



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# MEETING OF THE PARLIAMENT

Thursday 20 March 2014

Session 4

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# Scottish Parliament

Thursday 20 March 2014

[The Presiding Officer *opened the meeting at 11:40*]

## General Question Time

### Energy Sector (Employment)

**1. Christian Allard (North East Scotland) (SNP):** To ask the Scottish Government what plans it has to encourage people with transferable skills to work in the energy sector. (S4O-03037)

**The Minister for Energy, Enterprise and Tourism (Fergus Ewing):** Through Skills Development Scotland, the Scottish Government is refreshing the “Skills Investment Plan for the Energy Sector”, which was first published in March 2011, to better understand the skills needs of employers and target its skills activity accordingly.

Following the publication of the first energy skills investment plan, we introduced the energy skills challenge fund to support those people with relevant transferable skills and experience to secure employment in the energy sector.

**Christian Allard:** Will the minister join me in welcoming the fantastic work that Energy Skills Scotland and its director, Mike Duncan, are doing to address the skills gap that exists in the energy sector? Will he particularly welcome the fact that ESS is based in Aberdeen, the powerhouse of Scotland?

**Fergus Ewing:** Yes, I welcome ESS’s work. It has a very substantial operation in Aberdeen, where it is based, but also operates throughout Scotland.

By sheer coincidence, I was at Forth Valley College just half an hour ago opening its excellent new engineering facility, which has been praised by oil and gas companies. That facility means that the college, together with the other colleges and universities in the energy skills academy, is providing world-class quality training for young people to enter an industry that will provide them with lifelong and excellent career opportunities in oil and gas because, of course, our oil and gas is not running out.

**Dennis Robertson (Aberdeenshire West) (SNP):** Does that new engineering facility provide an excellent opportunity to get more women into the energy sector?

**Fergus Ewing:** Yes. I think that it was Princess Anne who, when last in Aberdeen, asked the oil and gas industry why it was neglecting one half of the population. Misperceptions exist and we need

to dispel those false perceptions because 90 per cent of the jobs in the oil and gas sector are not offshore. Just this morning, I met one young female who had undertaken an energy course specifically for girls in Banff and Buchan College. I commend that example to others. I very much hope that we will see more females being encouraged into the profession. I am aware that Dennis Robertson is championing that excellent cause.

### Literacy and Numeracy Targets (Fife Schools)

**2. Alex Rowley (Cowdenbeath) (Lab):** To ask the Scottish Government how it will meet its targets for literacy and numeracy in Fife schools. (S4O-03038)

**The Minister for Learning, Science and Scotland’s Languages (Dr Alasdair Allan):** We are committed to improving literacy and numeracy levels across the whole of Scotland. The most recent Scottish survey of literacy and numeracy showed a strong performance in literacy in primary and secondary with over 90 per cent of all pupils performing at or above expected levels for reading and writing.

**Alex Rowley:** It is concerning that, in 2011-12, 5.5 per cent of high school leavers left with no passes at Scottish credit and qualifications framework level 3 or better. In years gone by, we have seen many people leave the education system without qualifications and basic skills. It is equally concerning that, since 2007-08, part-time courses in Fife have fallen by 68 per cent. Does the minister agree that we need to look at adults’ requirements to retrain, reskill and brush up on skills and that we should invest in colleges in order to do that?

**Dr Allan:** Literacy and numeracy are important skills not only for adult learning but for lifelong learning. The member’s question gives me the opportunity to mention that, only a couple of hours ago, I was in St Bride’s primary school in Cowdenbeath; one of the very reasons that the school can show great improvement in its curriculum performance is the emphasis that it has put on literacy and numeracy.

The Government is involved in the provision of four literacy hubs throughout Scotland, one of which has a strong base in Fife. I take very seriously the point that core skills around literacy and numeracy are vital for people throughout their lives and working careers.

### NHS Fife (Meetings)

**3. Claire Baker (Mid Scotland and Fife) (Lab):** To ask the Scottish Government when it last met NHS Fife and what issues were discussed. (S4O-03039)

**The Minister for Public Health (Michael Matheson):** Ministers and Government officials regularly meet representatives of NHS Fife to discuss matters of importance to local people.

**Claire Baker:** Sadly, this is not the first time that I have raised concerns about Victoria hospital in Kirkcaldy. The inspection report from Healthcare Improvement Scotland last week said that improvements must be made to care for older people

“as a matter of priority”.

I know that the minister will highlight the improvements in accident and emergency waiting times in Fife. Although those are welcomed, constituents constantly come to me with concerns about elderly patient care. This week, a nurse reported to *The Courier* that

“Staff are under so much pressure it doesn’t take much for the system to get pushed to breaking point.”

Does the minister recognise those reports, which are backed up by staff surveys from the Royal College of Nursing Scotland? What steps will the Scottish Government take to ensure that those concerns are urgently addressed?

**Michael Matheson:** The member will be aware that Healthcare Improvement Scotland conducted a second follow-up inspection in December last year to look at the progress that the board was making. It identified a number of areas in which progress was being made, as well as areas in which it thought that further progress could be made. The board has assured us that it has a robust action plan in place to ensure that it builds on the progress that it has made to date.

I am aware of the issue that the member raises in relation to concerns that staff have raised. It is extremely important that staff feel that they can express their views if they have concerns about the way in which services are delivered in a particular health board area. I encourage the staff concerned to raise those issues through the appropriate channels in their health board or through the national confidential phone line, through which they can raise concerns that will then be investigated. I expect NHS Fife to investigate any concerns that have been raised by family members, patients or staff and to take appropriate action to address any failings that have been identified.

**Roderick Campbell (North East Fife) (SNP):** The minister will be aware of NHS Fife’s recent record on waiting times for diagnostic tests. What steps can the Scottish Government take to help NHS Fife?

**Michael Matheson:** It is extremely important to ensure that our health boards, including NHS Fife, have the right balance of services in primary care

provision and acute care provision and that they have good diagnostic services in place so that the patient pathway is as smooth as possible.

We have increased the level of funding to NHS Fife in the forthcoming financial year in order to allow it to continue to invest in local services. Alongside that, we have provided additional funding to get it closer to NHS Scotland resource allocation committee parity. We expect NHS Fife to use those resources to ensure that it continues to build on the improvements that it has achieved in recent years.

### School Rolls (Optimum Size)

**4. Clare Adamson (Central Scotland) (SNP):** To ask the Scottish Government what its position is on the maximum desirable school roll size. (S4O-03040)

**The Minister for Learning, Science and Scotland’s Languages (Dr Alasdair Allan):** It is for individual education authorities to determine optimum school rolls, based on local circumstances, to best suit the educational needs of children within that area.

**Clare Adamson:** The minister may be aware that North Lanarkshire Council is in consultation regarding a proposed merger of Taylor high school in New Stevenston and Our Lady’s high school in Motherwell. The new school will also incorporate the students of Bothwellpark special needs school, and the planned capacity is 2,150. Does the minister share concerns that parents and carers have raised with me that, in a school of such unprecedented size, the individual needs of pupils may be difficult to identify and prioritise?

**Dr Allan:** The member has put her own views on the record, but I hope that she will understand why I cannot comment on the matter. That is for the simple reason that, if the council decides to implement any closures, ministers may subsequently have to consider any question as to whether to call in. Therefore, I hope that the member will understand why I do not wish to prejudice that process by commenting any further.

### Ministerial Engagements

**5. Tavish Scott (Shetland Islands) (LD):** To ask the Scottish Government whether ministerial engagements regularly coincide with yes campaign events. (S4O-03041)

**The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon):** Ministers attend yes campaign events in a personal capacity. I am sure that Tavish Scott is well aware that the Scottish Government’s events on Scotland’s future are published on the Scottish Government website. All ministerial engagements comply with the Scottish

ministerial code and the published guidance on good practice in the run-up to the referendum.

**Tavish Scott:** I am grateful to the Deputy First Minister for that illuminating answer. Can she confirm that transport to and from such events follows the code of practice and is therefore paid for by the Scottish National Party and not by the taxpayer?

**Nicola Sturgeon:** I refer Tavish Scott specifically to the ministerial code. It is a document that is publicly available, but I am happy to deliver a copy to him personally later on if he so desires. The ministerial code specifically provides for the fact that ministers may undertake a combination of official and political engagements during the same visit, and the rules are also clear about ensuring that public resources are not used to support political activities. We are following those rules scrupulously to ensure a proper separation, and we shall continue to do so.

**Margaret McDougall (West Scotland) (Lab):** Is the Scottish Government holding a Scotland's future meeting on Arran on 30 March and, if so, how much has been spent on similar meetings across Scotland to date?

**Nicola Sturgeon:** We are holding a series of Scotland's future events across the country. I believe that the member is correct to say that we are holding such an event on Arran on the date that she mentioned. I did one in East Kilbride on Monday and it was incredibly successful. As a Government, we seek to engage directly with the people of Scotland on the biggest decision and the best opportunity that Scotland has had in 300 years. I would have thought that all politicians would want to do that, but perhaps it is because we engage so directly with the public that we are sitting on the Government benches and that the others are sitting on the Opposition benches.

### Marine Protected Areas

**6. Claudia Beamish (South Scotland) (Lab):** To ask the Scottish Government whether it will focus more on enhancing rather than protecting certain characteristics in marine protected areas. (S4O-03042)

**The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead):** As the member will be aware, we recently consulted on a potential network of marine protected areas for Scotland and we are considering the 14,703 responses. The number of responses clearly demonstrates the interest in the issue and it is therefore vital that a proper analysis of the responses is undertaken before decisions on the network are taken. However, I am aware that a well-managed MPA network can play a vital role in the conservation of both biodiversity and

geodiversity, providing long-term support to the ecosystem and the services that operate in our seas.

**Claudia Beamish:** I thank the cabinet secretary for that answer. It is indeed encouraging that so many people have written to the Scottish Government, showing the importance of marine biodiversity. Although the designation of MPAs is certainly to be welcomed, concerns remain about what I regard as the lack of ambition relating to the recovery characteristics. I believe that only two features, flame shell and maerl, have a conservation objective identified as recovery. Why has that objective not been extended to more features in the MPAs, given that recovery is highlighted in the Marine (Scotland) Act 2010?

**Richard Lochhead:** The circumstances of each proposed MPA will be dictated by the science that underpins the designation. Where there is sufficient evidence to put such an objective in place, we propose that some MPAs have features with a "recover" objective, and we hope that some MPAs will recover through nature, rather than through specific interventions. We have not set that in stone, because we listen to the representations that are made to us about those issues, and once we have published the final designations and management plans, the number of "recover" objectives that Claudia Beamish has referred to may change.

**Jamie McGrigor (Highlands and Islands) (Con):** Does the minister share my concern that the implementation of marine protected areas, although it is an important move to protect Scotland's marine treasures, might affect the livelihoods of our fishermen and cause fisheries displacement? Furthermore, can he clarify what support the Scottish Government would give to fishers affected by such consequences?

**Richard Lochhead:** In the majority of MPA designations, there will simply be a designation, so that we are aware of the marine feature. Other MPAs will have management plans attached to them, where that is required, and in some cases that may have some impact on fishing activity, but I do not expect there to be a huge number of such MPAs. We are in detailed discussions with the fishing industry, as we have been throughout the process, and those conversations continue. We will take a proportionate approach to the MPAs and listen to the concerns of the fishing industry.

### Co-operative Group (Agricultural Assets)

**7. Alison Johnstone (Lothian) (Green):** To ask the Scottish Government what discussions it has had with the Co-operative Group regarding the potential sale of agricultural assets. (S4O-03043)

**The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead):** The Co-operative Group is developing its ideas on how it intends to proceed with the sale of its farming business. I discussed the company's plans with its director of farm business and operations when the company's announcement was made last month. Since then, my officials have maintained a dialogue with the company in order to understand the impact on employees and the potential scope for maximising the economic and community benefits of the sale.

**Alison Johnstone:** As the cabinet secretary knows, the Co-op is to sell all three of its farms and its two packing houses in Scotland. Most of the land that we have in community ownership is in north-west Scotland. Does he agree that the sale provides a great opportunity to add prime agricultural land to and diversify community landholdings?

The co-operative and community sector needs at least six months to put a bid together, because it wants to retain the commitment to sustainable farming and co-operative business models and to create a new centre to support Scottish farming. Will the cabinet secretary do all that he can to work with the Co-operative Group to slow the sale process and will he work with others who want to develop such a bid?

**Richard Lochhead:** In my conversation with the Co-operative Group's director of farm business, I asked questions about the subject that Alison Johnstone raises, because I am aware of the potential interest, which she has verified. He explained that the plan is to sell the whole farm business as a going concern and that detaching any part would have a negative impact on the value of the business.

However, as I said, my officials are in regular contact with the Co-operative Group. I have a great deal of sympathy for the aims and objectives of people who believe that we should diversify the ownership of prime agricultural land and I will certainly convey to the Co-operative Group the points that those who are involved in the campaign are making.

**John Scott (Ayr) (Con):** The cabinet secretary may be aware that Monktonhill farm, which is at Troon in my constituency, may be a part of the Co-op's assets. Part of the land there, which the Co-op owns, has so far been unavailable to Transport Scotland, which has with the help of Stagecoach, South Ayrshire Council and others been seeking to create a park-and-ride facility at Monkton with a view to delivering hard-shoulder running for Stagecoach buses on the A77 into Glasgow. Will the cabinet secretary and the Scottish Government please support that project again,

through Transport Scotland, if and when the land becomes available?

**Richard Lochhead:** As the farming minister, I am not quite aware of the detail of the sale's transport implications in the member's constituency. However, if there is a case for building such issues into the conversations that I am having with the Co-operative Group, I will be happy to do that when I have more details. Perhaps the member can send me some information.

### **Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012**

**8. Siobhan McMahon (Central Scotland) (Lab):** To ask the Scottish Government what progress it has made in reviewing the operation of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. (S4O-03044)

**The Minister for Community Safety and Legal Affairs (Roseanna Cunningham):** Section 11 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 requires the Scottish ministers to report to Parliament on the act's operation over two full football seasons. The Government has commissioned an independent evaluation of the operation of section 1, which is on offensive behaviour at regulated football matches, by the University of Stirling in conjunction with ScotCen Social Research. That work is on-going.

The act requires the Government to report to Parliament no later than 1 August 2015 and we will do so. The work that I described and the evaluation that we are commissioning of section 6, which is on threatening communications, will ensure that our report to Parliament is based on a comprehensive, quality-assured and evidence-based evaluation of the first two full seasons in which the act has operated.

**Siobhan McMahon:** I understand that the University of Stirling researchers who are carrying out the independent evaluation of the 2012 act have already submitted their evidence to the Scottish Government in the form of interim reports. Will the minister say whether the required report will be presented to Parliament earlier than August 2015 or, better still, whether she will commit to repealing the act, as Scottish Labour has done today?

**Roseanna Cunningham:** I do not profess to be an expert on football, but even I know that this year's football season will not be over until the end of May. That means that the research is still on-going; it will cover the second full football season of the act's operation. The legislation provided for

that approach, which is precisely what we are doing.

I have read this morning's *Daily Record* and I give Siobhan McMahon my sympathies—Scottish Labour's deputy leader has obviously stolen her thunder.

## First Minister's Question Time

11:59

### Engagements

**1. Johann Lamont (Glasgow Pollok) (Lab):** To ask the First Minister what engagements he has planned for the rest of the day. (S4F-01973)

**The First Minister (Alex Salmond):** Engagements to take forward the Government's programme for Scotland.

**Johann Lamont:** Does the First Minister support the living wage?

**The First Minister:** Not only do we support the living wage but, of course, we introduced the living wage across the Government-controlled public sector in Scotland.

**Johann Lamont:** The First Minister will know that more than 400,000 working people in Scotland earn less than the living wage. Nearly two thirds of them are women. Being paid the living wage could mean an increase of around £2,000 a year to each of them. If the First Minister is committed to making a difference to those people's lives, why did the Scottish National Party vote down Labour's plans to guarantee a living wage to every worker from every firm that is bidding for a Government contract?

**The First Minister:** First, the credentials on the living wage are with the Scottish National Party Government that introduced it, as opposed to a Labour Party that never introduced it when it was in office.

Secondly, on the Procurement Reform (Scotland) Bill, let us get it right: we are pursuing the living wage but, obviously, we are doing so in a way that is compliant with European Union legislation, as was well explained.

If Johann Lamont is going to question our credentials with regard to seeking the living wage for Scottish workers and campaigning for it, perhaps she would like to explain how it never occurred to Governments in which she was a minister to introduce the living wage while they were in office. This Government did it, and we are proud of it.

**Johann Lamont:** The First Minister did not answer the question. He was asked about what his Government did last week to improve the rights of ordinary working people.

We know that legal advice and the EU is not the First Minister's strong point, but we have advice here that clearly states that it can be done. We also have a statement from the European Commission that says that it can be done. Even

an old Etonian such as Boris Johnson can ensure that workers in London can get the living wage.

In Scotland, however, we have a First Minister who looks for reasons not to do things. Let us look at his record on low pay. When Labour introduced the minimum wage, Alex Salmond was in his bed. When there was work to be done in his constituency office, he advertised for an unpaid intern, rather than letting someone earn a day's pay. Further, he spends £10 billion of our money on procurement, yet he denies hard-working people across Scotland the right to a living wage.

Why should working people across Scotland who are battling against the scourge of low pay trust the First Minister when he will not lift a finger to help them now?

**The First Minister:** The answer to Johann Lamont's question was in the second sentence of my previous answer. However, if she has that legal advice, stage 3 is still to come in the legislative process—she can bring forward the advice and we can work jointly to introduce the living wage in terms of procurement, if that legal advice is solid. However, she will agree that it would effect no benefit to workers in Scotland if we were to try to do something that was then immediately shot down by the European Commission.

Of course, we are now talking about an argument that asks whether the living wage should be introduced in terms of the minimum wage. Significantly, of course, the last time that Labour was in government, it failed to protect the minimum wage in terms of inflation—something that the SNP Government has guaranteed to do once this Parliament and this country get control of the minimum wage as well as the living wage.

On our credentials on this matter, the protection that has been offered across the Government-controlled public sector and the campaigns that we have had make our credentials impeccable. Why can no member of this chamber explain why it took an SNP Government, in this Parliament in Scotland, to introduce the living wage across the public sector in Scotland? That is, I repeat, something that we did, not something that we talked about doing, and it is something that we are proud of.

**Johann Lamont:** First, the legal advice was available at stage 2, and the minister encouraged his back benchers to vote down the proposal. The First Minister promises jam tomorrow—*[Interruption.]*

**The Presiding Officer (Tricia Marwick):** Order.

**Johann Lamont:** —when independence comes, rather than making a difference now. That

is the business of Government: what can be done right now.

The First Minister claims to be a progressive beacon, yet, after seven years in government, he cannot name a single policy that redistributes wealth from the rich to the poor. He guarantees big business a tax cut that is 3p in the pound lower than anything that a Tory chancellor would contemplate, but he will not match Labour in asking those with the broadest shoulders—people who earn more than £150,000 a year—to pay a bit more in tax. Labour will lodge our amendments on the living wage again at stage 3. Will the First Minister back them, or will he vote for poverty pay?

**The First Minister:** It is not new legal advice—it is the same old legal advice that Labour previously presented. One objective of the Procurement Reform (Scotland) Bill is to promote the living wage, which is why that aspect of the bill was proposed.

