



OFFICIAL REPORT
AITHISG OIFIGEIL

Meeting of the Parliament

Tuesday 6 February 2024

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Tuesday 6 February 2024

CONTENTS

| | Col. |
|---|-------------|
| HIS MAJESTY THE KING | 1 |
| TIME FOR REFLECTION | 2 |
| TOPICAL QUESTION TIME | 4 |
| Scottish Prison Service (Overcrowding) | 4 |
| Cervical Cancer Screening | 8 |
| BANKRUPTCY AND DILIGENCE (SCOTLAND) BILL: STAGE 1 | 12 |
| <i>Motion moved—[Tom Arthur].</i> | |
| The Minister for Community Wealth and Public Finance (Tom Arthur) | 12 |
| Claire Baker (Mid Scotland and Fife) (Lab) | 16 |
| Murdo Fraser (Mid Scotland and Fife) (Con) | 21 |
| Daniel Johnson (Edinburgh Southern) (Lab) | 26 |
| Colin Beattie (Midlothian North and Musselburgh) (SNP) | 30 |
| Stephen Kerr (Central Scotland) (Con) | 32 |
| Kevin Stewart (Aberdeen Central) (SNP) | 35 |
| Fergus Ewing (Inverness and Nairn) (SNP) | 37 |
| Carol Mochan (South Scotland) (Lab) | 40 |
| Keith Brown (Clackmannanshire and Dunblane) (SNP) | 43 |
| Maggie Chapman (North East Scotland) (Green) | 46 |
| Emma Harper (South Scotland) (SNP) | 48 |
| Pam Gosal (West Scotland) (Con) | 51 |
| Ivan McKee (Glasgow Provan) (SNP) | 53 |
| Katy Clark (West Scotland) (Lab) | 55 |
| Brian Whittle (South Scotland) (Con) | 57 |
| Tom Arthur | 60 |
| MOTION WITHOUT NOTICE | 65 |
| <i>Motion moved—[George Adam]—and agreed to.</i> | |
| DECISION TIME | 66 |
| DUNOON GRAMMAR SCHOOL | 67 |
| <i>Motion debated—[Donald Cameron].</i> | |
| Donald Cameron (Highlands and Islands) (Con) | 67 |
| Emma Harper (South Scotland) (SNP) | 71 |
| Liam Kerr (North East Scotland) (Con) | 73 |
| Rhoda Grant (Highlands and Islands) (Lab) | 74 |
| Ariane Burgess (Highlands and Islands) (Green) | 76 |
| The Cabinet Secretary for Education and Skills (Jenny Gilruth) | 78 |

Scottish Parliament

Tuesday 6 February 2024

[The Presiding Officer opened the meeting at 14:00]

His Majesty the King

The Presiding Officer (Alison Johnstone): Before we begin today's business, on behalf of all members and staff of the Parliament, I would like to express our concern and send our very best wishes to His Majesty the King. His Majesty's openness in making this announcement regarding his health will help to raise awareness of cancer, which affects so many. We wish His Majesty a full and speedy recovery.

Time for Reflection

14:00

The Presiding Officer (Alison Johnstone): The next item of business this afternoon is time for reflection. Our time for reflection leader today is The Rev Dorothy Wallace, parish minister, West Lochfyneside parish church.

The Rev Dorothy Wallace (West Lochfyneside Parish Church): Members of the Scottish Parliament, thank you for inviting me to share a few thoughts—what an honour.

The book of Genesis at chapter 2 has some of the soundest advice for us in the busy 21st century. It says:

“And on the seventh day God finished the work he had done.”

How many of us are guilty of seeing busyness as a badge of honour or thinking that we are lesser people if we take time off and take our time to rest? Busyness has become a national pastime—almost a national sport. We seem to have a need to be constantly doing. Of course hard work is to be admired. We all have our roles to fill in making this a great nation in which to live. We each have our roles to play in making that happen.

There will always be times when we are unavoidably busy—times when we will not always manage a day off, much less two, and forget about a 40-hour week. However, those times should be the exception, not the rule.

Wintertime was traditionally a downtime for the human race—a time for resting up for the lighter, warmer months of soil digging, crop planting and harvesting, and a time to take advantage of the longer nights by cosying in and making the best of it.

Every autumn, I promise myself that a couple of nights a week I will practise the Danish craft of hygge and take time to cosy in with comfy pyjamas, lit candles, devices off, a good book and a big mug of tea or whatever. Fill the hot water bottle and put it under the duvet in time for an early bed. In fact, fill two hot water bottles—one for your feet. Recline under a cosy throw, indulge the senses and rest up.

Alas, I am as bad as the next person for failing to adhere to the hygge life as often as I would prefer. However, as servants of our country—or, in my case, my small rural community—it is vital that we rest up. We cannot, after all, serve from an empty vessel, so I ask that you all take any chance that you can to rest up. Working on your laptop on the sofa is not rest. Rest up when you can. Prepare your minds and bodies for the busier

times. Make the most of these last few weeks of winter.

I end with words from Jesus:

“The sabbath was made for humankind, not humankind for the sabbath.”

May you each be blessed with Sabbath rest.

Topical Question Time

14:04

Scottish Prison Service (Overcrowding)

1. **Russell Findlay (West Scotland) (Con):** To ask the Scottish Government what its response is to comments made by the chief executive of the Scottish Prison Service that prisoners may need to be released early due to overcrowding. (S6T-01780)

The Cabinet Secretary for Justice and Home Affairs (Angela Constance): I associate myself with the Presiding Officer’s words wishing the King a full and speedy recovery.

Although the prison system will always be needed, the current prison population is too high. That has a negative impact on those who live and work in our prisons and on our wider communities, and it does not support effective rehabilitation or reduce reoffending.

We are taking forward a range of actions, including making best use of the prison estate, sourcing additional prison places and developing options for greater use of electronic monitoring. It is vital that the draft budget includes an additional £14 million investment in community justice services and other activity to support increased use of community sentences and alternatives to remand.

The current prison population has not increased at the levels that it was anticipated it might increase. At 7,889 yesterday, it is slightly lower than it was when I updated Parliament in October.

We will continue to work closely with the Scottish Prison Service and others on those actions, and we are monitoring the situation very closely.

Russell Findlay: The Prison Service is warning that emergency powers might be needed to release prisoners—possibly hundreds of prisoners—back into Scotland’s communities before they have served their sentences and with no restrictions whatsoever. That would put the public at risk and betray crime victims. Will the cabinet secretary today rule out any such mass release?

Angela Constance: I hope that I explained that, given the numbers that we now see in prison custody, I have no plans for emergency release. On the basis of the numbers, there is no need for that.

Russell Findlay may recall prison projections that were published last October. They were, of course, very broad projections, which anticipated a

prison population of anywhere between 7,500 and 8,650. The number in October was around 7,950; today, the number is 7,889.

As a member of the Criminal Justice Committee, Mr Findlay is well aware that emergency powers exist with the passing of the Bail and Release from Custody (Scotland) Act 2023, which we debated thoroughly in the committee. Those powers are the same as the powers that exist south of the border, for England and Wales. I note that, during the bill's passage, Mr Findlay did not move against those powers. Katy Clark did so at stage 2 and then did not press her amendment, and Jamie Greene did so at stage 3 and then did not press his amendment.

Russell Findlay: The Scottish National Party Cabinet Secretary for Justice and Home Affairs told the BBC that doing nothing is not an option, but what has the Government been doing? Let us take a look. It has failed to build two new prisons—they are hundreds of thousands of pounds over budget and years late. It has spent millions on prisoners' mobiles, which were then used to commit serious crimes. It has preached about rehabilitation while freeing highly dangerous men without any treatment whatsoever. It has talked about tackling drugs, but there are more drugs in prisons than there are on our streets. Let us not forget that the last time that the Government released hundreds of prisoners early due to Covid, almost half of them reoffended within a year.

We need to be honest with people. If that is the plan, do prison officers and the public not deserve the truth?

Angela Constance: I have not only told the BBC that doing nothing in the face of a high prison population is not an option; I have told the Parliament a number of times and, indeed, the Criminal Justice Committee that doing nothing in response to a high prison population is not an option. I would have hoped that Mr Findlay would also have had the courage to be honest with the people of this country about what will, at the end of the day, make our communities safer. A high prison population is not in the interests of prisoners and staff who work in our prison service, and it is not in the interests of community safety.

At the end of the day, we all want fewer crimes, fewer victims and less harm in our community, and we need to have the courage to follow the evidence. That is why we need to shift the balance from an overuse of custody to increasing the use of evidence-based community justice measures.

Audrey Nicoll (Aberdeen South and North Kincardine) (SNP): Phil Fairlie of the Prison Officers Association Scotland recently described the use of remand as "ridiculously high", and said that far too many people are entering prison on

short-term sentences. Does the cabinet secretary agree with Mr Fairlie's suggestion of reviewing sentencing policy and increasing community alternatives to custody?

Angela Constance: Mr Fairlie certainly knows what he is talking about, comparing the evidence of robust community-based interventions with very short-term sentences. As I said in my earlier answer, we are adding £14 million for criminal justice services, which is crucial. There has been an increase in the use of bail supervision, and we are exploring how to increase the use of electronic monitoring further. I am open to considering what further action is needed to encourage more widespread use of community interventions and whether a review of sentencing policy is warranted.

Protecting victims and the public from harm is my absolute priority. Whether that involves custody or community-based interventions, the goal is the same: less crime, fewer victims and safer communities.

Pauline McNeill (Glasgow) (Lab): Scotland has the highest remand population in Europe, which is one of the reasons why the prison population is so high. Some prisoners are being held in quite scandalous conditions. We heard this week that the head of the Scottish Prison Service has warned ministers that it is planning to double the number of prisoners who are released on electronic tags, but the compliance rate seems low at 70 per cent—so, around one in four are breaching the conditions. What does the Scottish Government say about that?

