Their report demonstrates their determination and commitment to achieving a solution which would balance all interests fairly. I am very grateful to them for their hard work and for devoting their time, experience and expertise over a long period.

In line with my commitment to Parliament, I am now writing to seek the views of interested parties and organisations on the approach recommended by the working group. I enclose a copy of their report, together with some broad questions on its recommendations. I will welcome all views and comments: they will help to inform the Executive's decisions on the way forward.

Subject to your and others' responses to the report and the questions about it, my initial reaction to this report is a very positive one; and I am minded to implement the approach the group recommends.

Please respond to the questions set out in the attached annex.

We look forward to hearing from you.

Jim Wallace



STRIKING THE BALANCE: A NEW APPROACH TO DEBT MANAGEMENT

CONSULTATION QUESTIONS

1. Please state:
 - your name, organisation and address
 - whether you represent debtor, creditor or other interests
2. Do you agree with the guiding principles set out by the working group in their report - the need for responsible behaviour by both creditors and debtors, the principle of least coercion and the need to avoid loopholes in the law? (Part IV, paragraphs 72 - 85)
3. The working group argue that it is not possible to view pouncing and warrant sale in isolation from its wider context, and identify a number of factors which they think need to be taken into account. Do you agree with their analysis: if not, what are the relevant factors to be borne in mind? (Part II, paragraphs 22 - 36)
4. The working group describe a number of key issues and pressing problems surrounding the operation of the existing system affecting both debtors and creditors, as well as the wider interests of society as a whole. Do you agree with their commentary? Are there any other issues that the group should also have considered? (Part III, paragraphs 37- 69)
5. Do you agree with the working group that the law must be able to oblige people to meet obligations which they should honour voluntarily? (Part IV, paragraphs 75 - 78)
6. The working group's research did not identify any other country that did not have some form of final enforcement. Do you agree with their view that some form of sanction is necessary in order to address the minority of people who can but refuse to pay their debts? (Part IV, paragraphs 70 - 84)
7. If so, do you agree with the working group that, excluding the possibility of civil imprisonment, the only alternative is to provide for some means of enforcement against valuable but non-essential property? (Part VI, paragraphs 122 – 126 & 134 – 136)
8. Do you agree with the working group that commercial and domestic cases should be treated differently? (Part V, paragraphs 86 - 92)
9. Do you agree with the working group that improved advice and information for debtors at an early stage is the key to achieving better outcomes in resolving debt cases? (Part VI, paragraphs 93 - 96)
10. To what extent do you think that access to information about debtor's circumstances has a role to play in securing better outcomes in debt cases? (Part III, paragraphs 61 – 63 and Part VI, paragraph 97)
11. To what extent do you think that allowing greater access to such information, were it to be achievable, would be acceptable to individuals and the business community? What issues do you think would have to be considered? (Part III paragraphs 61 – 63 and Part VI, paragraph 97)



12. The group recommends a new judicially supervised enforcement procedure which would also provide greater protection for the debtor and more opportunities to achieve negotiated settlement. To what extent do you think that such a procedure is necessary and appropriate? Please state your reasons. (Part VI, paragraphs 101 - 121)
13. Do you think that such a procedure should take place in the sheriff court?
14. Would the provision of additional information and advice alone, without any possibility of enforcement action, be a satisfactory approach for enabling debts to be recovered? (Part VI, paragraphs 130 - 136)
15. To what extent do you agree that establishing a statutory debt arrangement scheme should be a central element of a new approach for the longer term? (Part III paragraphs 46 - 52 and Part VI, paragraphs 99 - 100)
16. The working group makes a series of broad recommendations for action on a wide front. To what extent do you agree with these recommendations?
 - a) The need for plain English and user-friendly format for information aimed at debtors (Part III, paragraph 45)
 - b) A review of policy on recovery of unpaid council tax and the use by local authorities of summary warrant procedure (Part IV, paragraphs 74 & 118)
 - c) Increased debtor protections under summary warrants (Part III, paragraph 67 and Part IV, paragraph 74)
 - d) Rolling out the in-court adviser service more widely across Scotland (Part III, paragraph 42 and Part VI, paragraph 102)
 - e) A thoroughgoing review of the role of enforcement officers (Part III, paragraphs 55 – 57 and Part VI, paragraphs 120 - 121)
 - f) Additional judicial training on debt issues (Part VI, paragraph 113)
 - g) Consideration of the value of fitness tests applied to providers of debt and money advice (Part VI, paragraph 96)
 - h) Action with the UK Government to review the fitness tests required for those who extend credit (Part IV, paragraph 73)
 - i) Follow-up of findings from DTI Over-Indebtedness Taskforce on responsible lending and borrowing, marketing and transparency of financial products and credit payments (Part III, paragraph 33 and Part IV, paragraph 73)
17. Which of the wider recommendations for reform mentioned in question 16, in your view, have the most significant contribution to make?
18. If the working group's proposals were implemented, what impact do you think they would have
 - a) on debtors?
 - b) on creditors?
 - c) on tax collection and recovery arrangements?
 - d) on the courts?
19. Please feel free to comment further on any other aspect of the report and recommendations not mentioned above.



The closing date for responses is 17 October 2001.

In keeping with Executive policy, responses may be made publicly available unless respondents request otherwise. Accordingly, please indicate whether you would wish your response to be treated as confidential.

Responses should be sent to:

Julie Mckinnon
Scottish Executive Justice Department
Access to Justice, Diligence & European Co-ordination Division
Hayweight House
23 Lauriston Street
Edinburgh
EH3 9DQ
Tel: 0131 221 6764
Fax: 0131 221 6894
E-mail: julie.mckinnon@scotland.gsi.gov.uk

Further copies of the report and consultation questionnaire can be obtained from Julie Mckinnon. The report is also available on the Scottish Executive website at <http://www.scotland.gov.uk>

Striking the Balance

a new approach to
debt management

Report of
the Working Group on a Replacement for Pounding and Warrant Sale

to

Jim Wallace, QC, MSP,
Minister for Justice

6 July 2001

CONTENTS

	Page No
Executive Summary	
Part I Introduction	1
• Background	1
• The Working Group	2
• Our methodology	3
• Pounding and warrant sale: an outline	3
Part II The Wider Environment	5
• A “joined-up” approach	5
• Timetable	5
• Devolved/reserved issues	5
• The diligence review	5
• Other initiatives	5
Part III The Issues and the Problems	8
• Debtors’ interests	8
• Creditors’ interests	11
• Local and central government debts	12
Part IV Guiding Principles	14
• Is a replacement necessary?	14
• Guiding principles	14
~ responsible creditor behaviour	14
~ responsible debtor behaviour	15
~ the principle of least coercion	15
~ avoiding loopholes in the law	16
• Conclusion	16
Part V Commercial Debt	17
• Should domestic and commercial cases be treated differently?	17
• How should the distinction be made?	17
Part VI The Way Forward	19
• Advice and information	19
• A new court procedure	21
• Can there be a new approach without last resort action?	24
• A humane and workable alternative	27
• The need for wider reform	30
• Resource implications	30
• The need for review	30
Part VII Summary of Recommendations	31
Glossary	34

EXECUTIVE SUMMARY

Last year's passionate public debate about the Bill to abolish poinding and warrant sale provided a stark and timely reminder of the extent to which debt is a real and pressing issue in many people's lives in Scotland today.

Against that background, we were asked to take a long, hard look at the legal framework in Scotland for dealing with debt; and to make recommendations for a humane and workable alternative to the current system. We did so as a diverse group of people with different backgrounds and perspectives to bring to the discussion: but nevertheless, we were able to reach a firm consensus both on the shortcomings of the present system and on the key elements of a new approach.

It was clear to us that the way the procedure of poinding and warrant sale was used in cases of domestic debt was unacceptable in modern Scotland. By nature, it was highly intrusive and unacceptably distressing for many debtors. The safeguards in the court procedure were insufficient and poorly understood. There was inadequate access to information and advice for debtors. Moreover, the way the procedures were carried out gave us serious cause for concern. In summary, we found that the existing system could be used in an indiscriminate and heavy-handed way by both private and public sector creditors against vulnerable debtors in their homes. We found this to be inhumane; and we had some doubts as to its effectiveness as a means of debt recovery.

We were equally clear that, like other countries, Scotland needs a comprehensive legal framework for dealing with debt. Payment of legally confirmed debts cannot be optional, whether these debts arise from the purchase of goods and services; or whether they relate to the collection of local and central government taxation needed to provide essential public services for the community as a whole. This is an essential principle. The legal framework for dealing with debt must therefore be a comprehensive one. It must avoid leaving any wide loopholes which would encourage people to avoid paying their debts. To do so would ultimately damage the interests not just of creditors, but of other debtors, and ultimately of society as a whole.

However, the system must ensure that debtors are treated humanely; that they are given every opportunity to resolve their situation without the need for enforcement action; and that a clear distinction is drawn between those who cannot pay their debts and those who will not.

Above all, we reached the conclusion that the task set for us could not be seen in isolation from its wider environment. In order to tackle the persistent problem of debt in our society, a modern approach is needed. Our report seeks to propose such an approach. In the report which follows we therefore recommend:

- Nationwide provision of user-friendly information and advice for debtors.
- Setting up a statutory debt arrangement scheme to help people pay debts in a managed way without the threat of enforcement action.
- Creating new incentives for debtors and creditors to reach negotiated settlements.
- Reforming the enforcement procedure to afford much greater protection to debtors in the event of legal action being necessary.
- Introducing new safeguards to ensure the enforcement action can only be taken against those who can, but refuse to, pay their debts.
- Assisting the debtor by providing opportunity for voluntary disclosure.
- A final sanction against those who can pay but unreasonably refuse to sell valuable non-essential goods to meet their responsibilities (compulsory sale order).
- Reforming the role and regulation of officers of court when carrying out enforcement action.
- A wide range of further specific actions aimed at improving the regulation of credit and debt collection, the way local authority taxes are collected and the way representation within the court system operates.
- And a fast-track process for compulsory sale in commercial cases (commercial attachment order).

We believe that the approach set out in our report is both forward-looking and fair. It places the emphasis on dialogue and negotiation, rather than legal action. It will protect the most vulnerable in our society, while ensuring that the legitimate interests of creditors, and indeed of society as a whole, are also adequately protected. If our recommendations are implemented, we believe that there can be a new beginning for debt management in Scotland for the 21st century.

PART I: INTRODUCTION

Background

1. On 8 June 2000, the Minister for Justice, Jim Wallace, announced that he was establishing a Working Group with broad membership to find a workable and humane alternative to **poining** and **warrant sale**. This initiative took place against the background of a package of measures already being taken forward by the Scottish Executive to review and reform the law of **diligence** in Scotland in order to deliver a modern system of **debt management** and **enforcement** for the 21st century; and the debate in the Scottish Parliament about the future of poining and warrant sale.

2. A Member's Bill to abolish poining and warrant sale was brought forward early in the Scottish Parliament. The Bill's aims and general principles were approved by the Justice and Home Affairs, Local Government and Social Inclusion, Housing and Voluntary Sector Committees of the Scottish Parliament after evidence had been gathered in the latter part of 1999 and early 2000.

3. In its report to the Parliament, the Justice and Home Affairs Committee recognised that immediate abolition would leave a significant gap in the system of diligence¹; and therefore proposed that abolition should not take effect until the Scottish Executive had had an opportunity to bring forward legislation for a "workable but humane alternative"² to fill the gap and address other problems of debt recovery.

4. On 27 April 2000 the Deputy First Minister announced that the Scottish Executive intended to take up the Justice and Home Affairs Committee's challenge to find a workable but humane alternative; and that he

would set up a working group with wide membership to report back to him. He also undertook on 8 June 2000³ to consult widely on the working group's recommendations and the wider review of diligence during 2001; a commitment expanded upon by the Deputy Minister for Justice at Stage 3 of the Bill on 6 December 2000 when he said "*it is important for the replacement system to be subject to widespread consultation before being presented to Parliament*".⁴

5. The Bill was introduced, proceeded and was approved with a number of amendments by Parliament in December 2000. It received Royal Assent on 17 January 2001. As a result poining and warrant sale will end no later than 31 December 2002.

6. The working group's formal remit, which reflects the concerns of the Justice and Home Affairs Committee, was as follows: "*To identify a workable and humane replacement diligence against moveable property to that of poining and warrant sale and to make recommendations for implementing legislation to be brought forward during the Parliamentary session 2001/02.*"

7. We have, therefore, been faced with a formidably challenging task to complete to a tight timescale. In carrying out our work, we have sought to proceed on the basis of consensus. Throughout our discussions we have been very conscious that our fundamental concern must be to strike a fair balance between protecting debtors, who include some of the most vulnerable people in our society; safeguarding the legitimate interests of creditors, who provide the range of goods and services; and upholding the rule of

Our fundamental concern must be to strike a fair balance between protecting debtors, who include some of the most vulnerable people in our society; safeguarding the legitimate interests of creditors, who provide the range of goods and services; and upholding the rule of law.

¹ Justice and Home Affairs Committee Stage 1 Report, 9 March 2000, paragraphs 45 and 50

² Ibid, 9 March 2000, paragraph 48.