Let me repeat: this Government introduced the living wage across the public sector in Scotland. That might have had something to do with the alleviation of poverty wages. We actually did that, which is something that the Labour Party did not manage to do either here or, for that matter, down at Westminster.

Johann Lamont asks what we are doing to deal with poverty in Scotland and what measures we can introduce. Do we not remember? It is only a few weeks since the Labour Party voted against the extension of free school meals to all primary 1 to 3 schoolchildren in Scotland. Luckily, the SNP now has a majority in the Parliament and was able to bring forward that measure with the support of the Poverty Alliance.

We then go back to the top rate of taxation. I have pointed out to Johann Lamont that it was the SNP who moved against the reduction of the top rate of taxation from 50p to 45p in 2012. Where were the Labour members then? They were not asleep in their beds; they decided to deliberately abstain from the vote as an act of policy.

I am glad that Johann Lamont is now secure in those matters. In a remarkable "Newsnight Scotland" interview on Tuesday night, she twice refused to commit herself to increasing the top rate of taxation. I will quote her exactly. When asked, she said:

"There is a separate argument about how those powers are used. There is a dialogue we need to have with people in Scotland about that."

I suggest that she have a dialogue with members of her own party so that we can get some decent proposals from the Labour Party instead of its current proposals, which Reform Scotland has pointed out will raise not 40 per cent,

as was claimed on Tuesday, but only 26 per cent of the expenditure of the Parliament. Even people who were previously in favour of the Labour Party's proposals have now pointed out their extraordinary deficiencies.

Why is it that the yes vote is increasing month by month, poll by poll? Because people in Scotland look at the Tory Government at Westminster, remember the Labour Government in Scotland and see that a Government of our own in Scotland will ensure both prosperity and fairness across Scottish society.

### Secretary of State for Scotland (Meetings)

**2. Ruth Davidson (Glasgow) (Con):** To ask the First Minister when he will next meet the Secretary of State for Scotland. (S4F-01977)

**The First Minister (Alex Salmond):** No plans in the near future.

**Ruth Davidson:** Two years ago, the Scottish Government predicted that oil and gas receipts would be up to £7.2 billion. In reality, they were £6.1 billion. Last year, it predicted that oil receipts would total up to £8.3 billion. So far, with 10 months of those collected, the total is £4.7 billion. In the white paper, even to begin to balance an independent Scotland's books, the Scottish Government predicts oil revenues of up to £7.9 billion in 2016-17—[*Interruption.*]

**The Presiding Officer:** Order. I would like to hear Ms Davidson, if members do not mind.

**Ruth Davidson:** However, yesterday, the Office for Budget Responsibility said that the receipts for that same year were more likely to be £3.2 billion, which is less than half that figure. The First Minister wildly overstated the case last year and overstated the case this year. Why should we gamble the future funding of our hospitals and schools on a man with such a track record?

**The First Minister:** In the proposals in the white paper, we pointed out that with a historic share of debt, the deficit in Scotland would be between 1.6 and 2.4 per cent of gross domestic product in 2016-17. The forecast from the OBR for the United Kingdom deficit was 2.2 per cent—that was the revision downwards in the budget of this year.

Members should remember that the OBR has changed its forecast on growth in the economy by 50 per cent over the past year, which is quite an extraordinary achievement. If we remember the first Conservative Party budget, we should be moving into a happy situation of surplus by next year—according to the Conservatives' fancy—but that happy state is to be delayed to 2018-19.

The OBR has changed its oil forecasts, up and down, every six months. Therefore, based on certain factors—a reasonable forecast of oil price,

as opposed to one that is \$20 lower than that of the Department of Energy and Climate Change, and an increase in production, which the industry says will be the result of the extraordinary investment that we are seeing in the North Sea—the figures that we have outlined are robust. We are not going to go down the—[*Interruption.*] Well, we do not need a crystal ball to see the clarity of forecasts from George Osborne or the OBR; the forecasts change every five minutes, upwards and downwards.

It is quite useful sometimes to look at the fine print. Only last night, we discovered that of the £300 million adjustment in oil figures for 2016, no less than £200 million relates to the reallocation of offshore corporation tax to onshore corporation tax—a remarkable thing for a Tory chancellor to forget to announce in the middle of his budget, six months before the referendum.

When we consider a Conservative Party that has been telling us for the past 30 years that North Sea oil is not really worth all that much and is going to run out, and which has taken in, as its share, some £300 billion of Scottish oil revenues over the past 30 to 40 years, I think that, as we consider the next 40 years, the majority of people in Scotland will say that it is time that Scotland had a shot at a share of our great natural resources. Unlike the Conservative Party, which thinks that that is an enormous burden, the vast majority of people in Scotland will see it as one of the great advantages of controlling our resources in an independent Scotland.

**Ruth Davidson:** The First Minister's "robust" figures on oil are predicated on the barrel price not dropping below \$113. Today, oil is trading at \$105 per barrel. It is interesting that the First Minister criticises the OBR, because this time last year, when the referendum was not six months away, the finance secretary said:

"The OBR forecasts set out alongside the UK's March budget have not been seriously challenged by the industry or by independent commentators".

What a difference a year makes.

I am willing to concede that none of us knows exactly what the oil price will be in 2016-17. However, the First Minister's Nobel laureates have told him that he should

"plan budgets on a cautious estimate for oil revenues".

That is good advice, and it is unfortunate that the First Minister is not following it. Projections that are more than double the most recent projections sound to me like someone being not cautious but downright reckless.

It is more than a year since the First Minister dashed out his dodgy oil figures in the oil and gas analytical bulletin. He promised us regular

updates, but so far we have not had any. When will the First Minister update his figures? Does he accept that he will have to revise them down?

**The First Minister:** Let us talk first about prices, on which Ruth Davidson accused us of being overambitious. I was pointing out that the OBR forecast now, which is a revision upwards on its last forecast, is \$99 a barrel in 2016-17. As Ruth Davidson rightly suggests—let me be exact—we forecast \$113. The Department of Energy and Climate Change, a UK Government department, forecasts \$120 for that year, the Organisation for Economic Co-operation and Development forecasts up to \$140 to the end of the decade, and other forecasts are even higher. Therefore, \$113 is not an unreasonable estimate, given that—by her same logic—we are already some \$9 ahead of the OBR forecasts for the current year. On prices, there is a reasonable case to be made that ours is not an overambitious forecast but a very sensible one.

The OBR—remarkably—does not take the Department of Energy and Climate Change forecast on production, having refused to take its forecast on prices. The OBR is alone in thinking that the massive investment that is going into the North Sea at present will result in no increase in production. That goes totally against the arguments that the UK Government endorsed in the Wood report.

I offer Ruth Davidson the final authority on these matters: the man who can never be wrong, in her estimation. David Cameron said that North Sea oil

“is a real jewel in the crown of the United Kingdom economy. What is encouraging is that this year we are seeing a growth in production, as a number of new fields and projects come on stream”.—[*Official Report, House of Commons*, 12 June 2013; Vol 564, c 342.]

Even the Prime Minister is forecasting an increase in production that the OBR says is not going to happen. In that light, and given the evidence of the past 40 years, I think that people are more likely to believe Scottish Government forecasts and estimates of Scottish natural resources than a Tory party that has pocketed £300 billion of Scottish resources over the past 40 years. If we allow it the opportunity, it will happily pocket another £300 billion over the next 40 years.

### Free Prescriptions

**3. Aileen McLeod (South Scotland) (SNP):** To ask the First Minister whether the Scottish Government will continue to provide free prescriptions. (S4F-01984)

**The First Minister (Alex Salmond):** Yes.

**Aileen McLeod:** I thank the First Minister for his assurance that free prescriptions will be protected by this Scottish National Party Government. Last

week, the prescription charges coalition in England, which brings together more than 20 charities that support people who have long-term conditions, produced its latest report. It said that more than one third of the people who were questioned reported that

“the cost of their medication had prevented them from taking it as prescribed”.

In light of that, does the First Minister agree that the Scottish Conservative Party’s proposal to abolish free prescriptions is socially divisive and represents an utterly obscene tax on ill-health that is bound to hit hardest the most vulnerable in our society and undermine progress made in Scotland—

**The Presiding Officer:** I think we have got the question. First Minister.

**The First Minister:** People will find it significant that Ruth Davidson did not want to ask a question about the highlight announcement of the Tory party conference, which was on introducing a sick tax on people in Scotland.

The member is quite right. David Barker of Crohn’s and Colitis UK, who leads the prescription charges coalition, said:

“People with long-term conditions in Scotland do not face the barrier to effective treatment that those in England still do. As a result of an unfair, outdated and arbitrary system of exemptions, research shows that many with long-term conditions in England are severely compromising their health through being unable to afford prescription charges.”

I say to the Conservative Party that if it emphasises its credentials by cutting this tax, that tax and the next tax while simultaneously making the highlight of its conference an announcement that it will put a tax on ill-health on the Scottish people and take us back to the unfair situation in England that David Barker rightly speaks of, that is not an argument that will increase its support. That policy will diminish attendance at the party’s annual conference—if, indeed, that is possible.

**Jackson Carlaw (West Scotland) (Con):** In a year when we had a record attendance, that is something—[*Interruption.*]

**The Presiding Officer:** Order.

**Jackson Carlaw:** Neither the question nor the First Minister’s response was a surprise. How can he justify continuing to put hard-pressed resources into a ham-fisted, universal, non-targeted tax cut that has undoubtedly benefited the astonishing number of £100,000-salary rich ministers sitting on the front bench, rather than follow our priority of putting the resource into the recruitment of 1,000 additional nurses who could make a huge contribution to our national health service?

**The First Minister:** There has been a rise in the number of qualified nurses and midwives since we

took office in Scotland, and rightly so. Now we see that, when it comes to trying to promulgate difficult policies, there is a delegation of power to the deputy. I can see why that would be the case.

Jackson Carlaw should remember that if he goes to the barricades on this one he might meet with a dusty answer. The cut-off point was £16,000 back in 2008-09 when the analysis was done and 600,000 people in Scotland faced prescription charges. That was the extent of the unfairness that was going on and which would be revisited on Scotland if the Conservative Party had its way. I hope that no other party in this chamber is going to go down the road of reimposing the tax on the sick.

As for the record attendance at the Tory conference, I look to the *Sunday Post* for information on that. I have here an article stating:

“The Sunday Post can also reveal that desperate Tory bosses sent out invitations to non-party members ... in a bid to fill the empty seats at its conference.”

If the photo I am holding is anything to go by, it did not work—

**The Presiding Officer:** First Minister, that is very interesting, but it has nothing to do with prescription charges.

### United Kingdom Budget

**4. Jamie Hepburn (Cumbernauld and Kilsyth) (SNP):** To ask the First Minister what the Scottish Government's response is to the 2014 United Kingdom budget. (S4F-01979)

**The First Minister (Alex Salmond):** The Scottish Government will be making a statement before the Easter recess on the budget consequentials and the impacts of the budget in Scottish society. The budget was the last Westminster chance to create opportunity in Scotland and depart from the austerity programme, but that chance seems to have been missed. Before the Easter recess, our finance secretary's analysis will examine completely the likely impact of that continued austerity programme in Scotland.

**Jamie Hepburn:** In the face of many who are struggling as a result of their policies, the Conservatives have callously claimed that this budget is good for hardworking people, because of a cut to the cost of beer and bingo. Will the First Minister set out what the real cost of Westminster's austerity agenda is to families in Scotland—particularly families on lower incomes?

**The First Minister:** We can find that in the UK Government's own distributional analysis report, “Impact on households”, which accompanies the budget. That analysis shows that this particular Westminster game of bingo is the only game of

bingo where everyone is a loser, because the average loss for families is £757 a year. It is true that the top quartile lose £2,000 but, according to the UK Government's own figures, the second-biggest loss is for families at the very bottom of income distribution, who lose £814.

That condescending poster tweeted by Graham Shapps—

**Members:** It's Grant.

**The First Minister:** —the Conservative Party chairman told us that cutting the bingo and beer duty was

“to help hardworking people do more of the things they enjoy.”

Perhaps a lot of folk in Scotland will look at that and say, “88 is a millionaire's tax break; 25 is the NHS privatised; and all the 3s are tuition fees”, which is why the Conservative Party will continue to be rejected by the people of Scotland.

**Iain Gray (East Lothian) (Lab):** In the spirit of trying to find something positive to say about what was a bad budget for the vast majority of families across the United Kingdom—I agree with the First Minister about that—I note that support for employers was extended to create up to 100,000 new apprenticeship-related jobs over two years. That scheme does not exist in Scotland, but the consequentials of around £16 million will. Will the First Minister apply those resources to extending the apprenticeship programme and increasing opportunity for our young people?

**The First Minister:** As Iain Gray should know, the consequentials are extremely limited over the next two years, but the finance secretary will set out how exactly we intend to allocate them before the Easter recess.

I gently remind Iain Gray that this Government has increased apprentices in Scotland by 60 per cent over the levels that we inherited. An absolutely crucial point about our apprenticeship programme in Scotland is that all the people in apprenticeships are employed, which is absolutely necessary to achieve the joint interest of the apprentice and their employer in their future success.

Obviously, we always look at ways to improve the lot of young people in Scotland. Yesterday's debate on the European youth guarantee was part of that process. Let us remember the success that we have already had in the apprenticeship scheme. Given the financial circumstances of the past few years, a 60 per cent increase in apprentices from 16,000 to more than 25,000 is no mean achievement.

**Gavin Brown (Lothian) (Con):** A few minutes ago, the First Minister accused the Conservative

leader of passing the buck to the deputy leader. I do not think that he is in a terribly strong position to say that.

On yesterday's budget—

**The Presiding Officer:** I was hoping that you would get to that, Mr Brown.

**Gavin Brown:** Which of the savings and pensions measures from yesterday's budget does the First Minister not support?

**The First Minister:** We welcomed a number of the measures on savings, while pointing out that although there are benefits for people in extending to £15,000 the amount that can be saved tax free in an individual savings account, the Conservative Party would do well to remember that the average wage in Scotland is some £17,000 and that therefore, for many families in Scotland, the right to save £15,000 in a tax-free ISA is somewhat theoretical.

If ever the Conservative Party starts to show some affinity with the reality of what families in Scotland are suffering and enduring—not like the Tory party chairman did—then and only then, which I think will extend well beyond the member's political career and mine, will the Conservative Party be able to restore its fortunes. Is it not possible for the member to understand that people look at the Conservative Party and see a party of vested interests as opposed to one of the people's interests?

### Human Trafficking

**5. Jenny Marra (North East Scotland) (Lab):** To ask the First Minister what steps the Scottish Government is taking to tackle human trafficking. (S4F-01968)

**The First Minister (Alex Salmond):** We are working to ensure that police and prosecutors have the powers that they need to make Scotland a hostile place for traffickers, to raise awareness among the public and organisations about the potential signs of trafficking, and to ensure that tailored support packages are available for the victims of that heinous crime.

We are grateful to Jenny Marra for her interest in this agenda. The responses to the consultation on her possible members' bill confirm strong support for Scottish human trafficking legislation. As Ms Marra knows, on Monday 17 March we confirmed that the Scottish Government will introduce a human trafficking bill in this parliamentary session to strengthen further that response.

**Jenny Marra:** I thank the First Minister for taking on the bill and for using his majority to put important legislation on the statute book in Scotland.

The most important part of the bill will be the legal right of victims to get the support that they need. One trafficking victim is identified in Scotland every four days, but we believe that to be the tip of the iceberg. Will the First Minister commit today to enacting a survivors service and survivors standards, as approved by 51,000 members of the public, to ensure that victims of this human rights abuse in our communities get the legal right of support for recovery that they desperately need?

**The First Minister:** We will look sympathetically at the proposals. The aim and objective will be to consolidate and strengthen the existing criminal law. Enhancement of the status of and support for the victims of trafficking will require the relevant agencies to work with the Scottish Government to develop and implement the anti-trafficking strategy.

I am sure that, as we develop that dialogue, we will produce legislation that I hope everyone in this chamber believes will improve the lot of the victims, and be of great credit to this Parliament and to Scotland.

### Independence (Welfare System)

**6. Alex Johnstone (North East Scotland) (Con):** To ask the First Minister what assessment the Scottish Government has made of the cost of an independent Scotland's welfare system and whether it would seek the co-operation of the United Kingdom Government in its implementation. (S4F-01981)

**The First Minister (Alex Salmond):** As Alex Johnstone will know, the expenditure on social protection as a share of gross domestic product is estimated to have been lower in Scotland than in the UK in each of the past five years, accounting for 15.5 per cent of GDP in Scotland and 16 per cent in the UK in 2012-13.

Alex Johnstone will also know that the transitional period of shared administration was recommended by the expert working group on welfare. We agree with that view.

**Alex Johnstone:** I am aware of the First Minister's figures, which he has given in previous answers. However, it is clear that moneys in the Scottish budget as a whole are already allocated to other priorities and that, with a theoretical deficit of £12.1 billion built into the figures for the last full year, any additional money that is promised to the welfare system—as it is regularly promised by the First Minister's back benchers—will have to be accounted for somewhere. Can he tell us whether it would be through cuts in other areas of expenditure, increases in taxation or additional borrowing that he would account for the £12.1 billion deficit that he would have to address?

**The First Minister:** Alex Johnstone will see, if he examines the white paper, that—as I pointed out to Ruth Davidson—the projections for 2016-17 show Scotland being in a stronger fiscal position than the rest of the UK during that period.

In terms of the white paper, I will point out some details. We have pointed out that

“Scotland delivers almost all parts of the current UK benefits system to people living in Scotland from locations within Scotland”.

That is at paragraph 4.50. Also,

“Scotland provides a wide range of services to England ... such as working age benefit processing for London and services for pensioners in England, and involve a claimant count measured in millions rather than thousands.”

I make that point because Alex Johnstone talks about deficits in Scotland, but seems to be totally oblivious to the fact that the deficit of the United Kingdom—George Osborne’s deficit—is more than £100 billion.

Some appreciation of the plank of wood in his chancellor’s eye would perhaps help Alex Johnstone before he looks for specks of sawdust in the Scottish Government’s eye.

**John Mason (Glasgow Shettleston) (SNP):**

Does the First Minister agree that the best way to deliver a fairer society is not just to tinker at the edges of devolution but to enable this place to have control over the whole social security system, the tax system and the statutory minimum wage?

**The First Minister:** In fairness, I will point out to Alex Johnstone before I answer the question that my previous answer was for the benefit of Willie Rennie, who asked me last week to quote the Bible more often, but it turns out that he is not in the chamber.

I agree with John Mason that only the full fiscal powers of independence will allow key decisions on tax, wealth and employment policy to be made in Scotland by those who have Scotland’s best interests at heart.

The figures that I read out earlier with regard to the impact on families of all the tax and benefits measures came from the UK Government’s own papers that were published yesterday. I cannot understand, given the extent and depth of the recession and the suffering that has been endured by people in all categories of income, why on earth the second biggest impact of all should, in a situation in which all families are less well off on average, fall on those who are least able to pay and to bear that burden.

That is why I think that a Scottish Government of any political complexion would better reflect the general interest of the Scottish people, and why

we must—we absolutely must—have tax and benefits under the control of this Parliament.

## Miners' Strike 1984-85 (Anniversary)

**The Presiding Officer (Tricia Marwick):** We now move to a members' business debate on motion S4M-08941, in the name of Iain Gray, on the anniversary of the miners' strike 1984-85. The debate will be concluded without any question being put. Mr Gray, you have about seven minutes.