In answer to Russell Findlay, the cabinet secretary cited the Bail and Release from Custody (Scotland) Act 2023. Can the Government be clear about what difference the 2023 act will make to the remand population? Up until now, that has not been clear to Scottish Labour, and we would like an answer on that.

Angela Constance: Ms McNeill is right to point to the very large remand population that we have in this country. Twenty-seven per cent of the overall prison population has not been processed entirely through the courts; they are in prison unconvicted. For women prisoners, the share is even higher: the remand population in women's custody this week sits at 37 per cent. That is why we will continue to invest in a whole range of community alternatives.

We need to learn some of the lessons from good practice in and around alternatives to remand, some of which has had a good effect with women and young people. We need to apply that further afield. On the Bail and Release from Custody (Scotland) Bill—now the 2023 act—which we debated extensively in the Criminal Justice

Committee and the Parliament, it will begin to be implemented throughout the course of this year, and indeed in the coming months. I am happy to supply Ms McNeill with further information.

John Swinney (Perthshire North) (SNP): Given that the data that has been available for the past two years indicates that the proportion of custodial sentences of less than 12 months has decreased only from 75 per cent to 73 per cent, does the cabinet secretary believe that the Parliament's decision that there should be a presumption against short sentences of up to 12 months is actually being reflected in sentencing practice within the judicial system? Are there further steps that she can take to ensure that Parliament's wishes in that respect are reflected in the delivery of custodial sentences in the future?

Angela Constance: Mr Swinney is quite correct to note that the longer-term trend is away from short-term sentences of 12 months or less. However, their proportion of sentences overall remains high, and if we consider the prison population, there will be several hundreds of prisoners who are there on a short-term basis on any given day. Of course, it is for the courts to decide the facts and circumstances of each case. It is a presumption against short-term sentences, not a ban.

I am clear that, with the increased investment through the proposed budget, we can and must develop more options, with more breadth and depth, so that the courts have more alternatives and disposals at their fingertips.

Liam McArthur (Orkney Islands) (LD): The cabinet secretary offered some reassurances in relation to prison numbers, but Teresa Medhurst has predicted that those could rise to 8,500 by spring. She is right: we are at a "tipping point" where

"Prisons become very unsafe. The atmosphere, the tension, the volatility increases. Levels of violence increase, levels of self-harm increase."

The issue has been building for years. The cabinet secretary has set out the measures that have already been taken but, in the light of Teresa Medhurst's comments, what does she propose to do differently and/or in addition to take pressure off our overcrowded prisons and reduce the risk to staff, prisoners and, indeed, wider communities across Scotland?

Angela Constance: I treat the consequences of a high prison population with the utmost seriousness. Teresa Medhurst was right to point to concerns. The chief executive of the Scottish Prison Service, along with prison staff, is absolutely right to challenge this Government, this Parliament and the country as a whole.

In the past, probably from 2011 to 2018, there was a reduction in the prison population, but now the numbers, particularly last year's, are going in a different direction.

In response to Mr McArthur's question about what is different this time, although there is no silver bullet or single solution, we have good platforms to build on, whether that is the presumption against short sentences or the work that was done to reduce the prison population of young people. There is more that we can do to make use of technology and, of course, to ensure compliance with supervised bail, which is now at its highest level in 10 years. We also need to modernise and revamp the estate. We need to consider, and we will consider and act on, what more we need to do on what is a complex and ageing prison population.

We are taking a range of actions at pace, and I look forward to coming back to Parliament—probably at the end of this month—to give a more detailed and in-depth account of the action that we are taking and that we will take.

Fulton MacGregor (Coatbridge and Chryston) (SNP): We have just heard from the cabinet secretary that the prison population is ageing, which has increased the need for the prison service to buy in social care. I heard Natalie Beal, the governor of HMP Glenochil, discuss that very issue on the radio at the weekend. Has the cabinet secretary considered suggestions to set up a specific facility for such prisoners to take the pressure off our prisons?

Angela Constance: As I said, I am very open to considering suggestions on how best we tackle those matters, in conjunction with the Prison Service.

The number of individuals in our prison system who are over 60 has doubled. It is quite startling when visiting a prison to see that older population, and there are, of course, social care and health needs associated with that.

To some extent, the change in prison population reflects what is happening in society. It also reflects the fact that people are on longer sentences, that more people are on orders for lifelong restriction and that there are increasing numbers of convictions for historical sex offences. That is one example of work that we need to be invested in and to take further action on.

Cervical Cancer Screening

2. **Jackie Baillie (Dumbarton) (Lab):** To ask the Scottish Government whether it will provide an update on the reported recall of 150,000 women who were wrongly excluded from cervical cancer screening since 1997. (S6T-01788)

The Minister for Public Health and Women's Health (Jenni Minto): NHS Scotland is undertaking an audit of around 150,000 records of those who have been permanently excluded from screening since the programme began. We have provided health boards with significant resource to support that work and expect most boards to have finished by summer.

Since the wider audit began, I regret to say that one further case of cancer has been identified. I know that that will be concerning to anyone who has been excluded, but I must stress that the circumstances of that case are complex. The overwhelming majority of exclusions have been found to be correct and the risk to the women who may require further investigation remains extremely low.

All those whose records are being reviewed will be contacted as appropriate following the outcome of the review. I know that this has been a lengthy process, but it is essential that the time is taken to complete the review correctly so that those excluded can be confident in its findings.

Jackie Baillie: The problem of women being excluded from the cervical screening programme was first reported to the Parliament in June 2021. The minister at the time, Maree Todd, told the chamber that the cases of 1,500 women who had had partial hysterectomies since 1997 were being reviewed. When asked about women who had had partial hysterectomies before 1997, the minister acknowledged that the adverse event management team was reviewing the issue with individual health boards, and she said that the Government would be looking to conclude that work by July and to inform the women affected by August—that was July and August 2021.

Why have women had to wait three years to be informed? Why was the delay not reported to the Parliament? Why have we found out the extent of the Government's failure only because of the campaigning journalism of *The Sunday Post*? Is this an example of yet more secrecy from the Scottish National Party, or is it just that women's health is simply not a priority for the Government?

Jenni Minto: The Scottish Government takes the matter as seriously as possible. We are working closely with health boards to ensure that the audit covers the correct number of people. There have been some reasons why the work has slowed down, such as the development of new information technology systems and clinical pathways. However, some health boards have been working incredibly hard and, as a result, my officials have been speaking to them to see how they can share their resources and knowledge with other health boards.

Jackie Baillie: The minister's response is wholly inadequate. You are not serious about this. You promised the women that they would have letters in August 2021.

The Presiding Officer (Alison Johnstone): Speak through the chair, please.

Jackie Baillie: We are now in 2024, and we know that at least one woman has died as a result.

Let me tell members about Christine from Fife. She received a letter on 3 December 2023 saying that she had had only a partial hysterectomy and that she had been wrongly excluded from the cervical screening programme for 30 years. She immediately contacted her general practice surgery, which had no idea what was happening and could not provide her with a smear test. Thanks to the efforts of a practice nurse, she has now received an urgent referral to a consultant gynaecologist. Her appointment is on 14 February.

Why was Christine not notified before, in August 2021, as was promised by the minister? Why is she having to wait a further two and a half months to be seen? During the three-year delay, how many women have contracted cervical cancer? How many more cases have still to be reviewed? How much longer will it take for the Government to treat women's health seriously?

Jenni Minto: I do not have details of the specific case to which Jackie Baillie has referred, but if she writes to me, I would be very happy to respond.

As I understand it, the cases of about 85,000 women have been checked, but that is not the full picture. We are working closely with health boards, which are doing the work, to ensure that we get the right answer. It is important that we do the work thoroughly and with a degree of caution to ensure that we find all the women who are affected.

Tess White (North East Scotland) (Con): The cervical screening scandal was the result of not one blunder but many, and it cuts to the core of the issue of how the SNP Government supports women. One woman who recently received a letter believed that she had undergone a total hysterectomy, and she was shocked to learn that that might not have been the case. Women cannot be left in the dark any longer, so what exact support are you giving to health boards?

The Presiding Officer: Speak through the chair, please.

Jenni Minto: The Scottish Government has invested £5.5 million in the work. As I referenced earlier, my officials work closely with health boards to see where progress has been made and whether that progress can be replicated in other health boards.

Emma Harper (South Scotland) (SNP): Women who might have been affected by incorrect exclusion will, understandably, be concerned. Can the minister provide any further assurances that the vast majority of exclusions have been found to be correct?

Jenni Minto: I fully understand that concern. The wider audit has been conducted out of an abundance of caution, and the individuals in that group are very likely to have been excluded correctly. At present, only 0.2 per cent of the cases that have been audited should not have been excluded.

If I may, I stress to women that, at all times, if you are experiencing any symptoms, including bleeding that is unusual for you, pain or discomfort during sex, unexplained pain in your lower back or pelvic region, or changes to vaginal discharge, you should contact your GP. Jo's Cervical Cancer Trust is available on 0808 802 8000 if you require support.

The Presiding Officer: That concludes topical questions. I will allow a moment while members on the front benches organise for the next item of business.

Bankruptcy and Diligence (Scotland) Bill: Stage 1

The Presiding Officer (Alison Johnstone): The next item of business is a debate on motion S6M-12070, in the name of Tom Arthur, on the Bankruptcy and Diligence (Scotland) Bill at stage 1. I ask members who wish to speak in the debate to press their request-to-speak buttons. I invite Tom Arthur to speak to and move the motion.