³ Scottish Parliament Official Report Vol 7 No 2 Col 112

⁴ Stage 3 Debate on the Abolition of Poinings and Warrant Sales: Scottish Parliament Official Report; Vol 9 No 7, page 25, column 653

law. Our report and recommendations seek to reflect that balance, and to make constructive proposals towards a comprehensive solution for this pressing and important problem.

The Working Group

8. The membership of our working group was designed to be a broad one, bringing together a variety of perspectives and expertise in the issues raised by our remit. Apart from Ministers and MSPs of the different political parties and representatives of the specialist Parliamentary Committees with a close interest in the subject matter, our members included representatives of the advice sector, consumer and credit interests, and local authorities as well as an independent expert in the relevant area of law.

9. The numbers and composition of our group fluctuated over its lifetime for several reasons, including changes of Ministerial responsibility. These reasons are listed in the footnotes to the complete list of members in paragraph 11.

10. Two of the original members of our group advised at our second meeting that they were unable to accept the Group's remit as they found it too narrow. We decided that we could accept the remit, although as a result of our discussions we did not think it possible to consider any new approach in isolation from the wider context of debt enforcement as a whole. The report which follows reflects this approach.

11. Our Chair sought replacement members to represent the Justice and Home Affairs Committee and the Scottish National Party, but both declined to participate⁵:

Our Membership

David Ancliffe, Vice-Chairman, Institute of Credit Management

Margaret Curran, MSP, Deputy Minister for Social Justice⁶

⁵ The JHA Committee agreed at their meeting of 12 December 2000 that it would not be possible for one person to vote etc on behalf of the Committee.

⁶ Joined Group originally as representative of the former Social Inclusion, Housing and Voluntary Sector Committee (now the Social Justice Committee)

Martyn Evans, Director, Scottish Consumer Council

Yvonne Gallacher, Chief Executive, Money Advice Scotland

Trish Godman, MSP, Convenor, Local Government Committee

Iain Gray, MSP, Deputy Minister for Justice⁷

George Gretton, Professor of Law, University of Edinburgh

Johann Lamont, MSP, Social Justice Committee⁸

Ian Livingstone, Chairman, Scottish Enterprise, Lanarkshire⁹

Angus MacKay (Chair), MSP, Minister for Finance & Local Government¹⁰

David McLetchie, MSP, Scottish Conservatives

Susan McPhee, Head of Policy & Public Affairs, Citizens Advice Scotland

Mike Peterson, CoSLA¹¹

Euan Robson, MSP, Scottish Liberal Democrats

Members involved during part of the work

Jackie Baillie, Former Deputy Minister for Communities¹²

Frank McAveety, Former Deputy Minister for Local Government¹³

Craig Robertson, Finance Spokesperson, CoSLA¹⁴

Resignations

Tommy Sheridan, MSP, Scottish Socialist Party¹⁵

Christine Grahame, MSP, Justice and Home Affairs Committee¹⁶

⁷ Joined Group November 2000 upon change of Ministerial responsibilities

⁸ Joined Group February 2001 to replace Margaret Curran as representative of the Social Justice Committee but, although keen to do so, was unable to actively contribute due to other commitments.

⁹ Position held when appointed

¹⁰ Formerly Deputy Minister for Justice, current appointment carries interest in local government council tax collection

¹¹ Originally adviser to the CoSLA representative whose position he took over after resignation of finance spokesperson on 19/12/00.

¹² Resigned due to change of Ministerial responsibilities (now Margaret Curran)

¹³ Resigned due to change of Ministerial responsibilities (now Angus MacKay)

¹⁴ Resigned 19/12/00 on withdrawal of Glasgow City Council from CoSLA

¹⁵ Resigned 5/10/00

¹⁶ Resigned 17/10/00

Our methodology

12. Our objective was to report to the Minister for Justice with our recommendations for a new approach to debt management in June 2001. We intended initially to meet monthly; but in view of the scale of the task we faced, we agreed to increase the frequency of meetings. Since October 2000 we met fortnightly or more frequently; in total we met 19 times.

13. We decided that the best approach to the task was to divide the work into three distinct phases:

- Firstly, to look carefully at the problems with the current system of dealing with debt management and the processes leading up to and ending in poinding and warrant sale. We consulted a wide range of information sources on the range of issues involved, commissioned research into enforcement systems in other countries and had productive discussions and evidence from a variety of experts in the field. We took time to study in depth and become immersed in the subject as it would be essential that we based our conclusions on detailed, accurate and up-to-date information.
- Then, to consider the options for change within the context of the general management of debt.
- Finally, to agree on changes which we could recommend to the Minister for Justice.

14. We also established a website including basic information about the group and our discussions and featuring an e-mail facility for interested parties to contact us.

Poinding and warrant sale: an outline

15. Before turning to our consideration of the issues surrounding poinding and warrant sale, the role it plays in the diligence system and the problems which have led to the Parliament's decision to abolish it, we consider that it may be helpful briefly to summarise what is involved.

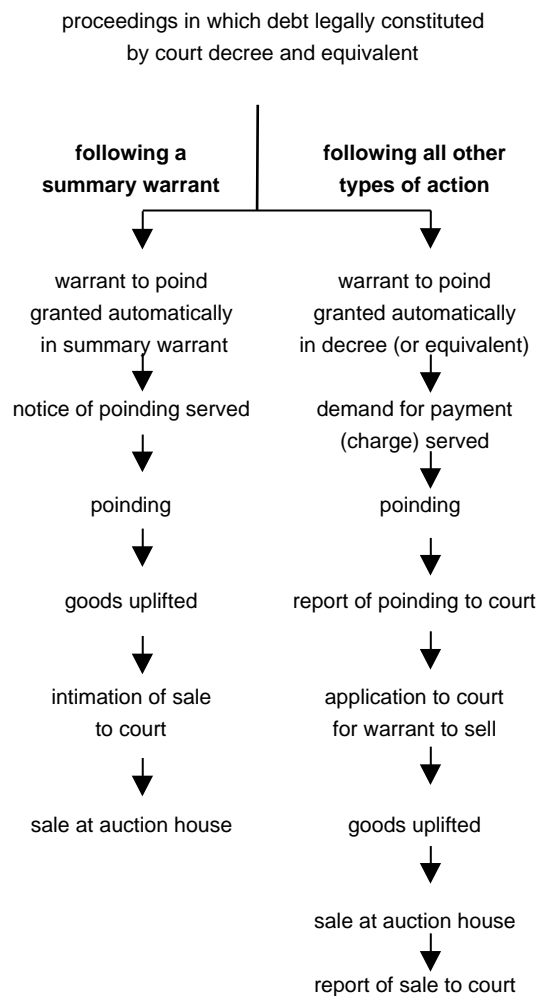
16. Diligence is the Scots law term for the range of procedures which enable court orders

in civil matters to be enforced, especially for the payment of money. Poinding and warrant sale is one procedure in this range of diligence procedures. It allows for the valuation, removal and sale of a debtor's goods following the debtor's failure to pay a **legally constituted debt**, as authorised by a **decree** of a Scottish civil court or equivalent. One such equivalent is a **summary warrant** granted by the **sheriff** primarily to local and central taxation authorities (see Part III paragraphs 64 to 69). After court authority has been granted, but before diligence can be done, a **charge for payment** must be served on the debtor which gives notice of the creditor's intention to proceed to diligence if payment is not made within 14 days. Diligence can apply both to commercial and to domestic debt.

17. Poinding and warrant sale is a two-stage enforcement procedure for **attaching** a debtor's assets in certain circumstances. Poinding, in plain terms, is the valuation by an **officer of court** of a debtor's goods in his possession with a view to determining whether selling them would contribute to repaying the amount owed. An extensive range of items, which are deemed to be essential to the debtor's home life and that of the household, are exempted from poinding by the relevant legislation, the Debtors (Scotland) Act 1987. Once goods have been poinded, the debtor may not dispose of them without the court's permission.

18. In the light of the poinding, the creditor may decide to apply for a further warrant to sell the poinded goods. This is known as the **warrant of sale**. Once such a warrant is granted, officers of court remove the debtor's goods and sell them to realise part or all of the value of the debt. In order to value and remove goods for sale, officers of court enter the premises where the goods are kept. Where poinding and warrant sale proceeds on the authority of a summary warrant, it follows an abridged version of these procedures which can be seen in the diagram in the next paragraph. For example, a charge for payment is not served. Also, **time to pay directions and orders**, by which the court can allow debtors to pay after a deferred period or by instalments, are not available under a summary warrant.

19. The following diagram shows the pouncing and warrant sale procedure:



20. The procedure is used by a wide variety of creditors, whether businesses or individuals, as well as by agencies of central and local government, in cases of both commercial and domestic debt. Examples of the wide range of situations in which pouncing and sale is available to a creditor as a measure of debt enforcement were given by the Scottish Law Commission in their April 2000 *Report on Pouncing and Warrant Sale*¹⁷:

- a shop has supplied goods to a customer who has defaulted on payment of the price of the goods;
- a limited company is owed a debt by another limited company;
- a local authority wishes to recover arrears of council tax;
- an ex-employee has made a successful claim for damages at an industrial tribunal against her former employers who now refuse to repay;
- a pursuer in a small claim action is awarded decree for damages against a local firm who carried out shoddy work on her home;
- the Child Support agency is seeking to recover unpaid child support maintenance from the child's absent parent; and
- a Scottish firm holds a decree against a foreign firm which has business assets in Scotland.

21. We examine the main problems with the system of pouncing and warrant sale and the main criticisms which have been levelled against it in Part III of this report, and we consider options for a new approach: but, first, we want to set this discussion in its broader context.

¹⁷ Scottish Law Commission Report on Pouncing and Warrant Sale (Scot Law Com No 177, April 2000) Part 2 Page 4 Paragraph 2.4

PART II: THE WIDER ENVIRONMENT

A “joined-up” approach

22. From early in our work, we acknowledged that we could not meet our remit in isolation from the whole diligence system or from its legal, social and economic context. The issues raised affect a wide range of interests, whether those of debtors, the business community, local and central government or society as a whole. So any new approach must be seen against the background of the wider environment. We were, therefore, very conscious in our discussions that any proposals we put forward should take proper account of that environment. Some of the main factors we bore in mind are outlined below.

From early in our work, we acknowledged that we could not meet our remit in isolation from the whole diligence system or from its legal, social and economic context.

Timetable

23. First, we quickly came to the conclusion that the timetable was a significant constraint. As we have already noted, poinding and warrant sale will come to an end at the end of next year. An alternative system of debt management is needed which can be in place by then. Any such alternative will require legislation in the Scottish Parliament, the Parliamentary process takes time, and there is a wide range of stakeholders who should be consulted properly on any proposals from the Scottish Executive on this issue. It was essential for us to identify proposals which could be implemented within this timescale. In view of this tight timetable for our own work we were not in a position to settle all of the fine detail of these proposals: moreover, that is more properly a job for the Scottish Executive and Parliament. We sought, instead, to lay down the main features of a new approach.

Devolved/reserved issues

24. The legislation governing the diligence system in Scotland falls squarely within the legislative competence of the Scottish Parliament under the devolution settlement.

But a number of related issues, such as those concerning the availability and regulation of credit, the regulation of debt collectors, arrangements concerning the payment of benefits and data protection, are reserved to the UK Parliament. We do not in any sense dismiss the possibility of action at UK level on these issues – indeed, we make recommendations too for matters reserved to the UK Parliament. However, we concentrate on proposals which could be delivered by the Scottish Parliament.

The diligence review

25. When the group was set up, work had already begun within the Scottish Executive on a wide-ranging review of the law of diligence, with the aim of modernising and streamlining the law in this area. That review is due to be completed at the end of this year; and we noted that the Executive has committed itself to consulting widely on policy proposals emerging from the review. We consider that reform in this area is essential, and long overdue.

Other initiatives

26. We also took into consideration initiatives, both within and outside government, which were of relevance to the issue of debt and debt enforcement in Scotland; and we address some of them in our recommendations.

It Pays to Pay

27. *It Pays to Pay*¹⁸ was the report produced as a result of an initiative established to consider ways of improving collection rates for council tax in Scotland. The Working Group set up to implement the recommendations of the *It Pays to Pay* report

¹⁸ *It Pays to Pay improving council tax collection in Scotland* January 2000

recognised that the abolition of poinding and warrant sale would have a major effect on council tax collection procedures. Our Group was provided with information about the steps being taken for implementation of their recommendations and progress. The initiatives of the implementation working group and the options considered for more convenient and efficient payment and collection methods of local taxes were of interest to us. Our Group was kept informed of action being taken by the group working on implementation of the *It Pays to Pay* report and we benefited from the cross-fertilisation of ideas which came from that. In particular, we noted with satisfaction the current initiative for providing local authorities with best practice guidance about the way in which council tax should be collected and unpaid tax enforced with a view to ensuring consistency of good practice throughout Scotland¹⁹.

Community legal service

28. At the end of last year, the Executive set up a broadly-based working group to develop proposals for a community legal service for Scotland. The group includes a range of providers of legal information and advice and representatives of user interests. Its aim is to identify ways to ensure that people get better access to justice through information and to get the help they need to resolve problems involving the law. It will be reporting to the Minister for Justice this October. Many of the issues which the group is discussing are highly relevant to questions of information and advice which we considered in the context of our work.

