

## STATEMENTS AND QUOTES

## Referred to in Part 3, Structure and Organisation of the Enforcement System

Debates on the Abolition of Poindings and Warrant Sales Bill

"They are the ones who are exposed to the ruthlessness of the sheriff officers. Sheriff officers use the poinding to demand lump-sum payments, forcing those in debt to get themselves into even more debt and then to allow themselves to be exposed at the hands of legal or illegal loan sharks.... I have often referred to them as rotweillers in suits, but I must qualify that statement; many rotweillers are often better behaved...That unaccountable bunch of bullies presented evidence to the Justice and Home Affairs Committee..."<sup>580</sup>

"A number of other important points were also made, however, about problems elsewhere in the current system of diligence. We have heard evidence, for example, that many debtors do not have access to, or are not given adequate information about their rights; that some sheriff officers behave in a bullying and intimidating manner towards debtors...We hope the Scottish Law Commission and the Executive will take account of the concerns raised by our witnesses in their review of the diligence system."<sup>581</sup>

"Last Monday night, at half past 7, I got another 'phone call from the sheriff officer. It was basically abusive. I pointed out that she was calling outwith Office hours and asked her to do me the courtesy of 'phoning between 9 and 5 o'clock. I can deal with things then. After 5 o'clock I can say to myself 'Right. That's it until 9 o'clock tomorrow'. That helps me to cope with depression and the anxiety. It makes the situation manageable."<sup>582</sup>

"Also, during the last nine months I have received regular phone calls from sheriff officers at night and at weekends who refuse to give their name and on many occasions, the name of their company. This is another expense especially when you consider I am ex-directory. Harassment is the tactic of the day and this causes untold misery to the victims causing ill health and more expense to the National Health Service. When the threat of forced entrance to your home hovers in the background it can have a terrible effect on your mental and physical well-being".<sup>583</sup>

"Do you understand the implication of sheriff officers battering down the door of someone's home to undertake a poinding or a warrant sale? Do you understand the impact that has on the family unit? You cannot isolate the children from the total family unit. Do you understand the psychological impact that that action has on family life?"..."Yes, I think I do – and I think that the staff we employ on pursuing diligence understand too. That is why we do not take such situations lightly."<sup>584</sup>

"This matter is about the people's Parliament making accountable an establishment that has not been accountable for more than 200 years. That was made clear when we took evidence on the bill. The Law Society, the Law Commission and the Society of Messengers-

<sup>580</sup> Tommy Sheridan, SSP, MSP for Glasgow. Scottish Parliament Official Report, 27 April 2000, cols 163-165.

<sup>581</sup> Justice and Home Affairs Committee, Stage 1 Report on Abolition of Poindings and Warrant Sales, 9 March 2000, Vol 1, para 19.

<sup>582</sup> Margo Kirkwood, Communities Against Poverty Network, Social Inclusion, Housing and Voluntary Sector Committee, Official Report, 17 November 1999, col 309.

<sup>583</sup> Eddie McColm letter to the Justice and Home Affairs Committee dated 29 October 1999. Justice and Home Affairs Committee, Stage 1 Report on Abolition of Poindings and Warrant Sales, 9 March 2000, Vol 2, Annexe F, p169.

<sup>584</sup> Exchange between Alex Neil, SNP, MSP for Central Scotland and Mike Isaac, Deputy Chief Executive of the Child Support Agency, Social Inclusion, Housing and Voluntary Sector Committee, Official Report, 12 January 2000, col 478.

at-Arms and Sheriff Officers are not happy at having to be accountable. In a way, that reflects Sheriff Officers' behaviour on the doorsteps when they serve poindings on people and force warrant sales. There is an overbearing arrogance - because they have a warrant, they believe that they have a right to do what they do, with little or no care towards the people with whom they deal."<sup>585</sup>

"...any solicitor advising a responsible creditor would have nothing to do with a sheriff officer who acted improperly or who brought undue pressure to bear, outwith the terms of the Act. In my experience, the Act has not been a bully-boys' charter. On the contrary, the Act provides a framework that seeks to create an equitable balance between the rights of creditors and debtors... If there is an issue as to how sheriff officers implement the procedures that were put in place by the Debtors (Scotland) Act 1987, it should be examined carefully and scrutinised".<sup>586</sup>

"Centre stage were the suits - the Sheriff Officers. With icy politeness a receipt for each item, here a television, there a washing machine, is handed over, for the law is nothing if not precise in its cruelty."<sup>587</sup>

"One CAB wrote a letter of complaint to a firm of sheriff officers after reports they had introduced a policy of 'phoning debtors, with no preliminary letter, in a harassing fashion demanding payment of sums from £200 to £1,000, with no instalments accepted."<sup>588</sup>

"[it is] easy..... to make cartoon characters out of Sheriff Officers, who are, after all, carrying out the instructions of the court."<sup>589</sup>

"...sheriff officers are officers of the court and only pursue what companies and individuals process via the courts. They do not randomly pursue people, they are instructed by their clients to use the diligence laid down in statute."<sup>590</sup>

### Scottish Law Commission

"Contrary to popular belief officers do not 'batter down' or 'kick-in' doors. Locksmiths are engaged to open locked doors. Use of the power of entry must be in accordance with Section 18 of the 1987 Act, which states that an officer of court is not entitled to enter an empty dwellinghouse or one which appears only to contain children below 16 years of age, unless the officer has given at least four days notice of intended entry or the sheriff has authorised entry without prior notice."<sup>591</sup>

### Consultation on the Independent Working Group's Recommendations

"In some jurisdictions enforcement is conducted by public bodies and subsidised by the state. In others enforcement agents work in the private sector...The solutions adopted in other jurisdictions involve (in varying degrees); keeping more debt recovery work within the

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<sup>585</sup> Lloyd Quinan, SNP, MSP for West of Scotland, Scottish Parliament Official Report, Stage 3 Debate, 6 Dec 2000, col 639-640.

<sup>586</sup> Frank Johnstone, Law Society of Scotland, Convenor of the Society's consumer law committee, Social Inclusion, Housing and Voluntary Sector Committee, Official Report, 1 December 1999, col 398.

<sup>587</sup> Scottish Sunday Express, *On the Mound to be on the make*, 28 November 1999.

<sup>588</sup> Sunday Post, *Recovery of Council Tax Debt*, Bob Smyth, 13 February 2000.