14:26

The Minister for Community Wealth and Public Finance (Tom Arthur): I am grateful for the opportunity to address the chamber on the general principles of the Bankruptcy and Diligence (Scotland) Bill. The bill is not a big one and is not a radical reform, which reflects the fact that our bankruptcy system in Scotland is widely perceived to be meeting our needs. However, the bill represents a chance to make things better for a small number of individuals with both severe debt problems and severe mental health issues.

The links between debt and poor mental health are well known and were clearly set out by many of the expert witnesses who gave evidence to the Economy and Fair Work Committee. I thank that committee for its scrutiny of the bill. I also thank the Delegated Powers and Law Reform Committee and the Finance and Public Administration Committee for their input, as well as all those who gave evidence at stage 1.

The proposals that are in the bill come from stakeholder-led groups that looked at each of the statutory debt solutions to determine what improvements could be made. The proposals, which have been subject to extensive public consultation, reflect the stakeholder recommendations that have achieved a level of consensus and where the change requires primary legislation.

The stakeholders involved each represent their areas of interest and therefore have different perspectives. Creditors, advisers representing those who are struggling with debt, trustees and sheriff officers are among those who have worked together to make improvements to our debt solutions and diligence arrangements. I pay tribute to the work of all stakeholders whose recommendations are being brought forward and enabled by the bill.

The bill will create the enabling power for a mental health moratorium to help to improve the lives of people who are struggling with debt and serious mental health issues. The mental health moratorium meets a recommendation in the Social Justice and Social Security Committee's report

“Robbing Peter to pay Paul: Low income and the debt trap”, which was the report on the committee’s inquiry into low income and problem debt.

The bill is intended to enable specific proposals for the moratorium, based on the advice of the mental health moratorium working group.

Daniel Johnson (Edinburgh Southern) (Lab): Does Tom Arthur not recognise that the very fact that the bill is an enabling bill, rather than one that sets out criteria, mechanisms and thresholds, makes it difficult for us to scrutinise it and consider whether it will deliver on the intent that he sets out? Does he recognise that that is a weakness, as Parliament considers the bill?

Tom Arthur: The member makes a fair point, which I will turn to as I progress through my prepared remarks.

I commend the members of the mental health moratorium working group. They included mental health professionals, who were able to contribute professional expertise in the field of mental health and to draw lessons from the mental health crisis moratorium that was introduced in England and Wales in 2021.

Stephen Kerr (Central Scotland) (Con): The problem with the working group’s recommendations is that, if the Government eventually adopted them as its proposals, they would give people who are suffering mental health and financial crisis less protection in Scotland than people in a similar situation in England and Wales. That cannot be right, can it?

Tom Arthur: I will come on to further detail of what we will take forward in the regulations.

The detail of how the proposals will work in practice will be set out in regulations. I accept the Economy and Fair Work Committee’s recommendation that it should scrutinise those details ahead of stage 3 of the bill.

We have recently completed a consultation on proposals for the regulations and the feedback is being analysed. At a high level, I confirm that the majority of respondents were in favour of most of the proposals, subject to the caveats that responses were qualified by respondents’ narrative comments and that we have agreed to allow a short extension to accommodate stakeholders who have asked for additional time. However, it is clear that comments on the eligibility criteria for the moratorium, on which there are a range of views, will need to be considered carefully. That is noted in the stage 1 report of the Economy and Fair Work Committee.

The protections that could be offered to someone who is eligible for the scheme are significant. Therefore, I want to be cautious about

setting the eligibility criteria too widely. We do not want to discourage creditors from lending to the group whom we are most trying to help. I am keen to avoid that, so I will look to find a good balance. We already have in place a standard moratorium that gives people who are struggling with debts six months’ protection from creditors. It provides them with time to decide how best to deal with their debts. For many people, that standard moratorium will be sufficient.

The committee’s report recommends that we should increase the protection for persons under a mental health moratorium, specifically in relation to eviction and the installation of prepayment meters. We already have measures in place in Scotland to protect people from eviction. Those include a statutory requirement for the Scottish Courts and Tribunals Service to consider the reasonableness of granting an eviction in all cases, including when there are arrears of rent. However, I will look into the matter to provide assurance on that point. The installation of prepayment meters might be more difficult to address, but I am writing to the UK Government on that and am happy to consider what further action might be needed on it. I will keep the committee fully informed.

The working group recommended that the moratorium would not be appropriate where a debtor lacked the capacity to consent. I note that the committee has recommended that that should be reconsidered. The issue was discussed in the recent consultation, and I will reconsider it in the light of the committee’s views once I have had the chance to consider the consultation responses.

I will also look at the committee’s concerns about the public register and consider how it can be introduced in a way that addresses those concerns. I am mindful of the fact that, as well as protecting the interests of the individuals who enter a mental health moratorium, we need to protect the legitimate interests of creditors. I will continue to look for a solution that can meet both those objectives.

I appreciate that concerns have been expressed about the extra pressure that may be placed on the advice sector by introducing a mental health moratorium. The sector has been helping to shape the proposals, and I will continue to consider the potential impact on it as we seek to finalise the detail behind the scheme. I also confirm that the Scottish Government will work with the advice and mental health sectors to develop clear guidance and training to enable them to deliver the mental health moratorium. We will work with them to ensure that the tools that they need are available.

When I gave evidence to the committee, my colleague Kevin Stewart recommended that we should seek input from the lived experience forum on the proposals for the mental health moratorium.

I confirm that we have engaged with that forum and are arranging an event with it to seek such input.

Other provisions in the bill make minor and technical amendments to the Bankruptcy (Scotland) Act 2016 that would serve to provide clarity and improve the operation of the bankruptcy process. The bill will provide more efficient recovery processes to assist businesses and local authorities to collect debts from those who can pay, while, importantly, protecting those who are unable to pay.

The bankruptcy and diligence provisions in the bill implement measures that were supported by stakeholders in response to a consultation that was carried out between August and October 2022. That consultation sought feedback on proposals from members of the working groups in stage 2 of the Scottish Government's review of the operation of existing statutory debt solutions.

I am pleased to note the Economy and Fair Work Committee's support for the measures that are set out in the bill. I have noted the committee's recommendations that amendments should be introduced at stage 2 to allow for the discharge of trustees when debtors have not co-operated in their bankruptcy, the charging of statutory interest and the recall of bankruptcy, and to extend the time in which a sheriff's officer can serve a warrant to cite a debtor in a petition for sequestration. I will look at those matters further in the light of the committee's report and consider whether amendments might be appropriate.

There are some other matters that stakeholders raised in their evidence to the committee that we will look at, but which can be addressed through secondary legislation. Those matters include the minimum period for reapplying for bankruptcy under the minimum assets procedure and the minimum income for earnings arrestment. As I said to the committee, when issues can be addressed in secondary legislation, that is often the best way in which to address them. I am committed to further engagement with stakeholders on those matters, because, as the committee notes, some concerns about unintended impacts were raised in the evidence sessions. The working groups that were involved in looking at each of the statutory debt solutions also made recommendations that can be dealt with through secondary legislation.

The bill is therefore part of a package of legislation. Together, we will make important changes to our debt solutions. I expect to start bringing forward regulations later this month, and I will bring forward further regulations in the next few months. Those regulations will include important changes to protected trust deeds.

As I have said, the bill is part of a wider programme of reform. We have commissioned an independent review to assess how far current statutory debt solutions meet the needs of a modern economy. That work is being taken forward by Yvonne MacDermid OBE. Yvonne brings a wealth of experience to that work, having served as chief executive at Money Advice Scotland for many years. She has been setting the foundations for the review and will shortly commence a set of stakeholder meetings to help to inform her work.

In summary, the bill will make small but important changes to bankruptcy and diligence. The introduction of a mental health moratorium is an important step that will help those with the most severe mental health conditions and financial challenges.

I look forward to hearing members' views this afternoon, and I ask them to support the bill at decision time.

I move,

That the Parliament agrees to the general principles of the Bankruptcy and Diligence (Scotland) Bill.

The Presiding Officer: Thank you. Members may wish to know that we have time in hand this afternoon, and that we hope to give back time for any interventions taken.

14:38

Claire Baker (Mid Scotland and Fife) (Lab): I am pleased to speak on behalf of the Economy and Fair Work Committee in the role of convener in this stage 1 debate on the Bankruptcy and Diligence (Scotland) Bill. I take this opportunity to thank everyone who responded to our call for views and the witnesses who gave evidence during our stage 1 scrutiny of the bill.

I also thank One Parent Families Scotland and the Poverty Alliance for engaging with the committee. Hearing about the issues faced by those with lived experience of debt and mental health issues was valuable for my appreciation of the complexity of the issue and of the reality of people who are struggling with their finances and debt. We recognise that it would not have been easy for them to share their experiences, and I sincerely thank those involved for being honest and open about their challenges. Although the introduction of a mental health moratorium is widely supported, the committee has to be satisfied that it will support those who need to access the mechanism.

Finally, I thank the Social Justice and Social Security Committee for highlighting relevant points from its report "Robbing Peter to pay Paul: Low income and the debt trap". The report has been

recognised as an important piece of work, and all of us, in all committees, should consider how we can give effect to its recommendations if the opportunity arises.

As members can see from our stage 1 report, the committee is supportive of the bill's aims. The introduction of a mental health moratorium would be beneficial to those who need it, and we welcome the minor and technical reforms and modifications to both the Bankruptcy (Scotland) Act 2016 and the law of diligence—Scotland's formal debt recovery mechanism.

However, we were disappointed by the lack of detail on the mental health moratorium that was made available to us during our stage 1 scrutiny, which meant that we could not discuss proposals in detail with stakeholders. More information on the Scottish Government's proposed policy direction was provided when the mental health moratorium consultation was published in November 2023, but, unfortunately, that came far too late for us to discuss it in depth with our witnesses.