29. We consider that the improvement of the co-operation between, and quality of, the networks of information and advice services will play a significant part in addressing some of the problems which have arisen in relation to the current system of enforcement.

Debt initiatives

30. We were also aware of parallel on-going governmental initiatives in social justice which aim to help alleviate the impact of debt for the disadvantaged: for instance, a National Debtline for Scotland overseen by the Scottish Executive Social Justice Department and the

¹⁹ We were advised that a best practice manual is in the process of being issued to local authorities

Department of Trade and Industry (DTI) Taskforce on over-indebtedness. Some members of our Group are also members of the Discussion Group which was set up to mirror the work of the Taskforce.

31. A recent research report, *Money Advice Services in Scotland - a time to reflect*²⁰, recognised the importance of free access to quality **money advice** within the social justice agenda. The report recommended establishing a national telephone debtline for Scotland which would be consumer-centred, free and open to all, impartial, well resourced and additional to the existing one-to-one provision. It would also have strong links to local provision, recognise the roles and needs of volunteers and recognise the importance of advocacy and representation services as part of money advice. The Executive has worked with DTI, the Lord Chancellor's Department (LCD), the money advice sector and banks with the aim of running pilot projects. We were advised that one of these pilot projects is to be set up in Fife in the near future. Another recommendation of the report concerned the need for a central support for money advice which we were also advised the Executive has been exploring. We were further advised that the Executive is currently funding research into the quality of money advice.²¹

32. Credit unions can play a valuable role in providing low cost credit on flexible terms for people on low incomes. Last year the Executive established a national development strategy working group on credit unions which produced an action plan, *Unlocking the Potential*²². The action plan aims to remove barriers to credit union growth in Scotland, making their services more widely available.

33. A Debt Summit²³ held by the DTI, and which led to the Taskforce on Over-indebtedness, concerned issues about consumer credit. For example, encouraging responsible lending and borrowing, marketing financial products, transparency of those products and credit payments, and other related matters. This did not directly relate to

²⁰ Money Advice Scotland (MAS) March 2000

²¹ Being conducted by MAS and others

²² *Unlocking the Potential: An Action Plan for the Credit Union movement in Scotland*, March 2001, Report by the National Credit Union Strategy Working Group

²³ On 31 October 2000

the work of the Group but we were encouraged that those with the responsibility for consumer credit (which is a reserved area) were actively looking at these issues. Their recommendations are currently being considered by DTI ministers. We were similarly encouraged to learn that the Office of Fair Trading (OFT) will soon be issuing proposals for guidelines on debt collection practices as part of their licensing review.

34. Our discussions were informed by the Debt on our Doorstep campaign organised by the Church Action on Poverty, an alliance of local activist, volunteer and public sector groups and organisations. Members of our Group had attended some of the campaign meetings and we considered a briefing pack produced for the campaign.

Consumer Support Network

35. We were also aware of the DTI initiative on a Consumer Support Network. A commitment in their consumer White Paper *Modern Markets: Confident Customers*²⁴ was to promote a more joined-up network of advice

agencies, delivering a seamless and high-quality service – more visible, accessible and consistent. This has led to the development of local and national Consumer Support Networks, which will encourage local providers to join up their services, offering quality advice to the public. In this context, they are working on quality standards, an advice directory and referral services. Like the ongoing discussions on a community legal service, the success of this initiative should have a positive impact on the way that debtors are helped to tackle their money problems.

Information sharing

36. Finally, we were made aware of ongoing discussions between UK Government Departments and the Scottish Executive in relation to information sharing between agencies in the context of establishing debtors' financial circumstances and benefit entitlements. This was relevant to suggestions that access to such information by third party disclosure was a key to improving enforcement action which we address in Part VI paragraphs 97 to 98.

²⁴ DTI July 1999

Part III: THE ISSUES AND THE PROBLEMS

Debtors' interests

37. From the outset we were acutely aware of the level of concern expressed in many quarters about the way in which poinding and warrant sale operates. We also appreciated the importance of our task in seeking to tackle the range of problems identified by witnesses at the early evidence-gathering stages of the Abolition of Poindings and Warrant Sales Bill and during the parliamentary debates.

38. Of particular concern to us was the element of enforced entry into the debtor's home; and the fear, humiliation and distress which this caused. It was argued that some creditors made use of this fear to frighten debtors into payment; and that the procedure was actually punitive, rather than being an effective way to recover debt. On the other hand, creditors argued that giving notice of their intention to proceed in this way, in the absence of action from the debtor to settle the outstanding amount, was very effective in eliciting payment.

39. It also became clear to us that many debtors did not have access to, or were not given, adequate information about their legal rights and the protections available to them. Moreover, it appeared that warrant sales did not always realise much towards repayment of the debt, once the costs of the procedure were deducted from the proceeds. This feature was said to be particularly true of local authority action to recover the community charge and council tax.

40. In looking for a humane and workable alternative, we thought it important to consider in the round the criticisms levelled at the current system. For debtors' interests, these fall into a number of main categories:

- lack of sign-posting advice and information for the debtor up to and including representation
- multiple over-indebtedness
- entry into debtors' domestic premises
- realising some payment towards the debt

- the role of officers of court

and we comment briefly on each of these aspects below.

Lack of advice and information for the debtor

41. We formed the view that debtors often lack knowledge and understanding of the legal procedures involved in enforcement of debt, and that the information made available to them in this respect is inadequate. This was of considerable concern to us, particularly because where enforcement action proceeds on the basis of a summary warrant, the procedure can move quite quickly.

42. Debtors have a range of legal rights under the Debtors (Scotland) Act 1987 and various protections are available to them but we were told that, in practice, many debtors were unaware of these. This situation seems to us to be highly regrettable, and in our view must contribute significantly to the element of fear to which much reference has been made. The provision of all relevant information in a user-friendly form must be an integral part of any new approach. We thought that the in-court adviser at Edinburgh Sheriff Court played a valuable role in this regard: but in our view such information should be available widely and long before a debtor has to appear in court.

43. More generally, we came to the view that debtors often fail or are unable to access the money advice services about management of debt that would in many cases assist them to avert the possibility of enforcement action being taken, particularly by negotiating repayment terms. Various sources of advice exist²⁵ – but not everyone takes advantage of them and there is no statutory duty on local authorities to provide advice services. We were advised that other countries, such as Finland, have passed legislation which does so.

²⁵ *Directory of Money Advice Services in Scotland*.
publication by Money Advice Scotland (MAS),
11 December 2000

44. We would like to see a much more proactive approach to engagement of the advice sector with debtors. Better access to and knowledge of the money advice services which are available will be a key issue in any effective debt management scheme. Telephone advice should also be more widely available and we were encouraged to hear of the Debtline pilot scheme shortly to be operating in Fife (see Part II paragraph 31).

45. Some of the language used in the pouncing and warrant sale procedure is archaic and may have contributed to the general lack of understanding of the process. **We considered that any new approach should use plain English, in a format which is readily understood.**

Multiple over-indebtedness

46. The issue which gave us particular concern was that of multiple debt. We recognised that the modern phenomenon of a person owing debt to a number of creditors created serious problems for debtors in managing repayments to all. The threat of action from a numbers of agencies can also be very difficult for debtors to manage. Debtors may pay the most aggressive creditor, regardless of the relative significance of each.

47. We were advised that some agencies employed by creditors to collect debt by means outwith the formal enforcement system use intimidating tactics, such as issuing fundamentally misleading letters, repeatedly calling at debtors' homes very late at night or at their work place. We are very concerned that these practices, which are not part of the formal enforcement system, should be the subject of a formal code of conduct. We note that this has been recognised as a problem as there is work under way in Whitehall which we mentioned in Part II paragraph 33. It is to be hoped this will result in early guidance to which debt collectors must adhere in order to retain a licence to operate.

48. Debtors who have taken the step of seeking advice may have to pay a fee for the service. The quality of advice services varies. There is evidence suggesting that consumers can suffer detriment after seeking advice from fee chargers. We were also advised that the OFT has issued draft guidelines in respect of how fee chargers should operate.

49. Payment of debts which accrue year-on-year, such as council tax, need careful management to enable debtors to meet their ongoing liabilities and avoid further accrual of historic debt. Where repayment on manageable terms has been negotiated informally with one creditor, such an arrangement may be jeopardised by a different creditor pursuing another debt using diligence.

50. Some organisations already run voluntary repayment programmes to help debtors make regular payments to multiple creditors. The benefits of this are clear for both debtor, who is provided with a means of managing multiple debt, and creditor, who receives regular instalments towards repayment. However, the availability of money advice is insufficient to ensure that everyone who needs to can access such a scheme, there is no statutory compulsion on creditors to take part and the schemes currently in operation are not integrated into the enforcement system to enable them to act as a **diligence stopper**.

51. This suggests an unmet need for widely available quality money advice services and access to a **debt arrangement scheme** at an early stage to help debtors manage their debts and reach negotiated agreement with their creditors.

52. The Scottish Law Commission proposed in 1985²⁶ and again in 2000²⁷ that there should be a national statutory debt arrangement scheme which could deal with all forms of debt, and which would act as a block to all forms of enforcement. Many other organisations and representative groups²⁸ have also called for such a scheme. We note with satisfaction that this idea is being pursued in the context of the Scottish Executive's review of diligence. A debt arrangement

²⁶ Scottish Law Commission *Report on Diligence and Debtor Protection* (Scot Law Com No 95) Chapter 4 pages 124-237

²⁷ Scottish Law Commission *Report on Pouncing and Warrant Sale* (Scot Law Com 177), pages 74-76

²⁸ For example, Citizens Advice Scotland has consistently supported such an approach in their responses to consultations on bankruptcy and diligence reform and to the Scottish Parliament, Social Inclusion, Housing and Voluntary Sector Committee 12 January 2000 Official Report Col 507; and it was also supported by the Improving Debt Recovery Working Group

scheme has, in our view, a crucial part to play in a comprehensive approach to the problem of domestic debt in our society.

Entry into debtors' domestic premises

53. Entry into domestic premises by officers of court for the purpose of poinding or (much more rarely) to remove items for sale at an auction house is a common feature of the current system. It can obviously be stressful and humiliating for the debtor and his or her family to have their home entered for such purposes. However, we did not consider that entry into commercial premises in this context raised quite the same issues, although the position of sole traders operating from home clearly calls for particularly careful consideration in this respect. Entry into domestic premises was one of the most resented features of the current system because of the element of intrusion. The intrusion could, in any event, prove pointless where it transpired that the debtor had goods of little or no value which could be attached and realised to repay the debt. This would be a key issue for us to focus upon in considering an alternative approach.

Realising some repayment towards the debt

54. One of the criticisms of poinding and sale is that, even if goods are sold, the proceeds of sale may not realise much more than the **expenses** of poinding and selling them, and thus may not reduce the debt owed. Under existing legislation, the **sheriff** is allowed some discretion when awarding warrants to ensure that this does not happen but it seems that debtors may not be aware or informed of this protection. The Scottish Law Commission opinion, expressed in its April 2000 Report²⁹, was that poinding should always be prohibited unless there are poindable goods of sufficient value to reduce the debt itself. We strongly support this principle. Any alternative system against

corporeal moveable property must be worthwhile in terms of reducing the debt.

Role of officers of court

55. Messengers-at-arms and sheriff officers, as officers of court, have a very specific and significant role to play in the enforcement process. It is the general function of officers of the court to ensure that what the civil courts order to be done does happen. This is an important role, without which the authority of the

courts and the principles of civil justice could not be upheld.

The legal

procedures available under Scots law for enforcing payment of debt are only one part of the function of an officer of court in enforcing court orders. Other action required under orders of court may, for example, include removing an offending person from a premises under an interdict or non-harassment order, searching for an abducted child or delivery of a child under a custody order and citing of witnesses and parties to attend civil (or criminal) proceedings.

56. We are aware of allegations about unprofessional conduct of sheriff officers made during the debate on the Abolition of Poindings and Warrant Sales Bill. Some of our members' own knowledge suggested that there was an element of truth to the anecdotal evidence in this regard: but in other cases members had heard that debtors had found officers to be helpful and supportive. We note that there are a very low number of formal complaints made using the official complaints procedure; and we are well aware that people will tend to feel ill-disposed towards those charged with carrying out a procedure which is bound to be unwelcome.

57. Whatever the factual position may be, the key point is that the significance of the onerous duties carried out by a court enforcement officer demands that all activities undertaken on the authority of the court must be conducted in a thoroughly professional, responsible and accountable manner. Past

A debt arrangement scheme has, in our view, a crucial part to play in a comprehensive approach to the problem of domestic debt in our society.

Creditors have a strong interest in seeking early resolution of outstanding cases by negotiation without the need for court and enforcement action.

²⁹ *Ibid*, pages 26 to 30

criticisms arising from the historical circumstances surrounding the pouncing and sale procedure have brought the important role of court enforcement into question: we must not allow that state of affairs to persist.