*Motion debated,*

That the Parliament notes that March 2014 marks the 30th anniversary of the start of the 1984-85 miners' strike; further notes the strike's devastating impact on coalfield communities throughout Scotland and the UK, including those in the Lothians; commends the many thousands of people in Scotland who showed solidarity with the striking miners in their local communities and across the UK; understands with regret that nearly 30 years after the strike ended, there are still men who were wrongly arrested or convicted during the dispute who have never received justice, and welcomes plans to commemorate the strike's anniversary in East Lothian and in other communities around the UK.

12:35

**Iain Gray (East Lothian) (Lab):** Thank you, Presiding Officer.

It is a great privilege to represent a coalfield constituency such as East Lothian, to lead today's debate on an important moment in this country's relatively recent history and to welcome to the public gallery some of those who lived the reality of the miners' strike of 1984-85. Why is it that we remember that strike in particular? After all, there have been many other important industrial struggles in the past and, after all, it was 30 years ago. Perhaps it is because it was a strike not just to save jobs, but to save a whole industry. The remains of mine workings that date back to the 11th century can be found in my constituency, so it was an industry with 1,000 years or more of history in Scotland.

In 1984 the miners believed that there was a plan to close down deep coal mining. Many pits had already closed and the miners believed that there was a secret hit list of 70 more. Now we know that they were wrong; the secret hit list had 75 pits on it. History has undoubtedly proven the fears that drove the strike to have been correct. In Lothian we saw Bilston close in 1989. Barony, the last pit in the Ayrshire coalfield, closed the same year. Monktonhall went in 1997, taking with it the savings of 130 miners who had given everything they had to keep it going as a co-operative. Then, in 2002, the last deep coal mine in Scotland, Longannet, was abandoned to the floodwaters.

Let us remember, too, that it was not just any job that the miners sought to save. There is

something special about a job that requires you to burrow deep into the earth and bring out coal that has been 300 million years in creation, all to satisfy one of humanity's most fundamental, primeval needs: for warmth. However, we should not be sentimental about the work. It was hard, unpleasant and dangerous. It often maimed and it sometimes killed, either shockingly suddenly or agonisingly slowly. I never met a miner who was not inordinately proud of what he did, but I met many who were relieved when their son did something else and did not have to go down the pit.

So how, then, did the miners find the strength to do the work? They found it from each other through extraordinary comradeship, self-sacrifice and solidarity, because there is no other way you can survive half a kilometre underground. That strength in solidarity imbued mining families and mining communities, too, so that mining was a way of life in our coalfields and much more than just a job. With so much at stake, it was no surprise, then, that when the dispute came, it was not just any strike. Like the work itself, it was always hard, often unpleasant and sometimes dangerous. It hurt, it wounded and it scarred. However, whole communities mobilised. In East Lothian, the Labour club was turned over to the strikers as their headquarters and soup kitchen. The Co-operative was generous to those who were its members as well as its customers. The Royal Musselburgh Golf Club felled its trees for fuel and the council set up a hardship fund.

The wider labour movement mobilised too, in practical ways, collecting food and money to keep the miners and their families going. Above all, everywhere, including in places such as Prestonpans, Tranent, Ormiston and Elphinstone, the women rose up too, with their husbands, their fathers and their sons, and organised. In the soup kitchens, on fundraising tours and trips at home and abroad and, yes, on the picket line itself, they did not support the strike but rather shared in the leading of it.

With so much at stake, it is not surprising that the forces that were ranged against the miners also mobilised without quarter. They tried to turn miner against police officer, coalfield against coalfield, family against family and even miner against miner, and they sometimes succeeded. And so, at the end of a long and bitter year, there was no victory for the miners, yet they marched back to work with heads held high, their pride undented and their dignity intact, although we must not forget the 200 victimised miners who did not go back to work and the 600 whose names, even now, should be cleared of unjust conviction.

The Tory Government of the time called the miners "the enemy within". They may have been

the Tories' enemy, but to us, and to many, they were the strength within, the decency within and the hope within. Today, it is important to commemorate the miners' struggle but not to memorialise or mourn it. Rather, in remembering, we should rededicate ourselves to the ideals with which they confronted the hardest of work and the bitterest of struggles—ideals that mean that mining communities such as those that I represent today still stand strong and proud although their mines are gone, and ideals of community, solidarity, justice and fairness—for thus it is that the men and women of this country's coalfields will never really be defeated.

12:42

**Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP):** The words that follow are not mine but belong to a good friend who gave himself to the struggle 30 years ago.

"We've nae choice. They'll no negotiate. McGahey and Clarke huv tried, we've tried—tried everythaen. Work tae rule, nae overtime—even the NACODS boys hae hud enough. McGregor, Thatcher—they waant a fight. We cannae jist row ower. It's no about us. It's the bairns, the veillage, a future. Whaur else kin we work? Cutting peats oan Airds Moss, eh?"

Those are the words of Andrew Leitch, a miner from Auchinleck, on the first weekend of the strike. He had worked at the Barony and the Killoch, as his father, his cousins, his school friends and his neighbours had. Some worked at the coal board engineering works or the transport and maintenance sections at Cumnock and Lugar. Where else could they work? They knew that, when the pit goes, the community goes.

The first couple of months were hard, but everybody, miner or not, stuck together—still cheery, still bantering, solid, holding together. The cafe gave tick, and the butcher's too, but it would not last. Strike pay was cut and the gas and electric still had to be paid. At the turn of the third or fourth month, the women set up the food bank in the club. Donations came in and bags were prepared for each of the families. The retired men and the widows would arrange for their concession coal to be distributed, and we still saw the massed ranks of the slosh and the alleycat on the dance floor on a Saturday night.

Resolve was steady, but morale was being sapped. Stories circulated—"So and so is going back," "They're gonnae let the pit flood," "Some have gone in at Bilston, or in Fife or somewhere." Rumours took their toll, but it was statements that hit the hardest. The families could cope with the silence of their member of Parliament—they expected nothing more—but when Kinnock, the leader of their party, a Welshman of mining stock, told them to pack it in, go back to work and accept

defeat and the coming closures, the sense of abandonment, betrayal and despair was tangible.

The folk in Auchinleck knew that they still had support beyond the mining community. The collections we made did not dwindle. The working people of Scotland still put their hands in their pockets, but as time went by we sensed that what had been given to aid the fight was now given in pity—but still in solidarity. Nine months in and some men had gone back. Tensions grew and families struggled to maintain dignity and cohesion, but they did.

**Neil Findlay (Lothian) (Lab):** Will the member take an intervention?

**The Presiding Officer:** The member does not have time.

**Adam Ingram:** There was no more tick at the butcher's, but a lurcher is faster than a rabbit and back in 1984-85 there were loads of rabbits on Airds Moss.

I was privileged to know those people and I was humbled by their courage. I was and am disgusted by the lies that have been told about them—that they were fools led by a madman; that they brought it upon themselves. They were not. They were people who knew that they had to take a stand for the future, for their children and for their community. What they could not have known was that they were facing the single-mindedness of the most brutal and pitiless British leader since Cromwell, allied with the cowardice and hypocrisy of the party that they believed was theirs.

12:46

**Alex Rowley (Cowdenbeath) (Lab):** As the son of a miner and a grandson of miners, I speak in the debate with great pride. I concur with the views that have been expressed on the strike and the sacrifice that was made. Thirty years on, we still want justice for those miners who were victimised during the strike and convicted unjustly. Neil Findlay will say more about that.

This morning I spoke to my great friend and comrade, councillor Willie Clarke, who has been a Fife councillor for more than 40 years and was a member of the National Union of Mineworkers national executive committee during the strike. I told him that I was going to speak in today's debate and asked him what his view was, 30 years on. He said that the strike was about fighting for jobs, not terms and conditions or wages. That is the great emphasis that needs to be put on the strike: it was about jobs. He also talked about the role of miners' wives and partners throughout the campaign. Most importantly, he stressed that the strike was about keeping mining communities together so that we would have a future.

Some 30 years on, some of those mining communities are still suffering the impact of the job losses. Take my constituency and, indeed, the ward that councillor Willie Clarke represents. Earlier today the First Minister talked about free school meals. The take-up of free school meals is a good indicator of poverty among children in primary 1 to 3. It would be great to see every child Scotland get a free school meal, but the reality is that in the former mining community of Ballingry, at the top of my constituency, more than 50 per cent of children qualify for a free school meal, based on poverty. In Aberdour, at the bottom of my constituency, the figure is 1 per cent. That shows the inequality that still exists.

Moving forward and remembering the miners' strike, our duty is to rejuvenate the mining communities that still suffer, 30 years on. We must address the inequalities that still exist and the low wages. We talked about the Procurement Reform (Scotland) Bill earlier today and we need to force through the living wage. Low-paid women workers in those mining communities still suffer as a result of the consequences of the miners' strike. Likewise we need training, skills and opportunities.

Whether the shipyard workers on the Clyde or the Jarrow marchers, throughout history people in the labour movement have marched and campaigned for jobs. They need to be our priority. A fitting memory to the massive, tremendous struggle of 30 years ago would be to tackle social inequality and deprivation, and to give people in the former mining communities jobs.

12:50

**Murdo Fraser (Mid Scotland and Fife) (Con):** I commend Iain Gray for bringing this important motion to the Parliament. I congratulate him on his speech, reflecting the interests of his constituents. I agree with Iain Gray that there is no doubt that the miners' strike of 1984 to 1985 was a defining moment in our recent history. No event demonstrates the pains of change in the Scottish economy more than that episode.

No Government is happy to see livelihoods lost, but we need to recognise that coal mining was an industry so uneconomical that, at that stage, it was losing nearly £14 on every tonne of coal produced in Scotland. Whatever Government had been in power at that time—

**Neil Findlay:** Will the member take an intervention?

**Murdo Fraser:** Mr Findlay will get a chance to speak later—I only have four minutes.

Whatever Government had been in power during the 1980s, changes to the structure of the coal-mining industry were inevitable. Contrary to

popular belief, the then Conservative Government did support Scottish mines. For example, between 1980 and 1983, the Polmaise mine in Stirlingshire was subject to more than £15 million of investment, which was designed to make it economically viable. Despite that, the UK taxpayer was subsidising the industry by more than £700 million per year—a situation that could not continue.

This year, the 100th anniversary of the first world war, we hear our troops being described as "lions led by donkeys". That term could equally be used to describe the miners during the strike period. I have great sympathy for the miners, but they were misled by a demagogue who was committed to bringing down the elected Government of the day. Arthur Scargill was so committed to his ideological objective that he refused to negotiate on his demand that uneconomic pits should not close. That left the Government with little room for manoeuvre and, ultimately, contributed to the decline of the industry.

The way in which Scottish communities supported the miners is part of our history and culture, and it should be celebrated. However, there is no better barometer of public feeling than the views of the British public, who were almost united in their belief at the time that Arthur Scargill had gone too far. Polls taken in July 1984 showed that 79 per cent of the population disapproved of the methods used by the miners, and 78 per cent believed them to be irresponsible.

For any strike to be successful, it must carry the good will of the public. That ran out as a result of Scargill's actions. Some might even call him a downright hypocrite, as he tried to use the Conservatives' right-to-buy scheme to purchase a house using NUM money.

The motion makes reference to miners who believe that they were wrongly arrested or convicted during the strike. What I would say to those men is what I would say to any other person who believes that they have suffered a miscarriage of justice: they should seek the assistance of the Scottish Criminal Cases Review Commission.

Let me deal with some other myths that we hear about this period. The first myth is that Margaret Thatcher closed more mines than any other Government. That is simply not true. The Labour Governments of Harold Wilson and James Callaghan closed 172 pits when they were in office, compared with 154 under the Conservative Government.

The second myth is that Margaret Thatcher was ready to deploy the Army against the coal miners. Documents released under the 30-year rule show

that the Government considered using the Army only to drive vehicles and, under extreme circumstances, to deliver vital provisions.

The third myth is that the Government drew up a hit list of 70 mines to be closed every year. Again, that is incorrect. There was a plan to close 75 mines, but over a three-year period, in line with the National Coal Board's plans to close 20 mines per year.

The final myth is that the then Conservative Government decimated manufacturing. That is wrong again, as manufacturing output actually increased by more than 7 per cent during the Thatcher years in government. By 1997, manufacturing accounted for more than 20 per cent of the economy. After 10 years of new Labour, that share had dropped to 12.4 per cent, a fall far steeper than the decrease under Lady Thatcher.

The great irony of the miners' strike is that we still have a coal industry in Scotland today—a coal industry that needs greater support. As we look back on the miners' strike, we should also look to the future and to coal's long-term role in Scotland.

12:54

**Jamie Hepburn (Cumbernauld and Kilsyth) (SNP):** I, too, thank Iain Gray for lodging the motion. It is apposite and correct that we mark an important moment in our country's industrial history that had a devastating impact on many communities. I do not need to make that point to you, Presiding Officer, as someone who grew up in Fife.

As I have said in previous debates on this subject, I grew up in Glasgow, which, of course, is not a mining area. That, and the fact that I was young at the time, meant that the miners' strike did not impact me directly. However, it must have had some impact because the strike took place in the wider context of an attack on the public sector and publicly owned industries by an ideologically driven Thatcher Government.

We saw other strikes, such as the teachers' strike, and we saw attacks on the steel industry. We saw the Tory Government actively pursue a policy of industrial decline, which led to some 3 million unemployed across the United Kingdom in the early 1980s. In that regard, I must say to Murdo Fraser that he might want to consider just whose ideological drive was misdirected. All of that, of which the miners' strike was absolutely part, contributed to my own sense, even at a young age, of a UK Government completely alien to the values of those around me and those that I hold now.

It is also important that I speak because I represent a former mining area. I should be clear that no pits in my area closed during the period that we are talking about; rather, they had closed many years before. However, there is great pride in the role that Kilsyth and Croy played in Scotland's mining heritage. Of course, many local people paid a high price as part of that industry, with the Dumbreck pit disaster in 1938 and miners from Condorrat killed in the later Auchengeich disaster.

As Iain Gray's motion says,

"many thousands of people in Scotland ... showed solidarity with the striking miners".

That was absolutely the case in my area. Although, as I said, none of the pits closed at that time, people who lived there worked in pits that were affected directly.

The devastation caused by the pit closures process is almost universally accepted:

"Many of these communities were completely devastated, with people out of work turning to drugs and no real man's work because all the jobs had gone. There is no doubt that this led to a breakdown in these communities with families breaking up and youths going out of control. The scale of the closures went too far. The damage done to those communities was enormous as a result of the strike."

The surprising source of that quote was Norman Tebbit. If even he can show some mea culpa, one might have thought that Murdo Fraser could do so, too. If the man who would have been encouraging miners to get on to a cycle can see that truth, surely we can accept that the process was one of deindustrialisation too far, personifying the cruelty of an economic philosophy that values markets above people. That is a philosophy that we must continue to debunk to this day.

12:58

**Neil Findlay (Lothian) (Lab):** Presiding Officer, you will have to excuse me as I wipe the vomit from my chin having listened to Murdo Fraser's rewriting of history.

The reality is that, 30 years ago, communities across the coalfields, from Stirlingshire to Kent and from Yorkshire to the valleys of south Wales, were under siege from a vindictive Tory Government determined to use every power in its armoury to take revenge on the miners for defeating the Heath Government a decade before.

Thatcher planned and executed that strike, helped by a cabal of shadowy figures, financed from very dubious sources and using every arm of the state available to crush the miners, but with a much greater ambition to destroy the trade union movement. Although none of my family was involved directly in the strike, many friends, neighbours and people in my village and the

surrounding villages were because the Polkemmet mine was a major employer.

The strike was my political awakening. I followed every bit of it on the news and the media and every word of Arthur Scargill, Peter Heathfield, Mick McGahey, Eric Clarke and the rest. As a teenager, they were my political inspiration. They were clever and articulate working-class men leading the fight for jobs, working in partnership with principled, organised, intelligent and determined women who provided the campaign's backbone, drive and energy.

It was not a strike about wages; it was a strike about communities, an industry and a way of life, and it was sustained by solidarity. Local people, businesses, trade unions and community groups donated money, food and Christmas presents for the kids. Foreign Governments, international unions and political parties sent donations and provided holidays and other such support, but all the time, the security services, the police, the judiciary and the Government conspired to bring down the industry and a movement and to achieve a victory, no matter what the cost.

In Scotland, we are repeatedly told that the policing here was different from that in England, that we had community policing, and that there was less friction and there were fewer arrests because people knew one another. That is an out-and-out lie that is perpetrated by those who want to rewrite history.

At Orgreave, where there was one of the main flashpoints of the strike, around 5,000 people were attacked by around 7,000 police officers. The result was that 95 people were arrested. All were acquitted and compensated because the police fabricated and duplicated evidence. Even the BBC footage was doctored.

After Orgreave, police action in Scotland at Hunterston and Ravenscraig resulted in mass arrests. There were 270 arrests at Ravenscraig in one day. So much for low-key community policing.

At the end of the dispute, more than 1,400 miners had been arrested in Scotland, and across the UK 900 had been sacked by the coal board. In Scotland, which had only 10 per cent of the UK mining workforce, there were more than 30 per cent of the overall dismissals, and not one person was reinstated.

I believe that many of those cases were miscarriages of justice and that they remain so. We know that South Yorkshire Police lied and duplicated statements. I firmly believe that that also happened in Scotland, to people such as Jim Tierney, who is now a schoolteacher. He was convicted and sacked because he was mistaken to have been in a group of people who threw stones at a bus in Fishcross. His pal was

convicted and sacked at the same time, despite his being at home in his bed when the alleged incident occurred.

There is the case of John Shallow, who was a miner at Polkemmet. He fell over at Hunterston and was hauled up to his feet by a policeman and arrested for breach of the peace. He is absolutely adamant that he has never committed a crime in his life.

Alex Bennett from Bilston glen was targeted and grabbed by a snatch squad because he was an NUM official. There is also the case of John Mitchell from Fife. The list goes on and on.

All those men and many more have contacted me. They are victims of miscarriages of justice, but the Cabinet Secretary for Justice apparently does not want to know.

On the 30th anniversary of the strike, those men deserve justice. Time does not heal when a person has a conviction for something that they did not do. I appeal to the Scottish Government and the UK Government to hold a review of those convictions. Those men cannot wait, so that review should happen now. Will the minister agree to hold a review where her boss has so far refused to do so?

13:02

**Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP):** I congratulate Iain Gray on securing this timeous debate.

My interest in the matter stems not only from the memories of 30 years ago and the images of police on horseback charging into lines of demonstrating miners, but from having the mining museum of Scotland in my constituency, in Newtongrange. Newtongrange's neat lines of miners' cottages on First Street, Second Street, Third Street, Fourth Street and so on mean that the landscape and sense of community of Scotland's mining past are literally never out of sight.

We can add to that my mother's tales of her father, who was a Welsh miner. He died at a young age, having not fully recovered from a pit prop falling on him. That led to his family of 10 children being orphaned and split to various homes. My mother's tales of the hardships of miners shared by a mining family from Derbyshire were therefore deeply embedded in me long before the strikes of the 1970s and 1980s.

We have to go back to the strikes of the 1970s to understand why Arthur Scargill tried to replicate the same strategy against the Thatcher Government 10 years later, with devastating

consequences for miners, the mining industry, communities and trade unionism at large.

