

## **EAST AYRSHIRE COUNCIL**

### **POLICY AND RESOURCES COMMITTEE - 4 OCTOBER 2001**

#### **CONSULTATION DOCUMENT BY THE SCOTTISH EXECUTIVE STRIKING THE BALANCE: A NEW APPROACH TO DEBT MANAGEMENT**

##### **Report by the Director of Finance**

### **1. PURPOSE OF THE REPORT**

- 1.1** This report proposes a response to the Scottish Executive's consultation document outlining proposals for the management of debt following the introduction of the Abolition of Poindings and Warrant Sales Act 2000 which comes into effect on 31 December 2002.

### **2. BACKGROUND**

- 2.1** The Justice and Home Affairs Committee recognised that an alternative must be put in place prior to the introduction of the Abolition of Poindings and Warrant Sales Act 2000 otherwise unscrupulous debtors could use this loophole to evade payment of their debts. The Committee called on the Scottish Executive to bring forward legislation for a humane and workable alternative to the diligence of poinding and warrant sale.
- 2.2** A broadly-based working group on a Replacement for Poinding and Warrant Sale was set up to identify the essential elements of such an alternative and to report to the Justice Minister, Jim Wallace MSP.
- 2.3** The Report entitled "Striking the Balance: A New Approach to Debt Management" has now been published as part of a wide-ranging consultation on the way forward and the Justice Minister now seeks the views of interested parties and organisations on the approach recommended by the working group. The initial reaction of the Justice Minister is to implement the approach that the working group has recommended.
- 2.4** The Report contains broad questions on its recommendations and all Scottish Councils have been asked to respond to the questions set out in the Report and this Council's proposed response is attached.
- 2.5** A glossary of the terms used throughout this document is attached at Appendix 1.

### **3. SUMMARY OF RECOMMENDATIONS**

In summary, the recommendations of the consultation paper are shown below.

- 3.1** Some form of sanction is necessary in order to address the minority of people who can afford but refuse to pay their debts.
- 3.2** Excluding civil imprisonment, the only alternative is to provide for some means of enforcement against valuable but non-essential property.
- 3.3** Commercial debt should be treated differently from domestic debt.
- 3.4** Improved advice and information for debtors at an early stage is the key to achieving better outcomes in resolving debt cases.
- 3.5** Greater access to information held on debtors.
- 3.6** A new judicially supervised enforcement procedure which would provide greater protection for the debtor and more opportunities to achieve negotiated settlement.
- 3.7** The introduction of a statutory debt arrangement scheme.
- 3.8** The need for plain English and user-friendly documentation.
- 3.9** A review of policy on the recovery of unpaid council tax and the use by local authorities of summary warrant procedure.
- 3.10** Increased debtor protection under summary warrants.
- 3.11** A Charge for Payment should be included in all summary warrant diligence.
- 3.12** Time to Pay orders for local government tax debts.
- 3.13** The application of fitness tests to providers of debt, credit and money advice services.

### **4. FINANCIAL IMPLICATIONS**

- 4.1** There are likely to be financial implications for the Council with regard to the resources required to administer the proposed procedures particularly within the Finance Department Revenues Section, the Educational and Social Services Department, Quality and Planning Section and in Legal Services.

## 5. LEGAL AUTHORITY

- 5.1 Legal authority is contained within the Abolition of Poidings and Warrant Sales Act 2000.

## 6. CONSULTATION QUESTIONS AND ANSWERS

- 6.1 ***Please state your name, organisation and address and whether you represent debtor, creditor or other interests.***

East Ayrshire Council, Council Offices, London Road, Kilmarnock, KA3 7BU  
as creditor.

- 6.2 ***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)***

Yes.

- 6.3 ***The working group argue that it is not possible to view poinding 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)***

We agree with the analysis of the working group and consider that the factors identified by them are relevant. In particular, we support 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 Scotland.

- 6.4 ***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)***

We agree with the commentary of the working group. In particular, we support the initiatives flowing from the "It Pays to Pay" report on improving council tax collection, namely that guidelines will be issued to local authorities to ensure consistency of approach and development of corporate debt recovery policies within local authorities.

We have not identified any other issues the working group should have considered.

- 6.5 ***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)***

Yes.

- 6.6 ***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)***

Yes. A wide legal loophole in the *enforcement* system would be created in the absence of some form of final *enforcement*. This loophole could be taken advantage of by debtors who could pay but refuse to do so.