We acknowledge that most of the detail that pertains to the mental health moratorium will be in regulations, and we welcome the minister's undertaking to produce draft regulations ahead of stage 3 and to share them with the committee. We look forward to scrutinising them in detail. I recognise that the Government intends to run a further full consultation on the draft regulations, which will provide the committee with additional time for scrutiny.

A key area for discussion this afternoon will be the criteria for qualifying for a mental health moratorium. The committee supports the moratorium's introduction, but we are concerned that only a very small percentage of Scotland's population stands to benefit from the proposals.

The mental health moratorium working group agreed that only those who are subject to a compulsory treatment order or who are receiving compulsory treatment under the Criminal Procedure (Scotland) Act 1995 should be eligible. We heard evidence from some witnesses that it is preferable to start with a small cohort to ensure that the scheme works properly before possible expansion.

However, One Parent Families Scotland and the Poverty Alliance said that the compulsory treatment order criteria would help only a very small number of people. The policy memorandum contains an estimate of between 112 and 500 people, but that is based on the more open entry criteria of the breathing space scheme, so uptake is likely to be at the lower end of the scale. The memorandum also reports:

“one in two adults with debt has a mental health problem and one in four people with a mental health problem is also in debt”.

We heard from South Lanarkshire Council that, for the mental health moratorium to have the biggest impact, it should be accessible to people who are receiving treatment in the community, not just in hospitals or other institutions.

It was suggested that Scotland's standard moratorium of six months could provide sufficient respite for people who are struggling with mental health challenges, and it was even suggested that that would be preferable, as following its application process is easier than providing the information and following the processes that would be required for a mental health moratorium.

That raised the question of the significance of introducing a mental health moratorium. It will be valuable to the small number of people who can access it, but we should recognise that the system that we have in place already provides a degree of respite. In his response to the committee, the minister argued that the current standard moratorium will be sufficient for many.

During the pandemic, the standard moratorium rose from six weeks to six months. The committee welcomes the minister's assurance that there are no immediate plans to reduce it, but we are aware of a previous commitment that the increase would be temporary. The committee is concerned that, if the criteria for the mental health moratorium remained narrow and if the standard moratorium returned to six weeks, many debtors would be left in a vulnerable situation.

The committee therefore concluded that widening the entry criteria would enable more people to qualify for support and avoid the unnecessary distress that might exacerbate someone's mental health issues. From its response, the Government does not appear to have been convinced by our argument so far, but there is to be further analysis of consultation responses, and the committee will scrutinise them once they are available. The committee recognises that a mental health moratorium would not apply to everyone who had a mental health condition and debt challenges, but we believe that the right balance has not been struck and that the policy risks being insufficiently effective.

The committee has identified three alternatives to the proposed entry criteria that we encourage the minister to consider, the first of which is using the criterion of being “severely mentally impaired” under council tax legislation. The term is recognised in the Local Government Finance Act 1992, but we strongly suggest that it is stigmatising and outdated, and we draw that to the Scottish Government's attention in the hope that the legislation will be updated. We welcome the

fact that the Government has said that it will look for an opportunity to amend the term in primary legislation. Notwithstanding the term itself, the criteria that local authorities use for assessing council tax should be considered.

The second alternative is to use the debt and mental health evidence form used by the money advice sector to evaluate the impact of someone's mental health on their ability to manage their finances. That recognises the role of the professions that support people who are in financial difficulties and supports their judgment about a person's capacity to manage their situation.

Thirdly, the committee proposes using similar criteria to that of the debt respite scheme in England and Wales, which is also known as breathing space. The mental health breathing space is open to anyone receiving mental health crisis treatment, as well as those receiving emergency or acute treatment. Entry to the scheme must be certified by an approved medical health practitioner.

The advantage of replicating the scheme is that it already exists and is in operation. Indeed, the most recent figures show that, in 2023, just under 1,500 people accessed a mental health breathing space. The committee recognises that the comparison is not a straightforward one—the standard moratorium in England is shorter than that in Scotland—but the system in England and Wales is tested and appears more realistic about who will need to access it.

The breathing space moratorium goes further in other respects than the proposal set out in the mental health moratorium consultation by the Scottish Government. The committee heard from Alan McIntosh of Advice Talks that breathing space prevents the repossession of cars, prevents evictions and home repossessions and prevents the forcible installation of prepayment meters. The minister might want to reflect on those differences, although I appreciate that he referred to that in his opening statement. His reply to the committee described the protections as "quite significant", but they do not offer as much protection as the UK's breathing space moratorium.

Although the committee understands that the regulation of the energy sector, including the use of prepayment meters, is reserved, and although we welcome the Scottish Government's commitment to liaising with the UK Government on the issue, we urge the Government to look at other areas around evictions, repossession and joint and several liability. That said, we welcome the fact that further views are being sought.

The committee has been made aware of an issue regarding mental health capacity.

Potentially, a small number of people who meet the entry criteria for the mental health moratorium might be unable to consent to it, as they do not have the capacity or a legally recognised representative to do that for them. Academics from the University of Aberdeen agreed that further consideration of debtor capacity is needed. That is another area on which, in the minister's response to the committee, he reports that "further views" are being sought through more consultation.

Others raised the point that the bill contains enabling powers only, with much reliance on details following in regulations. That has made scrutiny by the committee difficult, and mental capacity is likely to be one of the many areas that we will return to in our scrutiny of the draft regulations, which we expect to see prior to stage 3.

Consideration of the mental health moratorium revealed the possible development of a public register of people who access it. That is of great concern to the committee. During the evidence session with the Minister for Community Wealth and Public Finance, we explored the risks of stigmatising people in need of a moratorium. The committee is concerned that exposure on a public register might prevent individuals from accessing the support that they need. We have asked for more clarity from the Scottish Government on the proposal, and we look forward to receiving an update on potential areas of contention, such as how long someone's information would be stored on the register and who would be able to view or access that data.

Sections 2 to 5 of the bill cover minor or technical fixes that have been identified by the Scottish Government as necessary for the Bankruptcy (Scotland) Act 2016, and we welcome those changes.

In our evidence taking, we heard that additional reform to bankruptcy legislation would be welcomed by stakeholders. One area that requires reform is that of minimal asset process bankruptcy, which is a route into bankruptcy for individual debtors on low income and with few assets. It is a simpler and cheaper process that is appropriate to such circumstances. Currently, though, it is possible to apply for a MAP bankruptcy only once every 10 years, and the Social Justice and Social Security Committee has argued that people should be able to apply for a MAP bankruptcy every five years to bring the measure in line with full administration bankruptcy. The committee is in agreement with that proposal, and we await the outcome of the Scottish Government's discussions with stakeholders.

Sections 6 to 10 of the bill make reforms to the current law on formal debt enforcement, as recommended by the diligence working group. The

committee is broadly supportive of the reforms, and we draw the Scottish Government's attention to the proposals outlined in our report.

I also want to draw the minister's attention to the protected minimum amount seized in diligence against earnings, such as wage arrestments. That form of diligence requires the employer of a debtor to make a deduction from a debtor's net earnings, and the amount that is taken from earnings depends on how much someone earns, with the percentage of money seized increasing as earnings increase.

Currently, the amount that is protected from creditor action is £655.83; the minister will be aware of calls for the protected minimum amount to be increased to £1,000, which would bring earnings arrestment in line with bank arrestment. The "Robbing Peter to pay Paul" report recommended such an increase. While we are in a cost of living crisis, with individuals and families on the lowest incomes feeling the impact of inflation and rising prices most sharply, we should take the opportunity to increase that allowance.

Most debt in that category is council tax debt: in 2021-22, 83 per cent of charged-for payments were for council tax debt. A survey carried out for Advice Scotland by Alan McIntosh found that 59 per cent of wage arrestments were for council tax debt, with 94 per cent of respondents saying that wage arrestments left them unable to pay essential bills each month and 76 per cent falling into arrears and being unable to pay other debts. Creditors are entitled to seek repayment of debt, but any actions should not be unduly harsh. The committee supports increasing the protected minimum amount, sees that as reasonable and urges the Scottish Government to consider how the bill can be used to deliver that change.

I have not been able to cover every aspect of our consideration of the Bankruptcy and Diligence (Scotland) Bill, although members might think that I have made a good effort. I anticipate other points being covered by my committee colleagues, and I conclude by confirming that the Economy and Fair Work Committee supports the general principles of the bill and looks forward to receiving more detailed information from the Scottish Government in advance of stages 2 and 3, should Parliament approve the general principles of the bill at decision time today.

14:51

Murdo Fraser (Mid Scotland and Fife) (Con): I remind members of my entry in the register of members' interests: I am a member of the Law Society of Scotland, albeit not currently practising.

I echo the committee convener's thanks to all those who gave evidence to the committee about

the bill and I thank the Scottish Parliament information centre for its helpful background briefings and the committee clerks for their assistance during the preparation of our report. That report was agreed unanimously and there is very little political disagreement between committee members regarding our approach to the bill.

I am something of a veteran of committee consideration of bankruptcy legislation in this Parliament. In session 2, I sat on the committee that scrutinised the Bankruptcy and Diligence etc (Scotland) Act 2007 and, in session 4, the subsequent Bankruptcy and Debt Advice (Scotland) Act 2014. Here we are with yet another piece of bankruptcy legislation, which seeks to improve and update the law in an area where there is always a need for change.