<sup>589</sup> Scotland on Sunday, *Self Made Hero Leads Debtors into the Poverty Trap*, Katie Grant, 18 September 2000.

<sup>590</sup> The Herald Letters Page, Stephen Thomson FICM, 3 May 2000.

<sup>591</sup> Scot Law Com No 177, para 3.32.

public sector, channelling recovery through a limited number of agencies to facilitate economies of scale, and allowing extensive access to social security and other records (including records of other debts owed by the same debtor). Scotland and England and Wales have taken a different approach. There is little or no channelling of debt recovery and little access to information about debtors, but instead economies for the public authorities have been achieved by cutting back on payment for unsuccessful enforcement, and reducing the commission payable to sheriff officers...It is not realistic to expect enforcement agents to act in a professional manner but not pay them to do so...The present system offers extremely unsatisfactory incentives to sheriff officers, and also to public authorities. If they can obtain cheap enforcement services from sheriff officers there is no incentive to improve pre-enforcement debt recovery practices. Enforcement is a volume business. Enforcement agents make money, or in the public sector offset costs, from taking relatively small fees from large numbers of debts. Proper funding is achieved in other jurisdictions by either subsidies, or high enforcement fees, or enabling enforcement agents to develop a professional profile that includes other sources of income (debt collecting, certain kinds of legal advice and representation, organising debt arrangement schemes etc). The costs of the enforcement process and the incentives offered by different procedures, cannot be ignored in any proposals for reform...In practice, of course, the measures must be in place to make sure that the decisions taken by enforcement agents can be relied on to be appropriate and party-neutral - which is a question of training, incentives, work profile and regulatory supervision...In principle I think the formal regulation of sheriff officers and messengers-at-arms compares quite well with regulation in many other European jurisdictions."<sup>592</sup>

"People living in poverty have little confidence in or respect for Sheriff Officers who have made a great deal of money out of inflicting misery on those unable to pay their debts. There may be few formal complaints against Sheriff Officers. However, perhaps that is because, outside of the legal profession, nobody knows who to complain to or how. Certainly no-one seems to have been keen to bring these rights to the attention of these living in poverty."<sup>593</sup>

"While some Sheriff Officers may carry out their duties in a considerate manner, there is a great body of evidence from debtors and the advice sector showing that their behaviour has contributed significantly towards the stress and upset felt by debtors.... Ultimately we would like to see the introduction of a nationalised group of enforcement officers based in each sheriff court and directly employed by the court to assist the diligence process."<sup>594</sup>

"The level of complaints against Sheriff Officers is not particularly high, but given the powers they have it is important that they are seen to be acting properly."<sup>595</sup>

"...the conflict which can arise in relation to functions performed by them in debt collection and enforcement of court decisions ... could benefit from a review focusing on their qualifications, training and accountability."<sup>596</sup>

"The Council works closely with its firm of Sheriff Officers. This partnership helps to ensure that the Sheriff Officer performs his difficult task in a manner acceptable to the Council. This policy has been successful. This may be illustrated by the lack of any complaints to the Council via its formal complaints policy concerning the conduct of the Sheriff Officer."<sup>597</sup>

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<sup>592</sup> *The Regulation of Civil Enforcement Agents in Europe.*

<sup>593</sup> Lothian Anti-Poverty Alliance.

<sup>594</sup> Sheriff Court Users Group.

<sup>595</sup> Inverclyde Council.

<sup>596</sup> Falkirk Council.

<sup>597</sup> Moray Council.

"In the experience of this Council the sheriff officers carry out their role in a polite and helpful manner. The only complaints we have ever had from debtors were about the Sheriff Officers calling, not about their behaviour. Some of the allegations made against the Sheriff Officers may be true but each case would need to be looked at in the context of the situation the Officers encountered...[Review] may be desirable, but it should be said that those involved with the recovery of debts for and on behalf of the Council are impressed with the manner in which the sheriff officers operate."<sup>598</sup>

"Our members have found that Enforcement Officers carry out their duties in a professional manner."<sup>599</sup>

"The evidence of debtors is that sheriff officers all too frequently add to the distress of debtors when executing diligence on behalf of creditors. We are aware that few formal complaints are lodged against Sheriff Officers and feel that this is likely to be because of a lack of awareness of any complaints procedure available. ... A nationalised system of enforcement officers should ultimately be introduced."<sup>600</sup>

"Sheriff Officers, like the police, prison warders, the armed services and the like, often have a difficult job to do which may bring them into conflict with the public. ...Sheriff Officers also had to contend with a political campaign of non-payment at the time of the Community Charge. The Society does, however, agree that there are issues relating to the profession that should be subject to the review in the light of past experience and to comply with modern requirements."<sup>601</sup>

"Sheriff Officers should be part of the Sheriff Court system where they would be properly trained and supervised at all levels and provide a uniform service over the whole of Scotland. At the present time it is fragmented service with no overall control."<sup>602</sup>

"We take grave exception to the Report's insinuations concerning the conduct of Sheriff Officers. It would appear that in both the Scottish Parliament's and the Working Group's rush to create a "socially inclusive" Scotland they have chosen to scapegoat Sheriff Officers for the ills of society. This is simple minded and like blaming the police for over crowded prisons. Perhaps the Working Group should examine the conduct of creditors, debt recovery firms, solicitors, local authorities, H M Customs and Excise, the Inland Revenue and others, all of whom instruct Sheriff Officers. Sheriff Officers cannot be blamed for the poverty and indebtedness within Scotland."<sup>603</sup>

### Advice Sector

"Delegates also exchanged clients' experiences regarding sheriff officers carrying out diligence. Their experience was that sheriff officers proved supportive, providing useful information to people about benefits and where to go to obtain money advice. The root problem with clients' complaints lay with issues about the debt itself, often connected to an uncoordinated approach taken by local authorities in collecting debts due to different departments."<sup>604</sup>

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<sup>598</sup> Shetland Islands Council.

<sup>599</sup> The Finance and Leasing Association.

<sup>600</sup> Improving Debt Recovery Working Group, an interest group comprising representatives of Scottish Socialist Party, Scottish National Party and certain religious, not for profit advice sector and poverty action organisations.

<sup>601</sup> Society of Messengers-at-Arms and Sheriff Officers.

<sup>602</sup> Horace Jann.