Creditors' interests

58. Creditors have a legitimate right to pursue by legal means the repayment of debts lawfully due to them. Should we make it harder or more costly for creditors to pursue legally constituted debt, that may have a significant impact on creditors, who will adjust the way they operate in response. The ease with which personal and business transactions for goods and services are entered into, undertaken and repeated may be adversely affected by reduced recovery prospects when payment is not forthcoming. The need to provide workable methods for creditors to enforce payment must be balanced appropriately against the interests of increasing debtor protection, particularly if the consequences were to inadvertently disadvantage the most vulnerable, for whom the protections were designed. The costs of court action (particularly a lengthy court action) can be substantial and can be a deterrent to some creditors. Such costs can, on occasion, greatly diminish the sums recovered to the detriment to both debtor and creditor.

59. Some of the main factors which affect creditors' ability to recover debts and the means by which they choose to do so include:

- debtors' willingness to respond to requests for payment or negotiate instalments,
- information which they have or can access about their debtors' circumstances,
- viable alternatives to the formal enforcement system,
- costs of recovery outweighing the financial returns received

which we explore below.

Negotiating repayment terms with debtors

60. Creditors have a strong interest in seeking early resolution of outstanding cases by negotiation without the need for court and enforcement action. Since debtors will often not engage with their creditors directly when they have become overwhelmed by a

situation of multiple over-indebtedness, creditors too would benefit from the prospect of increased availability and intervention of money advice services. Where debtors do not respond to creditors the creditor has little option but to pursue the matter through legal channels to have the debt legally recognised and enforced. The opportunity for debtors to engage with money advisers before and during the legal process would enhance the prospects of creditors receiving payment and reduce the costs which they incur by having to take these measures. That is not to say that this is not possible on a voluntary basis at present but a more structured and widely available network could make a significant difference. It has been suggested that creditors, such as local authorities, who themselves offer advice services find that this increases their rates of recovery.

Information about debtors' circumstances

61. Creditors also have a strong interest in obtaining better information about debtors' circumstances to enable them to decide whether and by what means to pursue repayment. An important issue for creditors is, of course, information about debtors' financial circumstances. It can be difficult for a creditor to get a clear picture, in terms either of the property owned by the debtor or of his or her employment, benefit or bank details. Whilst some creditors can require debtors to provide such information when first engaging, for example when extending credit, this is not possible for other creditors, such as tradesmen and local authorities. This makes it difficult for the creditor to assess which means of enforcement, such as **arrestment** or **earnings arrestment**, would be available or appropriate to achieve payment. Indeed, it has been suggested that a motivation for pouncing under the current system may have been, in some cases, to obtain such information where none was previously available.

Non-payment of such taxes has an impact on all citizens who suffer vital services cannot be provided to the level which the community expects and we all bear the consequences of increased levies due to non-payment by the few

62. It has been suggested by a number of sources³⁰ that one way forward might be to introduce compulsory disclosure by third parties, such as banks, building societies, benefit agencies employers and others. This would oblige them to reveal details about debtors in order to facilitate targeting of appropriate enforcement action. This is something which our study of foreign legal systems revealed does occur, to varying degrees, abroad.

63. We can see the theoretical attractions in such an approach. It would however require the co-operation of a large number of interested organisations, and would need legislation at UK level. It would also rely on the information systems held by banks and saving institutions being centralised and computerised. More importantly it would raise wide-ranging issues of data protection and human rights; and, as the Scottish Law Commission argued in its April 2000 report³¹, by undermining the principle of client confidentiality could do considerable harm to the relationship between individuals, banks, and public bodies. Further issues arise in connection with charging, difficulties with bank account identification and sanctions for non-compliance. We do not, therefore, think that such a proposal would provide an achievable or effective alternative in the foreseeable future. We do, however, think that this general issue of availability of information is something which the Scottish Executive and UK Government should address which we discuss in Part VI paragraphs 97 to 98.

Local and central government debts

64. Some creditors, such as local authorities and the Inland Revenue, are in a unique position of having a statutory duty on them to collect taxes, duties and other levies. Moreover, they are involuntary creditors and

do not have the option of withdrawing services in cases of non-payment, exempting individuals and businesses from tax liability or writing off debt. Non-payment of such taxes has an impact on all citizens who suffer if vital services cannot be provided to the level which the community expects and we all bear the consequences of increased levies due to non-payment by the few. These arguments apply to all taxes but the issues are particularly stark in the case of council tax because the link between revenue raised locally and local services is more visible than in the case of general taxation.

65. We appreciate that there is a greater onus on tax authorities who are obliged to pursue ongoing liabilities and historical debt and pursue all means available to recover unpaid tax. We were aware that criticism has been levelled against local authorities in Scotland by the Accounts Commission for low rates of council tax collection. We were advised that comparisons of collection rates across the UK do not recognise the differences in enforcement procedures available. For example, local authorities in England and Wales are empowered to pursue the enforcement measure of earnings arrestment by serving an **arrestment schedule** directly, without the need to engage an officer of court to do so on their behalf. They also have recourse to civil imprisonment.

66. Much of the discontent about poinding and warrant sale arose from its use by local authorities as a means of collecting unpaid council tax; and, particularly in the late 1980s and early 1990s, unpaid community charge liabilities.³² The latter was bound up with the widespread non-payment campaign during which many who would have been entitled to rebates did not claim them. Often when people complained about poinding and warrant sale what they were actually aggrieved about was having to pay the tax itself, the manner in which local authorities were collecting it or that they had power to take enforcement action on the basis of the fast track summary warrant procedure.

67. The Scottish Law Commission recommended improvements regarding the court and enforcement processes for summary

³⁰ eg *It Pays to Pay*, the SLC *Report on Poinding and Sale* (Scot Law Com No 177), April 2000; and Mike Dailly, principal solicitor of the Govan Law Centre, who addressed us, on behalf of the Improving Debt Recovery Working Group, about his paper *The Remedy of Disclosure* an earlier version of which he had contributed to the report *Improving Debt Recovery in Scotland*, December 2000.

³¹ Scottish Law Commission *op.cit.*, paragraphs 5.73 to 5.77

³² Scottish Law Commission *Discussion Paper on Poinding and Sale: Effective Enforcement and Debtor Protection*, November 1999, pages 3-4

warrant in its 2000 report³³. The Commission noted that they did not incorporate some significant debtor protections and recommended that a charge for payment should be included in all **summary warrant diligence**, and that time to pay orders should apply to central and local government tax debts. Some of our members, whilst in favour of a fast track procedure for legally constituted debts due for taxes, duties and other levies, had some reservations about the summary warrant procedure itself.

68. In the past some local authorities have pursued poinding in an indiscriminating manner, providing little instruction to debt collectors and sheriff officers engaged by them. We were advised of varying practices for collecting and attributing payments received for different years' tax which has caused considerable confusion for debtors and advisers endeavouring to assist with managing

debt repayment.³⁴ Local authorities have often not co-ordinated collection of debts due to different departments. They would pursue debts for rent arrears and council tax separately, using different firms of debt collectors who would negotiate repayment terms on the basis of different criteria, duplicate diligence or each use different forms of diligence.

69. We note, however, as a result of the initiatives flowing from the *It Pays to Pay* report on improving council tax collection, that guidelines will soon be issued to local authorities to ensure consistency of approach and development of corporate debt recovery policies within local authorities (see Part II paragraph 27). Whilst long overdue, this is a welcome development which should be an essential improvement to debt collection by local authorities.

³³ Scottish Law Commission, *op.cit.* Part 4 pages 53 to 63

³⁴ Won't Pay or Can't Pay? The Real Cost of Scotland's Council Tax Debt – the Evidence of Citizens Advice Bureaux in Scotland, July 2000

PART IV: GUIDING PRINCIPLES

Is a replacement necessary?

70. After analysing the problems with the current system and how they might be alleviated in any alternative system, we considered carefully whether there was in fact a need for a mechanism for compulsory sale of debtors' goods. The Justice and Home Affairs Committee considered that *"the law must provide enforceable mechanisms for the recovery of debts freely and legally entered into and that any mechanism for the enforcement of debt necessarily involves a degree of coercion"*³⁵. The fact that the Parliament in plenary session decided to set down a period for an alternative to be introduced suggests that it shared the Committee's

view. Our examination of foreign legal systems suggested that all other countries in the developed world provide for action to realise this type of asset in

order to pay debts, in circumstances similar or more harsh than our own.

71. Nevertheless, we wanted to be clear in our own minds that there was indeed a need for such a system.

Guiding principles

72. A number of important principles guided our discussion on this. These were:

- responsible creditor behaviour
- responsible debtor behaviour
- the principle of least coercion
- avoiding loopholes in the law

and we discuss each in turn.

Responsible creditor behaviour

73. The current situation and problems in society today arising from multiple over-indebtedness, which we discussed in Part III paragraphs 46 to 52, are inextricably bound up with the increasing availability of credit. Encouraging and regulating responsible lending has been called for from many quarters in order to alleviate this. It is clearly something which is a root cause of many people's multiple over-indebtedness, as they take on more credit than they can manage, and which can ultimately lead to enforcement measures being taken. We have not examined this as part of our work, but we noted the initiatives being undertaken by DTI regarding responsible lending and borrowing, marketing and transparency of financial products and credit payments (see Part II paragraph 33). This is an encouraging start towards examining problems in this area and **we recommend that findings from the DTI Over-indebtedness Task Force be vigorously tackled and proposals for reform brought forward. The Executive should also pursue with DTI and OFT a review of the fitness tests required for those who extend credit.** We make a similar recommendation for advice services at Part VI paragraph 96.

74. We noted the unique position of central and local government creditors in the collection of taxes, duties and other levies in Part III paragraphs 64 to 69. Alongside the privilege afforded to them for recovering these monies by fast track means, must also come a duty to act fairly and consistently. These creditors must conduct collection and enforcement procedures to the highest standards of integrity and efficiency. Steps are being taken to put in place standards for local authorities and encourage a consistent approach. Follow up action should, however, be taken to assess the extent to which the measures introduced have succeeded in improving matters for debtors in practice in

³⁵ Justice and Home Affairs Committee Stage 1 Report, 9 March 2000, paragraph 46

consultation with advice interests. **We recommend that, in conjunction with local authorities, the Executive should give further consideration to its policy on recovery of unpaid council tax and the use by local authorities of summary warrant procedure. The Executive's diligence review should take on board the Scottish Law Commission's recommendations for introduction of debtor protections within the court and enforcement processes for summary warrants.** (See Part III paragraph 67)

Responsible debtor behaviour

75. In our society people, for the most part, behave responsibly towards each other. We recognise that we have to pay our taxes for the common good and, in the case of civil and commercial debt, that we should pay our debts. In order to do so we may have to re-organise our affairs and most of us take such steps as necessary when our financial circumstances fluctuate. Most of us consider it normal to realise assets which we have in order to be able to pay debts which we owe. For many it can be very difficult and it can be a struggle to make some payment towards their debts. Even those living in extreme poverty will do so, sometimes by deductions made from social security benefits for paying utility and tax debts. Nonetheless, people do so because most of us do want to pay our debts.

76. That majority, who are acting responsibly, should not be prejudiced by the minority who act irresponsibly. Some people, although able, evade or put off paying debts for their own personal gain. In the commercial world, late or non-payment

can have serious consequences for continuing to trade, particularly for small businesses.

We also recognised that there would be adverse consequences for us all, when some people don't pay their taxes, by reduction of services and increased levies (see Part III paragraph 64). Our laws are there to combat this by compelling people to act responsibly. In essence, the law of diligence compels people

We are strongly of the opinion that it is always better for matters to be resolved by negotiation before resorting to litigation

to do what they should already have done voluntarily – and which responsible citizens are doing every day without the need for diligence. That is, realising non-essential assets to meet debts.

77. This principle, of responsible debtor behaviour, seemed to us to be very important in the context of our work. It underlined that there was a need for a means of enforcement against non-essential moveable assets because it was necessary to ensure that those who seek to evade their responsibilities have to meet them alongside the vast majority of responsible citizens who are doing so.

Our laws are there to combat this by compelling people to act responsibly. In essence the law of diligence compels people to do what they should already have done voluntarily

78. We were very conscious and supportive of the public expectation that the enforcement laws should be

fair and even-handed. Take an example where an obviously wealthy person in business managed their bank account so that it was never left in funds, holidayed abroad, had a house in a spouse's name, and drove a sports car - but there was no legal means by which the car could be realised to pay off debts. There would be wholly justifiable public outrage if it was perceived that, the Scottish Parliament, having done away with a procedure because it was seen as heavy handed against the weakest in society, then allowed the situation where the rich could evade their responsibilities.

The principle of least coercion

79. When our laws compel people to do what they should already have done voluntarily, in this case by the enforcement system of diligence, we felt that it would also be important for this to be done in accordance with the principle of least coercion. By this we mean that, where there is a choice available between using different legal procedures, the least forceful or coercive means should be undertaken first. We endorse what the Scottish Law Commission said about this principle in

their 2000 Report³⁶. We were not surprised that the vast majority of those who responded to the Commission's consultation took the view that earnings arrestments, and to a lesser extent **bank arrestments**, were less coercive diligences than pouncing and sale and that, where a debtor had earnings or other funds, their arrestment was to be preferred.