Before I come to the detail of the bill that is before us, it is worth taking a moment to reflect on the wider policy background to bankruptcy law. The term "bankruptcy" is normally seen as a pejorative one, carrying negative connotations. Someone who is described as a "bankrupt" is often seen as having failed because they have not been able to meet their financial obligations. In reality, bankruptcy should be seen as something positive. Bankruptcy exists to provide both protection for individuals who fall into debt and relief from those debts. If the option of bankruptcy did not exist, people who find themselves in a situation where they have run up too many debts would never be able to escape and would be pursued indefinitely by their creditors. They would never have the chance to wipe the slate clean and start afresh.

That is what bankruptcy provides. Individuals can declare that they are unable to meet their financial obligations, a trustee will be appointed to administer their affairs and agree settlements with creditors and, after a set period of time—which stands at one year, in our current law—the debtor will be deemed to be free of those debts and able to resume control of his or her financial affairs. It is an acceptance in law that people make mistakes in life, that businesses sometimes fail, that no one should be permanently punished for that and that everyone deserves a second chance.

Stephen Kerr (Central Scotland) (Con): Does Murdo Fraser agree that it would be beneficial for the overall culture of enterprise in this country if we had a less stigmatising approach to bankruptcy, especially for businesses?

Murdo Fraser: I totally agree with that interesting intervention. In the United States, successful entrepreneurs often fail in business for a number of times before they are ultimately successful and people regard that as a run-of-the-mill part of entrepreneurial culture. The member

makes a fair point about the need to see business failure as not always being negative, although there are often negative consequences for creditors.

However, there is, as I have perhaps alluded to, a potential moral hazard here: if bankruptcy is seen as too easy, it can be a tool for individuals to act irresponsibly, or even recklessly, and run up debts knowing that they will not have to repay them. Therefore, bankruptcy law has tried to strike a balance between the interests of the creditors and the interests of debtors, and there are some popular misconceptions about who those creditors might be.

In most bankruptcies—personal bankruptcies—the largest creditors are usually public agencies, such as His Majesty's Revenue and Customs or local councils. The most common debt that leads to diligence proceedings in Scotland today is council tax. If we go too far in shifting the balance towards the rights of the debtors, we are potentially depriving public services of much-needed revenue.

Daniel Johnson: Does Murdo Fraser agree that there is an interesting contrast between public agencies and private businesses in the approaches that are being taken? The banks now take a much broader view about supporting people through financial difficulties, whereas councils can often be some of the most aggressive agencies in pursuing debts, which is something that we need to think about as we think about the issue in the round.

Murdo Fraser: Mr Johnson makes a very fair point. In the evidence that was given to the committee, some of the strongest-worded evidence against some of the additional protections for debtors came from, I think, the City of Edinburgh Council. To be fair, it is a reflection of the financial pressure that councils feel under that they have to try to recover whatever sums are due to them.

There is also a risk that, if bankruptcy legislation goes too far in protecting the debtor, it creates an active disincentive for mainstream financial institutions to be involved in lending to those who may be deemed financially vulnerable. That means that those individuals cannot access finance from reputable sources and are left, therefore, with no option but to go to the unregulated loan sharks who operate outwith the law. That cannot be in anyone's interest and it demonstrates why a careful balance is needed when drawing up bankruptcy rules. That balance was reflected in the evidence that the committee heard on the bill that is before us.

As we have heard from the minister and the committee convener, the bill makes what are, in

the main, fairly minor and technical reforms to existing bankruptcy legislation. The most significant reform in the bill, and the one that took up most of the committee's time, was the introduction of a specific protection for debtors who have a mental illness, with the creation of a moratorium on debt recovery action. That is not a novel concept. It reflects the breathing space scheme that already exists in England and Wales, where individuals receiving "crisis treatment", which encompasses those in compulsory treatment as well as those with conditions of comparable severity who are receiving crisis, emergency or acute treatment without compulsion, are protected from bankruptcy proceedings.

As we have heard, the committee received widespread support from stakeholders for the principle of a mental health moratorium. However, we also heard that there was concern about the lack of detail on how such a moratorium would operate in practice. The mental health moratorium working group agreed that the entry criteria should apply only to those who are subject to compulsory treatment orders, therefore excluding individuals with severe mental health issues who are in receipt of in-patient care and treatment on a voluntary basis. That approach was criticised by a number of those who gave evidence, including One Parent Families Scotland and the Poverty Alliance, which felt that the approach was too narrow and would help only a very small number of people. The alternative suggestion was the use of the term "severely mentally impaired", which currently exists in council tax legislation, but there are concerns that that language is now outdated.

The committee's concern, as we heard from the convener, is that, in asking Parliament to agree the general principles and to pass the bill at this stage without any detail as to how the moratorium would work in practice, we are essentially being asked to write a blank cheque to the Government. We have therefore asked the Government to provide, ahead of stage 2, more detail as to how the scheme would work in practice.

Fergus Ewing (Inverness and Nairn) (SNP): Murdo Fraser sets out the challenge very clearly. Is there not a concomitant risk that many debtors who are aware of the fact that mental health may provide a method of getting a pause might instruct solicitors that they have a mental health problem, perhaps with some merit and substance, and, therefore, a very serious risk that, if we go through the bill without defining exactly what it is that we want to do, we will end up with the unintended consequence of a huge number of people seeking to take advantage of a loophole that is not intended for them?

Murdo Fraser: Fergus Ewing, with his usual lawyerly background, makes a fair point about the potential for unintended consequences.

I was pleased to note that, in his letter to the committee last week, the minister reiterated his undertaking to ensure that the draft regulations that he intends to bring forward will be shared with us before stage 3. I welcome that assurance because, in my view, it is essential that the Parliament has the opportunity to see those regulations before voting on the bill in its final form—albeit that some of us might want to go even further than that when it comes to putting more detail in the bill.

That was the major reform in the bill. A number of other, minor changes are being introduced in addition, which, largely, we found uncontroversial. An important point that was made by witnesses was about the lack of capacity in the money advice sector to ensure that individuals who face serious financial challenges will have people to turn to for support. I encourage the Scottish Government to address that matter.

There was some discussion in the committee around the time limits for minimal asset process—MAP—bankruptcy. That simplified procedure applies where debtors have low income and very few assets. At present, it is possible to apply for MAP bankruptcy only once in 10 years, but some witnesses told us that that should be reduced to five years in line with full administration bankruptcy, thus making it easier for debtors in that category to get relief.

There was some opposition to that. The City of Edinburgh Council expressed concern that it might be used by people to write off council tax debts more easily, which reflects Daniel Johnson's point. The Scottish Government should give that further consideration.

If I have time, Presiding Officer, I would like to cover three other points briefly.

The Deputy Presiding Officer (Annabelle Ewing): Yes, please go ahead, Mr Fraser.

Murdo Fraser: The question of the discharge of trustees was alluded to by the committee's convener. The Institute of Chartered Accountants of Scotland told us in evidence that it would like trustees to be able to be discharged once they had taken all reasonable steps to deal with unco-operative debtors who could not be found. Otherwise, we end up with trustees having to hold a position indefinitely, despite the fact that they cannot take any action because they cannot contact the debtor. That seems a sensible reform and I encourage the Scottish Government to take it further.

Secondly, there is an issue in the number of days during which a petition for bankruptcy can be served. As the law stands, a petition must be served no more than 14 days and no fewer than six days before a hearing, giving an eight-day window. Evidence from the Society of Messengers-at-Arms and Sheriff Officers was that that creates a practical issue for it, particularly when dealing with debtors who live in remote and rural areas such as the Scottish Highlands. It has suggested extending that window to 21 days. That seems a sensible and practical change that could be made.

Thirdly, we heard some evidence about the arrestee's duty of disclosure. The bill requires arrestees to respond to all attempts to arrest wages and accounts. That will present significant resource implications for institutions including banks. The NatWest Group suggested an alternative approach that might reduce the administrative burden, and I hope that the Scottish Government will look at that.

The bill is a relatively modest and welcome piece of legislation. There are reforms in it that are necessary and that we would like to be progressed, and I hope that the Scottish Government will work with stakeholders and with the committee to ensure that our on-going concerns—in particular, on the operation of the mental health moratorium—are addressed. I am pleased to say that the Scottish Conservatives will support the general principles of the bill at stage 1.

15:03

Daniel Johnson (Edinburgh Southern) (Lab): All too often, poor mental health and debt go hand in hand and lead to absolutely disastrous social consequences, both for the people who are immediately affected and for wider society. The need to legislate in that area is therefore clear. That is why Scottish Labour is broadly supportive of the bill and will support its general principles at stage 1.

However, it is important to note that we have concerns about the mechanisms by which people will trigger a mental health moratorium, the threshold at which it may be obtained and the protections that are afforded to those who choose it.

Overall, however, and perhaps more important, I have concerns about the approach that the Government has taken in the bill. It is legislating for an approach, but leaving the detail on all the matters that I have just mentioned to be set out in secondary legislation, thereby denying us the possibility of scrutinising that detail in the chamber today. That is problematic.

Nevertheless, the bill addresses an important area, because we know that poor mental health goes hand in hand with money problems; that is self-evident. We know that people who have mental health problems are three and a half times more likely to be in debt. That can lead to a cascading situation in which one, in turn, impacts the other, leaving our society, and families, devastated along the way. That is all the more so, given that we are in the middle of a cost of living crisis, in which family bills are going up and up and those pressures are mounting.

That is why we welcome the intent in the provisions as they are set out in the bill. Those provisions are important. However, I raise a question about the mechanisms. By definition, the people whom we are talking about lack capacity and are in the deepest of mental health crises, as set out in the policy memorandum and by the mental health moratorium working group. We have to ask ourselves whether those people actually have the capacity or even the physical means to use those mechanisms.

Stephen Kerr: Will the member take an intervention?