<sup>603</sup> Stirling Park, Messengers-at-Arms & Sheriff Officers.

<sup>604</sup> *Money Advice Scotland Spring Journal, incorporating Conference 2001*, awaiting publication.

"The code of conduct and complaints procedure should be reviewed in consultation with the society [of messengers-at-arms and sheriff officers] to ensure that it complies with the requirements of the Human Rights Act and with a humane and fair debt recovery system, placing it on a statutory footing, if required. The operation of this self-regulated system of complaints should be made subject to further reference to the Legal Services Ombudsman. If a serious breach was found, the Ombudsman would have powers to make the debt unenforceable in law. The creditor's remedy would then be against the sheriff officer. The forms in the Debtors (Scotland) Act 1987...should be amended to include information about the complaints procedure."<sup>605</sup>

### Research

"There was a general belief that the system was stacked against creditors, with too much protection for debtors at both court and diligence stages...They believed that there should be a role for the courts - or the state in some form - to ensure payment of money due."<sup>606</sup>

"At the early stages of recovery the greater use of the telephone and the increasing computerisation and sophistication of procedures can be identified as a new trend. The involvement of advice agencies has also increased, with creditors now often reporting dealings with such groups and commonly following a practice of referring defaulters to such agencies."<sup>607</sup>

"The overwhelming majority of interviewees were not satisfied with current debt enforcement procedures. In summary, this dissatisfaction appeared to be attributable to disappointing outcomes in relation to initial expectations, a lack of information about post-decree procedures, and the cost and time of enforcement procedures."<sup>608</sup>

"Respondents' recollections of poidings revealed disparities between the conduct of different sheriff officers. Reports ranged from those who said that the sheriff officers '*couldn't have been nicer*' and carried out the poiding in a discreet and sensitive manner, to those who related accounts of aggressive behaviour and intimidation..... Despite the experience of many, it was also reported by others that sheriff officers were helpful and informative. There were respondents who rated them as an important source of information. However, as none knew what the statutory obligations of sheriff officers were, they were unaware whether or not these obligations had been met. Most people in this position welcomed any information about what was happening to them regardless of where it came from."<sup>609</sup>

"These chaps (sheriff officers) are agents of the court, regulated by the courts. We now have people at the door who are not regulated. We have been forced to do that. We are a separate agency. I think you will find some agencies use guys who are a far cry from a sheriff officer. You are more inclined to get problems with these guys than a sheriff officer."<sup>610</sup>

"Respondents were anxious to stress the need for wider availability of information about court procedure and diligence in the form of leaflets and literature. Many believed that the

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<sup>605</sup> Improving Debt Recovery Working Group, an interest group comprising representatives of Scottish Socialist Party, Scottish National Party and certain religious, not for profit advice sector and poverty action organisations.

<sup>606</sup> *Study of Commercial Creditors*, ch 8, para 17.

<sup>607</sup> *Ibid*, para 21.

<sup>608</sup> *Study of Individual Creditors*, ch 4, para 79.

<sup>609</sup> *Study of Debtors*, ch 4, paras 61, 67.

<sup>610</sup> *Study of Facilitators*, ch 6, para 13.

provision of some literature would allow people to make informed choices about selecting a course of action and thus improve their availability to choose the right path." <sup>611</sup>

"Some sheriff officers were characterised as being insensitive or even aggressive. One respondent suggested that sheriff officers should be trained to deal with situations sensitively...One respondent argued that there should be more women employed as sheriff officers. She felt that male sheriff officers could be intimidating, particularly when dealing with single women." <sup>612</sup>

### Historical Context

"The story of the political storm caused by the poll tax need not be told here. Some of the effects of that storm were quick others were slow. ....that poindings was killed by the poll tax is more certain. Had the poll tax never been introduced, it seems likely that poindings, reformed by the 1987 Act, would have faded from the political agenda. But the poll tax aroused such opposition that many refused to pay it. ... But poindings were commonly used. In the public mind "poll tax" and "warrant sale" became associated, and opposition to the former rekindled the old opposition to the latter. Long after the poll tax had disappeared, the hostility to poindings continued to smoulder." <sup>613</sup>

"A similar problem may arise in relation to the collection of unpopular taxes: thus the Scottish Sheriff Officer who has to collect outstanding poll taxes is associated with its unpopularity." <sup>614</sup>

### Debt Collection

"It would be more productive to review the activities of debt collection agencies that are not regulated by the courts." <sup>615</sup>

"There is concern in regard to companies of sheriff officers also operating as debt collection agencies. This dual role of officers of court and private commercial concern can easily lead to confusion. Debtors receiving headed notepaper with the logo of a company established as sheriff officers can be led to believe that diligence is to be carried out, when in fact it is a letter from the debt collection side of the business. Regulations must be tightened to ensure that this is not a situation that could be abused to the benefit of ordinary commercial creditors and the detriment of debtors confused at the dual role adopted by these companies." <sup>616</sup>

"It should be recognised that the number of Officers is small, particularly outside the major cities, and that the viability of their business would be seriously affected by splitting the debt collection aspects from other court enforcement aspects of their role. We cannot see any particular conflict of interest between these two duties where officers act on the authority of the court with no interest in the issue other than their fee". <sup>617</sup>

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<sup>611</sup> *Study of Debtors*, ch 5, para 45.

<sup>612</sup> *Ibid* ch 6, paras 23, 24.

<sup>613</sup> Professor George L Gretton, *SLT*, 2001 (Articles) p 255.

<sup>614</sup> *Regulation of Enforcement Agents in Europe*, p 221.

<sup>615</sup> Richard Montague.

<sup>616</sup> Scottish Sheriff Court Users Group.

<sup>617</sup> Scottish Liberal Democrat Party.