- 6.7 ***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 and 134 - 136)***

Yes and that appropriate checks should be included to ensure that this happens only in appropriate circumstances.

- 6.8 ***Do you agree with the working group that commercial and domestic cases should be treated differently?  
(Part V, paragraphs 86 - 92)***

Yes. Greater debtor protection should be afforded to individuals in their homes than to non-domestic entities in commercial premises.

- 6.9 ***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)***

Yes. Debtors should be made aware of the local availability of money advice at an early stage and have a better understanding of court procedures. Debtors, particularly in multiple-debt situations, should be made aware of the benefit of debt counselling. Overall, debtors would have a better understanding of their options and thereby attain some degree of control over their financial circumstances. This would influence debtor behaviour by encouraging earlier engagement between debtors and creditors. This would be beneficial to debtors by reducing stress and to creditors by accelerating repayment.

- 6.10 ***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)**

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.

**6.11 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)**

The Inland Revenue's records contain details of taxpayers' employment, bank accounts and other assets. We recommend that when a *summary warrant* is obtained, local authorities, or sheriff officers acting as their agents, be allowed access to Inland Revenue records to identify the place of employment or business and bank details of council tax and non-domestic rates debtors. Onward disclosure of the information obtained from the Inland Revenue should be prohibited.

The issues that would have to be considered are:

- Infringement of civil liberty and human rights
- The rights of confidentiality and privacy
- Data protection (the Data Protection Act 1998)
- Primary legislation by the Westminster Parliament

It may be however that if local authorities had improved powers to require employment and financial details from debtors, access to Inland Revenue tax records to trace debtors' employment and bank details may not be necessary.

Upon obtaining a *summary warrant* local authorities in Scotland are provided with legislative powers that enables them to obtain banking and employment details direct from a debtor. Failure by the debtor to supply this information on request is punishable in Scotland by a civil penalty of £50, rising to £200 for each subsequent failure.

Experience has shown that this penalty is not an effective compulsitor. It may be that it should be made a criminal, rather than a civil offence, for a debtor not to comply with a request for employment and banking details. This would bring Scotland into line with the present position in England and Wales.

In Scotland where a person fails to supply information to the Assessor to assist him to carry out his functions in relation to the banding of dwellings for council tax purposes, the person is liable to a fine of up to £500. Where information supplied is knowingly false the person may be liable on summary conviction to a term of imprisonment not exceeding 3 months and/or a fine not exceeding £1,000. It may be that similar powers should be available to local

authorities to assist them in carrying out their function in relation to the collection of taxes.

- 6.12 *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)***

The Debtors (Scotland) Act 1987 resulted in the restriction of goods available for *poinding*. Consequently, few household items of reasonable value are now available in low to middle income group households to make a *warrant sale* realistic. The *diligence* of *poinding* and *warrant sale* is no longer effective. We are of the view, therefore, that the law does require to be modernised and streamlined and that a new procedure is necessary.

The new judicially supervised *enforcement* procedure places advice and information ahead of the enforcement process. The “diligence stopper” provides greater protection for the debtor because it halts procedure against debtors who genuinely cannot pay. Judicial supervision, means enquiries into debtors’ circumstances, quality advice to the debtor, appointment of an adviser by the court and the availability of a voluntary declaration will provide more opportunities to achieve negotiated settlement.

The position of creditors is protected because if all the *enforcement* alternatives have been exhausted, the last-resort action of compulsory sale is competent against debtors who are able to pay their debts by realising valuable non-essential assets but persistently refuse to do so.

We consider that the new judicially supervised *enforcement* procedure is appropriate because it achieves a more equitable balance between the interests, rights and responsibilities of creditors and debtors.

- 6.13 *Do you think that such a procedure should take place in the sheriff court?***

Yes.

- 6.14 *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)***

We do not consider that the provision of additional information and advice alone, without any possibility of *enforcement* action, will be a satisfactory approach for enabling debts to be recovered. Last-resort action against valuable non-essential goods in a debtor’s home, tightly constructed and supervised by the court, must be an indispensable element under the new approach.

**6.15 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)***

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 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.

**6.16 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)***

We fully endorse the need for plain English and user-friendly formats for information aimed at debtors, particularly court documents.