80. A further extension of this principle mentioned by the Commission would involve giving preference to procedures for recovery of debt which bypassed diligence since diligence itself is coercive by its very nature. They explored this in the context

Corporeal moveables are, in fact, the one type of asset which those deliberately trying to avoid repaying their debts cannot easily shield from their creditors.

of time to pay, a debt arrangement scheme and access to legal advice. We thought that it would be extremely important for us to uphold this principle and to consider its extension where possible. We said, in the context of responsible creditor behaviour, that we are strongly of the opinion that it is always better for matters to be resolved by negotiation before resorting to litigation or, indeed, to resolve litigation by negotiation where possible at the earliest possible stage. We, therefore, endeavoured to focus on a solution which would enable these aims to be achieved.

Avoiding loopholes in the law

81. In the debate about abolition of pouncing and warrant sale, it was said that failure to introduce an alternative would create a loophole in the enforcement system which would knowingly give a free hand to a minority who would willingly cheat the system at the expense of their neighbours. No-one wants some people to be able to legally avoid responsibilities which the rest of us meet. We, therefore, had to be very careful to avoid any proposals which could give rise to this. Any new approach would have to ensure that no one would be excluded, neither by creditors being unable to use it nor by debtors although able to pay being untouchable.

82. In the debate about abolition of pouncing and warrant sale, it was argued by some that there was no point in enforcement against this type of property since people can organise their affairs so that their assets are in someone else's name. They asserted that, as richer people were better at doing this, it was the poor who suffered from pouncing while the rich escaped. Closer analysis of this reveals that the reverse of this is true. It is possible to put other types of property, such as **heritable property**, bank accounts or investments, in the name of a third party, often with an offshore element. But this doesn't work for corporeal moveables because they are not held in the 'name' of anyone but are simply possessed and possession of moveables raises a powerful presumption of ownership. This means that corporeal moveables are, in fact, the one type of asset which those deliberately trying to avoid repaying their debts cannot easily shield from their creditors.

83. We, therefore, think that the more compelling case is for a new approach which can target exactly the type of person it is meant to; such as the person described in the example given in paragraph 78 above, who does have non-essential moveable assets which can be realised to repay debts.

Conclusion

84. We considered that, in order to meet the demand of the principles of responsible debtor behaviour and to avoid a wide legal loophole that it would be essential to have a new approach of some sort. That approach would have to incorporate mechanisms to uphold the principles of least coercion including negotiation before litigation as well as providing safeguards to ensure the principle of responsible creditor behaviour.

85. As well as making provision for these principles within a new approach itself, we considered it essential that the principles be further reinforced by necessary action being taken in the wider environment identified by us in Part II. We set out recommendations for a new approach and for wider action in the Parts which follow.

³⁶ Scottish Law Commission, *op.cit.*, pages 8-9, paragraphs 2.18-2.21

PART V: COMMERCIAL DEBT

Should domestic and commercial cases be treated differently?

86. Because all the problems with pointing and warrant sale arose when it operated in domestic cases, the parliamentary committees considered whether its abolition should apply only in the domestic sphere. They were deterred from doing so by potential difficulties in differentiating between the two types of case. The committees said:

“We have considered the case for partial abolition, restricting access to the diligence for those pursuing commercial debtors. However, we believe that there may be difficulties in defining commercial debt, particularly in relation to small businesses, which would require further consideration before we could regard this as a viable option.”

Justice and Home Affairs Committee

“The Justice and Home Affairs Committee may wish to consider whether any distinction should be made between commercial and private debts. However, it is recognised that the distinction between private individuals and businesses may be difficult to draw, for example in cases where businesses are wholly owned by one individual.”

Local Government Committee

87. Abolition of the existing procedure in commercial cases was, therefore, approved effectively by default by these committees. However it was clear that the focus of discontent was on domestic cases and that commercial cases were generally not regarded as unsatisfactory. We, too, have been unable to identify any convincing reason why commercial debtors' goods held in commercial property should be protected from attachment by creditors in order to satisfy legally constituted debts.

88. Indeed, the consequences of not doing so would seriously undermine the ability to compel financial liabilities to be honoured in the commercial world. There would no longer be a mechanism for creditors to secure payment legally due from commercial debtors by attaching their assets held as **corporeal moveable property**: such as commercial aircraft owned by an airline, fleets of vehicles held by a car hire company or paintings owned

by a commercial gallery. Taking some of the examples mentioned in Part I paragraph 20, it would mean that the employee with an award from an employment tribunal would be unable to attach the assets in the former employer's work place. The home owner who had shoddy work carried out in her home would not be able to attach the assets of the company which the court had ordered to pay compensation.

89. **Whilst the Parliament did not identify any problems with the existing procedure for commercial cases, there is always scope for improvement. Accordingly, we recommend that some of the features of the proposed modernised system should be adopted for commercial cases, with appropriate modifications.** Examples would

be better information to debtors and access to a national debtline and money advice which would be of particular assistance to small business and sole traders.

It is important to treat the domestic and commercial circumstances differently to ensure that much greater debtor protection is afforded to individuals in their homes than is required for commercial entities in commercial premises.

Commercial cases should be capable of being progressed directly on the court's authority when it grants a decree or equivalent for payment of money (by a commercial attachment order).

How should the distinction be made?

90. **It is important to treat the domestic and commercial circumstances differently to ensure that much greater debtor protection is afforded to individuals in their homes than is required for commercial entities in commercial premises.** We have given a great deal of thought to how this could be done and have identified a solution which would enable such a distinction to work.

91. We took the view that it was necessary to consider both the nature of the debtor (commercial or non-commercial) and the nature of the premises (a house or elsewhere). For a commercial debtor whose goods are in commercial premises (case 1) the need for debtor protection is at a minimum. The need for debtor protection is at a maximum when the debtor is not commercial and the valuable non-essential goods are in the debtor's house (case 2). In the case of a commercial debtor who may be storing valuable non-essential goods in his house, such as a sole trader or partnership, we considered that there was still the same need for maximum debtor protection because a home was involved (case 3). We also felt that some debtor protection should apply in

the case of a debtor who was a private individual with valuable non-essential goods in his possession which were not inside his house, such as a car (case 4). We thought that the house itself and the surrounding land should be viewed separately because entry into the house itself was the real cause of concern.

92. Thus, cases 2 to 4 involve a domestic element, in whole or in part, and would be classified as domestic. **It is possible to define the differentiation set out by us within legislation in order to enable these domestic cases and the purely commercial cases to be treated differently and we recommend that this be done.**

PART VI: THE WAY FORWARD

Advice and information

Why is it important?

93. It is well known that there is an increase in debt problems today and there are undoubtedly greater numbers of people with multiple over-indebtedness in the modern world. When it comes to paying debt, people often bow to the most aggressive creditor and will clear that debt by borrowing from other sources at disadvantageous interest rates or pay the creditor who shouts the loudest rather than take a systematic and logical approach to their debt problem. Inevitably this gives rise to greater creditor recourse to legal enforcement.

Reform of the enforcement system needs to be undertaken with the need to tackle the underlying problems as well. We quickly agreed that we should devise a new approach to the compulsory sale of goods which attempted to address the difficulties arising from coping with multiple debt in so far as possible within our remit.

94. We were agreed from the outset that it would make a real difference if a new debt management approach as a whole could be designed to influence debtor behaviour in order to encourage debtors to engage at the earliest possible stage in the process. People with severe or multiple debt problems can fail to respond to letters or notifications for a number of reasons. They can feel overwhelmed by their situation, may be unable to cope with it or understand how to deal with it, and may be afraid or too ashamed to seek advice. Where intimidating collection tactics which we have mentioned are used people can seek to avoid further harassment by not opening mail. We were of a mind that these were undoubtedly cases where early intervention would both reduce stress and assist in reasonable repayment and that information and advice services would be a

Building advice and information into the new approach at the earliest possible point would help debtors to help themselves and, in turn, creditors should reap the benefit also.

key factor. Advice for debtors, debt counselling and better information about court procedures would be an essential part of the new approach. **We recommend an advice and information package at the outset of this new approach as well as more widely.**

95. Building advice and information into the new approach at the earliest possible point would help debtors to help themselves and, in turn, creditors should reap the benefit also. Armed with relevant information in plain English people will be better equipped to understand the legal process, what their options are and how they can take control of their situation. We note that, previously, diligence notices were compiled with input from the advice sector. However, it is time for some further thought to be given to terms of notices which go to people generally both before and during the court process so that they incorporate useful information, including about how to access local advice services.

96. We are convinced that creating an environment in which multiple debt can be managed to the benefit of debtors and all their creditors is the only way forward. It is necessary for money advice to be delivered by organisations working to agreed standards of competence. Wider availability of money advice will only make a real difference if a quality service can be delivered, avoiding problems such as those which we have mentioned. In order to achieve that **we recommend that the Scottish Executive's Community Legal Service Working Group³⁷, which is formulating proposals for a national network of legal advice, information and representation, should also consider the value of the fitness test applied to providers of debt and money advice as overseen by the OFT.**

Would access to information about debtors' circumstances help?

97. It would benefit both debtors and creditors if the debtor's circumstances were established

³⁷ known as the Review of Legal Information and Advice Provision in Scotland

at an early stage. The creditor could then properly evaluate the merits of, and target, appropriate enforcement action and, determining the extent of a debtor's ability to pay, would enable repayment terms to be agreed. Whilst disclosure of information by third parties would be of general assistance for creditors to target accurately and quickly which method of enforcement to use, it does not itself provide a solution for a new approach which would address the problems which we have identified and it throws up additional problems of its own as set out in Part III paragraphs 61 to 63. It can, however, play a useful part of long term improvements, and to that end, **we recommend that the Executive continue to investigate, with the UK Government and other interested parties, the scope for progress towards sharing information about debtors' financial circumstances.**

98. For present purposes, we have identified an alternative means by which information about a debtor's circumstances could be delivered without the inherent difficulties with confidentiality, data protection and human rights of placing a statutory obligation on third parties already mentioned in Part III. Advice agencies when helping people in financial difficulties complete a standard form to assess their circumstances. We favoured a similar voluntary opportunity in the early stages of the new process in which the debtor could make a declaration of his/her assets to the court with the optional third party assistance from an independent money adviser. We felt that most debtors would welcome the opportunity voluntarily to disclose their circumstances as doing so could result in manageable payment terms being agreed and enforcement action being halted or averted. An opportunity for debtors to give this information to the creditor would allow maximum potential for a reasonable settlement to be made in the interests of both parties. This should be introduced as a step in the process to be overseen by the court before it considers whether to authorise enforcement.

[Exactly how can advice within the court process help?](#)

99. We very much support the current role of independent money advice agencies in bringing about negotiation between debtor and creditor. Debtors may be reluctant or unsure how to seek money advice about managing

multiple debt until or after enforcement action is taken against them. Accordingly, this difficulty should be addressed in the new approach with advice being incorporated into the process. This should act as a 'diligence stopper', that is enforcement action being pursued under the new approach would be halted to enable an adviser to explore and negotiate payment terms between the debtor and creditor.

100. The availability of money advice in this context would also provide an opportunity to debtors to take advice and positive action about managing all their debts. This is done at present on an informal basis dependent on mutual co-operation. We have noted that the Executive's review of the law of diligence is addressing options for a statutory debt arrangement scheme to manage multiple over-indebtedness. **We recommend that the Scottish Executive should introduce a national statutory debt arrangement scheme.** It should enable debt repayment plans, devised by accredited money advisers for people in multiple debt, to be formally approved, where in the interests of all parties, and to act as a block on any enforcement action operating.

101. We recognise and are concerned that debtors often lack knowledge and understanding about legal procedures being taken against them and protections available to them. It will be essential, therefore, that within the process of the new approach there be provided proper and adequate information about the procedures and their consequences to debtors.

102. We were impressed by information which we received about the success of the in-court advice pilot project in Edinburgh Sheriff Court. The availability of advice and assistance about court procedures which are unknown and frightening to unrepresented litigants is extremely valuable. We consider that projects of this kind have an important contribution to make to better understanding of the legal process. The in-court adviser only deals with advice about the case which is in court but refers individuals on to other advice agencies for a wider range of advice and mediation as may be appropriate. A Citizens Advice Bureau housed within the court, as part of the pilot, assists with this process. **We recommend that, in the context of ongoing work on the development of a community**

legal service, the Executive should consider rolling out the in-court adviser service at Edinburgh Sheriff Court more widely across Scotland.

A new court procedure

103. Our principal concern was to develop a new approach which would avoid the problems under the existing system identified in Part III of this report. It was clear that all of those problems concerned domestic cases and that there was a compelling case for applying different rules and procedures to the two different types of case.

104. As already set out, another important feature of the new approach would be to ensure that enforcement against property could only be used as a genuine last resort for the few cases where it was necessary. In order to achieve that, significant procedural steps and safeguards would have to be in place. It would mean that each domestic case would have to be considered individually on its merits. Even although creditors had obtained a decree for payment of money from the court, an additional new type of application should be made to the court for compulsory sale of goods in domestic cases (compulsory sale order). There should be introduced procedures enabling debtors to access information and advice, only after which the court would decide whether there were grounds for granting the new application.

What would happen in domestic cases?