Daniel Johnson: I will take the intervention in a second.

The Royal Edinburgh hospital is in my constituency—I am contacted by people there, but very often, it is quite far down the line that they even have the means of communication to do so. If those are the people whom we are talking about, I question whether they have the capacity and, as I said, the physical means, to take up such a moratorium.

I am happy to give way to Stephen Kerr.

Stephen Kerr: Does Daniel Johnson agree, however, that at the end of this legislative process, people in Scotland who are in the distressing circumstances that we are outlining ought to be no less protected than such people who are living in England and Wales? Surely that is the threshold by which we should judge the detail of the bill in respect of the moratorium.

Daniel Johnson: Mr Kerr makes a valid point. In approaching this legislation, we need to ensure that we do the most that we can. If there are examples from elsewhere, in particular close to home, we should look to those in respect of what we can do. We need to question whether, if the bill does not go as far as the temporary provisions that we enacted recently during Covid, it is going far enough.

My point about capacity leads me on to the point about the threshold. We do not have clarity in that regard. Although I understand that the Government will publish draft regulations before

stage 3, it is hard to understand precisely to which group of people the provisions will apply.

The mental health moratorium working group, in its proposals, suggests that the provisions will apply to those undergoing compulsory treatment orders—in colloquial terms, those who have been sectioned. That is an extraordinarily high threshold. As we all know, only people who are experiencing the most severe and acute forms of mental health distress—those who are likely to harm themselves or others—will find themselves in that situation.

I understand—and I agree with—what the minister said about the need to find a balance, but I suggest that that threshold is too high.

Brian Whittle (South Scotland) (Con): Does the member recognise that if we were to expand those criteria, with which I think most of us would agree, the issue of resource would have to be addressed?

Daniel Johnson: I was coming to that very point. Although I think that a threshold that includes all those who are undergoing mental health treatment would be far too low, and too broad an approach—it would, for example, include me, as someone who is undergoing on-going mental health treatment—my concern is not so much that people with attention deficit hyperactivity disorder or autism spectrum disorder might not need the moratorium; it is that many people who find themselves in situations in which their conditions lead them into dire financial situations quite simply cannot access the resource and the clinicians, as Mr Whittle alluded to, who might be able to provide them with the diagnosis and the help that they need.

We need to look at the criteria, and those need to be tightly drawn up. However, we also need to look at access to those people who might well end up as gatekeepers. I commend the committee for its work; its suggestions about other criteria are well made—for example, those that are used in England and Wales for the breathing space scheme.

I take on board the convener's comments about the stigmatising nature of the terminology. However, the "severely mentally impaired" category in the council tax legislation is clearly a workable one, so I ask why we are not using it.

We must also ask ourselves how the proposed moratorium will work in practice. We need to understand what form the protections and provisions will take. Will they include the pausing of enforcement actions? Will they pause contact from creditors? Will they freeze interest and charges on debts? Questions about payments such as those for car loans, which are the forms of debt that many people will have entered into prior

to their mental health crises, are the ones that need to be answered. Quite simply, we do not yet have those answers.

As Stephen Kerr alluded to, there is a risk that we might legislate for protection levels that are lower than those that have been available in Scotland temporarily or those currently available in England and Wales.

Moreover, I have severe concerns about the nature of the bill. As I was reading the bill in preparation for the debate, I was struck by its lack of specificity. It does not contain any of the points about mechanisms, thresholds or protections that I have set out here, even in principle. However, when I read section 1(3) of the bill, on the scope of regulations that ministers can introduce, I was really quite concerned. It states:

“Regulations under this section may— (a) make different provision for different purposes, (b) modify any enactment, (c) include incidental, supplementary, consequential, transitional, transitory or saving provision.”

That provides extraordinary scope. Subsection (3) essentially enables ministers to make changes to any act of this Parliament, albeit that they might have a tenuous link to the bill, and to do so for various purposes. Not to have the guide rails of principles or criteria to determine how such provisions might be made is quite concerning. We need to guard against the making of such legislation, which this Government seems to be introducing more and more frequently.

Although I accept the Government's point about needing to get the bill right, I argue that it is important to get those details right before a bill is published and put to Parliament, because that is what this place is for. As Fergus Ewing pointed out in his intervention, there can be unintended consequences. Thresholds on mental health criteria and issues such as debt often have impacts that cannot be foreseen. It is for precisely those reasons that the Parliament exists to test and amend them. We know that secondary legislation does not afford us the same benefits in interrogating and amending provisions, let alone taking evidence, that primary legislation does. Would it not have been better to have had such matters published and properly scrutinised by the committee in its stage 1 report, rather than waiting until after the event?

Scottish Labour commends both the intent of the bill and its broad purposes. However, I have huge concerns about its proposals for future legislation, which would leave the door wide open for Governments that might not have the benign intent that the current one claims to have.

The Deputy Presiding Officer: I remind all members who seek to speak in the debate to

ensure that they have pressed their request-to-speak buttons. We move to the open debate.

15:13

Colin Beattie (Midlothian North and Musselburgh) (SNP): I am pleased to have the opportunity to speak in the debate on the Bankruptcy and Diligence (Scotland) Bill at stage 1, particularly as I am a member of the Economy and Fair Work Committee, which recently considered it.

The bill's objectives seem quite simple. Many of the proposed changes are of a technical or minor nature and appear to require little debate. However, the area that has been the focus of most attention is the provisions intended to improve the lives of people who are struggling with problem debt and who have serious mental health issues. I will focus my remarks on that area.

In principle, the proposal to provide a moratorium to give breathing space to people who have serious mental problems would give them a chance to recover and to handle their situation better when they are able to do so. However, a number of issues need to be considered to ensure fairness and justice. As we now know, people with mental health problems are three and a half times more likely to be in debt, and half of people who are in problem debt are experiencing a mental health problem. The cost of living crisis has exacerbated the link between money issues and mental health problems.

Although the bill is focused on the more extreme end of the scale, research from the Money and Mental Health Policy Institute shows that one in six adults in the UK has experienced suicidal thoughts due to the cost of living crisis. That makes it very clear why the proposed bill is necessary.

The current legal framework for statutory debt solutions allows people in debt, including those with mental health issues, to apply for a six-month moratorium against diligence, giving someone with debt problems time to consider the best solution to their financial situation. During that time, the debtors are expected to continue making payments towards any debts due while the moratorium is in place, but the moratorium prevents creditors from taking particular forms of recovery actions for a set period of time.

Section 1 of the bill would give ministers the power to make regulations to introduce a mental health moratorium. There is little included that indicates how the moratorium would work, and, although leaving the detail to the regulations will allow flexibility to adapt legislation to changes, it means that the specifics of how the moratorium will work are not set out. Compulsory eligibility is a key factor. It seems likely that those who are

subject to a compulsory treatment order under the Mental Health (Care and Treatment) (Scotland) Act 2003 and those receiving treatment under the Criminal Procedure (Scotland) Act 1995 would be eligible. After that, it becomes less clear—and understandably so. Mental health is a complex business, and there must be a clear line in the bill as to who is eligible without grey areas or ambiguity.

In England, the debt respite scheme breathing space criteria are wider than the proposals put forward by the Scottish Government: breathing space is open to anyone who is receiving mental health crisis treatment. Perhaps the Scottish Government will consider using similar criteria going forward. That would cover people receiving crisis treatment, which would include those receiving compulsory treatment as well as those who are receiving crisis, emergency or acute treatment without compulsion.

There is also the question of who would sign off on such a mental health moratorium. The Scottish Government's consultation proposes that eligibility to sign off would be certified by a mental health officer, a reporting medical officer, a community psychiatric nurse or a similarly qualified professional, which seems reasonable.

There has been some debate on the length of the moratorium. The Government's proposal that the initial stage of the moratorium should last as long as the person is receiving treatment, followed by a six-month period to allow the person to deal with their debt problems, is reasonable. My only question is, what happens if the person has a long-term condition or, indeed, a permanent condition? What is the backstop to deal with that?

Details of how the freeze will work remain to be seen. How will diligence be stopped? I assume that interest will be frozen and that creditor contact will be ceased. I look forward to receiving more information on that as the bill progresses.

Stephen Kerr: Does the member share the concerns that I and other people have expressed about the Government's stated intention to create a public register of those who would make use of the scheme? No such criteria exist in England and Wales. Does he agree that they ought not to exist in Scotland? In relation to stigma, it is very important that the matter is handled sensitively.

Colin Beattie: I recognise the sensitivity of the public register, and there will be further debate and discussion on that.

Other concerns exist that the mental health moratorium might put additional pressures on an already stretched money advice sector. Although it is not anticipated that an enormous volume of debtors will avail themselves of the facility, there will be a need for practitioners across the entire

debt advice sector to receive appropriate training and education to ensure that the best possible advice is given, and there may well be a cost attached to that.

To add to the complexity of the area, many individuals who are subject to a compulsory treatment order have appointed an individual as their attorney to handle their affairs when necessary. Is it, then, necessary to restrict that service to those who have mental capacity to consent and those who have legally recognised representatives? What happens to people in debt who do not have that capacity?

I will briefly run through one or two other points that arise from the bill.

The minimum asset process is a way to bankruptcy for individual debtors with a low income and few assets. Currently, one can apply for such a bankruptcy only every 10 years. The suggestion is that the period be reduced to five years, but there are mixed views on that. Some stakeholders support it and some reject it. Far more work needs to be done to ensure that the appropriate period is fixed.

I see that I am running out of time, Presiding Officer, so I will run ahead.

I look forward to seeing further information on the detail of the bill in the further stages as it goes forward. In the meantime, the bill's intentions are beneficial to creditors who suffer from serious mental health problems, and they offer a fair option in difficult circumstances for creditors and debtors.