"Where Sheriff officers and other debt recovery agencies share accommodation and personnel there is a problem of defined roles. We would welcome proposals for training and supervision to tackle these problems".<sup>618</sup>

"Companies of Sheriff Officers should not be allowed to trade as debt collectors, as this causes confusion among debtors."<sup>619</sup>

"We believe that, by using Sheriff Officers for debt collection, we obtain a much higher standard of service than we would obtain through using debt collectors. In the views of debt collectors, the Sheriff Officers are often too soft and ineffective. We would caution against any move which would expand the role of largely unregulated debt collectors and diminish the role of Sheriff Officers".<sup>620</sup>

"Our experience suggests that collection agents can usefully combine the role of enforcement officer with sensitive debt collection arrangements".<sup>621</sup>

"Although no problems have been experienced by [us] with the role of enforcement officers, the conflict which can arise in relation to functions performed by them in debt collection and enforcement of court decisions is appreciated and could benefit from a review focusing on their qualifications, training and accountability".<sup>622</sup>

"The review of the role of enforcement officers should be widened to cover the possibility of a code of practice and criminal liability for breaches by debt collectors".<sup>623</sup>

### Access to Information

"Information is the key factor in good and effective enforcement. With proper information uneconomic actions are avoided, circumstances are determined and appropriately measured remedies can be taken. Access to reliable information about the debtor is vital."<sup>624</sup>

"Disclosure of information, if it can differentiate between who can and who cannot repay their debts would be extremely helpful in pursuing the correct course of recovery action."<sup>625</sup>

"The Institute agrees that access to a debtor's financial circumstances is crucial to creditors. The availability of such information will reduce the number of court actions leading to abortive enforcement. This would save court fees, legal costs and wasted judicial time. The Institute notes the reasons why such disclosure is not yet possible, however, but supports the recommendation set out at the end of paragraph 97 that the Executive should continue to explore the scope for sharing information about debtors' circumstances. In doing so, the Executive should seek to ensure that any such scheme would prevent an unscrupulous debtor from hiding assets by withholding relevant information."<sup>626</sup>

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<sup>618</sup> Scottish Local Government Forum Against Poverty.

<sup>619</sup> Improving Debt Recovery Working Group an interest group comprising representatives of Scottish Socialist Party, Scottish National Party and certain religious, not for profit advice sector and poverty action organisations.

<sup>620</sup> Argyll and Bute Council.

<sup>621</sup> Department of Finance & IT Services, Renfrewshire Council.

<sup>622</sup> Falkirk Council.

<sup>623</sup> North Ayrshire Council.

<sup>624</sup> The Advice Shop, Edinburgh.

<sup>625</sup> Dundee Anti Poverty Forum.

<sup>626</sup> Institute of Credit Management.

"If creditors were able to obtain accurate and up-to-date information on debtors' circumstances, particularly financial circumstances, at an early stage in the process, creditors would be able to act more efficiently and effectively by making better informed decisions on the most appropriate way to recover debts and deciding whether, and by what means, to pursue repayment."<sup>627</sup>

"Access to information about debtors' circumstances is pivotal in achieving the principle of least coercion. Creditors can only make the right judgements regarding the most appropriate course of action if debtor information is available. Unfortunately, there is clear evidence that debtors, for whatever reason, are unwilling to provide this information and it is hoped that an improved advice and information service can remedy this."<sup>628</sup>

"Access to information from third parties can obviously be of use in developing an enforcement strategy: by reducing fruitless visits to the wrong premises, indicating whether the debtor's employment situation is such that financial difficulties are to be anticipated, and facilitating enforcement through "less intrusive" means such as earnings arrestment. The structure of the enforcement system is also an important consideration, however. Legal systems vary in the extent to which they centralise or regionalise debt recovery/enforcement. Where a limited number of competent authorities have responsibility for the debtors in their area, knowledge of the individual debtors and their circumstances is increased, and the existence of multiple over-indebtedness may be much more readily apparent. The existing Scottish system fares better than England and Wales in this respect, since a greater amount of work is channelled through regionally based messengers-at-arms and sheriff officers, but in theory much more could be done. A growing number of European jurisdictions channel the recovery of public debts through regional offices/agents, making it possible to obtain a better overall picture of a debtor's situation, and presumably deal with more than one debt in any enforcement measure adopted. Typically this may also assist in the funding of enforcement, given that the fees involved are often a set as a percentage of the debt. Thus if the same office deals with large debts (e.g. VAT) as well as small ones (e.g. parking fines) it can subsidise the cost of collecting the small debts from the fees obtained from the large ones."<sup>629</sup>

"Access to information giving a clear picture of a debtors financial circumstances is important provided that it has results in creditors taking appropriate recovery action and a positive outcome for the debtor. Advice agencies currently prepare detailed financial statements for their clients and send these to creditors. However this does not always result in creditors taking the most realistic recovery methods. When presented with a full financial picture local authorities have still frequently passed debts for several years council tax over to different firms of sheriff officers in the full knowledge that debtors do not have the ability to pay. Likewise consumer creditors can raise a court action to obtain a decree even though they have a financial statement outlining that they cannot realistically expect more money from the debtor than they may already be receiving in pro rata repayments. Therefore mechanisms must be put in place to stop this process and ensure that under any new system of debt arrangement or other court hearings the disclosure of full financial details results in the debtor's circumstances being taken into account before further (possibly inappropriate) recovery action by creditors is permitted."<sup>630</sup>

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<sup>627</sup> East Ayrshire Council.

<sup>628</sup> Fife Council.

<sup>629</sup> *The Regulation of Civil Enforcement Agents in Europe*.

<sup>630</sup> Improving Debt Recovery Working Group an interest group comprising representatives of Scottish Socialist Party, Scottish National Party and certain religious, not for profit advice sector and poverty action organisations.

## Referred to in Part 4, Debtor Protections

### Debt Arrangement Scheme - SLC

"Our proposals were rejected by the government of the day for a number of reasons. First, it was felt that voluntary arrangements brokered by money advice workers and debt counsellors worked well in practice, and that this precluded any need for a statutory basis. Secondly, it was felt that a voluntary trust deed would be more appropriate in many cases. Linked to this was the argument that there was no need for a process so closely resembling sequestration in bankruptcy. Thirdly, it was felt that our recommendations were too complicated. Fourthly, it was argued that the scheme would be unfair to subsequent creditors, who would not benefit from the scheme and yet could not enforce their debts against the debtor during the currency of the scheme. Fifthly, the experience of other legal systems was that such schemes would be unsuccessful as debtors usually failed to keep up payments. It was therefore thought that the scheme would simply be an additional administrative burden with a high failure rate, offering no long-term comfort to the debtor. Sixthly, it was thought that the schemes were set up at too late a stage of the debtor's indebtedness. Multiple debt should be tackled at an earlier stage, through debt counselling for example. Finally, it was argued that the schemes would have implications for the public purse, which would have to be met by the taxpayer. Given the expected high failure rate, and the fact that the schemes were unlikely to significantly reduce the number of sequestrations, it was considered that the benefits would not outweigh the expenses and could not be justified."<sup>631</sup>