In the 1970s, the strike began in the early days of winter. On 9 January 1972, miners all over Britain came out on strike. By 9 February, the Heath Government declared a state of emergency, and we had the three-day working week. By 28 February, a deal had been agreed between the Government and the miners. That was a lesson that Margaret Thatcher and her Government took to heart, and she ensured that it would not be repeated.

From my perspective, Arthur Scargill walked right into a well-planned Tory trap. In the 1980s, the Thatcher Government had everything lined up to pave the way for privatisation and break the unions. The miners' strike gave her the golden opportunity.

The strike was called at the height of summer, when coal stocks were at their highest. The National Coal Board had as its chair the hard man, Ian MacGregor. The touchpaper was lit when, in 1984, five pits were closed without proper process. The miners resisted an all-out national strike, unlike what happened in the 1970s. Divide and rule was added to the mix.

From my perspective, watching from the sidelines, the strike seemed doomed to fail from the outset, but Arthur Scargill pressed on. From using legal action to stop what was known as secondary picketing, the Tory Government moved to mass policing, often bringing in police from outside a local area, which made policing brutal. Working people against working people is a sight that I never want to see again on these islands.

During the strike, 11,291 people were arrested, more than 8,000 were charged and many were convicted, usually of breach of the peace or obstructing the police—convictions that, as has been said, stand to this day. By 1985, the miners returned to work having gained nothing but lost much. Eventually, the remaining small number of pits were privatised and trade unions and trade unionism would never be the same again.

The postscript is that Scargill was right—there was a hit list of pit closures—but he was the wrong man to lead the strike at the wrong time. If Mick McGahey had been given a greater role at the time, perhaps the history of the trade union movement and Tory privatisation would have been different. If he had led, with his better understanding of the strategy required and the essence of right timing, and being more personable, eloquent and persuasive to the public ear than Scargill, I do not think that the humiliation of the miners and the subsequent rampage of privatisation would have been so easily won.

I welcome the commemoration of the heroic fight of the miners, who deserved on all sides much better than they got.

13:06

**Hanzala Malik (Glasgow) (Lab):** I thank Iain Gray for securing today's important debate on the miners' strike. History is important, and that remarkable event had a lasting effect that is still seen in the community today and should not be allowed to be forgotten.

March 2014 marks the 30th anniversary of the start of the 1984-85 miners' strike, which had a devastating impact on coalfield communities throughout Scotland and the United Kingdom. The strike began in Stirlingshire, and today, the strike's legacy is evident across Britain, where of 170 operating coal pits dotted across the country in 1984, only three remain.

The strike was the largest strike of its time. It lasted more than a year and made life extremely difficult for the miners and their families. The strike was not about money—it was about jobs and industry survival. Many miners were forced to survive on welfare and on kind donations during the strike, and miners across Scotland and the UK sacrificed much to help one another in the fight against the National Coal Board. Women played a significant role in the strike, in mobilising support for the miners. Women set up and ran community kitchens to feed miners and their families who were dealing with the hardship of the strike. They held fundraising events and—for the first time—women joined men on the picket lines in the heat of the strike, where they were injured, just as men were, in the violent struggles that ensued on the front line.

There is still an on-going fight for the former coalfield communities. The Coalfields Regeneration Trust is fully committed to ensuring that former coalfield communities are sustainable and prosperous, and more than £21 million has been spent by the trust in the Scottish coalfields on creating jobs, helping people to find work, supporting new businesses and social enterprises, encouraging healthier lifestyles, and helping local groups at the heart of the communities to become self-sufficient and successful.

The miners' strike is testimony to the courage, solidarity and determination of the trade union movement and it is a symbol of struggle and continuing resistance. It has an important lesson for us all, but it is vital that we not only learn lessons from it but find ways to ensure that justice is done and that people who did not do wrong are acquitted of their charges.

One good thing is that the Glasgow mines have left a valuable inheritance for Glasgow citizens—a

renewable and green form of heating. Glasgow City Council is looking in to use of heat energy from water in abandoned mines under Glasgow to warm Glasgow homes. Results suggest that 40 per cent of the city's heat requirements could be met in that way.

The sacrifice that people made should not be forgotten. Unions need to be assisted to continue to support workforces up and down the country. Most important, all the people who were accused of wrongdoing that they did not do should be cleared. I back the call for the Government to look in to how it can address that issue.

13:11

**The Minister for Community Safety and Legal Affairs (Roseanna Cunningham):** We have heard from a number of members who represent communities that were deeply affected by their experience of the miners' strike, and from members who continue to be incredibly moved by what happened—from Iain Gray, whom I congratulate on obtaining the debate, and from Adam Ingram, Alex Rowley, Jamie Hepburn, Christine Grahame and Hanzala Malik.

It is 30 years since the strike began, but the many months of the strike and the closure of the coal mines in the 1980s have had a long-lasting impact on miners, their families and the communities in which they lived and worked. Events have already taken place—such as those in Iain Gray's constituency and at the Frances colliery in Dysart—to remember what happened 30 years ago. Given the strike's impact on all the people in those communities, it is right that we think back.

The miners chose to exercise their democratic right to strike because of the significant job losses that were occurring. We should remember that, when the strike began, six pits had been closed since 1981 and it was clear that many more closures were to follow, as Iain Gray said.

The length of the strike was such that the miners and their families endured real hardship. We should not forget the support that was offered by many people across the country and from far outwith the mining communities. People raised money to support the striking miners and their families, and volunteered at soup kitchens to feed families whose income had dropped to absolutely nothing. I am old enough to have been out on strike in solidarity with the miners and to have collected money and food.

The closure of coal mines across Scotland has had a lasting impact on the communities that were affected, and it has left a toxic legacy of unemployment that we cannot ignore. Murdo Fraser's speech was interesting, but it did not

accord with any reality that I remember from throughout the 1980s in Scotland, when industry after industry was shut down, year after year.

However, it is also important that we look to the future, which Alex Rowley and Hanzala Malik touched on. The Scottish Government's regeneration strategy places community-led regeneration at its heart, which will deliver what local people know will make a difference. The Scottish Government has provided funding to the Coalfields Regeneration Trust, which has invested more than £21 million in the Scottish coalfields to create jobs, help people into work, support new businesses and social enterprises, encourage healthier lifestyles and help groups at the heart of their communities to become successful and self-sustaining. By concentrating our regeneration efforts on the communities that need them most, and by working with people to deliver change, we can help to reverse the decline that former coalfield communities have felt.

A number of members—most notably Neil Findlay—expressed concerns about police conduct during the strike. Nobody should be in any doubt that the police do a difficult and demanding job, although I know that recent events in England have highlighted that it is vital that the police be held to account for their actions. There are clear and well-established procedures in place to consider and investigate complaints against the police, and any concerns about police conduct should in the first instance be raised with the chief constable. If an individual remains dissatisfied, the case can be referred to the Police Investigations and Review Commissioner.

**Iain Gray:** Surely Roseanna Cunningham must acknowledge that the issue is not specific instances. It was a strategic approach to policing that was unique in our recent history, which is why the cases warrant a collective review of how those miners came to be victimised.

**Roseanna Cunningham:** I will come to review. I thank Iain Gray for that intervention, because there are some confusing signals about what is expected of such a review. I go back now to the remarks that I was making and come back later to that point.

Where there is an inference of criminality, the allegation will be referred to the Crown Office, which is empowered to undertake independent investigations and to bring prosecutions, where appropriate. The motion refers to people who it is alleged were wrongly convicted of criminal offences during the strike. I think that Neil Findlay, when talking about Orgreave, said that many miners who went to court were acquitted. The courts recognised, at the time, that many of the cases were not solid.

**Neil Findlay:** The important thing is that it was established at that time that there was widespread malpractice by the police in South Yorkshire. The argument is that that happened in Scotland as well, so we need to think about what happened overall in Scotland; we need to look at the cases overall. The minister stood in solidarity with the miners and did collections and all the other good things that I would expect her to have done during that strike, so surely she agrees that we should go down that route in Scotland?

**Roseanna Cunningham:** I will press on with my explanation of where we are.

**Neil Findlay:** Does she agree? Yes or no?

**The Presiding Officer:** Mr Findlay.

**Roseanna Cunningham:** Since 1999, we have had a Scottish Criminal Cases Review Commission. It operates entirely independently of our courts, the police, prosecutors and the Scottish Government and is responsible for investigating potential miscarriages of justice. If the commission investigates any case and comes to the view that a miscarriage of justice may have occurred with a person's conviction, it has a special power to refer back to court for appeal cases that have exhausted the normal appeal process. Members have mentioned specific cases of what they consider to be false convictions; that is the correct route to take for those cases.

On the calls for the Scottish Government to inquire into the matter, members must be aware that only the courts can overturn criminal convictions. Therefore, I need to be clear about whether we are being asked, in effect, to bring about a situation in which members are happy to have a general review that does not tackle what they consider to have been miscarriages of justice. There is a way to tackle miscarriages of justice, but that does not seem to be what is being discussed.

**Iain Gray:** Will Roseanna Cunningham give way?

**Roseanna Cunningham:** I am in my last seconds.

Only courts can overturn criminal convictions—Governments cannot. We have in place robust procedures in our justice system as part of the checks and balances to protect against miscarriages of justice. I understood that that is what we were talking about. There are procedures in place to investigate complaints against the police and to review historical convictions when it is alleged that a miscarriage of justice took place, as has been alleged in the chamber today, so we should rely on those tried and tested independent processes to be used as needed.

13:18

*Meeting suspended.*

14:30

*On resuming—*

## Business Motion

**The Deputy Presiding Officer (Elaine Smith):** Good afternoon. The first item of business this afternoon is consideration of business motion S4M-09409, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Bankruptcy and Debt Advice (Scotland) Bill.

*Motion moved,*

That the Parliament agrees that, during stage 3 of the Bankruptcy and Debt Advice (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 to 4: 35 minutes

Groups 5 to 9: 1 hour 5 minutes

Groups 10 to 14: 1 hour 30 minutes.—[*Joe FitzPatrick*].

*Motion agreed to.*

## Bankruptcy and Debt Advice (Scotland) Bill: Stage 3

14:30

**The Deputy Presiding Officer (Elaine Smith):** The next item of business is stage 3 proceedings on the Bankruptcy and Debt Advice (Scotland) Bill. In dealing with the amendments, members should have the bill as amended at stage 2, SP bill 34A; the marshalled list, SP bill 34AML; the correction slip to the marshalled list, SP bill 34AML (correction); and the groupings, SP bill 34AG.

The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. Members who wish to speak in the debate should press their request-to-speak buttons as soon as possible after I call the group.

### Section 2—Financial education for debtor

**The Deputy Presiding Officer:** Group 1 is on financial education for debtor. Amendment 3, in the name of Fergus Ewing, the Minister for Energy, Enterprise and Tourism, is the only amendment in the group.

**The Minister for Energy, Enterprise and Tourism (Fergus Ewing):** I begin by declaring that I am a non-practising solicitor member of the Law Society of Scotland and a member of the HI-Scot Credit Union.

Almost all the amendments that the Scottish Government has lodged for stage 3 are in response to arguments put by stakeholders that include the Institute of Chartered Accountants of Scotland, Citizens Advice Scotland, the Law Society of Scotland, StepChange Debt Charity and others, as well as to arguments put by MSPs.

Our proposals in the bill in relation to financial education are groundbreaking. They are a step towards a financial national health service for Scotland. As part of our financial health service, the most financially vulnerable will benefit from education designed to build their financial capability and help prevent repeated debt problems. There has been support throughout the bill process for financial education being an integral part of the system. What we have delivered through the bill provides the platform for further action to build the financial capability of individuals and families across Scotland.

Maximising the opportunity for the financial education of our young people is vital if we are to prevent future generations from experiencing problem debt. Initiatives such as Glasgow City

Council's project to commit £10 to a credit union savings account for every secondary 1 pupil are commendable aspirations that are worthy of consideration and something that we want to discuss with credit unions. The importance of encouraging young people to save and to understand the value of money cannot be overstated.

Amendment 3 is fairly minor. It takes up a suggestion from the Institute of Chartered Accountants of Scotland that a trustee in bankruptcy must advise the debtor within six months of the start of their bankruptcy if they are required to undergo a programme of financial education. Providing clarity early in the process will be helpful for the individual. It will ensure that financial rehabilitation is not delayed and that they can benefit from a programme of learning during their bankruptcy. This small change has come about as a result of listening to those with an interest in the matter. I ask that Parliament support the amendment.

I move amendment 3.

*Amendment 3 agreed to.*

### **Section 3—Debtor's contribution: common financial tool**

**The Deputy Presiding Officer:** Group 2 is on common financial tool. Amendment 4, in the name of the minister, is grouped with amendments 5 and 7.

**Fergus Ewing:** The proposal for a common financial tool has been discussed extensively during the Parliament's consideration of the bill, and rightly so. One of the key principles of the bill is that those who can pay their debts should do so. The assessment of an individual's ability to pay must therefore be done in a way that is both consistent and fair. To mandate the use of a common financial tool across the money advice and insolvency sector is a significant step forward and one that has been widely supported both across the sector and by the Economy, Energy and Tourism Committee.

On-going discussions with stakeholders have led us to clarify our intentions in relation to the tool, which members will recall will be the common financial statement operated by the Money Advice Trust. Amendments 4, 5 and 7 make minor adjustments in that light.

Amendment 4 responds to stakeholder queries about whether assets or liabilities would be used in setting how much it is appropriate that debtors generally should pay. The amendment makes it clear that the specific power to prescribe a method for assessing the debtor's assets, income, liabilities and expenditure is aimed at assessing the particular debtor's financial circumstances.

Assets could still be relevant but, for instance, in assessing the debtor's income as part of their financial circumstances rather than more widely.

Amendment 5 ensures that the regulations that set out the tool will be able to use the common financial statement while any necessary adjustments are made. Likewise, amendment 7 makes it clear that, in setting a debtor contribution order, the Accountant in Bankruptcy must also use the common financial tool. I believe that the amendments in the group bring the necessary clarity, and I therefore ask the Parliament to support them.

I move amendment 4.

*Amendment 4 agreed to.*

*Amendment 5 moved—[Fergus Ewing] and agreed to.*

### **Section 4—Debtor contribution order**

**The Deputy Presiding Officer:** Group 3 contains minor and technical amendments. Amendment 6, in the name of the minister, is grouped with amendments 9, 66 and 74 to 82.

**Fergus Ewing:** The amendments in group 3 make certain technical corrections and improvements to the bill. I am pleased that they include points that were made by stakeholders such as the Scottish Law Commission and StepChange Debt Charity. The amendments ensure that the legislation will read and have effect accurately. I can speak to any of the individual amendments in copious detail if members so desire, but I do not propose to go through each of the minor points at this stage.

I move amendment 6 and invite members to support amendments 6, 9, 66 and 74 to 82.

*Amendment 6 agreed to.*

*Amendment 7 moved—[Fergus Ewing]—and agreed to.*

**The Deputy Presiding Officer:** Group 4 is on length of contribution period in respect of debtor's income and estate. Amendment 1, in the name of Jenny Marra, is grouped with amendment 2.

**Jenny Marra (North East Scotland) (Lab):** Amendment 1 will be familiar to members who have followed the debates as the bill has progressed through Parliament. As a corresponding amendment did at stage 2, amendment 1 seeks to reverse the increase from four years to three years in the practical effects of bankruptcy for Scots, thereby maintaining the status quo that Lloyds Bank has described as an "adequate payment period".

I do not want to go over old ground, so I simply note that Citizens Advice Scotland's stage 3

briefing refutes the minister's assertion at stage 2 that the move will not cause undue hardship. Citizens Advice Scotland has stated that

"increasing the payment contribution period by a further year is very likely to cause hardship. Bankruptcy is for those who are in major need of debt relief, an additional year of payments, administration fees and charges will not help them get that relief."

As CAS also noted, the proposal is intended to do one thing: it is intended to cover the costs of the Accountant in Bankruptcy which, under the bill's proposals, will take a great swathe of functions that are currently overseen by our courts.

**Fergus Ewing:** I assure Ms Marra that the intention is most certainly not to recover the Accountant in Bankruptcy's costs. I also inform her that in a letter that I have from Lloyds Banking Group, Euan McPherson, who is its head of fraud operations, has said:

"As a result of our discussion and the additional assurance provided that the rule would only be applied where there is a proven ability to make payments over the extended time, I believe the bank should be able to support the provision."

**Jenny Marra:** I thank the minister for that assurance. His quotation is not the one that I have from Lloyds. Perhaps we can check that later.

The point that I was making is that the reason for the move is described in the Government's policy memorandum for the bill, which says:

"It is considered that the courts are under increasing pressure from civil and criminal business. As a result of this, access to justice may take longer than previously anticipated, with sheriffs spending more time dealing with chambers work than with courtroom business."

**Chic Brodie (South Scotland) (SNP):** Will Jenny Marra take an intervention?

**Jenny Marra:** No, thank you.

Not so long ago, I, as a member of the Justice Committee, and members on the Labour benches, in the chamber, argued strongly against the SNP's decision to close 10 sheriff courts across Scotland on the ground that doing so would increase pressure on the courts. I cannot help believing that if the Government had had the foresight to take our advice, we would not now be passing on the costs of court closures to some of the most vulnerable and financially excluded people. There is no greater iniquity and I believe that the Government will come to regret this.

There was no great support for the change during consultation. That can be made no clearer than in the Accountant in Bankruptcy's analysis of the consultation, which clearly states:

"The majority of respondents who responded to this felt that this product was not required."

**Chic Brodie:** Will Jenny Marra take an intervention?

**Jenny Marra:** No, thank you.

Furthermore, the Law Society and many others have questioned the measure's effectiveness. For those reasons I ask members to support amendment 1.

Would you like me to continue with amendment 2 now, Presiding Officer?

**The Deputy Presiding Officer:** Yes—please speak to all the amendments in the group.

**Jenny Marra:** Amendment 2 seeks to reinstate automatic discharge from bankruptcy. At stage 2 I moved a similar amendment and at stage 1 I spoke against the bill's proposals to end automatic discharge. I acknowledge that the minister has moved on the matter at stage 2 and again today to clarify the process of discharge and to make it easier.

However, I want to put on record the advice of the European Commission, which says that

"discharge should be as automatic and as reasonably limited in time as possible."

I wonder whether scrapping automatic discharge will fulfil those criteria. We have heard from the Institute of Chartered Accountants of Scotland that the move could have serious unintended consequences and I stress again, as I did at stage 2, that the provision will be seen as a hindrance and not a help to getting debtors financially active again. I therefore ask members to support amendment 2.

I move amendment 1.

**Murdo Fraser (Mid Scotland and Fife) (Con):** As this is my first contribution to the debate, I declare my interest as a member of the Law Society of Scotland.

I will speak to Jenny Marra's amendment 1, which seeks to reduce the contribution period that is proposed in the bill from 48 months to 36. As Jenny Marra said, the committee debated the issue at some length at stage 1, when we prepared our report, and it was debated again when an amendment was lodged at stage 2. On both those occasions I, on behalf of my party, reserved our position on it. However, stage 3 is make your mind up time, so I have made up my mind.

I am minded not to support Jenny Marra's amendment 1—with one caveat, which I will come to in a moment—for two reasons. First, the 48-month period already exists in law in relation to protected trust deeds, and to me it makes sense to have similar provisions in relation to bankruptcy. Secondly, and perhaps more significantly, as a

matter of principle debtors should aim to repay as much of the money that is owed to their creditors as they can. To extend the contribution period to 48 months would allow more money to be repaid. I am not convinced that the 12-month extension will cause undue hardship; indeed I suspect that the measure will apply to relatively few cases.