I support the general principles of the bill.

15:20

Stephen Kerr (Central Scotland) (Con): It is a pleasure to follow Colin Beattie, who gave a considered and thoughtful speech that highlighted many issues of concern about the bill that I wish to reiterate.

The proposed legislation has good intentions—there is no doubt about that—and I am sure that it will have unanimous support across the chamber when we get to decision time, but it is severely lacking in detail. What exactly are we to scrutinise today in the stage 1 debate? Surely we all agree with the idea that we ought to take a view on modernising our law on how we should treat people who suffer from severe mental health issues in relation to their financial affairs. But surely, when a bill is in front of us, we should be looking more at the substance of what is being proposed to deal with the issue. Murdo Fraser has said that Conservative members will support the bill. As I said, I think that it will be unanimously

supported—I hope that it will be—but we need more detail.

New laws cannot be made casually, and the Parliament does not have a great reputation for making solid and robust law. We do not have a revising chamber. We have to get to the detail of any bill so that we do not produce bad or weak law, and we should be very wary of rubber stamping vague bills such as the one that is in front of us. For example, who is to be helped? How are they to be helped? How long are they to be helped for? What mechanisms will be used to provide the help? We have no idea what additional resources will be required, in a public or a private sense, to fulfil the bill's requirements, because specific and substantial details on that simply do not exist. Therefore, we are all left to discuss a worthy principle that everyone in the chamber already agrees on—namely, that we should update our existing bankruptcy legislation and introduce a mental health moratorium for people who are suffering from mental health issues.

However, I simply do not think that we should accept any provisions that emerge on the basis of the bill that leave at-risk Scots in a less protected position than people in England and Wales. I hope that none of us would support a bill, or the details of any bill, that would leave our citizens in a worse-off position than their fellows in the rest of the United Kingdom, but that is what I fear we will see happen if the Scottish Government, as is its pattern, accepts the recommendations of its own working group, specifically on the entry criteria. That has been well covered in paragraph 50 of the Economy and Fair Work Committee's report and in paragraph 72, on the scope of the protections. I congratulate the convener and the committee for the excellent stage 1 report that they produced.

The minister should agree today to the committee's request in paragraph 76 of the report, if he wants to look it up. He should commit to that request today. I have to ask for that because there is nothing in the bill that spells out the detail that we are all badly missing.

The explanatory notes say that section 1 of the bill gives ministers

“a power by regulations to establish a moratorium ... on debt recovery action in relation to individuals who have a mental illness.”

The policy memorandum, which was produced by the minister, goes even further and puts it more succinctly. It says:

“Further work will be taken forward within government and with stakeholders to develop the details of the scheme which will cover specific areas such as the criteria for entry to, and exit from, a moratorium; the specific protections afforded by a moratorium; and the duration of those protections.”

So, the substance of the bill is still to be worked out, and our role as parliamentarians in scrutinising what the Government is proposing is therefore largely fatuous. That is a familiar trick from the Scottish National Party and Scottish Greens in office. They introduce proposed framework legislation that empowers ministers. Daniel Johnson is right to highlight his concerns, which we should all share, about the extent of those powers, which sounded very much like Henry VIII powers to me as he read from the bill. As I say, the Government is proposing framework legislation empowering ministers to—

Alasdair Allan (Na h-Eileanan an Iar) (SNP): Will the member give way?

Stephen Kerr: Yes, of course.

Alasdair Allan: I have listened to what the member has been saying about framework legislation. He presents it as though it is a uniquely Scottish phenomenon. Would he not acknowledge that framework legislation is a feature of Westminster, too?

Stephen Kerr: I am not presenting it as anything of the sort. I do not like framework legislation, whoever produces it. I just happen to think that the governing party, of which Alasdair Allan is a member, produces more of the stuff than is palatable in a Parliament where we should be scrutinising the substance of detail. On the matter of empowering ministers all the time to introduce the detail as secondary legislation, we all know that the Parliament can barely cope with the secondary legislation that it already has before it. There is more and more secondary legislation, with completely inadequate means of scrutinising it. The way that we deal with secondary legislation could not be called robust.

Keith Brown (Clackmannanshire and Dunblane) (SNP): Given the contempt that Stephen Kerr has repeatedly shown in his speech for the ability of the Parliament to legislate, the unjustifiable faith that he has in the Westminster system and his description of our role as “fatuous”, how can he possibly be considering voting for the bill today?

Stephen Kerr: I do not know whether Keith Brown has been listening at all. I did not mention Westminster. In fact, I said the opposite—I said clearly, in response to Alasdair Allan, that I do not like framework legislation, whoever produces it, because I think that the whole point of the Parliament is to be a counterweight to the Executive. We should not trust ministers to produce the detail in secondary legislation when no Parliament has the capacity to scrutinise secondary legislation properly.

Tom Arthur: I just want to clarify this. In his remarks, Mr Kerr has been keen to stress the

importance of parity with the position in the rest of the UK. The scheme that he speaks of so favourably was made under regulations—under provisions similar to those of a framework bill. I am unsure what the particular issue is that he is trying to address, particularly given that, as has been said in evidence, the position that the Government has set out of determining measures through regulations was supported by Citizens Advice.

Stephen Kerr: I am delighted to hear how the SNP is holding up Westminster as somehow being the standard against which everything that we do in this Parliament has to be measured. My goodness me! This is a breakthrough moment for the union. The SNP is setting its stall out on the basis of what happens in the House of Commons and the House of Lords. Of course, the former leader of the SNP at Westminster is desperate to get into the House of Lords. Perhaps that is because he, too, holds Westminster in such high esteem.

The fact is that secondary legislation is an inadequate way of bringing forward such measures. As Fergus Ewing rightly says, they should—

The Deputy Presiding Officer: Mr Kerr, I have been generous with time, but please bring your remarks to a close within the next 30 seconds.

Stephen Kerr: I will close in the next 30 seconds. There is a lot more to be said about secondary legislation, but I respect the fact that I do not have the time.

I will conclude by saying why I am voting for the bill—and I think that Keith Brown might be interested in listening to this. The reason I will do that is that there are some worthy things in the bill. In an ever-changing society, the imperative for dynamic legal frameworks is self-evident, and it is incumbent on us, as legislators, to ensure that our legislative framework adapts to continue to provide fair and efficient solutions—

The Deputy Presiding Officer: Mr Kerr, I think that the 30 seconds have passed. Thank you very much.

Stephen Kerr: —to those facing financial hardship.

The Deputy Presiding Officer: I think that we get the general gist. Thank you, Mr Kerr.

15:29

Kevin Stewart (Aberdeen Central) (SNP): I am very pleased to support the general principles of the bill today.

I joined the Economy and Fair Work Committee when it was part way through its deliberations, but I have found all the scrutiny of the bill to be very

interesting. I thank all those who have engaged with the committee. In particular, I thank the minister for listening, because one of my difficulties with what we were doing through the bill was that there had not been enough engagement with the voices of lived experience. I am glad that the minister has put that right and that those voices will also be heard when it comes to formatting the regulations.

The bill brings forward stakeholder-led recommendations to introduce improvements to current insolvency solutions and debt recovery processes. Stakeholders and people with practical experience in both the money advice and mental health sectors consider that there is a strong link between problem debt and poor mental health. Poor mental health can cause and be caused by problem debt, and it can impact an individual's ability to manage their money or to make sound financial judgments and decisions, or to maintain employment and a regular income that can service debt.

The Royal College of Psychiatrists reports that “One in two adults with debts has a mental health problem”, and that

“One in four people with a mental health problem is also in debt.”

Experience in the money advice sector shows that individuals with mental health problems often do not seek early help with debt issues, which may be attributed to stigma surrounding mental ill health. That can lead to problems worsening before action is taken. It is also generally acknowledged that the threat of creditor action, or pressure from creditors, can exacerbate existing mental health issues.

Good resources already exist for creditors, including Citizens Advice Scotland's “Mental Health and Money Good Practice Guidance for Creditors”. However, as we know, good advice is often ignored.

As I mentioned, the bill will bring forward stakeholder-led recommendations to introduce improvements to current insolvency solutions and debt recovery processes. Its aim is to help to improve the lives of people who are struggling with debt, which may be exacerbated by the difficulties that they face on a day-to-day basis. More efficient recovery processes will assist businesses and local authorities to collect debts from those who can pay. The measures in the bill have been and are being designed with and by the stakeholder community, which is extremely important.

I recognise that the bill is only one part of a programme of work to improve bankruptcy and diligence. The Scottish Government will introduce changes through secondary legislation, some of

which, it is hoped—I certainly hope that this will be the case—will be laid before Parliament during the progress of the bill.

The Government has also commissioned a longer-term review to assess how far the current statutory solutions meet the needs of a modern economy. I am glad that the minister mentioned Yvonne MacDermid, who has accepted an appointment to lead stage 3 of the wider review. I am sure that some matters will merit further consideration as part of the review.

Outwith the scope of the bill, I hope that the Scottish Government will take cognisance of the work done in Lord John Scott's mental health law review and that it will take the advice of many stakeholders to remove all the current discriminatory terminology that exists in legislation to describe people who have poor mental health.

Phrases such as “severely mentally impaired”, which is used in the council tax legislation that other members have mentioned, are outdated, antiquated and severely stigmatising to many people. I recognise that the work to change legislation takes time, but it is galling that stigmatising language still exists in legislation. I know that some of the laws have existed for decades, or even for centuries, but such stigmatising language must be cast into the dustbin of history once and for all.