### Debt Arrangement Scheme - Support and Concerns

"We believe that this could be the most important step forward in the proposals, recognising the prevalence of multiple indebtedness and offering a way forward which does not offer an advantage to the creditor who chooses to use access to more coercive remedies. The detail of any such scheme is important, particularly in encouraging disclosure and offering advice; adequate training of court personnel involved would also be an important dimension. While we would see these as an overall strategy to be held together; effective advice provision and statutory debt arrangement scheme would be cornerstones of such a way forward."<sup>632</sup>

"The establishment of a statutory debt arrangement scheme is vital to dealing with multiple debt situations. Currently it is extremely difficult to establish reasonable debt arrangements for multiple debt situations, as it is the creditor who pushes hardest for repayment who is most likely to be successful. This is of course to the detriment of the other creditors."<sup>633</sup>

"It is agreed that establishing a statutory debt arrangement scheme should be a central element of a new approach for the longer term. For the new proposed procedures to be workable, a debt arrangement scheme similar to the system in England and Wales needs to be implemented. A new systems characteristics must include: Taking account of all debts owed, including Council Tax and rent arrears; Taking account of the debtor's overall circumstances, and that of his family; Taking account of the ability to pay realistic sums of money and to provide debtors with some fallback situation, when they stumble on an emergency; Must be able to cope with debtor's personal circumstances which could change.

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<sup>631</sup> Scot Law Com No 177, para 5.54.

<sup>632</sup> Debt on our Door Step Campaign, an interest group comprising representatives of a range of church groups, credit union movement, Citizens Advice Scotland, Child Poverty Action Group, Local Government Forum Against Poverty and other anti-poverty groups.

<sup>633</sup> Citizens Advice Bureau, Peniciuk.

The system needs to build in the facility for applications for variations of an Order to be made. Similarly, if a debtor's circumstances are the same as when the application is made and the payments were set too high to be realistic, then a system needs to be in place to take account of such a situation. The debt arrangement scheme must be time limited. Cognisance must be taken of overall levels of indebtedness when setting the limits for a debt arrangement scheme. The current system in England does not take account of the real debt problems people are facing. Clear guidance to both debtor and creditor that interest has been frozen from day 1 (or not). Where debtor maintains payments under a debt arrangement scheme they must be free from all diligence. There needs to be sufficient information and money advice providers available to assist debtors with completing application forms. The issue of adequate funding of advice services is raised again in this context. Any system adopted should take account of other disbursement systems available, which should help reduce setting up, and running costs of such a system." <sup>634</sup>

"Completely, currently the Scottish legal system does not recognise multiple indebtedness outwith the context of bankruptcy. Debt is an imbalance between income and expenditure, multiple debt is where more than one obligation is effected by it. Most debts which get to decree stage are the tip of the iceberg. Balance cannot be achieved without reference to the overall financial situation. The absence of a debt arrangement scheme was a major contributing factor in the pre 1993 rise in sequestration's. Since then protected trust deeds have continued to rise year on year. The need is there the only matters are how to deliver it efficiently. Again the numbers of applications will fall once the negotiating norm has been established. With regard to a debt arrangement scheme it must be capable of suspending all enforcement action, during its course, otherwise there will be loopholes, that will effect the stability of any arrangement. As far as priority of payments is concerned court or official enforcement costs incurred by any creditor should be preferred, before payment of outstanding debts." <sup>635</sup>

"The Institute is supportive of a statutory debt arrangement scheme, and is comforted to note that only *accredited* money advisers will be involved. The Institute trusts that the Executive will be most supportive of the "free" money advice sector rather than those which seek fees from debtors." <sup>636</sup>

"The Association is supportive of the concept of a statutory debt arrangement scheme subject once again to such a scheme not being used to frustrate the collection process. Consideration needs to be given to the prioritisation and apportionment of payments between various creditors." <sup>637</sup>

"The principle is a good one but of concern are the different creditors who are involved with conflicting interests and aims. The public sector has greater social responsibilities and obligations compared to the private sector with profit as their main aim. Different types of credit and debt are also involved with an obvious problem being Council Tax which continues to accrue. Any scheme would have to be underpinned with the principle of preventing further debt from accruing which may be at the expense of other creditors interests which may not be to their liking. Debtors may also view such a scheme as a further avenue to avoid or delay payment." <sup>638</sup>

"We agree that in principle a statutory *debt arrangement scheme* should be a central element of a new approach for the longer term. A *debt arrangement scheme* would

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<sup>634</sup> Money Advice Scotland.

<sup>635</sup> The Advice Shop, Edinburgh.

<sup>636</sup> Institute of Credit Management.

<sup>637</sup> Institute of Revenues, Rating and Valuation (Scottish Branch).

<sup>638</sup> Angus Council.

introduce a systematic, manageable and logical approach to debtors with multiple debt problems and allow debtors to make orderly and regular payment of their debts to their creditors. The court would formally approve debt repayment plans devised by accredited money advisers for people in multiple debt, if in the interests of all parties, and act as a "diligence stopper" blocking any *enforcement* action operating. We recommend that local authorities be treated as preferred or secured creditor and that there is no maximum prescribed period for repayment with a discharge of debts on payment of a composition of less than their full amounts." <sup>639</sup>

"Non statutory debt arrangement schemes already exist and we see no benefit in introducing this into statute. An enforcement of a statutory debt arrangement scheme, thereby preventing action being taken against a debtor, could encourage people to incur additional debt. Under these proposals, a debtor could deliberately exceed his financial limits in the knowledge that the only recourse would be the implementation of such a scheme enabling him to arrange re-payments based upon his previous disposable income. In respect of government taxation it is important to note that the payment is already a statutory obligation. Is it the Working Group's intention to superimpose the suggested new statutory debt arrangement scheme upon the statutory obligations that already exist? Should such a scheme be introduced there will be a great fear that this will place an unfair monetary burden upon creditors, cause an unreasonable delay in the recovery process and allow debtors to manipulate the system to their advantage and to the detriment of creditors. From the information available to date it would appear that debtors could use the scheme as a stalling mechanism to avoid their liabilities." <sup>640</sup>