105. We explained in Part V why commercial and domestic cases should be treated differently. In devising a new approach which would be workable and humane, we wanted to enable those who are willing and able to repay their debts to be assisted in doing so in a managed regime by placing advice and information ahead of any enforcement process. Also, to provide a 'diligence stopper' which would halt the procedure against those who can't pay but enable it to be taken under strictly controlled conditions against the small minority who can but refuse to pay their debts. We discussed many options and arrived at the following procedure which would achieve these aims and be formulated in such a way that it could not be misused.

Judicial supervision

106. The new approach which we recommend would be subject to very tight supervision by a court. As a consequence, we believe that creditors, when first seeking payment from debtors, will be encouraged to negotiate repayment terms and provide information about sources of advice. Where negotiation is unsuccessful, creditors will have the right to proceed to court to obtain a decree for payment of the debt due. That decree would continue to permit, as it does at present, other types of enforcement to be carried out. Creditors should previously have taken reasonable steps to attempt the less intrusive means of enforcement, namely arrestment³⁸. However, for all the reasons mentioned in Part III, it might in some cases be necessary for creditors to resort to enforcement against valuable non-essential items for the small number of cases where payment could be made but is persistently refused. It would then be essential that the new approach be controlled by strict judicial supervision since ultimately it might involve entry into a home. To bring the new approach under the direct control of the court, the creditor must make a specific application to the court, for a compulsory sale order.

Means enquiry

107. A specific application to the court will also enable the court to enquire into the debtors circumstances/means. The creditor would only be entitled to do so if he could demonstrate that he had been unsuccessful or unable to proceed with arrestment/earnings arrestment. The application would be intimated by the court to the debtor along with an information and advice pack.

This would include information about local advice agencies and it would

By proceeding in this way, all cases can be considered on their merits and individual circumstances assessed.

explain the court procedure including how to make a voluntary declaration and apply for time to pay. It could also include information about relevant benefits which may be available, so that debtors are fully aware of their entitlements. By proceeding in this way,

³⁸ Both earnings arrestment and non-earnings arrestment

all cases can be considered on their merits and individual circumstances assessed.

Advice and information in the court process

108. Advice incorporated as part of the court process, along with an opportunity to make a voluntary declaration, is an innovative approach

which we think is an essential component of the new approach (see Part VI, paragraphs 93 to 102).

This intervention is likely to make a real difference to the outcome of the proceedings because that advice will assist debtors to take control of their situation and manage their debt. Creditors will see the debtor's circumstances and be able to make informed decisions about realistic payment terms or whether to proceed.

109. The experience of our members representing debtor interests is that the vast majority of people who consult them about debt problems want to take positive action to clear their debts. Similarly, the experience of our members representing creditor interests is that creditors want to have a return on outstanding debt. We, therefore, have very good reason to believe that, as a direct result of this approach, the outcome in most cases will be that the parties will agree repayment terms and the application for a compulsory sale order withdrawn. Moreover, this should help debtors to be assisted with managing other debts which might avoid court/enforcement action by other creditors.

Voluntary declaration

110. We were conscious that a voluntary scheme for declaration could be open to abuse by under-declaration. Since many such declarations will be made with the assistance of an adviser, the scope for this should be reduced. However, where a creditor has good reason to believe that an incorrect voluntary declaration has been made, he will be able to seek verification of it and, should there be sufficient evidence, the court may appoint an adviser to assist with doing so. We discussed

whether we should also recommend some means for random or sample verification of declarations with a penalty for refusal to declare in order to encourage honesty. We eventually rejected this as it could lead to introducing a penalty which would be more severe than the last-resort action, conceivably even civil imprisonment. For the same reason, we also rejected the possibility of a compulsory declaration targeted towards the few who refuse to cooperate at the end of the process, when all other opportunities have been exhausted. Nonetheless, any statement to the court is not to be made lightly since, should the court learn that it has been made fraudulently, the court may find the person who did so in contempt of court which carries serious consequences. This should act as a deterrent.

Other debtor protections

111. While advice is being taken an application for a compulsory sale order must not be granted by the court. However, if a negotiated settlement is not achieved, the creditor may want the application to proceed to a hearing. The court will then assess the evidence, including any voluntary declaration, and will have discretion to order further procedure appropriate to the debtor's circumstances.

112. What further procedure will be appropriate will depend on the circumstances of each case. The court will be obliged to consider whether advice and a voluntary declaration have already been taken/compiled, and whether an application for a time to pay direction has been made and defaulted on by the debtor. It will also have to assess whether the information supplied would enable the creditor to use an earnings arrestment instead, or whether there is sufficient evidence to satisfy the court that the debtor does not have any valuable non-essential goods which could reasonably be used to repay the debt. In some cases the creditor may decide independently not to proceed (eg if the parties agreed settlement terms or in light of content of the voluntary declaration). In other cases a valuable item which might normally be regarded as not essential, such as a vehicle, may be an essential in the individual's circumstances. We do not, therefore,

recommend restricting the court's discretion, as the circumstances will be different in each case.

113. Nonetheless, our experience is that different sheriffs' handling of debt cases can sometimes be inconsistent, particularly where debtors are in multiple debt, and it is essential that additional effort be devoted to specialised training for sheriffs with a view to achieving a common approach throughout the Scottish courts. **We recommend that the Executive should discuss with the Judicial Studies Committee how best to add to the training available to sheriffs in relation to debt issues and time-to-pay applications, in order to ensure consistency and best practice across the country.** Further training should be assisted by the money advice sector which has relevant specialist knowledge and experience to contribute.

Last-resort action of compulsory sale

114. We believe that the provision of better and earlier information and advice, the emphasis on negotiation and the provision of new safeguards for the debtor in the legal process would lead to the resolution of the vast majority of cases without the need to have recourse to a last resort. However, we recognise that there may be a small number of cases where no resolution can be achieved by other means; and where the court is satisfied that there is good evidence to justify granting a compulsory sale order. The new approach we propose should guarantee that this is only a possibility in exceptional cases – that is, cases where debtors are genuinely in a position to pay their debts by realising assets, but persistently refuse to co-operate.

Filtering out everyone except those who can but won't pay

115. An extremely important feature of the design of this procedure is that it filters out those who genuinely can't pay. In such cases the court will simply refuse any application for a compulsory sale order. We anticipate that the provision of advice and assistance will be a very welcome lifeline for the vast majority of debtors who will avail themselves of the opportunity. But we wanted to be sure that

there would be no possibility that someone, who does not engage in the process for genuine reasons of inability or fear, could be misconstrued as someone who can but persistently refuses to pay or co-operate.

116. We therefore decided that, where that might be in doubt, a further option should be available to the court to appoint an adviser to visit the debtor who has not taken up the opportunities made available. This would, again, filter out any cases where people had become genuinely overwhelmed and failed to take action. Even if this possibility may be remote, because of introduction of the upstream arrangements for advice and assistance, we consider it necessary to cover all eventualities, in order to be absolutely sure that action is only taken against the small minority of people who can but won't pay their debts.

Valuable non-essential items

117. Action in the last resort must only apply to items of value which should be realised by debtors in order to meet their liabilities and pay their debts. We set out in Part IV paragraphs 75 to 78 the principle that the normal behaviour of reasonable and responsible citizens is to realise assets of value to pay debts which they owe. Whilst legal means of enforcement must be available for the few who act unreasonably by forcing them act responsibly, there must also be appropriate safeguards for the vulnerable. We considered whether there should be a monetary threshold up to the value of which goods would not be attachable. We rejected this after some consideration as we thought it would create more difficulties than it might solve. It would be difficult to set a threshold which could take account of individual or family circumstances and needs, and people need to be protected from selling essentials regardless of their total value. The great majority of us were firmly agreed that the best way of guaranteeing this would be to set out very clearly those items which must be exempted. Listing valuable non-essential items which could be the subject of last-resort action would, in our view, be unworkable.

118. Our policy is to enable enforcement against the few who can but don't pay until

Our policy is to enable enforcement against the few who can but don't pay until forced to do so.

forced to do so. In the process which we have set out, an individual may be regarded as unable to pay by reason of not having realisable goods in accordance with the foregoing paragraph. We recognise, at Part III paragraphs 64 to 65, the particular difficulties that local authorities can face as involuntary creditors. Government-determined benefit schemes may assess individuals as being able to meet on-going liabilities for council tax and water charges. However, under our new approach, the same individuals may be deemed as unable to pay any accrued debt on these liabilities by reason of not having realisable goods in accordance with the foregoing paragraph. Ongoing liabilities may continue to accrue despite no realistic prospect of recovery. This is clearly unsatisfactory for local authorities and is likely to be a particular problem in relation to water and sewerage charges which are currently collected by local authorities. **We recommend that the review of council tax recovery recommended at Part IV paragraph 74 should consider this issue.**

Realising valuable non-essential items

119. Where a court does grant action as a last resort, after all of the alternatives have been exhausted, it will be for compulsory sale of valuable non-essential goods at auction. Any such items should not be disposed of by the few persistently uncooperative debtors in a further attempt to defeat realisation for creditors. The court should, accordingly, have further discretion, should it be considered necessary in the circumstances, to order that any such items are not disposed of unless the debtor voluntarily realises the items to address the debt.

Everyone has a duty to make every reasonable effort to repay their debts and pay tax due.

120. We gave a great deal of thought to who should carry out this particular order of the court in light of the problems highlighted in Part III, paragraphs 55 to 57. We consider that this enforcement function, as for all other official duties on the authority of the court, should be carried out by a thoroughly professional, responsible and accountable body of court enforcement officers. We were unable to identify another body or institution to whom this particular function could appropriately be given. But we were very

concerned that public confidence in officers of court has been undermined by past events.

121. **We, therefore, urge the Executive to carry out an early and thorough review of this office and bring forward proposals for significant reform.** This should include title, organisational structure and accountability as well as national standards, professional qualifications, training and continuing professional development. Careful consideration should also be given to whether the separate roles currently undertaken by sheriff officers, in relation to debt collection and enforcement of court decisions, are compatible and should be performed by the same people.

Can there be a new approach without last-resort action?

122. One of our members, while agreeing in principle in that some action of last resort was necessary, was unable to contemplate entry into domestic premises, even if only for the persistently uncooperative. That member considered that any last resort might wrongly be used as a threat against those who were genuinely unable to pay and who might not be aware that such a threat was without foundation. That member felt that, instead, only a general provision of information and advice throughout the enforcement system should be devised.

123. We gave very serious consideration to this argument, because it goes to the heart of the issue. We carefully assessed what would be achieved by each approach. Our analysis is set out in the following paragraphs. On balance, the great majority of us concluded that, if the system was to be effective as well as humane towards debtors and if it was to ensure a fair balance between the rights of debtors and those of creditors, last-resort action against valuable non-essential goods was an indispensable element.

An approach involving last-resort action against valuable non-essential goods

124. We considered that the main benefit of an approach involving a tightly constructed and supervised last-resort action against valuable non-essential goods in a person's home is that it would ensure that there was no

consciously approved loophole in the enforcement system which would allow debtors who had such goods, which could be sold to pay their taxes or commercial debts, to be able legally to refuse to do so. It would reinforce the message that all citizens have responsibilities as well as rights. It would address the concern that debtors have a right to expect reasonable behaviour by creditors, the protection of the courts, and access to assistance from advice agencies. It would also address the concern that public authorities should ensure that debtors can get help to address their local authority debt problems. It would emphasise that, whilst the overwhelming majority of debtors do recognise these rights and responsibilities, everyone has a duty to make every reasonable effort to repay their debts and pay tax due.

125. We were very conscious that this balance of rights and responsibilities is particularly relevant in the case of central and local government taxation and levies. If the payment of these could be enforced against the vast majority while some could avoid doing so, despite being able to pay, the tax burden would rise and vital services may well be cut which would be a loss to all of us as citizens and unfair to the vast majority who pay. The existence of last-resort action would help to ensure that central and local government are able to collect tax from the small number who could pay but seek not to do so.

126. There may be a case for anticipating that, without such a last-resort action, the availability of unsecured credit may well be harder to obtain and certainly more costly within most credit markets. We are aware that providers of credit to those on very low incomes tend to collect payments by other means, such as door to door collections, and that a restriction of enforcement means may not affect their operations as badly as anticipated for other credit providers. This new approach would, however, ensure that providers of goods and services have the confidence to extend credit on reasonable terms to those who need it in the knowledge that a full range of enforcement measures would be available should recourse to them be necessary.

127. This approach would take the first step for improving the provision of money advice services within the overall enforcement system, within which such last-resort action

sits. It would increase the incentives (and, indeed, requirement in some cases) for creditors and debtors to reach negotiated settlement as well as increasing the level of protection for debtors. It would mean that those who found it hard to pay because of their circumstances have all the help needed to manage their repayments or re-schedule their repayments.

128. It is clear that entry into a person's home is one of the most intrusive and frightening aspects of the existing system. It is in principle possible that retaining an option of last resort could mean that creditors would continue to give notice to debtors that they may use this possibility. The threat of poinding was used as an effective 'spur to payment' under the existing system, and some concerns have been expressed that a last-resort action could be used in the same way. However, we have devised this approach extremely carefully and proposed very tight restrictions and safeguards to ensure that action would only be possible for extreme cases. In these circumstances we believe that any such threats by creditors would be much less credible.