As for the caveat that I wanted to highlight, I note that in its briefing for the debate, the Law Society of Scotland, while not opposing the increase to 48 months, asks for the move “to be closely monitored” and says that

“if problems arise the Scottish Government should act swiftly in order to rectify them.”

The suggestion is eminently sensible, and if the minister is able to give me an undertaking that he will take such action if required, I will be very happy to support the Government’s position and oppose amendment 1.

14:45

**Alison Johnstone (Lothian) (Green):** I speak in support of amendments 1 and 2. I supported similar amendments at stage 2 and still believe that we should not increase the contribution period.

No one is suggesting that people who can afford to pay their debts should not do so, but as I listened to the evidence, it became clear to me that a very broad spectrum of organisations are against the move to four years. We heard from money advice non-governmental organisations, professional bodies such as R3—the Association of Business Recovery Professionals—and Carrington Dean, and creditors such as Lloyds Banking Group and the Consumer Finance Association, all of which are against the increase. In other words, creditors and debtors oppose the measure—although I acknowledge that the credit unions welcomed it.

David Hill, of ICAS, said:

“I believe that the longer a payment period is, the more likely it is that breakage will come. That is not to say that a payment period of four years will not work, but the longer the period is, the more people’s circumstances change and the more likely it becomes that a breakage will happen.”—*[Official Report, Economy, Energy and Tourism Committee, 2 October 2013; c 3370.]*

**Chic Brodie:** As I have noted in previous conversations on the matter and about the requirement for certainty, which Alison Johnstone has just underpinned, the policy memorandum makes it quite clear that the 48-month period

“can be varied should the debtor’s circumstances change, or in certain circumstances”,

as has been pointed out, it can

“result in a shorter or longer repayment period.”

Does not the member agree with that?

**Alison Johnstone:** I am minded to listen to the evidence of the many experts who came before the committee and who quite clearly stated that there will be a greater chance of breakage as a result of the increase. Why should we put ourselves in the position of having to deal with such breakages?

Moreover, the Law Society of Scotland

“considers that there is insufficient evidence that a debtor contribution order for four years will improve returns to creditors.”

Surely that is one of the major points in this debate.

The committee received correspondence from a practitioner with more than a decade’s experience in debt advice and personal insolvency, who said:

“If Section Four is implemented as proposed in the Bill, Scotland will have the longest formal bankruptcy period in the UK.”

He also said that, in his 10 years of experience of working in the industry,

“it is usually only the lower income debtors who cannot meet creditor criteria in Protected Trust Deeds who choose sequestration.

To extend the payment period would, therefore, mean it will be the lowest income, poorest Scottish debtors who will pay more. More ... than is expected of them in other parts of the UK.”

The minister has previously stated—Murdo Fraser has also just made the point—that the new debt arrangement scheme, which the committee supports, includes a 48-month period. However, the regulations were introduced before we had the chance to take full evidence on the bill, during which the issue emerged. As we have the opportunity now to get the details right in the primary legislation, we should do so.

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** I support amendments 1 and 2 in the name of Jenny Marra.

On amendment 1, I believe that the proposed increase was not contained in the original consultation and that, when it was subsequently consulted on, only a minority of respondents supported the Government’s current position. The minister has said that the reason for the move is not that it will cover costs, so I am interested to hear what he has to say in order to find out what the reason is. Murdo Fraser tried to give a reason, but perhaps the minister will help me out now.

**Fergus Ewing:** Does Mr Chisholm accept that the consultation sought views on the length of a contribution period in a payment product and that a clear majority of respondents, including almost all the credit unions that responded, supported a

period of longer than the four-year period that we are now fixing? In fact, it was suggested that the period be five years.

**Malcolm Chisholm:** The credit unions have particular reasons for their position. I will look further into the matter, but let me put it this way—the measure was certainly opposed by a very large number of organisations that I would normally pay close attention to. I await the reason; no doubt the minister will provide one in his summing up.

Murdo Fraser attempted to justify the change on the ground that four years is the period that applies to protected trust deeds, but an entirely different category of arrangement applies to them. Jenny Marra gave her main reasons for opposing the change and referred to Citizens Advice Scotland's briefing, which is an organisation to which I and, I hope, others always pay close attention.

Alison Johnstone mentioned CAS, too. Many people will have to pay more and, as she emphasised, it will be the poorest people who will find it harder to get back on their feet, there will be new opportunities to miss contributions and the bill may result in a growing number of debtors who cannot maintain their contributions, which will, in general, increase hardship.

As Alison Johnstone also said, the bill includes the longest formal bankruptcy period in the UK. My understanding is that that period may well be the longest in the European Union, because three years is the norm throughout the EU. The Law Society of Scotland proposes that the timescale be monitored. If amendment 1 is defeated, that monitoring can and should be asked for. No doubt the issue will come up in the final debate.

Murdo Fraser discussed amendment 1 but not amendment 2, which intrigued me because it was the Economy, Energy and Tourism Committee that was not persuaded about the ending of automatic discharge. His committee said that the change would have unintended consequences and it called on the Scottish Government

“to clarify the circumstances in which a debtor would be assessed as not having ‘co-operated with the trustee’”.

That, too, is a concern of Citizens Advice Scotland, which says that the criterion that the debtor must co-operate is too broad because it does not say what “co-operate” means. Perhaps that will also be clarified by the minister. However, it is of concern that because such matters are not in the bill the policy will be open to a great deal of discretion.

The bill will amend the Bankruptcy (Scotland) Act 1985, which was extremely welcomed when it was introduced. It was—I say with due respect to

Murdo Fraser—perhaps one of the few pieces of legislation in the 1980s that was extremely welcomed. Indeed, the Law Society of Scotland said:

“when the Bankruptcy (Scotland) Act 1985 said that people could have automatic discharge ... it was seen as a huge step forward that would stop people ending up in bankruptcy in perpetuity for various reasons”.—[*Official Report, Economy, Energy and Tourism Committee*, 30 October 2013; c 3489.]

I hope that that gives the minister and his colleagues behind him pause for thought, because when they reflect on this issue, they will realise that they are well to the right of the Conservative Party.

**Fergus Ewing:** I will deal first with the arguments relating to amendment 2. Perhaps Ms Marra does not appreciate that, in lodging amendment 2, a section that has been included in the bill as a result of stakeholder feedback—that stakeholder was ICAS—would be amended. Therefore, we do not believe that amendment 2 should be supported.

The main issues undoubtedly surround amendment 1 and the length of the contribution period, so I will address that matter. I am grateful for all members' speeches, to which I have listened carefully, as I listened to the similar arguments at stages 1 and 2.

Let me make it absolutely clear that only people who can afford to pay a contribution to the cost of their bankruptcy will pay. Only one third of people who are bankrupt in Scotland pay such contributions; the remaining two thirds make no contribution payments whatever. We do not expect that proportion to change. The fundamental principle that is recognised in the bill and which this Government supports is that those who are able to pay from their income should contribute, but those who cannot should not. The bill seeks to introduce and apply that principle more fairly and more consistently than has been the case, for reasons that it is incumbent on me to explain.

Before I do so, I point out that those whose sole income comes from benefits would pay no contribution. That should be clearly stated, because the matter has not emerged in the debate. In assessing the amount of contributions, at least three different methods of calculation exist. The first is for people who enter the debt arrangement scheme, the second is for people who enter protected trust deeds and the third is for people who enter sequestration or bankruptcy. There are currently three different systems—three different mechanisms—but there is no consistency. How is that fair?

Setting aside whatever our political perspectives might be, surely we can all agree that, if we have a

system in which those who can pay should and do pay, they should pay in accordance with a consistently set and fair formula that is the same for everybody and does not vary in accordance with what form of statutory solution they seek, whether it is debt relief or debt management. The common financial tool will introduce that consistency.

Incidentally, with the common financial tool, we will encourage in the permitted deductions from income the inclusion of a measure of savings. That has not hitherto automatically been the case. We will come back to Parliament on how the common financial tool and the common financial statements will be calculated. I expect that we will debate those things in the Economy, Energy and Tourism Committee, but the common financial tool will bring consistency and fairness across the board for the very first time, which will end real unfairness to a great number of people who either pay too much or too little. I would have thought that all members could subscribe to that.

Assertions have been made that I cannot see as being—with respect to those who have made and repeated them—correct. It is therefore reasonable for me to rebut them.

First, I think that Malcolm Chisholm, who I know has a long history of taking a very compassionate approach to his politics—that is not in doubt—claimed that we would have the longest period in the UK in which debtors pay a contribution. That is not correct. In England, the individual voluntary arrangements insolvency measure normally involves a payment period of five years. We are not proposing five years, although most credit unions wanted that; we are proposing four years. In England, the period is five years, so with all due respect I am afraid that it appears to me that that needs to be corrected.

Secondly, the payment period for protected trust deeds is to last for four years. We debated that matter in committee, when it was agreed unanimously. If Labour Party members were prepared to accept in committee that four years is a reasonable length of time during which a contribution order should be paid for protected trust deeds, I cannot for the life of me understand how one could construct an argument that it is okay to have four years for protected trust deeds but somehow it is iniquitous, unfair, shocking and causative of undue hardship if the period were more than four years and not three years, as is now being argued. The Scottish Government consulted on those matters, and credit unions made their views very clear.

There are other important arguments. People who enter into debt arrangement schemes choose to pay their debts almost in full. They want to pay their debts, and we should encourage that. Most of

us pay our debts, although I am quite sure that there are many people in the country and in the gallery who struggle to pay their debts in these difficult times. They pay their debts, mortgages and rent not for three or four years, but for 20, 25, 30, 40 years or their whole lifetime. We must recognise that not only those who have to face the difficulty of sequestration or protected trust deeds are struggling with debt; the generality of the population are, so we must have a balanced solution. Those who get into difficulty with debt but who wish nonetheless to pay their debt off in full and so enter the debt arrangement scheme pay for an average of six and a half years, which is twice the length of time the Labour Party says would be causative of undue hardship.

I do not think that CAS said that our measures would cause undue hardship, which Jenny Marra imputed to it. I think that it said “hardship”, but perhaps that is a minor criticism. If paying a contribution for four years is causative of hardship, surely those who are paying off their debts under DAS and are paying for six and a half years are in hardship. The argument does not quite seem to be consistent.

15:00

In response to Murdo Fraser’s request in relation to the Law Society’s briefing to MSPs, I am happy to confirm that the Accountant in Bankruptcy will closely monitor the extension of the contribution period to 48 months as it proceeds. I assure Mr Fraser that we will, even before we get to that stage, bring to the committee in some shape or form the opportunity to discuss the common financial tool. Regardless of whether we need to do that, I think that we should do it, so I am happy to undertake to do that.

I am slightly surprised that members who have argued against the bill have not mentioned the provisions of the supplementary financial memorandum, paragraphs 36 to 42 of which deal with breakage, to which Alison Johnstone referred. The supplementary financial memorandum calculates a range of estimated likely gross aggregate additional contributions, and none of that has been challenged by any member.

We accept that it is extremely important to allow debtors relief under the bankruptcy and protected trust deed option, but we must provide fairness to creditors, too; they must get a return on their money, if that is reasonable. That includes credit unions. We do not want them to suffer undue bad debt because debtors who can pay do not pay for a period.

We must strike a balance between the creditor and the debtor. We believe that the measures that we have proposed are fair and that, once they are

introduced, they will pave the way—for the first time ever in Scotland—for a consistent system across the board. That, in itself, will be worth our while and will be a step forward.

**The Deputy Presiding Officer:** I invite Jenny Marra to wind up and to say whether she intends to press or to withdraw amendment 1.

**Jenny Marra:** I will make just a couple of brief remarks. Malcolm Chisholm summed up our position very well.

On the last two points that the minister made, many of those who gave evidence to the committee oppose the extension of the contribution period to four years. The minister cited the credit unions, but he must admit that many other bodies that gave evidence are against the extension to four years, including Citizens Advice Scotland, which both of us have quoted.

The minister mentioned the period for bankruptcy in England, but he was not comparing like with like. He needs to be honest with Parliament about that. The bankruptcy period in England is not four years. He will make Scotland have the longest bankruptcy period in the whole of the UK, which will prevent people from getting back into the economy and being economically active again.

Amendments 1 and 2, which seek to stop the extension of the bankruptcy period to four years and to reinstate automatic discharge, would improve the bill. I press amendment 1.

**The Deputy Presiding Officer:** The question is, that amendment 1 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

As this is the first division at stage 3, I suspend the meeting for five minutes, after which there will be a 30-second division.

15:03

*Meeting suspended.*

15:08

*On resuming—*

**The Deputy Presiding Officer:** We move to the division on amendment 1.

#### **For**

Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (Lab)  
 Bibby, Neil (West Scotland) (Lab)  
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
 Dugdale, Kezia (Lothian) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)

Findlay, Neil (Lothian) (Lab)  
 Finnie, John (Highlands and Islands) (Ind)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (East Lothian) (Lab)  
 Harvie, Patrick (Glasgow) (Green)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hilton, Cara (Dunfermline) (Lab)  
 Hume, Jim (South Scotland) (LD)  
 Johnstone, Alison (Lothian) (Green)  
 Kelly, James (Rutherglen) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Marra, Jenny (North East Scotland) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McInnes, Alison (North East Scotland) (LD)  
 McMahan, Michael (Uddingston and Bellshill) (Lab)  
 McMahan, Siobhan (Central Scotland) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Pearson, Graeme (South Scotland) (Lab)  
 Pentland, John (Motherwell and Wishaw) (Lab)  
 Scott, Tavish (Shetland Islands) (LD)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Drew (Glasgow) (Lab)  
 Stewart, David (Highlands and Islands) (Lab)

#### **Against**

Adam, George (Paisley) (SNP)  
 Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (SNP)  
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
 Biagi, Marco (Edinburgh Central) (SNP)  
 Brodie, Chic (South Scotland) (SNP)  
 Brown, Gavin (Lothian) (Con)  
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)  
 Buchanan, Cameron (Lothian) (Con)  
 Burgess, Margaret (Cunninghame South) (SNP)  
 Campbell, Aileen (Clydesdale) (SNP)  
 Campbell, Roderick (North East Fife) (SNP)  
 Carlaw, Jackson (West Scotland) (Con)  
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
 Constance, Angela (Almond Valley) (SNP)  
 Crawford, Bruce (Stirling) (SNP)  
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)  
 Dey, Graeme (Angus South) (SNP)  
 Don, Nigel (Angus North and Mearns) (SNP)  
 Doris, Bob (Glasgow) (SNP)  
 Dornan, James (Glasgow Cathcart) (SNP)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 FitzPatrick, Joe (Dundee City West) (SNP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
 Goldie, Annabel (West Scotland) (Con)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)  
 Lochhead, Richard (Moray) (SNP)

Lyle, Richard (Central Scotland) (SNP)  
 MacAskill, Kenny (Edinburgh Eastern) (SNP)  
 MacDonald, Angus (Falkirk East) (SNP)  
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
 Mackay, Derek (Renfrewshire North and West) (SNP)  
 MacKenzie, Mike (Highlands and Islands) (SNP)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)  
 McLeod, Aileen (South Scotland) (SNP)  
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)  
 McMillan, Stuart (West Scotland) (SNP)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Neil, Alex (Airdrie and Shotts) (SNP)  
 Paterson, Gil (Clydebank and Milngavie) (SNP)  
 Robertson, Dennis (Aberdeenshire West) (SNP)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Stewart, Kevin (Aberdeen Central) (SNP)  
 Sturgeon, Nicola (Glasgow Southside) (SNP)  
 Swinney, John (Perthshire North) (SNP)  
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)  
 Torrance, David (Kirkcaldy) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (SNP)  
 Yousaf, Humza (Glasgow) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 35, Against 76, Abstentions 0.

*Amendment 1 disagreed to.*

### Section 8—Moratorium on diligence

**The Deputy Presiding Officer:** Group 5 is on a moratorium on diligence. Amendment 8, in the name of the minister, is the only amendment in the group. I call the minister to speak to and move the amendment. [*Interruption.*] I ask for conversations across the chamber to cease, please.

**Fergus Ewing:** One of the benefits of the bill is that it will deliver, for the first time, a six-week moratorium on diligence across all statutory debt solutions in Scotland. The moratorium will give the debtor a reasonable opportunity to take advice.

Amendment 8 provides that the moratorium protects against diligence against earnings that has not yet begun, but not against that which is already in force. Generally, the moratorium will suspend the execution of continuing diligence, but it is not the Scottish Government's intention that, for example, current maintenance arremts that are already in place, which might provide important support for the recipient—in respect of children, for example—should be interrupted just

to give the debtor space to decide what to do. I stress that that is distinct from the effect of any subsequent sequestration on those diligences, which is unaffected by the bill.

The amendment guards against unintended consequences and makes it clearer—to the debtor who is protected and the creditor who is prevented from beginning new diligence—how the moratorium will operate in practice and where the cut-off is.

I move amendment 8.

*Amendment 8 agreed to.*

### Section 9—Statement of undertakings

*Amendment 9 moved—[Fergus Ewing]—and agreed to.*

### Section 12—Concurrent proceedings for sequestration: recall

**The Deputy Presiding Officer:** Group 6 is on recording certain documents in the register of inhibitions. Amendment 10, in the name of the minister, is grouped with amendments 65, 69 and 73.

**Fergus Ewing:** Amendments 10, 65, 69 and 73 are minor but important amendments. They could go in regulations, but we propose to include them here to fit the legislative scheme of the act.

Amendments 10 and 73 relate to the cases where bankruptcy has been recalled. They provide that, on the granting of a recall, a certified copy of the decision is sent to the keeper of the registers of Scotland to be recorded on the register of inhibitions. That ensures that the inhibitive effect of the sequestration of the debtor is lifted, restoring them, so far as practicable, to the position prior to their sequestration.

Amendment 69 deals with matters associated with the bill's provisions for reappointment of a trustee, where assets are discovered at a later date. It provides that an inhibition can be imposed anew or renewed from the reappointment of the trustee, thereby safeguarding assets that vest in the trustee for the benefit of all creditors.

Finally, amendment 65 provides for notification to the keeper where a matter in the register is affected by an order curing a defect in procedure.

I move amendment 10.

*Amendment 10 agreed to.*

### Section 13—Submission of claims to trustee

**The Deputy Presiding Officer:** Group 7 is on submission of claims to trustee. Amendment 11, in the name of the minister, is the only amendment in the group.

**Fergus Ewing:** I am grateful to the Institute of Chartered Accountants of Scotland for suggesting this improvement.

Amendment 11 tightens the requirement on creditors to submit their claims for the amount that they are owed in a bankruptcy to the trustee in 120 days or less. Claims need to be submitted so that the amount that the debtor owes is clear and the rest of the process can begin. As it stands, the bill requires creditors to submit their claims by that deadline or provide a reasonable explanation why they could not. Instead, ICAS has suggested that creditors should be required to justify late submission on the basis of exceptional circumstances, as a stricter test. I think that that is useful, in that it will help with the smooth running of the process.

I move amendment 11.

*Amendment 11 agreed to.*

### Section 15—Vesting of estate after sequestration

*Amendment 2 moved—[Jenny Marra].*

**The Deputy Presiding Officer:** The question is, that amendment 2 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a one-minute division.