"The creation of a statutory debt arrangement scheme is vital to a healthy and humane enforcement system. My information about such systems in other European jurisdictions is rather limited, but I am aware that a number of different approaches exist (particularly in relation to funding of the schemes and to the degree of control exercised over the debtor who is subject to debt arrangement). I imagine it would be helpful to consider them in planning a Scottish system. I understand that the European Commission recently issued contracts for two studies on over-indebtedness (one law, one economics) as part of its programme for tackling social exclusion." <sup>641</sup>

"The suggestion of debt arrangement scheme is fine in principal but it begs the question 'who is going to pay for it?' Would not wish to see a similar situation arise as Northern Ireland where the Enforcement of Judgments Office has resulted in major delays in cases being dealt with. This has arisen from major under funding of the system. For instance, what procedure is in place where, under a debt arrangement scheme: the debtor fails to maintain payment, the debtor takes further credit or incurs further debt." <sup>642</sup>

"This is absolutely essential and long overdue. Even where a debtor seeks money advice, the voluntary nature of these negotiations means creditors can still refuse perfectly reasonable repayment offers. This is reflected in the huge increase of Protected Trust Deeds, which often result in a poor return to creditors, due to the fees charged by insolvency practitioners. A statutory debt arrangement scheme would allow either creditor or debtor to seek judicial intervention when things go wrong, and precipitate a realistic sustainable repayment plan to all creditors." <sup>643</sup>

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<sup>639</sup> East Ayrshire Council.

<sup>640</sup> Stirling Park, Messengers-at-Arms & Sheriff Officers.

<sup>641</sup> *The Regulation of Civil Enforcement Agents in Europe.*

<sup>642</sup> Credit Services Association.

<sup>643</sup> Pete Mowat.

"Multiple indebtedness is an escalating problem. It is a situation that the Debtors (Scotland) Act did not address. The existing system is geared towards both payment of and enforcement on individual debts. We are therefore fully supportive of proposals for the implementation of a statutory debt arrangement scheme. We see this as the cornerstone of a system of managing multiple debts and would be to the advantage of both debtors and creditors. There are many examples of creditors taking out court action which results in them being paid the same sum under a time to pay direction or order that they were offered informally. Thus these actions do not benefit the creditor, the debtor, or the court. They add time, cost and considerable additional stress. The debt arrangement scheme could ensure that both the debtor and creditor would know exactly where they stood. All existing creditors at the time of application could receive repayments in a more systematic fashion than at present, and would all be treated fairly. It would also save court time and ease the burden on debtors and money advisers of constantly having to renegotiate with certain creditors who demand changes in repayment arrangements. If debtors were informed of a system of repayment that existed to help them make realistic payments to multiple creditors they may be more likely to seek help at an earlier stage than at present. The present system focuses on punishment for failure to pay rather than assistance in making repayments. Many debtors are aware at a reasonably early stage that they are unable to meet their financial commitments, but fear there is nothing they can do. This fosters a 'head in the sand' approach to dealing with debt problems for most debtors, which can be overcome by early intervention methods that offer a positive 'spur to payment' as opposed to the negative 'spur' of the threat of diligence."<sup>644</sup>

"My main concern about the Report is that it refers to a "debt arrangement scheme", participation in which will stop all enforcement action. The debt arrangement scheme is not fully defined in the glossary. However, I would be concerned if a scheme is envisaged that replaces Trust Deeds. In my view it would be wrong to replace Trust Deeds as they have been used successfully for many years, and they ensure the appointment of a properly qualified individual to act as Trustee. Trust Deeds are highly flexible and are currently being used very effectively to tackle the modern problems faced by debtors and their advisers."<sup>645</sup>

"We strongly agree that the establishment of a statutory debt arrangement scheme should be the cornerstone of the debt enforcement system in the 21<sup>st</sup> century. One of the major problems of the current provisions of the Debtors (Scotland) Act is that it takes no account of the multiple debt problems. We would hope that the proposed system for debt arrangement outlined in the IDRWG Report could assist in the development of this scheme. Among the main features outlined in the Report were: The Debt Adjudicator will oversee all time to pay applications made under the Debtors (Scotland) Act and arrange payments to all creditors in a multiple debt situation where a Debt Arrangement Scheme has been applied for by the debtor. Each sheriff court jurisdiction shall appoint a number of Debt Adjudicators (dependent on size of local area/demand on service). Only one adjudicator would sit at each hearing. These individuals could be legally qualified or from a social work/welfare rights background. Every action for payment summons issued by the sheriff court (excluding eviction and reparation) served on an individual debtor for a sum up to £25,000 will, in addition to the current time to pay application, state that any other debts can be included in a debt arrangement scheme application. There should be no limit to the total debt dealt with under the procedure, but no individual debt shall be over £25,000. If the liability or the amount of the debt is in dispute the debtor will return the summons to the court indicating intention to lodge a defence and the case will call before a sheriff. If the sheriff finds in favour of the creditor at this hearing the debtor shall subsequently have recourse to the debt adjudicator to apply for time to pay on this and any other debts they may have. Debt arrangement hearings may take place in a room at the sheriff court, or in another venue in

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<sup>644</sup> Scottish Sheriff Court Users Group.

<sup>645</sup> Association of Business Recovery Professionals.

that jurisdiction e.g. church hall, conference facilities. Proceedings will be conducted in an informal manner that will be clearly established by published guidelines. Hearings will take place via an appointment system, possibly including evenings and weekends. We believe that the introduction of a statutory debt arrangement scheme should make the most significant contribution to make in providing debtor protection. However, in order for the scheme to succeed it must be accompanied by a massive investment in the advice sector."<sup>646</sup>

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<sup>646</sup> Improving Debt Recovery Working Group an interest group comprising representatives of Scottish Socialist Party, Scottish National Party and certain religious, not for profit advice sector and poverty action organisations.