**(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 and 118)***

We agree with the recommendation that a review of policy on recovery of unpaid council tax is required. Under the new approach, local authorities will not be able to take enforcement action against debtors who are unemployed, have no savings and no valuable non-essential goods. The diligence of *arrestment*, *earnings arrestment* and compulsory sale orders will be unavailable against these debtors. The report notes Benefit schemes may assess such debtors as being able to meet on-going liabilities for council tax, water and sewerage charges, however, ongoing liabilities will continue to accrue despite no realistic prospect of recovery. This will be a particular problem in relation to water and sewerage charges which are collected by local authorities but for which no rebate scheme is available.

We do not agree with the recommendation that a review of policy on the use by local authorities of *summary warrant* procedure is required.

Local authorities have a statutory duty imposed upon them to collect taxes, duties and other levies and owe a fiduciary duty to council tax payers to ensure, so far as practicable, that no avoidable loss falls on them.

Local authorities may obtain a *summary warrant* from the *sheriff* for arrears of various taxes, non-domestic rates, water and sewerage charges and other levies.

Local authorities and sheriff officers acting on their behalf have over the years developed administrative practices to elicit payment from tax defaulters after the grant of a *summary warrant* and prior to *poinding*. These administrative practices will usually be cheaper than a *charge for payment* that has to be served by an *officer of court* whose expenses are added to the overall costs of the *diligence*.

The Law Commission in its report of April 2000 stated at page 119:

*“In our 1985 report we recommended that summary warrants should continue to be enforceable by a special statutory procedure rather than by ordinary poindings.”*

*“Moreover, the fact that the creditors are public bodies who retain direct control of diligence justifies a lesser degree of control by the sheriff. We are not aware of any criticism of the fact that summary warrant procedure is different...”*

**(c) *Increased debtor protections under summary warrants (Part III, paragraph 67 and Part IV, paragraph 74)***

We do not consider that increased debtor protection under *summary warrants* is necessary.

The working group recommends that Scottish 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*.

The Scottish Law Commission in its April 2000 report made two recommendations regarding *summary warrants* with a view to incorporating what it perceived as significant debtor protections:

**(i) *A charge for payment should be included in all summary warrant diligence.***

We oppose this recommendation on the basis that it is unnecessary, intrusive and expensive.

The *charge for payment* warns the debtor of the possibility that failure to pay may lead to *diligence*.

A council tax final notice issued by local authorities warns debtors that failure to pay will result in an application being made to the *sheriff* for a *summary warrant* with a 10% surcharge. Debtors are also warned that failing payment diligence may proceed on the summary warrant.

We consider the serving of a *charge for payment* on debtors by *sheriff officers* in *summary warrant diligence* will cause considerable distress to many vulnerable debtors who may have difficulty in understanding the import of the *charge for payment*.

We consider that the cost of sheriff officers serving a *charge for payment* in *summary warrant diligence* (currently £39) will be prohibitive.

**(ii) *Time to pay orders should apply to central and local government tax debts.***

We oppose this recommendation on the basis that it is unnecessary and will slow down the legal process.

*Time to pay orders* are competent after diligence has commenced and give debtors an extension of time for payment. *Time to pay orders*, therefore, are incompatible with the summary nature of *summary warrant diligence*.

The *summary warrant* procedure is meant to be quick and relatively inexpensive. In our view the procedure should retain the advantage of speed and not be slowed by the inclusion of *time to pay orders* which may only serve to increase the indebtedness given the ongoing liability.

Debtors and creditors would prefer to arrive at instalment arrangements through informal negotiations rather than formal *time to pay orders*.

Local authorities can be relied on to give debtors in genuine difficulty additional time for payment.

Council Tax is a continuing liability. Allowing an extended period to pay will create problems for the debtor when the next assessment becomes payable.

In a summary procedure extra steps are best avoided unless strictly necessary.

Local authorities are public bodies who retain direct control of *diligence* and therefore justify a lesser degree of control by the *sheriff*.

**(d) *Rolling out the in-court adviser service more widely across Scotland (Part III, paragraph 42 and Part VI, paragraph 102)***

We agree that the in-court service adviser service presently available in Edinburgh *Sheriff* Court should be made more widely available in Scotland. We consider this will have little impact on local authority debtors however.

**(e) *A thoroughgoing review of the role of enforcement officers (Part III, paragraphs 55 - 57 and Part VI, paragraphs 120 - 121)***

The review would provide reassurance on the professionalism and accountability of sheriff officers.