129. The case study at paragraphs 140 to 146, illustrates the benefits of this approach.

[An approach with no last-resort action?](#)

130. The main attraction of an approach, which does not involve a last-resort action against valuable non-essential goods in domestic cases, is that it might be seen, at first sight, to avoid the threat of entry. However, a key issue is that an approach without the possibility of action of last resort would also be likely to have an impact on creditor behaviour, with more creditors resorting to **sequestration**. Sequestration can be used for debts over £1 500, and permits forced entry into debtors' homes. It is a harsh measure which, for those who do not welcome sequestration, is far worse than the last-resort action currently under discussion as it involves taking control of debtors' affairs, such as prevention of acquiring new assets and obtaining credit. Debtors could have their homes entered and all their valuable non-essential assets seized and could also have their homes sold. It has been suggested that some debtors might, on the other hand, welcome sequestration as a means of clearing

their debts. We certainly do not wish to propose a solution in which this is encouraged.

131. An approach with no last-resort action would leave a gap in the enforcement system for debts less than £1 500. For people who can pay but refuse to do so, creditors, with no recourse to enforcement against other types of property, would be obliged to wait until the debt plus accruing interest or year-on-year debts had reached this amount before seeking sequestration. It has been suggested that this may create an incentive for some creditors to adopt intimidating practices to which we referred in Part III paragraph 47. Thus, an approach with no last-resort action could result in an increase of intimidating tactics by some debt collection agencies who we were advised actively market themselves to creditors on the basis of their aggressive and unpleasant, but allegedly effective, tactics. We have expressed concern that regulation of debt collection agencies may be insufficient: but have noted that legislation in this area would be for the UK, rather than Scottish Parliament; and that there is work under way in Whitehall on this issue Part II paragraph 33 and Part III paragraph 47.

132. Creditors would have to use other methods of enforcement to pursue recovery of debts. They might, therefore, want to obtain better and more up-to-date information about debtors' bank accounts and employment, to allow them to do so. We have identified the lack of such information as a problem for enforcement: but noted that a comprehensive solution to this problem would involve action at UK level on a number of reserved issues, and would raise questions of privacy, data protection and human rights restraints. More widely, it has been suggested to us that, if providers of goods and services felt that the system offered them insufficient protection, the availability of credit might be significantly restricted.

133. As far as debtors' behaviour may be concerned, an approach without a last-resort action for domestic cases would send a strong message that, in some circumstances, debtors could legally avoid paying their debts. The

absence of a complete enforcement method for domestic cases would result in potentially wide-ranging consequences for collection of council tax, water charges, council rents and other liabilities and in poorer services and/or increased charges for the community as a whole. This could give rise to a knock-on effect of increasing the 'non-payment culture'.

An approach without a last-resort action for domestic cases would send a strong message that, in some circumstances, debtors could legally avoid paying their debts.

134. We did give long and hard thought to whether there was another action of last resort, apart from enforcement against valuable non-essential goods, which might fill this loophole. However, having looked at a number of other countries' systems we were unable to identify any possibility, other than civil imprisonment. This is a common feature of many other enforcement systems internationally, within the EU as well as elsewhere. Closer to home, it is also a possibility in England and Wales but we considered it to be totally unacceptable in a modern Scotland.

135. We have said that we view information and advice is a crucial part of any comprehensive solution. In this context we unanimously agreed to recommend the development of a comprehensive debt arrangement scheme as part of the Executive's review of the law of diligence (see Part VI paragraph 100). However, information and advice, on their own, do not provide a new approach to poinding and sale which will enable legally constituted debts to be collected. Information and advice are part of a workable solution; they are essential to ensure that only the few, who can pay but won't, ever have to face last-resort action.

136. We acknowledge that the absence of a comprehensive system of enforcement in Scotland would lead to a significant decline in the collection rate of substantial amounts of money owed to local government or the UK Government and its agencies. We are also aware that it has been argued³⁹ that there might be pressure on the Scottish Executive to provide compensation for any consequential

³⁹ Memorandum by the Scottish Executive to the Justice and Home Affairs Committee of the Scottish Parliament, November 1999, paragraph 26.

losses. It is incumbent on us to recommend a new approach which will maintain a comprehensive enforcement system which enables debts to be collected in a humane manner. The great majority of us do not consider that this can be achieved by advice and information alone.

A humane and workable alternative

Would the new approach be both humane and workable?

137. The purpose of our work was to find a new approach to attachment of corporeal moveable property which would be humane in the manner in which it operated, particularly when affecting the most vulnerable in society, and workable so that it would be an effective means of enforcement. It was a question of balancing the interests of debtors and creditors fairly and ensuring that all the criticisms levelled against pointing and warrant sale did not form part of the new picture. It was a tall order which generated a great deal of discussion, opinions and ideas. What is perhaps most surprising is that, amongst a group of diverse and, often opposing, interests that we did achieve such a degree of consensus in reaching a result on which we are all positively agreed but for one. Whilst dissenting from last-resort action, that member played a full and active role with us in

The new procedure proposed will provide the necessary safeguards against misuse whilst ensuring that enforcement action is still available and no loophole is created.

defining all other aspects of our recommendations.

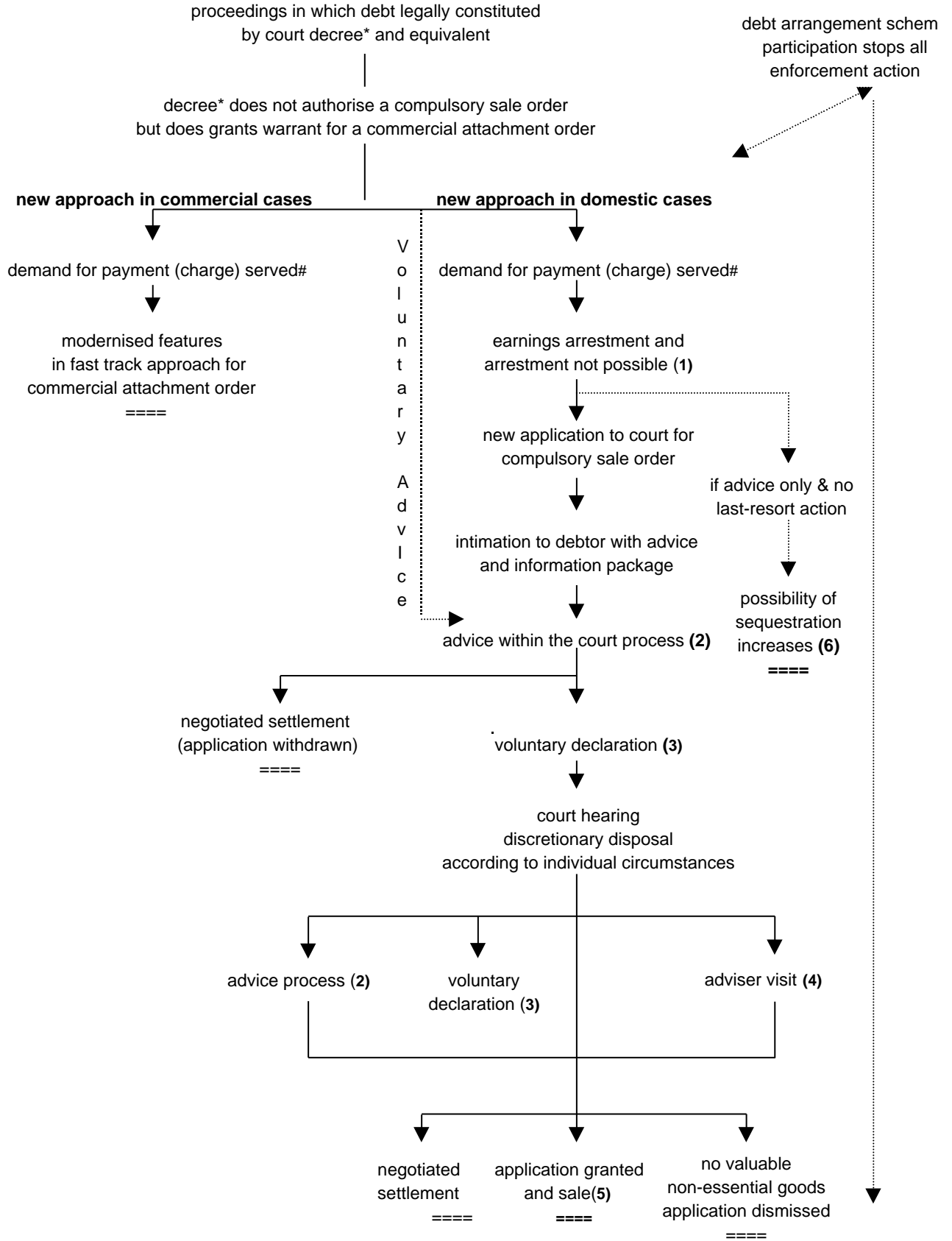
138. We have concluded that the new procedure proposed will provide the necessary safeguards against misuse whilst ensuring that enforcement action is still available and no loophole is created. The introduction of advice and information into the process will add an additional tier of debtor protection and fill an unmet need, which we also recommend should be replicated throughout the diligence system within a full debt arrangement scheme. **Accordingly, we recommend implementation of the new approach which we have set out in detail in Part VI paragraphs 99 to 129 of our report.**

The new approach – an explanatory diagram

139. The following diagram depicts the new approach recommended and demonstrates, in particular, how it would:

- (1) require less intrusive forms of diligence to be undertaken first;
- (2) introduce debt management and assist those who want to pay, and can pay, to do so;
- (3) introduce voluntary declaration (with a money adviser available to help complete it) and avoid the need to enter premises, as well as filter out those who can't pay;
- (4) address any cases of the genuinely overwhelmed who failed to act;
- (5) apply last-resort action against only those who can but won't pay; and
- (6) avoid the harsher measure of sequestration.

diagram:



* and equivalent including summary warrant

this assumes that the debtor protections recommended by the Scottish Law Commission are adopted (see paragraphs 67 & 74)

The new approach – a case study

140. We have set out the circumstances in which vulnerable groups of people have not been fully protected under the existing system and how we propose that our new approach will address that. Particularly how individual circumstances will be assessed in order to target those who would benefit from money advice and to filter out everyone except those who can but won't pay from last-resort action. In the same way as we set out examples of those for whom it is necessary to have an alternative system, it might also be helpful if we demonstrate how we envisage our new approach operating in practice to avoiding former difficulties by reference to some examples.

141. The Social Inclusion, Housing and Voluntary Sector Committee heard evidence from a representative of the Communities Against Poverty Network about her mother's experiences⁴⁰. Her mother, now in her late seventies, had lived a hand-to-mouth existence on social security benefits. She relied on her husband to manage the bills but had to run up debts herself to buy children's toys and essentials such as bedclothes. To try to avoid warrant sales she would go to moneylenders who would put her even further into debt. Although a warrant sale was averted by an eleventh hour loan of money, the fear of that day lived with her and she was still upset and nervous when letters arrived.

142. Under the new approach this woman would be greatly assisted by early access to money advice which would provide help to manage her debt situation holistically. This might involve income maximisation including a benefits check, challenging any debts for which she may not be liable, negotiating with multiple creditors on her behalf, setting up a debt repayment plan, exploring low cost credit options and referring to other advice services as appropriate. Even if she had felt unable to seek advice at an early stage and court action was raised against her, she would be directed to local advice services at various stages during the court process. If she had not sought advice but attended court she would be directed to local money advice services by the court or in-court adviser. If a creditor sought an

application for a compulsory sale order, further direction to money advice services would be made and she would be able to explain her circumstances without someone forcibly entering her home. Where she still had not taken up these opportunities, the court would be able to suggest an adviser visit. Ultimately, however, any such application would not be granted because of what we understand about her means and lack of valuable non-essential goods.

143. It can be seen from this example, which we know involves real life circumstances which are not uncommon for those on benefits, just how difficult it would be for someone not to become aware of or to take up the benefit of money advice. Equally, how she would be filtered out during the enforcement application which would be inappropriate in her circumstances.

144. Another example might involve a low income family where one of the parents works, the other is at home with the children and they live at subsistence level. Their finances would run smoothly while things are following their normal course but an unexpected expense, such as a family bereavement with the funeral expenses or an unavoidable repair for a car needed to get the working parent to work, can throw the household budget into difficulty. These are not unusual circumstances which can lead to previously manageable repayments of existing loans and ongoing liability for council tax falling into arrears. Following a bereavement, or during a period of depression, it can be difficult for people to keep on top of managing their affairs and, for whatever reason, failing to respond to creditors is likely to lead to court and enforcement action.

145. Under the new approach this family would also benefit from the intervention of advice and assistance at all stages mentioned in the previous example. Where money advice was accessed at an early stage, a payment scheme would be set up. If, however, a creditor sought to do diligence, an earnings arrestment would have to be pursued instead of an application for a compulsory sale order. It is most likely that time to pay arrangements would be put in place, either for a deferred period or for manageable regular instalments.

146. Equally as common as the examples already given is the person who consciously

⁴⁰ Kait Laughlin, 17 November 1999 Social Inclusion, Housing and Voluntary Sector Committee Official Report Cols 310-312

delays settling debts until the very last moment until forced to pay. Another true-life scenario is the hotelier who regularly only settled debts after the hotelier's Jaguar car was pounded. By requiring this person to act responsibly as they ought to have done voluntarily, the new approach would allow creditors to apply for an application for a compulsory sale order and enable such valuable non-essential items to be realised to meet debts due.