#### For

Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (Lab)  
 Bibby, Neil (West Scotland) (Lab)  
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
 Dugdale, Kezia (Lothian) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)  
 Findlay, Neil (Lothian) (Lab)  
 Finnie, John (Highlands and Islands) (Ind)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (East Lothian) (Lab)  
 Harvie, Patrick (Glasgow) (Green)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hilton, Cara (Dunfermline) (Lab)  
 Hume, Jim (South Scotland) (LD)  
 Johnstone, Alison (Lothian) (Green)  
 Kelly, James (Rutherglen) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Marra, Jenny (North East Scotland) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McArthur, Liam (Orkney Islands) (LD)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McInnes, Alison (North East Scotland) (LD)  
 McMahan, Michael (Uddingston and Bellshill) (Lab)  
 McMahan, Siobhan (Central Scotland) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Pearson, Graeme (South Scotland) (Lab)  
 Pentland, John (Motherwell and Wishaw) (Lab)  
 Scott, Tavish (Shetland Islands) (LD)

Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Drew (Glasgow) (Lab)  
 Stewart, David (Highlands and Islands) (Lab)

#### Against

Adam, George (Paisley) (SNP)  
 Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (SNP)  
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
 Biagi, Marco (Edinburgh Central) (SNP)  
 Brown, Gavin (Lothian) (Con)  
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)  
 Burgess, Margaret (Cunninghame South) (SNP)  
 Campbell, Aileen (Clydesdale) (SNP)  
 Campbell, Roderick (North East Fife) (SNP)  
 Carlaw, Jackson (West Scotland) (Con)  
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
 Constance, Angela (Almond Valley) (SNP)  
 Crawford, Bruce (Stirling) (SNP)  
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)  
 Dey, Graeme (Angus South) (SNP)  
 Don, Nigel (Angus North and Mearns) (SNP)  
 Doris, Bob (Glasgow) (SNP)  
 Dornan, James (Glasgow Cathcart) (SNP)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 FitzPatrick, Joe (Dundee City West) (SNP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
 Goldie, Annabel (West Scotland) (Con)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)  
 Lochhead, Richard (Moray) (SNP)  
 Lyle, Richard (Central Scotland) (SNP)  
 MacAskill, Kenny (Edinburgh Eastern) (SNP)  
 MacDonald, Angus (Falkirk East) (SNP)  
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
 Mackay, Derek (Renfrewshire North and West) (SNP)  
 MacKenzie, Mike (Highlands and Islands) (SNP)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)  
 McLeod, Aileen (South Scotland) (SNP)  
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)  
 McMillan, Stuart (West Scotland) (SNP)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Neil, Alex (Airdrie and Shotts) (SNP)  
 Paterson, Gil (Clydebank and Milngavie) (SNP)  
 Robertson, Dennis (Aberdeenshire West) (SNP)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

Stewart, Kevin (Aberdeen Central) (SNP)  
 Sturgeon, Nicola (Glasgow Southside) (SNP)  
 Swinney, John (Perthshire North) (SNP)  
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)  
 Torrance, David (Kirkcaldy) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (SNP)  
 Yousaf, Humza (Glasgow) (SNP)

15:15

**The Deputy Presiding Officer:** The result of the division is For 36, Against 74, Abstentions 0.

*Amendment 2 disagreed to.*

### **Section 16—Discharge of debtor**

**The Deputy Presiding Officer:** Group 8 is on discharge of debtor. Amendment 12, in the name of the minister, is grouped with amendments 13, 14 and 70.

**Fergus Ewing:** This group of amendments deals, in different ways, with the discharge of the debtor. Amendments 12, 13 and 14 make changes to the discharge process in full administration bankruptcy. Again, I am grateful to the stakeholders who have provided feedback and who have helped to shape the changes.

Amendment 12 extends the deadline for making representations in relation to discharge from 14 to 28 days. [*Interruption.*] That applies to all, but it will be of particular benefit to the debtor in obtaining the benefit of advice before any appeal. I am grateful to Citizens Advice Scotland for suggesting the improvement.

Amendments 13 and 14 slightly alter the process by which a replacement trustee is appointed when a debtor cannot be traced by moving the task of notifying creditors about the appointment of a replacement trustee to the Accountant in Bankruptcy. That sensible, practical step, which was suggested by ICAS, also reflects the Accountant in Bankruptcy's continuing role.

Amendment 70 deals with the debtor's discharge from the minimal asset process. We know that the MAP will deliver accessible debt relief to those who need it most and that debtors will be charged less than half of what they are currently charged. They are currently charged £200 and, under the MAP, the charge will be reduced to £100. In order for the MAP to deliver that saving, we need it to be a modern, streamlined system. Amendment 70 helps with that streamlining, as it removes some of the bureaucracy that would otherwise have to be undertaken at the point at which the debtor receives their discharge. That bureaucracy is not necessary because the MAP results in automatic

discharge and will be a more automated process for cases in which there are no assets.

I move amendment 12 and invite members to support all the amendments in the group.

**The Deputy Presiding Officer:** I remind members to ensure that electronic devices are switched off in the chamber. I also invite members who wish to have conversations to have them outwith the chamber.

*Amendment 12 agreed to.*

### **Section 18—Deferral of discharge where debtor cannot be traced**

*Amendments 13 and 14 moved—[Fergus Ewing]—and agreed to.*

### **Section 20—Assets discovered after trustee discharge: appointment of trustee**

**The Deputy Presiding Officer:** Group 9 is on assets discovered after discharge of trustee. Amendment 15, in the name of the minister, is grouped with amendments 16 to 19.

**Fergus Ewing:** Amendments 15 to 19 deal with circumstances in which the trustee becomes aware of assets after the debtor has been given their discharge. There have been quite a number of cases in which that sort of thing has happened recently as a result of payment protection insurance payouts.

Amendments 15 and 17 allow that, if the asset is worth less than £1,000, no further action needs to be taken by the former trustee. There would be no point in pursuing a relatively small sum if the cost of recovering the asset was likely to be greater than the value of the asset itself.

Amendments 18 and 19 place certain requirements on the former trustee. By this stage, the trustee, as well as the debtor, is likely to have received their discharge. The former trustee will therefore have the choice either to seek reappointment and realise the value of the assets themselves or to leave it to the Accountant in Bankruptcy to appoint a new trustee.

Amendments 18 and 19 specify that, if the trustee decides not to seek reappointment, he or she must provide the AIB with certain information including the estimated value of the newly discovered asset and some of its history, why it should be included as part of the debtor's estate and why it was not recovered in the first place.

The amendments in the group represent sensible improvements to the process and were all lodged following meetings with ICAS, which is the recognised body for insolvency practitioners. I invite members to support them.

I move amendment 15.

*Amendment 15 agreed to.*

*Amendments 16 to 19 moved—[Fergus Ewing]—and agreed to.*

### **Section 25—Recall of sequestration by sheriff**

**The Deputy Presiding Officer:** Group 10 is on recall of sequestration. Amendment 20, in the name of the minister, is grouped with amendments 21 to 42 and 71.

**Fergus Ewing:** Concern was expressed about our proposals for what is referred to in the bill as “interim recall”. In its written evidence to the committee, the Law Society of Scotland said:

“interim recall is ... flawed. We consider that there can be no middle ground—either a debtor is sequestrated or he is not.”

As I said in response to Hanzala Malik’s amendments at stage 2, there are practical operational matters to consider. My officials and I have had helpful discussions with the Law Society since then—indeed, I spoke to Michael Clancy just last week—and we are happy to propose amendments that deliver on my commitment at stage 2 to remove the concept of interim recall from the bill.

I have a great deal more in my notes but, in the absence of clamant demand from members to hear it, I invite members to support the amendments in the group.

I move amendment 20.

*Amendment 20 agreed to.*

*Amendment 21 moved—[Fergus Ewing]—and agreed to.*

### **Section 26—Recall of sequestration by Accountant in Bankruptcy**

*Amendments 22 to 42 moved—[Fergus Ewing]—and agreed to.*

### **Section 28—Replacement of trustee acting in more than one sequestration**

**The Deputy Presiding Officer:** Group 11 is on replacement of trustee and removal of trustees and commissioners. Amendment 43, in the name of the minister, is grouped with amendments 44 to 53.

**Fergus Ewing:** Amendments 43 and 44 will amend section 28 to enable, with more ease, a block transfer of cases from one trustee to another. The bill currently provides for such a block transfer, but only in line with the existing provision in the 1985 act for where a trustee is

deceased or ceases to be qualified to act as a trustee.

ICAS pointed out that the usual circumstances that would give rise to the need for a block transfer would be when a trustee has changed firms and gone to work for a new firm of insolvency practitioners, and is unable to take their cases with them. Amendment 43 will therefore widen the circumstances in which a block transfer is allowed to include cases in which there is a conflict of interest or a change in the trustee’s personal circumstances that prevents them from carrying out their duties.

Amendment 45 provides that a block transfer may be carried out either on the application of any interested party or at the AIB’s own accord. In either case, the amendment requires that interested parties should be notified and given the right to make representations.

Amendment 47 will place a duty on the new trustee, where the new trustee is not the Accountant in Bankruptcy, to notify all creditors in the cases to which they have been appointed, so that creditors are kept aware of and up to date on developments.

This group of amendments also deals with the removal of trustees and commissioners. Amendments 50 to 52 will allow debtors, as well as commissioners and creditors, to apply for a declaration that the office of trustee is vacant on the basis that the existing trustee is unable to act or should not, on the basis of conduct, continue to act. That is a helpful improvement, which was suggested by the Law Society.

Likewise, amendment 53 is not a major amendment but one suggested by a stakeholder, this time ICAS, and one which we think improves the bill. It provides a new power for the sheriff to remove from office a commissioner in the circumstances where the commissioner is no longer acting in the interests of the efficient conduct of the sequestration. The current practice of calling a creditors meeting might not always meet the needs of the relevant parties, and it is expected that amendment 53 will provide for a more satisfactory process in some circumstances.

I move amendment 43.

*Amendment 43 agreed to.*

*Amendments 44 to 49 moved—[Fergus Ewing]—and agreed to.*

### **Section 29—Removal of trustee and trustee not acting**

*Amendments 50 to 52 moved—[Fergus Ewing]—and agreed to.*

### After section 29

*Amendment 53 moved—[Fergus Ewing]—and agreed to.*

### Section 31—Bankruptcy restrictions order

**The Deputy Presiding Officer:** Group 12 is on bankruptcy restrictions orders. Amendment 54, in the name of the minister, is grouped with amendments 55 to 64.

**Fergus Ewing:** A bankruptcy restriction order—BRO—is a mechanism for ensuring that people who abuse the bankruptcy process, for example by failing to provide information on assets or disposing of assets, have a restriction on their activities after their bankruptcy has ended. It is currently a sheriff who decides on BRO applications made by the Accountant in Bankruptcy. The bill has proposed that decisions on BROs, among other things, should pass from the sheriff court to the AIB. At stages 1 and 2, I listened to representations from stakeholders, most recently in a meeting I had with the Sheriffs Association, which has concerns about the proposals for BROs.

The law currently allows BROs to be made for between two and 15 years. It has been highlighted to me that, when a BRO is required for five years, it generally deals with cases of a more serious or complex nature that have a significant impact on the life of the individual. As such, we have reconsidered that more serious cases of this nature would benefit from a judicial view. I am pleased therefore to bring forward amendments 54 to 64, which provide that the AIB will have responsibility for making BROs of between two and five years but that the sheriff will retain responsibility for BROs of between five and 15 years.

Provision of fair and just process remains central to our proposals. As an officer of the court, the AIB is well placed to make decisions in relation to BROs. The staff of the AIB have been preparing applications for BROs for a number of years now. They do that in a rigorous and careful fashion, which is evidenced by the fact that every single application to a sheriff has been approved.

It is important that there is a right of appeal to the sheriff, and the bill retains that protection for all cases. Any BRO will be challengeable at any time before its expiry.

I believe that the amendments provide a better balance. They ensure that the AIB can deal efficiently with BROs in more straightforward cases, minimising the burden on the court. More complex cases will benefit from scrutiny by the court. The right of challenge will exist for the duration of any BRO.

I hope that Parliament will be supportive of these amendments, which address the concerns of valued stakeholders.

I move amendment 54.

*Amendment 54 agreed to.*

*Amendments 55 to 64 moved—[Fergus Ewing]—and agreed to.*

### Section 33—Power to cure defects in procedure

*Amendment 65 moved—[Fergus Ewing]—and agreed to.*

### Section 40—Review of decision about discharge of trustee

*Amendment 66 moved—[Fergus Ewing]—and agreed to.*

### After section 40

**The Deputy Presiding Officer:** Group 13 is on appeals against review decisions of the Accountant in Bankruptcy. Amendment 67, in the name of the minister, is the only amendment in the group.

15:30

**Fergus Ewing:** Amendment 67 is a lengthy but minor amendment that clarifies that appeal to the sheriff from a review carried out by the AIB is a full rehearing of the matter. The new power of review by AIB is designed to ensure that there is an opportunity for mistakes to be corrected and for earlier decisions to be challenged without the need to go to court, so that people have access to justice and decision making at the right level.

That said, the right to appeal those decisions in court is also a very important aspect of the bill. The bill was consistent with existing provisions of the Bankruptcy (Scotland) Act 1985, but amendment 67—which responds to points made by the Sheriffs Association—puts beyond doubt the position already in the bill that such an appeal could be on a matter of fact, a point of law or the merits of the case. It does not affect any other avenue of court review under the 1985 act. I invite members to support the amendment.

I move amendment 67.

*Amendment 67 agreed to.*

### Before section 41

**The Deputy Presiding Officer:** That brings us to group 14, which is on representation in the sheriff court. Amendment 68, in the name of the minister, is grouped with amendment 72.

**Fergus Ewing:** Amendments 68 and 72 provide for parties to be represented by persons other than solicitors in some cases in the sheriff court.

Amendment 68 ensures that a person authorised by the AIB can conduct civil proceedings in the sheriff court in relation to the accountant's functions. The administration of bankruptcy cases requires the accountant to carry out functions that range from administrative to quasi-judicial. The accountant is an officer of court for that purpose. It follows that the AIB's staff or associated agents should equally be able to carry out functions across the same spectrum, including representation in court.

Amendment 72 ensures that the current arrangements for the sheriff to allow lay representation, for instance by a citizens advice bureau, in relation to the award of sequestration can be replicated for discharge appeals under the bill.

In due course, wider powers in the Courts Reform (Scotland) Bill will replace those powers of the courts to allow lay representation. I ask members to support the amendments.

I move amendment 68.

*Amendment 68 agreed to.*

#### **Section 44—Effect of sequestration: renewal of period of inhibition etc**

*Amendment 69 moved—[Fergus Ewing]—and agreed to.*

#### **Schedule 1—Schedule A1 to the 1985 Act**

*Amendment 70 moved—[Fergus Ewing]—and agreed to.*

#### **Schedule 2—Information to be included in the sederunt book**

*Amendment 71 moved—[Fergus Ewing]—and agreed to.*

#### **Schedule 3—Minor and consequential amendments**

*Amendments 72 to 76 moved—[Fergus Ewing]—and agreed to.*

#### **Schedule 4—Repeals**

*Amendments 77 to 82 moved—[Fergus Ewing]—and agreed to.*

**The Deputy Presiding Officer:** That ends consideration of amendments. I will allow members a few moments to reorganise themselves for the debate on the bill.

## **Bankruptcy and Debt Advice (Scotland) Bill**

### **The Deputy Presiding Officer (Elaine Smith):**

The next item of business is a debate on motion S4M-09365, in the name of Fergus Ewing, on the Bankruptcy and Debt Advice (Scotland) Bill.

15:34

### **The Minister for Energy, Enterprise and Tourism (Fergus Ewing):**

We have had a good discussion on the Government's final package of amendments to the bill, and I would like to think that the number of non-Government amendments suggests that, at the end of the process, we have arrived at an overall consensus on most things, even if we do not agree on everything.

I begin the final debate on the bill by thanking Murdo Fraser, the other members of the Economy, Energy and Tourism Committee, their clerking team and all of those who have assisted with Parliament's scrutiny of the bill. I thank also my own officials and those in the Accountant in Bankruptcy's office for their excellent, efficient and lengthy support during, and indeed before, the bill.

We as a Government, and my officials in particular, have appreciated the support of all of the stakeholder organisations that have engaged with us. It is a long list. Members will have noticed that there are very few tidying-up amendments, if I could call them that. Almost all of the amendments were introduced because the Institute of Chartered Accountants of Scotland, the Law Society of Scotland, Citizens Advice Scotland and the Sheriffs Association put forward points and made suggestions.

We had lengthy discussions with those organisations, before and after the introduction of the bill but especially during its passage. The bill is now in better shape, and I am extremely grateful to all of them for that. It is important that we listen to stakeholders, and I am particularly grateful for their support, advice and contributions throughout the passage of the bill.

I have already made it clear that there needs to be a balance in bankruptcy law between the interests of creditors and debtors. For creditors, we stand by the principle that, when the debtor is able to pay something towards the cost of their bankruptcy, they should do so. Creditors have a right to expect a reasonable return. The effect of bad debt on creditors, particularly small businesses, can be extremely serious. We need to bear that in mind in striking that balance.

When someone is able to make a contribution, we have extended the payment period from 36 to 48 months. As I alluded to in the debate on group

4, the Accountant in Bankruptcy's analysis has indicated that that move should give rise to an improved return for creditors. That is what common sense would suggest. After all, if people pay for three years, broadly speaking they will pay for four years. That is the lesson that we learned from other vehicles, and I see no reason why it should not apply in this case. However, I was happy to give the assurance to Mr Fraser that he reasonably sought. The Accountant in Bankruptcy will monitor things closely.

As we move towards the final stage of the passage of the bill, I hope that all members will accept the critical point that a contribution is paid in less than a third of all bankruptcy cases. Only one third of the people who are bankrupt in Scotland will pay anything at all. The most financially vulnerable debtors will not be required to make any contribution. Those whose sole income derives from benefits will not pay a contribution. They should not, they cannot and they will not. It is incumbent on me to set that out extremely clearly. Credit unions have welcomed that change, and I have had positive discussions with the British Bankers Association and representatives of high street banks. Lloyds Banking Group has confirmed to me this week that it

"should be able to support the provision".

On the debtors' side, as well as mandatory advice we will introduce a new minimal asset process—or MAP—which will deliver quicker, more efficient debt relief to debtors who need it most, at half the cost. If I may say so—this is not in the script—it is a tribute to the efficiency of the Accountant in Bankruptcy and her staff in Kilwinning that they are able so efficiently to conduct their business that they do so at a cost of £100 per case. That indicates a diligence, devotion and ability that we should all appreciate from public servants who do a terrific job. Indeed, in the next couple of weeks I will have the pleasure of visiting once again the staff in the Kilwinning office formally to thank them for their work.

As well as the MAP, we will introduce a new common financial tool for Scotland, which will deliver, for the first time, a consistent determination of the amount that the debtor can pay. Up to now, various calculations have been applied. That simply cannot be right. I cannot overestimate the importance of this point: up until now, there has been no clarity or consistency in the various types of statutory solution that debtors enter. Those who enter the debt arrangement scheme, sequestration or protected trust deeds will pay contributions when they can, but there has been no consistency. Surely that is wrong. It is not an easy thing to devise a common financial tool

that is fair to everybody, but it has already been done, and we will work hard to bring forward clear proposals on this matter and debate them in Parliament in due course.