**(f) *Additional judicial training on debt issues (Part VI, paragraph 113)***

Action which promotes consistency of approach across the country is welcomed.

**(g) *Consideration of the value of fitness tests applied to providers of debt and money advice (Part VI, paragraph 96)***

We agree. High calibre provision of debt and *money advice* is a key element in ensuring a more joined-up network of advice agencies delivering a seamless and high quality service.

**(h) *Action with the UK Government to review fitness tests required for those who extend credit (Part IV, paragraph 73)***

We agree that the UK Government should review fitness tests for those who extend credit. Irresponsible lending can encourage borrowers to take on more credit than they can manage. This is a root cause of many cases of multiple over-indebtedness and can ultimately lead to enforcement measures being taken against them.

**(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)***

We agree. Debtors often resort to borrowing money from sources providing disadvantageous interest rates.

**6.17 Which of the wider recommendations for reform mentioned in the previous question, in your view, have the most significant contribution to make?**

We consider that the core recommendation at 6.16 (g) will make the most significant contribution.

**6.18 If the working group's proposals were implemented, what impact do you think they would have -**

**(a) On debtors?**

If the working group's proposals were implemented, they would have a considerable impact on debtors.

Under the new approach there would be a more humane and workable alternative to the current system.

It would provide very tight restrictions and supervision by the courts. The level of protection and safeguards against misuse for debtors in court procedures would be increased.

It would make debt recovery more reactive to individual circumstances.

It would increase the help available to debtors to manage their repayments or re-schedule their repayments through the improved provision of *money advice* services.

Introducing an advice and information package at the outset would make better quality advice and information more readily available to debtors, particularly the provision of proper and adequate information about court procedures and their consequences. This would increase protection for the vulnerable groups of people by making them aware of how to obtain debt counselling and access local advice services.

Earlier access to *money advice* would help debtors to manage debt situations holistically. *Money advice* would be able to explore opportunities for maximising the income of debtors by checking benefit entitlement, challenging debts where there is no liability, negotiating with multiple creditors, setting up repayment plans, exploring low cost credit options and referring debtors to other advice services.

A compulsory sale order would only be possible in extreme cases.

There would be greater incentives for creditors and debtors to reach negotiated settlements.

Debtors would be allowed to make voluntary disclosure.

Debtors would be encouraged to engage with their creditors at the earliest stage in the process.

There would be a reduction in intimidating collection tactics deployed by some creditors.

The introduction of a “*diligence stopper*” would provide greater protection for debtors because it would halt procedure against debtors who cannot pay.

A greater opportunity would be provided for debtors to contact money advisors before and during the legal process.

A statutory *debt arrangement scheme* would help people with multiple debts to have debt repayment plans formally approved by the court thereby acting as a block on any *enforcement* action operating.

An application for a compulsory sale order would give the debtor an opportunity to obtain information and advice. When this was done the court would then decide whether there were grounds for granting the application. Advice and information would therefore be placed ahead of any *enforcement* process.

The court, prior to granting a compulsory sale order, would have the power in doubtful cases to appoint an adviser to visit a debtor who has not engaged in the process. This would remove the possibility that a person who has not engaged for genuine reasons of inability or fear will not be misconstrued as someone who is persistently refusing to pay or co-operate.

It would almost be impossible under the new approach for a debtor not to become aware of or to take up the benefit of *money advice*.

Less intrusive means of *enforcement*, such as *earnings arrestment* and *bank arrestment*, would have to be used prior to an application to the court for a compulsory sale order.

An application for a compulsory sale order would not to be granted whilst the debtor is taking advice.

Debtors who genuinely are unable to pay and who have no valuable non-essential goods would be filtered out during the application for a compulsory sale order.

The commercial debtor, small businesses and sole traders would have access to better information and to a national debtline and *money advice*.

**(b) *On creditors?***

In a large majority of cases creditors would have earlier access to better information on the debtors' circumstances. This would allow creditors to make better-informed decisions on whether to pursue repayment and if so enable them to deploy the most appropriate means of recovery.

There would be greater incentives for creditors and debtors to reach negotiated settlements under which repayment terms for manageable regular instalments could be agreed.

An application to the court by a creditor for a compulsory sale order would allow the court to enquire into the debtor's circumstances and means. Creditors would be able to see the debtor's circumstances and make informed decisions about realistic payment terms or whether to proceed.