## Referred to in Part 5C, Diligence against Earnings

### Use of Earnings Arrestments

"The majority of commercial creditors and their agents (solicitors, debt collectors and sheriff officers) stated that an earnings arrestment was their first choice of diligence when considering enforcement of a debt and was always used if a debtor's employment details were available. The general view was that earnings arrestments were an efficient and effective means of debt recovery resulting in regular, guaranteed payments towards a debt".<sup>647</sup>

"The vast majority of our consultees were of the view that earnings arrestments and to a lesser extent bank arrestments were less coercive diligences than poinding and sale, and that where a debtor had earnings or other funds, arrestment was to be preferred".<sup>648</sup>

"Alternative means of collecting money such as ..... earnings arrestments are far more effective - for both creditor and debtor".<sup>649</sup>

" Although earnings arrestments are generally a good model of the debt recovery process, their effect can be magnified by the lack of knowledge of rights available. This emphasises the need for further free advice provision. In theory at least, the interests of the creditor are well balanced with the rights of the debtor. The debtor has a source of income, to which the creditor is allowed only restricted access, regulated by the courts".<sup>650</sup>

"....it is still the most popular form of recovery for 'ordinary' creditors accounting for nearly half of all cases where enforcement action had been taken in 1998".<sup>651</sup>

" Creditors should previously have taken reasonable steps to attempt the less intrusive means of enforcement, namely arrestment".<sup>652</sup>

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<sup>647</sup> Overview, p 29, para 9.

<sup>648</sup> Scot Law Com No 177, p 9, para 2.19.

<sup>649</sup> Shelter Scotland, Justice and Home Affairs Committee, Stage 1 Report on the Abolition of Poindings and Warrant Sales, Vol 2, Annexe F, p 192, para 3.

<sup>650</sup> Improving Debt Recovery Working Group, *Improving debt recovery in Scotland*, p 38.

<sup>651</sup> Debt on our Doorstep, p 16.

<sup>652</sup> *Striking the Balance*, p 21, para 106.

## Referred to in Part 6, Enforcement Authorised by a Summary Warrant

### Summary Warrant Diligence

“We strongly support an increase in debtor protection under summary warrant. At present debtors have no time to pay rights and offers of repayment are accepted at the discretion of officers of the court. This can vary depending on the area and the specific officers”.<sup>653</sup>

“It is essential that debtors are afforded the opportunity to apply for Time to Pay Directions and they have the opportunity to appear in court, if they so wish or to have a representative. This is not intended to undermine the fact that Council tax is a state debt and needs to be collected but rather giving those who do wish to pay the opportunity to do so, and for the Court or other Arbiter to understand a clearer picture of the debtor’s situation..... Given the ‘*It Pays to Pay*’ document and research carried out by MAS, it is essential that COSLA are invited to provide guidance to local authorities in terms of Corporate Debt Recovery Strategies. This would enable Local authorities to collect their debts in a humane way, which takes account of both creditor and debtor interests”.<sup>654</sup>

“Yes, but any change to the Summary Warrant procedure which would make it more bureaucratic would increase the administrative burden and have a detrimental effect on collection levels at a time when Councils are being encouraged to increase their collection levels and criticised when they fail to do so.....Perhaps increased awareness of the system is all that is required rather than further protection and the increased availability of advice may resolve this. Care has to be taken not to introduce further time delays into the system and as such introducing opportunities for debtors to avoid or delay payment”.<sup>655</sup>

“Most local authorities endeavour to make contact and provide advice to debtors long before summary warrant stage. Even after warrants are issued most local authorities are keen to intervene and to come to an arrangement with debtors. A critical factor affecting the ability of local authorities to provide an effective advice service to debtors is a lack of resources. It is also important to note that although local authorities are involuntary creditors they are measured among other things on the cost of collection and the level of Council tax recovered. Council Tax debt accrues year on year therefore sound advice is needed to ensure debtors manage current (ongoing) liabilities and do not increase their historic debt. Where debtors do not respond to creditors, or offers of advice and assistance, there is little option but to pursue through legal channels.....The Council is concerned that the recommendation for increased debtor protection under summary warrants may be weighted too much in the favour of debtors to the detriment of creditors”.<sup>656</sup>

“In the case of Council Tax a minimum of 3 prior requests for payment will have been issued allowing a debtor experiencing financial difficulty adequate opportunity to contact the local authority. The proposal that the summary warrant process should be followed by additional notification will inevitably lead to a delay in collection of debt. This is considered unnecessary in view of the improved access to advice at earlier stages in the process. The additional notification is also likely to lead to increased collection costs, not only for the local authority, but also for the debtor, unnecessarily increasing the level of indebtedness. To consider the removal of the summary warrant process for collection of local and central government debts is considered impractical given the debtor numbers concerned and would inevitably lead to considerable delays in court processes which would have a detrimental

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<sup>653</sup> Citizens Advice Bureau, Musselburgh & District Office.

<sup>654</sup> Money Advice Scotland.

<sup>655</sup> Aberdeen City Council.

<sup>656</sup> East Dunbartonshire Council.

effect on collection.....While it is true that there has not been a co-ordinated approach to the collection of local and central government debts, the development of corporate debt policies within local authorities may overcome this problem at local level”.<sup>657</sup>

“The most commonly issued recovery document is the reminder. This informs a debtor that Council Tax instalments are in arrears.....At the reminder stage in the recovery process, the Revenue Section’s staff deals with enquiries from Council Tax-debtors. In many cases these are offers to pay the outstanding amounts via payment arrangements. The staff will always attempt to accommodate such requests, seeking to agree a mutually-acceptable arrangement. If a Council Tax-debtor does not pay a reminder, or contact the Revenues Section to make an arrangement, a Summary Warrant may be obtained. This will result in the addition of a ten per cent surcharge.....Instead of seeking to make recovery more complex, the Council would urge the Executive to act to streamline it, giving Local Authorities the discretion to act within a framework which contains adequate provisions to protect debtors rights but, simultaneously, permits them to quickly and efficiently collect the sums that are due to them”.<sup>658</sup>

“Given that local authorities have statutory duties to serve demand notices and reminders notices for local taxes, any further demand for payment is unnecessary....will delay the recovery process.....may significantly increase local authority costs which in turn will lead to higher local taxes”.<sup>659</sup>

“Summary warrants by their nature proclaim that the debt is a general debt to society that the individual concerned has generated because they have refused to pay. Summary warrant debts are not debts where the individual can plead ignorance - that they were conned into it or were given easy credit where the vendor knew that they could not afford to settle in terms of a legal contract that they have agreed to and signed. The debt is to the community at large”.<sup>660</sup>

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<sup>657</sup> Glasgow City Council.

<sup>658</sup> Moray Council.

<sup>659</sup> Scottish Borders Council.

<sup>660</sup> Robert Telfer.

## LIST OF CONSULTEES

\* Denotes Organisations which have agreed to provide notification of this paper to their associates/members/colleagues.