There is more that we can do with the common financial tool. For example, we have been discussing with members of our common financial tool working group and the Money Advice Trust whether we can—as I mentioned earlier—build a small allowance for savings into the determinations.

The bill is aiming to assist financial rehabilitation, and members will have heard me refer previously to the Government's vision for a financial health service. The passing of the bill today will mark a major milestone on the road to making that vision a reality. We need such a service to build the financial capability of people in Scotland, and, by working with organisations such as church groups and credit unions, we will help to support people to make better financial choices and prevent future problem debt.

We want our financial health service to act on behalf of the people of Scotland and to put the case to credit reference agencies that there should be more differentiation in credit risk scoring between people who have taken steps towards repaying their debts and those who have not. For example, credit reference agencies appear to give no recognition to those who are paying their debts under the debt arrangement schemes. That is plainly wrong, and we are working with the BBA to see whether it is possible to put it right.

In addition, we believe that banks should play their part to allow accounts to be opened or to remain open, which can enable debtors to benefit from things such as lower charges for household fuel, and by delivering specific products. If one has a bank account, as members know, one has access to discounts through paying bills by direct debit, for example. If banks do not allow undischarged debtors to have a credit-only account, those debtors cannot access the discounts that others can, and that cannot be fair.

The provisions in the bill are designed to tackle that issue and to act as a counterpart to the provisions that have been introduced down south. That is a worthy purpose, and we look forward to continuing to work with the BBA and individual banks, not least because, according to the CAB, only Barclays generally allows such a service at present. We hope that all the banks will follow that example.

We will have a financial health service that brings together different strands and sources of information and advice so that anybody with a concern or an issue to do with debt or borrowing can find, in one place, the help and assistance that

they need. To that end, I can announce that the website of the Accountant in Bankruptcy will be rebranded in the autumn to become the website for, and a portal to, Scotland's financial health service.

The Bankruptcy and Debt Advice (Scotland) Bill is not the end of the process, but a new beginning. The financial health service will soon be a visible reality, and bankruptcy will be no longer just about accounting after the fact but about prevention before the fact. Debtors will be better advised, informed and supported. The changes in the bill are commendable and, more than that, they are essential. I invite all members to support them and to support the bill.

I move,

That the Parliament agrees that the Bankruptcy and Debt Advice (Scotland) Bill be passed.

15:43

**Jenny Marra (North East Scotland) (Lab):** I agree with the minister that the bill that is before us today is radically different from—and, I agree, much better than—the bill that was introduced at stage 1. Labour has argued throughout the process that critical areas of the bill need to be changed in order for us to support it.

Those include putting Scots into bankruptcy for longer than is the case for those in any other part of the UK; ending automatic discharge, against the advice of the European Commission; and capping the amount of debt that the poorest can have before they enter bankruptcy and then charging those self-same poorest a fee to enter it.

At every stage of the bill, Labour members have sought to rectify what we believe are unnecessary measures that unwisely tip the balance towards simply recouping the moneys that are owed and away from allowing people and businesses to become financially active again.

Bankruptcy law is important for many reasons, but it is particularly important not just because it provides a right of recourse to those who are owed money but because it is a fundamental safety net of the state with a function to help businesses that have failed—particularly in an economy that is still recovering—and to support individuals who have fallen into financial difficulty.

Good bankruptcy law can help to build an economy that is inclusive not just for those who never have to worry about money but for those who find themselves in acute financial difficulty, which happens for a multitude of reasons. It can also support those who have risked their livelihoods by trying to start their own businesses and build a better life for themselves and their families.

Sometimes families break down and leave one party with nothing; sometimes house prices fall so far that negative equity can render people insolvent; sometimes the insurance company will not pay out after a natural disaster; and sometimes businesses are set up with the best of intentions but fail for economic reasons not of their own making. As lawmakers, we have to be sensitive to the reasons why bankruptcies happen, and the laws that we pass on bankruptcy must reflect that it is in the best interests of the Scottish economy to strive for economic inclusion as well as fair reparations.

In my opinion, if Labour's amendments at stage 3 had been accepted, they would have done two very important things: first, they would have reversed the Scottish Government's decision to put Scots into bankruptcy for longer than in any other part of the United Kingdom; and, secondly, they would have reinstated the principle of automatic discharge from bankruptcy, as envisaged by the European Commission's expert recommendations.

The Government's failure to agree those changes is a missed opportunity that will hold Scots in bankruptcy for longer than at present and make it more difficult and complex for Scots to get back on their feet.

**Fergus Ewing:** My understanding is that the European Commission document to which the member refers does not really apply to the generality of those who are bankrupt but specifically to small and medium-sized enterprises. Does the member really feel that that document supports the arguments that she has set out?

**Jenny Marra:** It is my understanding that the document does support the arguments that I am making, but I assure the minister that I will go back and check that.

In light of the continued concern of not just the Labour Party but, among others, Citizens Advice Scotland—which I know the minister has listened to very carefully—will the minister commit to undertake post-legislative scrutiny in the form of a review of the two specific provisions on which I moved amendments within three years of their coming into effect? A similar point was raised by Murdo Fraser during consideration of amendments, and a review would give us some comfort around those provisions. We would be able to see what impact the changes were having on those going through bankruptcy and how they were affecting the efficient disposal of bankruptcies, which is essential for getting people financially active again.

The minister made significant changes to the bill. It is rare to debate 80 amendments at stage 3,

including some that introduce new sections, but it was welcome today. I think that the minister listened to Labour's concerns on the issue of interim recall and removed it from the bill. Although he did not reinstate the provision for automatic discharge, he lodged two separate amendments to clarify the process; although he did not remove the cap on debt for the minimal asset route, he raised it to a point where the vast majority of the poorest people will qualify for the new route; and although he did not abolish the charge for accessing the minimal asset route, he reduced it by half, after making the ill-judged decision earlier in this parliamentary session to raise it to £200.

Those changes and the fact that the minister listened to our points, combined with the creation of the financial health service, which is very welcome, mean that the Labour Party will reluctantly support the bill today.

15:50

**Murdo Fraser (Mid Scotland and Fife) (Con):** I am pleased to contribute to the debate on behalf of the Scottish Conservatives. Usually, when we get to stage 3 debates, everything that needs to be said has already been voiced. I therefore do not have a great deal to add to what I said in the stage 1 debate and during the bill's progress.

As convener of the lead committee, I thank once again my committee colleagues for their assistance in scrutinising the bill, along with our committee clerks, all those who gave evidence, and particularly our adviser, Nicholas Grier. As much of the bill is technical, it certainly assisted us to have both Nicholas and the team from the Scottish Parliament information centre on hand to guide us through it.

Throughout the stage 1 process, committee members had a thorough debate on a whole range of issues, many of which Jenny Marra has just mentioned, and we all learned a great deal about the bankruptcy process. I think that I was the only member of the committee who was a veteran of the Bankruptcy and Diligence etc (Scotland) Bill, which was introduced in 2005 and which went through the then Enterprise and Culture Committee, but my knowledge had dimmed with the years, so it was good to be refreshed.

It is fair to say that, on many of the controversial issues, some of which Jenny Marra mentioned, the arguments are fairly balanced on both sides. The committee's scrutiny was useful in identifying exactly what the issues were so that, when it came to voting on the bill, we could be clear about the implications. I commend the minister for the way in which he has taken the bill forward and particularly the way in which he consulted interested parties.

The bill has widespread support. I heard Jenny Marra say that Labour will support it. We will do so, too, and I am sure that we will hear from other parties whether the support will be unanimous. The general approach has been constructive from all sides. It has been about taking forward the law in a non-partisan way and seeking to bring an improvement, and that is right, because the bill focuses on ensuring that Scottish people have access to fair and just processes of debt advice, debt relief and debt management.

A key aspect of the bill is the introduction of compulsory money advice for those who are facing financial difficulty. It remains to be seen how effective that will be, but it is certainly a laudable aim. We will need to monitor closely the extent to which additional resources are required to put it into practice and make sure that it works, and the committee discussed the matter in detail when it took evidence.

More generally, committee members felt that financial education, which is not the same as compulsory debt advice, would be useful. I believe that there is a role for it in schools. We need people to be aware of alternatives to expensive sources of credit such as payday lending. For example, we need to look at how we can expand the role of credit unions, which are a welcome and comparatively recent development.

One of the ironies of the process of taking evidence was that, when it came to many measures in the bill, the credit unions, which would usually be creditors in any bankruptcy process, took a much more hard-line approach, particularly to making debtors repay, than many of the other witnesses whom we heard from, including insolvency practitioners. That brings to our attention the harsh reality that credit unions have to recover the money that they lend in order to have a future and to ensure that they are financially solvent.

In the way in which we address all the issues, a proper balance has to be struck. If debt relief becomes too easy, we create a moral hazard because it becomes too simple for people to walk away from moneys that are due. On the other hand, if it becomes too onerous, we simply trap people who have fallen on hard times in a cycle of debt from which they can never escape. It is always a challenge to strike that balance. In my view, the bill is successful in that regard, but time will tell.

A welcome measure in the bill, which the Scottish Government introduced at stage 2 and which the committee identified during our scrutiny, is the provision to allow undischarged bankrupts access to bank accounts. That mirrors a similar provision that was brought in down south on a previous occasion. It is important because, as the

minister fairly said, having a bank account is essential in modern life. In future, with the introduction of universal credit, all benefits will be paid into bank accounts, so removing accounts from bankrupts would have caused them real difficulty. Now that the legislative framework is in place, it is up to the banks to make the necessary changes to their policies to ensure that accounts are made available, and I encourage the minister to ensure that they do that.

Finally, I welcome the introduction of the new minimal asset process. As the minister will know, there continues to be a debate about whether the fee for entering the MAP, which is a maximum of £100, is appropriate or whether it is too high and will act as a deterrent. I welcome the evidence that we received from the Accountant in Bankruptcy, which was that the figure will be looked at in the light of experience and that, if possible, it will be reduced.

I will have the opportunity to add some comments later, but for the moment I simply confirm that the Scottish Conservatives are pleased to support the bill.

15:55

**Mike MacKenzie (Highlands and Islands) (SNP):** The bill has an unfortunate acronym, because there is nothing bad about it. It represents a necessary updating of bankruptcy legislation and offers benefits for both debtors and creditors. Much of the Parliament's concern is rightly focused on the difficulties that debtors face, but creditors should not be ignored. My concern for creditors, though, does not include those in the payday loan industry, nor am I much concerned about the banks. I am concerned for small businesses that face real problems in dealing with bad debts: the man who fixed the washing machine; the local garage; the corner shop that helpfully offered credit. I am also concerned for credit unions, the good intentions of which often work against them.

The returns to such creditors have often been very low—far too low—and that is why I like the bill, which offers benefits to debtors and creditors. That is in part because the common financial tool is fairer to debtors and will achieve better returns for creditors by the mechanism of extending payment, for those who can afford to make it, over four years rather than three years, which is important. Jenny Marra argued that that will increase breakages, but evidence from the experience with the DAS suggests otherwise: breakages, when they occur, are much more likely to occur in the first two years and not, as has been suggested, in year 4.

As the minister said, it is important to note, too, that those on the very lowest incomes will make no payment at all. Those who can pay often say—indeed, many people told the committee this—that they want to pay off their debts; they just require circumstances that make that possible.

There are benefits too for the efficiency of the AIB. For instance, the MAP must have a ceiling on debt that can be dealt with without complication and therefore efficiently. I welcome the AIB's aim to get payment for the MAP down to £100 and perhaps even lower, which would be impossible with a higher debt ceiling. In the same interest of efficiency, I welcome the AIB taking on some of the administrative work that has been done by the courts.

The Scottish Government has demonstrated good practice in developing the bill. It has worked with stakeholders throughout the process and, more important, listened carefully to them; where possible, it has implemented the recommendations that it favoured. I am delighted that the Government is taking action to help debtors keep bank accounts and to raise the threshold for the MAP to £17,000.

Bankruptcy is inevitably a difficult process. That is why I warmly welcome the bill and the recent improvements to the debt arrangement scheme, which increasingly offers people a better alternative to bankruptcy. I note that since the number of applications for the DAS has risen, the number of bankruptcies has gone down, which I welcome. The Scottish Government and the Accountant in Bankruptcy are to be commended for that.

15:59

**Richard Baker (North East Scotland) (Lab):** In parliamentary terms, I am now very wizened. Although I was not a member of the Economy, Energy and Tourism Committee when it considered the Bankruptcy and Debt Advice (Scotland) Bill, I was, like Murdo Fraser, a member of the Enterprise and Culture Committee in 2005 when it considered the Bankruptcy and Diligence etc (Scotland) Bill. The goal of what was another highly technical piece of legislation was to strike a better balance between the rights of creditors and the rights of debtors and to uphold the can-pay, should-pay principle while helping those who, for whatever reason, genuinely struggled to meet the financial demands of their debts. Such a balance is not always easy to strike and achieving it in this bill has clearly been at the forefront of committee members' minds.

In the stage 1 debate, we on this side came to the conclusion that the correct balance had not been struck between those competing demands,

particularly with regard to the increase in the debtor contribution payment period from 36 to 48 months. Indeed, that was the subject of amendments 1 and 2 in the name of Jenny Marra, which were debated in this chamber this afternoon. Although the minister has said that the measure is not about full-cost recovery for the Accountant in Bankruptcy, Citizens Advice Scotland and others have expressed the opposite view and voiced concern that the move is not primarily in the interests of debtors, who, after all, do not take lightly the step of entering into such arrangements.

As a result, I think that it has been right to test the Government's stance on this issue, and I agree with Citizens Advice Scotland's assessment that even if the provision is intended for individuals who have been assessed as being able to make the contribution, the fact is that increasing the debtor contribution payment period by a further year is very likely to cause them hardship. An additional year of payments, administration fees and charges will not assist them in restoring their financial position, which is, after all, the point of the bankruptcy process.

However, as colleagues have said, we acknowledge that during stage 2 there was movement from the Scottish Government in a number of important areas, including the raising of the minimal asset process bankruptcy level as well as the offer of £200,000 to support financial education, which will, of course, be welcomed by all parties in the chamber. The provisions on compulsory money advice for bankrupt debtors and financial education for those who it is deemed would benefit from it are ambitions of this legislation that can be supported.

I believe that my party has a strong track record in improving the laws of this land for people who become unable to meet their financial obligations and who require assistance to restore their financial position while, at the same time, delivering fairness to creditors. Indeed, when we were in government, we achieved those goals through measures such as the debt arrangement scheme and support for money advice. It is always right to review legislation in this area to ensure that it is fit for purpose, and I am sure that ministers have been right to do so in this instance. However, although we welcome a number of provisions in the bill as representing progress in our bankruptcy laws, we maintain strong reservations about the practical impact of other elements.

I suspect that this will be one of those pieces of legislation for which post-legislative scrutiny will be particularly important; indeed, as Jenny Marra has highlighted, it will be most important with regard to the debtor contribution payment period. It will be

necessary to reflect further on this legislation once it has been passed so that we as a Parliament are assured that, in practice, it is delivering a legal framework that effectively provides the balance in the law that I mentioned earlier of maintaining creditors' rights while assisting those who cannot meet the demands of their debt.

The bill must be part of that much broader work of Government to help people who are in debt get out of it and, most important, to do whatever we can to ensure that people do not take on unmanageable debt in the first place.

16:03

**Tavish Scott (Shetland Islands) (LD):** I hope, Presiding Officer, that you will allow me to start with a point that is very much about Parliament rather than the minister's handling of the bill. The Government lodged 80 amendments, which, by any standard, is a lot. Mr Ewing very reasonably set out the case for that; indeed, on occasion, he very reasonably did not read out his whole brief, which I suspect was a relief to the chamber.

However, perhaps the minister should have read into the record the justification and arguments that he was making on behalf of his stage 3 amendments. On a number of occasions, he cited ICAS, the Law Society of Scotland and other bodies that had no doubt come forward with helpful suggestions at this last stage, but neither Mr Fraser's Economy, Energy and Tourism Committee, which was responsible for scrutinising the bill, nor the Delegated Powers and Law Reform Committee has considered those amendments or measures. In short, there has been no effective committee scrutiny of a great raft of changes that have been made to a piece of legislation that we are clearly going to pass this afternoon.

**Fergus Ewing:** Perhaps I was not being sufficiently generous to Mr Fraser and his committee members, but it is fair to say that a great many of the amendments that we have accepted on the particular advocacy of stakeholders pursued issues that had been very clearly identified by the committee, including in its report.

**Tavish Scott:** I am sure that that is correct. I reiterate that I am not criticising the Government of the day or the minister responsible for the bill. My point is that, even in these circumstances, Parliament does not have a mechanism that allows us to look at such issues. We do not have enough time between stages 2 and 3 of a bill, to take the very point that Mr Ewing has correctly made. I ask that, in our consideration of our own procedures—because this is a matter for Parliament, not Government—we reflect on how

we work. Today, we are talking about a bill that we broadly agree with, and Mr Ewing has very reasonably made the case for his amendments. However, there is other legislation that is the very definition of controversial—a recent example is that of the justice measures that were very firmly pushed through Parliament at stage 3 in highly controversial scenes. I repeat that that is not the case today.

Turning to the bill, I recognise that, as the minister has just said, during its passage the Government has addressed many of the concerns that were highlighted. We on the Liberal Democrat benches recognise that work and support the bill.

I highlight in particular the financial education measure, which I have long believed in and for which I have argued at a number of levels. I recognise the Scottish Government's commitment to provide additional finance to deliver in that area. The increase in the debt ceiling for minimal asset processes that Mr Fraser mentioned also appears to be an eminently sensible development of policy and practice.

I recognise the work that has been done with the money advice sector to predict the likely impact of the requirement for compulsory money advice. Liberal Democrat members hope—as do other members, I am sure—that demand will be monitored and that resources will be reviewed in line with any upward demand or changed requirement.

We are cautious about the ending of automatic discharge, on which we hope the Government will reconsider its approach. I noted with considerable interest the debate on Jenny Marra's amendments. I am not quite sure that I understood Mr Chisholm's remark that the proposal in the bill makes the Government more right wing than the Conservative Party. I see that Mr Swinney is listening; I suppose that, on corporation tax, that would indeed be the case. Nevertheless, the position, following the debate on Jenny Marra's amendments, is clearly more balanced than it was at an earlier stage. That movement, although limited, is welcome.

We were worried about the transfer of powers from the judiciary to the AIB, given the conflict-of-interest arguments that were made. I acknowledge the minister's observations on progress to reduce that conflict. I trust that he will assure Parliament that that change will be carefully monitored to ensure equality in sequestration cases and in other areas where work continues.

There is one area where we still have concerns, and that is why we supported Jenny Marra's amendment 1. We believe that the extension of debtor contribution orders to 48 months will, if not carefully monitored, push people into further

financial hardship. That cannot be the intention of the minister or the Government; it certainly should not be the intention of the law. There are continuing concerns about that, given what happened today.

Citizens Advice Scotland is not an organisation to be underestimated. I am sure that many of us spend considerable time with citizens advice bureaux in our areas across Scotland, listening carefully to their points about the reality of everyday life for many people, and that members have taken note of the CAS briefing on the bill. I was therefore concerned that the minister did not specifically pick up the points that it made to Parliament in that briefing.