If a creditor has good reason to believe that the debtor has made an incorrect voluntary declaration, he would be able to seek verification of that declaration.

The availability of a last-resort action for domestic cases would send a clear message to debtors that they cannot legally avoid paying their debts.

**(c) *On tax collection and recovery arrangements?***

We are concerned at the suggestion that the summary warrant procedure may be replaced with a more time consuming, confusing and expensive system which is unlikely to improve the position of either the debtor or the creditor.

There will be financial implications for local authorities arising from many of the proposed changes. This should be recognised by the Scottish Executive in the Local Government Finance Settlement.

**(d) *On the courts?***

Because the new approach would be controlled by strict judicial supervision, we consider that the new approach will place a greater workload on the courts, involve additional court time and possible delays in the court process. This may be offset if a greater number of debt matters are resolved by negotiation.

## 7. RECOMMENDATIONS

It is recommended that Members; -

- 7.1 consider the proposed response detailed in section 6 of this report with a view to agreeing the content of the submission to be made; and
- 7.2 otherwise note the contents of this report.

Alex McPhee  
**Director of Finance**

AMcP/BM/JC/DMW  
7 September 2001  
ENC (1)

### LIST OF BACKGROUND PAPERS

1. Striking the Balance – A New Approach to Debt Management (Scottish Executive Working Party Consultation Document (July 2001)
2. Discussion Paper on Pounding and Sale: Effective Enforcement and Debtor Management – Scottish Law Commission Discussion Paper (November 1999).
3. It Pays to Pay – Improving Council Tax Collection in Scotland (CoSLA report 2000).
4. Council Tax Best Practice Guide – Effective Council Tax Billing (CoSLA/IRRV Publication).

Any person wishing to inspect the background papers listed above should telephone James Lally, Senior Administrative Officer on Tel 01563 576148. Any person wishing further information on this report should contact Alex McPhee, Director of Finance on Tel 01563 576300.

# Appendix 1

## CONSULTATION DOCUMENT BY THE SCOTTISH EXECUTIVE STRIKING THE BALANCE: A NEW APPROACH TO DEBT MANAGEMENT

### GLOSSARY OF TERMS

#### **Attaching**

Generally used to describe the effect which *diligence* has on property by prohibiting its disposal pending completion of the relevant *diligence* procedure.

#### **Arrestment**

A form of *diligence* which attaches or freezes a debtor's moveable property which is in the hands of a third party (e.g. money in a bank account). It culminates in an *action of furthcoming* in which the court orders the third party (e.g. 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 *earnings arrestment* mentioned below.

#### **Arrestment Schedule**

A document which implements an *arrestment* by serving it on a person who holds moveable property.

#### **Bank Arrestment**

See *arrestment*.

#### **Charge for Payment**

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 *diligence* may be initiated if payment is not made.

#### **Corporeal Moveable Property**

Property which is tangible (corporeal), is not fixed like *heritable property* and can be handled or moved (moveable). Examples of this type of property include animals, paintings, vehicles and jewellery. Corporeal moveable property is sometimes called moveable property for brevity.

## **Debt Management**

Organising repayment of multiple debts owed to creditors on orderly and regular terms agreed by all parties – often with the assistance of an advisor and usually by facilitating a plan for repayment by instalments which is calculated according to the debtor's means and debts' relative priority.

## **Debt Arrangement Scheme**

A statutory scheme by which debt repayment plans compiled during *debt management* may be formally approved and *diligence* prohibited while it is operating.

## **Decree**

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 *diligence* 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 *diligence*, such as extracts of *summary warrants*, criminal orders for unpaid fines or compensation, foreign judgements registered in Scotland for *enforcement*, arbiters awards and deeds registered in the court books for execution i.e. *enforcement*.

## **Diligence**

The legal procedures by which order 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 prevent 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 *officer of court* carrying out *diligence*.

### **Furthcoming (Action of)**

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

### **Heritable Property**

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

### **Interdict**

A court order prohibiting specified acts.

### **Legally Constituted Debt**

An obligation to pay 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 advisors to counter the problems encountered by clients in debt, which include:

- 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 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.

### **Poinding**

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 staff 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 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 *poinded* articles under a decree or equivalent (other than under a *summary warrant* where specified authority to proceed to sale is not required).

**Warrant Sale**

A sale of *poinded* articles authorised by a *warrant of sale*.

**AGENDA**