Association of Scottish Community Councils *	Consumer Credit Trade Association
Centre for Scottish Public Policy	Finance and Leasing Association
Child Poverty Action Group	Institute of Directors Scotland
Citizens Advice Scotland *	
Consumer Credit Counselling Services	Institute of Revenues Rating and Valuation (Scottish Branch)
Edinburgh Youth Social Inclusion Partnership	Institute of Revenues, Rating and Valuation
Eric Liddell Centre	National Association of Valuers and Auctioneers
Improving Debt Recovery Working Group	Registry of Friendly Societies, Industrial and Provident (Co-operative) Societies, Building Societies etc
Money Advice Scotland *	Scottish Chambers of Commerce
Money Advice Trust	Scottish Council of Development and Industry
Paylink Trust	Scottish Federation of Small Businesses
Payplan	Society of Chief Officers of Trading Standards - Money Advice Team
Paypoint	
Poverty Alliance *	Association of Chartered Certified Accountants
Scottish Bankruptcy Advice	Bank of Scotland
Scottish Civic Forum	Building Societies Association
Scottish Consumer Council	Chartered Institute of Bankers in Scotland
Scottish Council for Voluntary Organisations	Clydesdale Bank plc
Scottish Council Foundation	Committee of Scottish Clearing Bankers
Scottish Human Rights Centre	Council of Mortgage Lenders
Scottish Tenants Organisation	Institute of Chartered Accountants of Scotland
Scottish Ex Servicemen's Charitable Organisation	Institute of Payroll and Pensions Management
Shelter Scotland	Lloyds TSB
Stepping Stones For Families	London Scottish Bank plc
Tenant Information Service	Royal Bank of Scotland
Tenants Participation Advisory Service	Society of Law Accountants in Scotland
TWINE	
Welfare Rights Service	
Association of British Credit Unions Ltd.	
Blazons Investment Ltd.	British Energy
Consumer Credit Association	Scottish and Southern Energy plc
Credit Services Association Ltd.	Scottish Gas
Grant Thornton	Scottish Power
HLB Kidsons	BT Scotland
Institute of Credit Management	Scottish Water
Logic Group	Water Industry Commissioner for Scotland
National Consumer Credit Federation	
Property Managers Association Scotland Ltd.	Scottish Enterprise *
Provident Personal Credit Ltd.	Highlands and Islands Enterprise *
Scottish Consumer Credit Association	
Scottish League of Credit Unions	
Scotwest Credit Union Limited	All Unitary Councils
Shopacheck Financial Services Ltd.	CoSLA
Association of British Insurers	Aberdeen Bar Association
Community Business Scotland	Certified Bailiffs Association
Confederation of British Industry (Scotland)	Chambre des Huissiers de Justice du Quebec

Court of the Lord Lyon  
Court of Session Rules Council  
Edinburgh Bar Association  
Enforcement of Judgments Office, Northern  
Ireland  
Faculty of Advocates  
Glasgow Bar Association  
In Court Advice Service  
Judicial Studies Committee  
Law Reform Advisory Committee for Northern  
Ireland  
Law Society of Scotland  
Legal Services Agency Ltd.  
Lord President of the Court of Session  
Part-time Sheriff's Association  
Scottish Association of Law Centres \*  
Scottish Law Agents Society  
Scottish Law Commission  
Scottish Legal Action Group  
Sheriff Court Rules Council  
Sheriff Court Users Group  
Sheriffs' Association  
Sheriffs Principal  
Society of Solicitor Advocates  
SSC Society  
WS Society

A.B & A Matthews  
Archibald, Campbell & Harley  
Brodies WS  
Buchanan Campbell  
Canons  
DLA  
Dundas & Wilson  
Gerber Landa & Gee  
Henderson Boyd Jackson  
MacRoberts  
McCann Fordyce  
McKay & Norwell  
Paul & Williamsons

AA Hutton  
Abernethy, McIntyre & Co  
Advisory Council for Messenger-at-Arms and  
Sheriff Officers  
Alex M Adamson  
Baxter Jackson & Co  
Charles Anderson  
Christopher Lyall & Co  
D Bruce  
David K Bell  
George Walker & Co  
HM Love & Co  
J & M M Booth  
J Marshall Love & Roach  
James Reid & Co  
James Reid & Son  
James S Orr

John Campbell  
Killean & Co  
Llewellyn & Company  
Lowrie & Co  
MacMillans  
Malcolm Smith & Co  
Messrs. McGrigor Donald  
Rutherford & MacPherson  
Scott & Co (Michael M Cameron)  
Society of Messengers-at-Arms and Sheriff  
Officers  
Stirling Park & Co  
Thomas Hannah & Co  
William Caulfield  
William G Kay & Co  
Union Internationale des Huissiers de Justice et  
Officers Judiciares

Scottish Conservative and Unionist Party  
Scottish Green Party  
Scottish Labour Party  
Scottish Liberal Democrat Party  
Scottish National Party  
Scottish Socialist Party  
Clerk to the Justice 1 Committee of the  
Scottish Parliament  
Clerk to the Justice 2 Committee of the  
Scottish Parliament  
Clerk to the Local Government Committee of the  
Scottish Parliament  
Clerk to the Social Justice Committee of the  
Scottish Parliament  
All Members of The Scottish Parliament

Cardiff University  
Glasgow Caledonian University  
Glasgow Graduate School of Law  
Heriot Watt University  
Napier University  
Robert Gordon University  
Strathclyde University  
University of Aberdeen  
University of Abertay  
University of Dundee  
University of Edinburgh  
University of Glasgow  
University of Stirling

Advocate's Library  
House of Commons Library  
House of Lords Library  
Inner Temple Library  
Legal Research Unit  
Mitchell Library  
National Library of Scotland  
Scottish Parliament Information Centre  
Scottish Poverty Information Unit

Catholic Bishop's Parliamentary Office  
Scottish Churches Parliamentary Office \*  
Scottish Interfaith Council

Chamber of Shipping  
Merchant Navy Association  
Merchant Navy Welfare Board  
Members of the DTLR Consultative group on the  
Arrestment of Ships Convention

Scottish Trade Union Congress  
STUC Womens Committee

Relevant Scottish Executive and United  
Kingdom Government Departments and  
Agencies

Members of the public who have been in  
correspondence with the Executive regarding  
issues discussed in this paper