There is no doubt that the bill includes many sensible and progressive measures. Many members have mentioned them and I will not repeat them just for the sake of having them on the record. Although the bill achieves a policy ambition that we very much support, we add a note of caution about the need for on-going monitoring of the changes to ensure that a policy that should be supported is delivered in reality.

16:10

**Chic Brodie (South Scotland) (SNP):** In my experience, which largely concerns owners of small businesses, the vast majority—although not all—of those that enter bankruptcy do so as a last resort. The bill is also for them, subject to the conditions that Jenny Marra mentioned.

Entering bankruptcy is not an easy option, and neither is leaving it, given the attendant consequences. The bill cannot reflect or recognise the feelings associated with bankruptcy, which are sometimes hopelessness or desperation. However, it significantly adds to and improves the existing regulations relating to debtor conditions, protected trust deeds and the debt arrangement scheme. That aspect partly mitigates the emotional consequences of bankruptcy. Above all, the bill seeks to marry as well as it can the debtor's obligation to the best and most acceptable solution for the creditor.

I wish that full comprehension of personal assets and liabilities was integral to everyone's education, but it is not, of course. However, as per the debt arrangement scheme and protected trust deeds, education and understanding of the whole financial landscape that underpins debt and debt solution are paramount.

Tavish Scott mentioned money advice. With the appropriate resource and quality controls, compulsory money advice should be a bulwark against recurring bankruptcies and an acknowledgement to creditors of the action that is to be taken. That will focus, as now, on a few new

entrants to bankruptcy—the estimate is some 500—but when it is linked to a requirement for financial education for existing debtors, whether that be online, additional face-to-face or hard-copy support, the spectrum of understanding might and should be greater. The proposed monitoring and measurement of those educational outcomes will determine the success of that much-needed function, as espoused in the bill.

Education and understanding also need to be embraced and understood by creditors so that the process of debt relief and debt management ensures a balance for both creditors and debtors alike. To be fair to creditors and debtors, in striking that balance, there has to be a balance of certainty. After the consultation, it was right to set a payment period of 48 months from the date of the first payment to ensure that certainty entered the arena. That is the stake in the ground. However, as I mentioned in an intervention, there is also recognition that if the debtor's circumstances change, variability comes into play, as per proposed sections 32B(2)(b) and 32B(2)(c) of the Bankruptcy (Scotland) Act 1985, which will be inserted by section 4 of the bill.

The success or otherwise of the bill rests on the role of the Accountant in Bankruptcy. Whether it is acting as a trustee or as a replacement trustee, an adjudicator on discharge or the prime decision maker on administrative matters, its responsibilities are fulsome. I believe that they will be discharged appropriately, with support in specific cases, as required by the courts.

That said, in circumstances—there are perhaps too many of them—in which a debtor cannot be located so that the regime in the bill can play through, it is right that there should be no debt relief and that discharge should be deferred indefinitely. That underpins the statement in the policy memorandum that the

“intention is that those who can pay should pay.”

That does not absolve immediately the trustees or the AIB, as an original or a replacement trustee, from the need to make every effort to locate the debtor, but it should be clearly understood that those who can pay should pay.

Given the subject matter of the bill, it is difficult to welcome that which has made it necessary. However, I welcome the bill, as it will instil greater confidence—and greater competence—in a process that I believe will treat debtors and creditors alike fairly.

**The Deputy Presiding Officer (John Scott):** As we completed our consideration of amendments ahead of schedule, I am minded to accept a motion without notice from Joe FitzPatrick, on behalf of the Parliamentary Bureau, that decision time be brought forward to 4.40 pm.

*Motion moved,*

That the Parliament agrees, under Rule 11.2.4 of Standing Orders, that Decision Time be brought forward to 4.40 pm.—[*Joe FitzPatrick.*]

*Motion agreed to.*

**The Deputy Presiding Officer:** I call Malcolm Chisholm. You have four minutes or thereby.

16:15

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** Here was me thinking I could speak for as long as I liked.

**The Deputy Presiding Officer:** It will be a generous four minutes, Mr Chisholm.

**Malcolm Chisholm:** This is the first debate in which I have spoken on the subject of bankruptcy since I took part in the debate on the Bankruptcy (Scotland) Bill in 1992. Having heard the remarks that I made earlier, the minister will undoubtedly think that that is perfectly obvious. Then, as now, we were amending the Bankruptcy (Scotland) Act 1985. We did not really have any choice, because the previous piece of legislation on bankruptcy was the Bankruptcy Act of 1621. I suppose that it is a mark of the success of devolution that we have had several pieces of legislation on bankruptcy in just 15 years.

It was interesting for me to read the debate on the Bankruptcy (Scotland) Bill. One of the interesting things about it was the fact that, in an amendment, the Labour Party asked for a special committee to be set up because it was a technical subject, which made it necessary to hear the evidence of experts in the field. I am sorry to say that that proposal was stubbornly rejected by Ian Lang after being eloquently proposed by Donald Dewar. That made me think how superior our processes are, certainly at stage 1. The Economy, Energy and Tourism Committee did a magnificent job with the Bankruptcy and Debt Advice (Scotland) Bill. It produced a very lengthy and detailed report, and all the people who had an interest in it had an opportunity to give evidence.

Having said that, with reference to Tavish Scott's point about the scrutiny of detail, I remember that, during the committee stage of the Bankruptcy (Scotland) Bill, we sat all night examining the detail of the bill. I still remember us being in the committee room at dawn after discussing the bill all night. It was a different procedural world, which had its advantages and disadvantages.

Another similarity is the fact that the Bankruptcy (Scotland) Bill gave the Accountant in Bankruptcy a big extra role because of a deficiency in the 1985 act, and the bill that we are considering today will transfer some judicial functions to the

Accountant in Bankruptcy. As the Law Society of Scotland said in its briefing, it still has reservations about the removal of judicial involvement.

Like Jenny Marra, I welcome several of the changes that were made at stage 2, one of which dealt with stakeholder concerns about the transfer of functions from the sheriff to the AIB. The reduction of the risk to banks in offering accounts to undischarged bankrupts was welcome. The removal of the concept of interim recall was a Labour proposal that was accepted and implemented by the minister at stage 3. The changes to the cap on debt for the minimal asset route were welcome, too, as was the reduced fee. All that was well covered and acknowledged by Jenny Marra.

Other welcome features were in the bill from the start, such as the provision of access to fair and just processes of debt advice, debt relief and debt management, the provision of financial education through the financial health service and the use of the common financial statement as the common financial tool. There is much to be welcomed, some of which came about as a result of the stage 2 process. It is clear that, on this occasion, stage 2 was successful for members of the Scottish Parliament, as it often is.

However, I must briefly repeat the concerns that Jenny Marra highlighted when she spoke to her amendments earlier. There are continuing concerns about the debtor contribution period. I would like to make two points in response to what the minister said. He made quite a lot of the situation in England, but like was not being compared with like—apples were being compared with oranges.

The minister referred to the credit unions' views. There is an issue relating to credit unions, but the way to deal with it was to give them preferred creditor status. It is regrettable that the opportunity to do that has not been taken.

I am in no position to know whether ending automatic discharge is against the European Commission's advice. Jenny Marra said that she would check the detail of that, but it seems clearly to be against the European Union norm. The minister should reflect on that. As I said in earlier comments, it is also against the progressive approach of the Conservative Party in 1985—although I had better add that that applies to this issue only.

I hope that the main additional point that Jenny Marra made in her opening speech will receive a positive response from the minister when he sums up. We talk a lot about post-legislative scrutiny in the Parliament, but we do not do a great deal of it. We have an excellent opportunity to look at the two issues that she highlighted. I hope that, after

three years or so, the Government and the Parliament will look formally at those two contentious issues to see whether worrying and unintended consequences have arisen—Murdo Fraser's committee made a point about that in relation to ending automatic discharge.

16:21

**Murdo Fraser:** I will add briefly to my earlier comments and I will reflect on some of the speeches. I very much welcome Malcolm Chisholm's recognition of how progressive the Conservative Party was in 1985. I listened with interest to his and Richard Baker's reminiscences about dealing with previous bankruptcy legislation, which were in addition to my own. However, I counsel members about being too enthusiastic on the subject, because I understand that a bankruptcy consolidation bill is in process. I am sure that a party whip near you will be coming soon to seek members to serve on the consolidation bill committee, so members should be careful about showing too much interest in the subject, or they might find themselves inveigled into such positions.

Tavish Scott made a perfectly fair point about parliamentary process. To be fair to the minister, the stage 3 amendments that he lodged were not contentious and were in response to lobbying by third parties. At stage 1, the committee identified many of the issues involved. However, it is an issue that Parliament had a matter of a few days to consider the amendments before we debated and voted on them. In considering how the Parliament operates, we all need to reflect on whether that is sufficient time to consider properly what could be important matters.

As for the wider debate, I think that bankruptcy is a good thing. We need to remember that bankruptcy is intended to protect debtors—people who fall on hard times—and to ensure that they are not continually harassed and chased by those to whom they owe money. Bankruptcy protects debtors and lets them get back on their feet.

However, bankruptcy has implications, such as making it difficult for people to borrow money and perhaps to set up in business and get on with their lives, so people should never enter into bankruptcy lightly. We need to be careful to strike the right balance because of moral hazard, to which I referred earlier.

Mike MacKenzie made a good point in today's debate, which he raised throughout the committee's scrutiny of the bill. He reminded us that we must consider the interests not just of debtors but of creditors. The word "creditor" sometimes conjures up images of a large institution such as a bank or—worse still—a

payday lender that does not really deserve to get back the money that is due to it. In reality, many creditors might be small businesses that are due money for work that they have done. If that debt is not repaid, a small business could find itself in financial difficulty and could be brought down. In all the debate, we need to remember that there is a balance; making things too easy for debtors has a negative impact on creditors, which is not always a good thing.

It has been excellent to see how much consensus there has been around this debate. There have been a few issues of concern—Jenny Marra raised the issue of the 48-month period for debtor contribution—but people have been pretty much in agreement.

The provision of debt advice is an important aspect of the bill. A few weeks ago, I went to Aberfeldy to visit the new debt advice centre that has been set up by Christians Against Poverty, which provides help and assistance to people in that part of highland Perthshire who are in money difficulties and have fallen on hard times. That is the sort of hands-on, practical advice that is being provided at a local level that is vital to people and helps them to avoid getting into the process of bankruptcy in the first place.

Bankruptcy is never a pleasant process for anyone. It is there to provide relief from debt for those who have fallen on hard times. It is the mark of a civilised society that we are able to deal in a compassionate way with people in those circumstances while avoiding the creation of any perverse incentives for people who might seek to abuse the rules.

As I said earlier, the bill strikes the right balance, and the Scottish Conservatives will be pleased to support it at decision time today.

16:26

**Iain Gray (East Lothian) (Lab):** In the desperate attempt to think of a way to inject colour into this closing speech, I toyed with the idea of making play of the acronym for the bill—BADAS—but I assumed that somebody would probably beat me to it and, indeed, Mr MacKenzie did not disappoint, as he pointed out that its acronym was, perhaps, more exciting than some of the passages of consideration.

However, I continued that search for colour. I was drawn to the many touching obituaries for Clarissa Dickson Wright that we saw in our newspapers. She was, of course, famous as one of television's "Two Fat Ladies" and was latterly a resident for some years of East Lothian—fortunately for me not the part of East Lothian that forms my constituency, as I fear that Ms Dickson

Wright was probably not a natural Labour Party voter.

That was not the only eccentricity that she displayed. Her whole life was one of great colour and eccentricity. One aspect of that was that she was declared bankrupt on no fewer than three occasions. Clearly, she saw bankruptcy as being a valid way of managing one's finances across time. Indeed, famously, when she was rector of the University of Aberdeen, she caused consternation by going as far as advising the student body that the best way for students to deal with their student debt was by declaring themselves bankrupt, thus divesting themselves of their responsibility to pay it. Her approach to bankruptcy was pretty flippant but, as Murdo Fraser has said, bankruptcy is a serious issue and should not be entered into lightly. Usually, it is only entered into in the most difficult of circumstances.

Labour's concerns throughout the scrutiny of the bill have been around proposals that we believe tipped the balance of financial obligation and economic re-engagement against the debtor while placing a new administrative burden on our money advice services. Those concerns were not partisan, and Mr Fraser made clear that, in the course of the scrutiny that was conducted by the committee of which he is the convener, he had similar concerns. They are certainly not trivial. For example, early in the scrutiny process, ICAS said that the bill would

"engrain ... conflicts of interest",

which is quite a serious statement for it to make.

However, the story of the bill, from its introduction in June to the point that it has reached today, is, as most speakers have acknowledged, a story of significant change. That, surely, is encapsulated by the fact that we passed 80 amendments to it today, many of which were substantial and inserted two new sections to the bill.

What began as a bill that perhaps threatened to roll back much of the good work that has been done over the years to modernise our bankruptcy and debt relief laws and to encourage effective financial re-engagement while ensuring that there is a system of fair payment for creditors has, we believe, become a bill that is made acceptable by the significant efforts of Citizens Advice Scotland, the Law Society, ICAS and members from across the chamber. In fairness, that has also been achieved by the minister's willingness to listen to those people and to respond by amending the bill. He amended the bill to ease the burden on our money advice services when, at stage 2, he announced additional funding. He has raised the cap on the minimal asset process; he has rightly ensured that those who are most in need of

access to bankruptcy will have that access; and, today, he has further clarified the process of discharge and has repatriated some of the powers to our courts that had previously fuelled concerns about conflicts of interest, to which I have referred.

**Mike MacKenzie:** Does Iain Gray agree that it is a great strength of the Scottish Government's approach to the bill that it has listened carefully to stakeholders, not just at the consultation phase before the bill was introduced to Parliament but all the way through, and has responded to stakeholders' concerns?

**Iain Gray:** I agree with that. A number of members have talked about the bill process and have acknowledged that the minister listened to much of that evidence. However, although the bill has been improved, it is still not perfect. The decision to reject our amendments today was a mistake and has weakened what could have been a better bill. That is the basis on which we have called for a commitment to review the legislation within three years, which we think is an important and useful part of the parliamentary process.

I am pleased that we can find enough consensus on the bill, although perhaps not on everything in it, to pass it this evening and move forward to the next stage of what many members have described as a long journey—going back to the 17th century, as Mr Chisholm said—of our bankruptcy and debt arrangement legislation.

**The Presiding Officer (Tricia Marwick):** I call Fergus Ewing to wind up the debate. Minister, I would be grateful if you could continue until 4.40.

16:32

**Fergus Ewing:** I have thoroughly enjoyed this very useful debate. We have seen a remarkable degree of consensus, co-operation and forbearance, especially as members have had to listen to me speak for nearly two hours, which must have provided quite a degree of provocation for some.

Thanks to the contributions of members, the Economy, Energy and Tourism Committee and stakeholders, the bill is now in much better shape than it was. We have been willing to engage, discuss and listen carefully to what stakeholders have said, and we have responded where appropriate. I am grateful to Iain Gray for acknowledging that we have been willing to move on matters, although I am afraid that I do not have time to respond to all the points that have been raised.

Mr Chisholm asked why there has been no alteration of the status of credit unions to make them preferred creditors. That was considered in

the 2012 consultation, but the proposal lacked any support from beyond credit unions at the time.

Jenny Marra raised the issue of automatic discharge. I remind her that amendments that were agreed at stage 2 will ensure that the process of discharge will commence automatically at the 10-month point, and that the trustee will submit a report that will provide information on the co-operation of the debtor, which will allow the Accountant in Bankruptcy to make a decision on discharge. Discharge at the end of one year will be the case for most debtors; only those who have not co-operated will not receive a discharge. The point is that we are seeking to ensure that those who do not co-operate do not get a discharge. That is provided for in the existing legislation, but the bill gives it a new focus. The vast majority of debtors co-operate, and for them the process will be automatic.

In response to Malcolm Chisholm's comments about one's place in the political spectrum, in relation to the 1985 act, I point out that the period of discharge that was brought in by the 1985 act, which itself offered welcome clarity, was three years. It will now be one year, for the most part, which is a step forward.

As Murdo Fraser said, during this parliamentary year we will introduce a consolidation bill, which is to commence by April 2015. That bill will modernise the language, where appropriate, and it will make it easier for practitioners and advisers to follow what is currently a long, tortuous and complex chain of legislation, which begins, I think, in 1985, continues in 1993 and involves three or four subsequent pieces of legislation. The process is now difficult for practitioners, lawyers, citizens advice and money advisers, sheriffs, accountants and insolvency practitioners. I think that the forthcoming bill will be the first consolidation bill that this Parliament will consider, and it is right that we will do so.

I am happy to give the assurances that Mr Fraser and Ms Marra sought about a review of the extension of the payment period from 36 to 48 months. It might be better to carry out the review four years after commencement, when the change has taken effect. However, for the avoidance of doubt, I undertake—as I have already said—that the Accountant in Bankruptcy will monitor the situation closely, as she does all important material issues. That will form part of our work, and I am sure that I will rightly appear regularly before the Economy, Energy and Tourism Committee to account for the Government's stewardship of regulation in debt, which is important. There is a great deal more work to be done in that regard.

I am grateful to Mike MacKenzie for highlighting the impact on creditors—Murdo Fraser paid fair

tribute to him for doing so. There are thousands of small businesses around the country, and a bad debt can put such companies out of business. What, then, is the effect on such families? Ministers receive letters along those lines, and Mr MacKenzie, who I believe was formerly a small businessman himself, ensured that during the bill's progress we did not forget the need to strike a balance between the interests of the debtor and the interests of the creditor.

I am pleased that the British Bankers Association has confirmed that it is comfortable that its members would apply the same approach to opening basic bank accounts for undischarged bankrupts in Scotland as they would apply in England and Wales, should legislation be made in each jurisdiction that has the effect of removing the after-acquired-property potential liability.

It is clear that we have paved the way for banks to resume activity in this important area. As I said, people who want to get a discount on their bills by paying by direct debit cannot do so if they are bankrupt and cannot get access to a bank account. That is surely unfair. I hope that members of all parties agree that we should urge the banks to adopt a fair approach. Yes—there can be credit-only bank accounts, but a fair approach in that regard would make a significant difference to people who are in financial difficulty.

I am pleased that the Labour Party decided to support the bill. I hope that I am not being ungenerous when I point out that it took a different view at stage 1—I think substantially because it thought that the payment period was not correct. I am not aware that there has been substantial change to the bill since stage 1, although there have been many technical amendments, so why the Labour Party has changed its view is not immediately apparent to me. However, it is better that one sinner repent. I make no issue of that, in any way whatever.

I repeat my thanks to everyone who played a part in the bill, in and outwith Parliament. I thank our advisers and, in particular, Chris Boyland and Claire Orr and all the other staff who assisted in the complex work that the bill involved.

The bill will establish the basis for a financial national health service in Scotland, which is the beginning of a process to which we will return as we rightly try to ensure that people in Scotland, especially young people, are properly educated to manage their finances. It is a great day when this Parliament can move towards establishing a financial health service for Scotland.

**The Presiding Officer:** I am indebted to you for carrying on until 16.40, minister.

## Decision Time

16:40

**The Presiding Officer (Tricia Marwick):** There is one question to be put as a result of today's business. The question is, that motion S4M-09365, in the name of Fergus Ewing, on the Bankruptcy and Debt Advice (Scotland) Bill, be agreed to.

*Motion agreed to,*

That the Parliament agrees that the Bankruptcy and Debt Advice (Scotland) Bill be passed.

*Meeting closed at 16:40.*



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