The need for wider reform

147. We have highlighted within this report wider difficulties beyond the scope of our new approach concerning a range of issues and have included recommendations for improvement in our proposals for a new and comprehensive approach. We take the view that further action is required to remedy them as complementary measures to our core recommendations.

Resource implications

148. We recognise that the fulfilment of these criteria does not come without a cost. It would be impossible to recommend such changes without also recommending that additional resources be made available to the voluntary sector and local authorities or any other body which would become part of the new approach for the provision of information and advice about debt problems. **We recommend that the provision of the necessary additional resources for the advice sector be centrally funded.**

149. A new application to the court will

involve additional court time notwithstanding that the majority of applications will be resolved at the very early stages. However, we anticipate that there will be savings to be made in the overall reduction in court actions once the impact of access to advice kicks in and these could be quite substantial once a debt arrangement scheme is available across the board. At the outset, however, steps should be taken to ensure that any initial increase in court business does not give rise to delays in the court process.

150. Due to the need for us to bring forward an early solution for a new approach to pouncing and warrant sale before it is abolished, we have been unable to consider in depth the means by which the wider recommendations which we have made should be taken forward. We do not, therefore, attempt to comment on the level of funding which might be required for implementation of reforms arising from wider reform undertaken by the Scottish Executive and UK Government.

The need for review

151. Our recommendations, if implemented, would represent a significant shift in the way that debt is managed and enforced in Scotland. As we have described, the stakes are high for consumers, for the business sector and for government; and the impact of changes may be significant. **We, therefore, recommend that the Scottish Executive review the operation of the new system no later than three years after its entry into effect, and report back to the Scottish Parliament.**

PART VII: SUMMARY OF RECOMMENDATIONS

Recommendation	Part	Page	Paragraph
1 We considered that, in order to meet the demand of the principles of responsible debtor behaviour and to avoid a wide legal loophole, it would be essential to have a new approach of some sort. That approach would have to incorporate mechanisms to uphold the principles of least coercion including negotiation before litigation as well as providing safeguards to ensure the principle of responsible creditor behaviour.	IV	16	84
2 We considered that any new approach should use plain English, in a format which is readily understood.	III	9	45
3 It is important to treat the domestic and commercial circumstances differently to ensure that much greater debtor protection is afforded to individuals in their homes than is required for commercial entities in commercial premises.	V	17	90
4 It is possible to define the differentiation set out by us within legislation in order to enable these domestic cases and the purely commercial cases to be treated differently and we recommend that this be done.	V	18	92
5 Whilst the Parliament did not identify any problems with the existing procedure for commercial cases, there is always scope for improvement. Accordingly, we recommend that some of the features of the proposed modernised system should be adopted for commercial cases, with appropriate modifications. Examples would be better information to debtors and access to a national debtline and money advice which would be of particular assistance to small businesses and sole traders.	V	17	89
6 We recommend implementation of the new approach for the non-commercial debtor which we have set out in detail in paragraphs 99 to 129 of our report. This includes:	VI	27	138
creating an environment in which multiple debt can be managed, advice and information package at the outset of the new approach as well as more widely,	VI	20 -	99 -
encouraging negotiation before enforcement with those willing and able to pay assisted in doing so in a managed regime by placing advice and information ahead of any enforcement action, provision of proper and adequate information about the legal procedures and their consequences to debtors,		25	129
less intrusive means of enforcement to be used first – earnings arrestment and arrestment,			
new application to court for judicial supervision of enforcement against valuable non-essential items for those who can but refuse to pay,			
debtor to be advised of the application and supplied with an advice and information package,			
the package to contain information about local advice agencies and explain the court procedure including how to make a			

voluntary declaration and apply for time to pay,
 application not to be granted while advice being taken,
 adviser to explore and negotiate payment terms between the
 debtor and creditor(s),
 debtor given opportunity to make a voluntary declaration to the
 court about his circumstances,
 negotiated settlement likely to be achieved but where unsuccessful
 creditor may proceed to hearing,
 cases considered individually on their merits with enquiry into
 circumstances and means and court discretion for disposal
 according to circumstances,
 mechanisms to ensure those who can't pay are filtered out,
 including possibility of adviser visit where appropriate,
 application refused where the debtor has few or no valuable non-
 essential items,
 application granted only against those who can but refuse to pay,
 compulsory sale order only for valuable non-essential items.

7	We recommend that the Scottish Executive should introduce a national statutory debt arrangement scheme.	VI	20	100
8	The Executive's diligence review should take on board the Scottish Law Commission's recommendations for introduction of debtor protections within the court and enforcement processes for summary warrants.	IV	15	74
9	We recommend that, in conjunction with local authorities, the Executive should give further consideration to its policy on recovery of unpaid council tax and the use by local authorities of summary warrant procedure.	IV	15	74
10	We recommend that the review of Council Tax recovery recommended at Part IV paragraph 74 should address the problem of Government determined benefit schemes deeming an individual as someone who can pay when our new approach will determine them as unable to pay.	VI	24	118
11	We urge the Executive to give immediate consideration to carry out an early and thorough review of this office [enforcement officers] and to bring forward proposals for significant reform.	VI	24	121
12	We recommend that, in the context of ongoing work on the development of a community legal service, the Executive should consider rolling out the in-court adviser service at Edinburgh Sheriff Court more widely across Scotland.	VI	20	102
13	We recommend that the Scottish Executive's Community Legal Service Working Group, which is formulating proposals for a national network of legal advice, information and representation, should also consider the value of the fitness test applied to providers of debt and money advice as overseen by the OFT.	VI	19	96
14	We recommend that the Executive should discuss with the Judicial Studies Committee how best to add to the training available to sheriffs in relation to debt issues and time-to-pay applications, in order to ensure consistency and best practice across the country.	VI	23	113
15	We recommend that the Executive continue to investigate, with the UK Government and other interested parties, the scope for progress towards sharing information about debtors' financial circumstances.	VI	20	97

16	We recommend that findings from the DTI Over-indebtedness Task Force be vigorously tackled and proposals for reform brought forward.	IV	14	73
17	The Executive should also pursue with DTI and OFT a review of the fitness tests required for those who extend credit.	IV	14	73
18	We recommend that the provision of the necessary additional resources for the advice sector be centrally funded.	VI	30	148
19	We recommend that the Scottish Executive review the operation of the new system no later than three years after its entry into effect, and report back to the Scottish Parliament.	VI	30	151

GLOSSARY

<i>attaching</i>	Generally used to describe the effect which <i>diligence</i> has on property by prohibiting its disposal pending completion of the relevant <i>diligence</i> procedure.
<i>arrestment</i>	A form of <i>diligence</i> which <i>attaches</i> or freezes a debtor's moveable property which is in the hands of a third party (eg money in a bank account). It culminates in an action of <i>furthcoming</i> in which the court orders the third party (eg the bank) to pay the money to the creditor. If the creditor arrests goods in the hands of a third party, the court will in due course order the goods to be sold, and the proceeds to be paid to the creditor. The common law arrestment described here should not be confused with <i>earnings arrestment</i> mentioned below.
<i>arrestment schedule</i>	A document which implements an <i>arrestment</i> by serving it on a person who holds moveable property.
<i>bank arrestment</i>	See <i>arrestment</i> .
<i>charge for payment</i>	A document, served on a debtor on the authority of the court after it has ordered the debtor to pay, which demands payment of the sum due within a specified time and gives notice that <i>diligence</i> may be initiated if payment is not made.
<i>corporeal moveable property</i>	Property which is tangible (corporeal), is not fixed like <i>heritable property</i> and can be handled or moved (moveable). Examples of this type of property include animals, paintings, vehicles, aircraft, and jewellery. Corporeal moveable property is sometimes called moveable property for brevity.
<i>debt management</i>	Organising repayment of multiple debts owed to creditors on orderly and regular terms agreed by all parties - often with the assistance of an adviser and usually by facilitating a plan for repayment by instalments which is calculated according to the debtor's means and debts' relative priority.
<i>debt arrangement scheme</i>	A statutory scheme by which debt repayment plans compiled during <i>debt management</i> may be formally approved and <i>diligence</i> prohibited while it is operating.
<i>decree</i>	A final order or judgement given by a Scottish civil court, normally requiring the unsuccessful party to do, or stop doing, something. The most common example is an order to pay money. The order may be enforceable by <i>diligence</i> upon the court issuing an extract of the decree. Other orders or deeds may serve an equivalent function to that of a decree in authorising <i>diligence</i> , such as extracts of <i>summary warrants</i> , criminal orders for unpaid fines or compensation, foreign judgements registered in Scotland for <i>enforcement</i> , arbiters awards and deeds registered in the court books for execution ie <i>enforcement</i> .
<i>diligence</i>	The legal procedures by which orders of the civil courts are enforced. In the case of debt, the procedures are available

to a creditor awarded a *decree* for payment of a sum of money. They are used against the debtor's assets by *attaching* and selling them in order to satisfy the debt. Different forms of diligence apply to different types of property.

diligence stopper

Generally used to describe a court order which stops the operation of existing *diligence* or prevents future *diligence*.

earnings arrestment

A form of *arrestment* against a debtor's earnings.

enforcement

Legal means of compelling or prohibiting action. In the case of debt, by compelling payment of money by use of the law of *diligence*.

expenses

The costs of court and *enforcement* action, including court dues and fees payable to lawyers and *officers of court* carrying out *diligence*.

heritable property

Property which is land or is associated with it such as buildings. A lease of heritable property is itself heritable.

forthcoming (action of)

A court action taken by a creditor against a third party following an *arrestment* in order to complete the *arrestment*. The arrested property is ordered for sale or surrender, ie made forthcoming. This action is required only for a common law *arrestment* and is not used in *earnings arrestments*.

interdict

A court order prohibiting specified acts.

legally constituted debt

An obligation to pay a sum of money which has been found to be liable by legal process, in a *decree* or equivalent.

messenger-at-arms

An *officer of court* appointed to carry out all *warrants*, including *warrants* to do *diligence*, issued by the Court of Session, High Court of Justiciary and Court of the Lord Lyon.

money advice

A series of tools and professional strategies used by advisers to counter the problems encountered by clients in debt, which includes:

- a commitment to independent, impartial and high quality advice with financial problems,
- a problem solving approach which recognises the respective rights and obligations of the parties to transactions which the client has entered into,
- a holistic or "whole person" attitude to the problems of the individual which takes into account factors such as health, housing conditions etc.,
- a participation approach involving the individual in solving their problems and learning from the experience,
- a professional attitude towards those credit companies and agencies, with whom advisers require to negotiate, which recognises the need for consistency and endeavours to build mutual respect,

This service, achieves greater effectiveness, when it is sensitive to, aware of, and can advise and assist with a range of other issues like employment, housing, relationship

problems, disability, ill-health or substance abuse, which may contribute to, or be the root cause of a debt problem itself.

non-harassment order

A court order prohibiting a person from harassing someone else by behaving in a specified manner.

officer of court

Any person who carries out a function of and is accountable to the court. In respect of court *warrants* to do *diligence*, only *messengers-at-arms* and *sheriff officers* are permitted to carry out this function.

poining

(pronounced 'pinding')

A form of diligence for the *attachment* of *corporeal moveable property*.

sequestration

The process of bankruptcy in which control of a person's assets is transferred to a trustee who sells the property and distributes the proceeds amongst creditors.

sheriff

A judge who hears and decides cases in the Sheriff Court.

sheriff officer

An *officer of court* appointed to carry out all *warrants* issued by the Sheriff Court, including *warrants* to do *diligence*. The officer is authorised to do so within a geographical area in which the court is located (sheriffdom).

summary warrant

A *warrant* issued by the sheriff court, in respect of payment assessed as liable by central and local government, which authorises specified forms of *diligence*.

summary warrant diligence

Diligence done on the authority of a *summary warrant*.

time to pay direction

A court order which authorises a debtor to repay a debt due by instalments or deferred lump sum. An application for this may be made by the debtor during the court proceedings before a *decree* is granted. The order acts as a *diligence stopper* for specified forms of *diligence*.

time to pay order

A court order which authorises a debtor to repay a debt due by instalments or deferred lump sum. An application for this may be made by the debtor after a *decree* is granted and specified forms of *diligence* instigated. The order acts as a *diligence stopper* for those diligences.

warrant

Authority of the court, recorded in the court's decree or order, which instructs or permits specified action to be carried out by an *officer of court*.

warrant of sale

Authority of the court which grants the sale of *poinde*d articles under a decree or equivalent (other than under a *summary warrant* where specific authority to proceed to sale is not required).

warrant sale

A sale of *poinde*d articles authorised by a *warrant of sale*.

Further copies can be obtained from the Working Group Secretariat-

Julie McKinnon
Scottish Executive Justice Department
Access to Justice
Diligence and European Co-ordination Division
Hayweight House
23 Lauriston Street
Edinburgh
EH3 9DG

E-mail: julie.mckinnon@scotland.gsi.gov.uk

Tel: 0131 221 6764

Fax: 0131 221 6894