Here is where I disagree with some of the contributions that have been made about legislating. Many people in the Parliament believe that everything should be in primary legislation. I do not. I believe that, as parliamentarians, we have a role to play in scrutinising not only primary legislation but secondary legislation, and there is the ability to do that in the Parliament. If there were more opportunities to put certain aspects into secondary legislation, we would not have to deal with phrases from decades or centuries ago. It would have been easier to put phrases such as “severely mentally impaired” into the dustbin of history a long while ago if such phrases had been in secondary, rather than primary, legislation. I am sure that we can all agree on the need to modernise legislation and guidance as we go forward.

The key aspect of getting this right is listening to the voices of lived experience. I am very pleased that the minister has agreed to do so and that the Government will take into account those people's views as it progresses to the regulation stage.

15:37

Fergus Ewing (Inverness and Nairn) (SNP): I apologise for being late to the chamber because of being unavoidably detained on a personal matter.

It was in the 1970s that I read a reflection that the late distinguished first First Minister of Scotland made at that point, which was that Scotland was the only country in the world that had her own legal system but lacked a legislature. He believed profoundly that this Parliament should exist to fill that gap and to remove that anomaly, so that we could regularly make laws in Scotland, and not just under Law Reform (Miscellaneous Provisions) Acts, as was the case before devolution.

I think that we all support that, but at the heart of this debate is a very simple question: how do we make good law? How do we avoid passing law that might have unintended consequences? How best do we achieve that? Framework bills are not helpful in that regard, but, as Mr Stewart said, we cannot put everything in primary legislation. Perhaps there is a happy medium to be grasped, but I say to the minister, with respect, that I do not think that he has achieved that.

Not many people will remember the Scottish Law Commission's bankruptcy report from 1982, but, being something of an anorak in bankruptcy law, I do. The report led to the Bankruptcy (Scotland) Act 1985, which was a model of clarity and served Scotland well for many years—I think that I see the Accountant in Bankruptcy being inclined to nod on that point.

However, the one big mistake was that the 1985 act created a mechanism whereby people with no assets and very modest debts could be made bankrupt, with accountancy practices receiving a very large payment, which often exceeded the amount of the debt. The estimated cost of the provisions was £250,000, because George Leslie Kerr, a friend of mine who was the Accountant in Bankruptcy, envisaged only business bankruptcies being covered, but a market was created, with people in the schemes going bankrupt so that accountants could get a handsome fee. The cost ended up being £20 million.

As it happened, I ran a campaign with Tom Shields, who wrote for *The Herald* diary, and, with the tacit support of Leslie Kerr—I hope that he does not mind that slight breach of etiquette—we got it stopped. To be fair, Michael Forsyth, who passed the bill that became the Bankruptcy (Scotland) Act 1993, credited me with perhaps creating the momentum to end that abuse of public funds. It served no purpose at all, and it was ended.

I mention that because unintended consequences are a big issue. I spent more than 20 years as a solicitor and about 10 years as an accredited specialist in bankruptcy law. Rightly or wrongly, I acted mainly for the debtor, and mainly for businesses that were about to finish or had basically finished. In those cases, there was

usually a family home that was owned by the debtor, with family and children, all of whom were innocent.

I want to get across the point that that was high-octane stuff. Every single business that was facing serious debt problems had a main person in charge—it was usually a male—and that person was under enormous pressure. It is hard to convey just how much mental stress many of my clients were under.

My job was often to preserve the family home by raising a mortgage. If a family member had a job, they could raise a mortgage and buy out the interest from the Accountant in Bankruptcy, hopefully at a relatively modest amount. We were not supposed to do that, but it was often done because of good grace on behalf of enlightened trustees.

Brian Whittle: I am interested to hear the member's comments on the issue and his experience. As an aside, does he think that, because of the fees that administrators can command, we put people into bankruptcy too easily?

Fergus Ewing: There is an element of that, but I want to finish the point that I was making.

Many of those people, who faced the loss of their business, their dignity, their status and their self-esteem and self-worth, were under incredible stress. Very often, they did not have any mental problems, but I could sense, as a non-expert—an entirely lay person—that they were beginning to suffer from mental stress because of the extreme pressure that they faced. In fact, I cannot think of anyone who was absolutely rational at all times in such situations—it is very hard to achieve that.

My point is that, if we create the mental health moratorium but the criteria and the gatekeeping are not crystal clear, it is just human nature that people who want more time will say, "Well, I have mental illness." Of course, there is a mental health sign-off process, which is dealt with in paragraph 57 of the committee's report. That is quite right, but it might not be an impediment to people who are determined to get a pause in the process, and why should it be? If they have a mental health issue, that is fine, but it seems to me that there is potential for abuse, and it is our duty as legislators to deal with that.

I will make a few other short points. We have an excellent scheme called the debt arrangement scheme, which is a debt payment plan. I think that we are a bit ahead of England on that, or at least we were in my time—I see that the Accountant in Bankruptcy is nodding, so that must still be true. I wonder whether an alternative to the bill is to encourage greater take-up of the DAS. It is a diligence stopper, and it freezes interest. Very

often, it can reduce the quantum of debt that is paid. Would the DAS not be an alternative that could be used by widening the circumstances in which it is available? I will not go into more technicalities, as I do not have time.

The problems with definition are acute. There is perhaps a case for following the English example—although it is not perfect—because it has been tried over a relatively short period and tested to an extent.

There is also the question of what protections there will be. As one witness said to the committee, where is the meat on the bone? Unless we know what the protections are, the whole thing is hopelessly nebulous. Is it about the total amount of debt? Is it the length of repayment? Is it the length of the pause? There needs to be clarity from the creditor's point of view. Not all creditors are rich or Government bodies—although most are.

Tom Arthur: Will the member take an intervention?

Fergus Ewing: I will take the minister's intervention if I have time, Presiding Officer.

The Deputy Presiding Officer: Briefly, minister.

Tom Arthur: I am grateful to Fergus Ewing for his considered contribution and for bringing his vast experience to bear on the issue. One of the distinctions between the proposed mental health moratorium and the existing moratorium is that the proposed moratorium has two aspects, one of which is the mental health treatment phase, which is indefinite. The criteria, as originally proposed, were aligned with existing mental health statutes. Does Fergus Ewing have any reflections on that? He has raised concerns about potential abuse. Does he think that there is a criterion that can give confidence when it comes to having the indefinite protection of the moratorium?

Fergus Ewing: I wish the minister well, but my main point is that the questions are difficult and postponing them until a later date is not the right solution. If they can be answered prior to stage 3, that would do Parliament a service and it could avoid what I have identified as potential risks becoming actual ones.

I wish the minister well in the task that I once pursued, and I very much hope that he will give some thought to the points that I have made.

15:45

Carol Mochan (South Scotland) (Lab): Like other members, I thank the committee and the clerks for preparing the stage 1 report on an important piece of legislation. It is helpful for those

of us who are considering the bill but were not part of the committee that the report was so well put together.

I support legislation that would actively seek to support debt management strategies. The convener, Claire Baker, set out well the contributions that the bill could make. I do not think that I have read anything that suggests, or spoken to anyone who suggested, that some of the proposals that other members have talked about have ever been seen as open to abuse rather than positive steps.

Scottish Labour will support the bill at stage 1 at decision time, as we agree with its general principles and aims. The introduction in legislation of a mental health moratorium is welcome. It is right that people who are suffering from poor mental health are provided with the greater protections that members have spoken about. Having read the stage 1 report, the evidence and the SPICe briefing, along with having discussed the matter with members of the committee, it is clear to me that that would be a positive and welcome step.

Scottish Labour is also supportive of the proposed two-stage approach to the moratorium period, with an open-ended first phase that would allow an individual to focus on recovery from a serious mental health condition rather than exacerbate the problem with continuous debt worries. Prioritising the mental health of the individual in such situations is paramount, as other members who have spoken to people with lived experience have said. We believe that we have found common ground with the Government on that.

As members know, citizens advice bureaux across the country provide high-quality debt advice free of charge to people in their time of need. A witness from one of them said:

“We must recognise that, when someone has a mental health crisis or when their mental health is so bad that they need to take time out and pause, that is not the time to think about their debts.”—[*Official Report, Economy and Fair Work Committee*, 25 October 2023; c 9.]

We ought to listen. That means not only establishing the moratorium in legislation but explaining how it will operate in practice. Some of the questions that members have asked the Government so far have related to that.

On that point, I find myself in full agreement with the committee’s recommendations. As Daniel Johnson mentioned, Scottish Labour shares the committee’s concerns about the lack of detail on how the moratorium will operate in practice and its view that there must be sufficient time to scrutinise detailed proposals. That would be helpful, as many other members have said. The bill leaves a

lot of detail to be laid out in regulation. Those regulations should be provided in draft form before stage 3.

I appreciate that, in his letter to the committee responding to the stage 1 report, the minister acknowledged the committee’s concerns and suggested that he will seek to address them. I look forward to his comments on that. However, it is important to note the evidence given by South Lanarkshire Council, which noted:

“It, therefore, is not clear, at this point, who will be able to use a Mental Health Moratorium, how an application will be made and what effect it will have or how long it will last.”

Clarity on that would be helpful for people who will have to deal with the situation. There is undoubtedly a concern. The Scottish Government has set out a well-intentioned and well-supported proposal, but where it lacks detail, it is fair to say that there is still a fair amount of work to be done to address the concerns that the committee, other stakeholders and members in the chamber have raised.

Furthermore, eligibility in relation to the moratorium is another clear area where we believe that the Scottish Government ought to revisit its position. As it stands, only those who are receiving compulsory treatment would be eligible for a mental health moratorium. I know that a couple of members mentioned that, and they are far more familiar with the exact wording, but my understanding is that the approach is thought to be not proportionate to the scale of the problem. I agree with the committee’s proposal that the criteria should be widened. Going back to a statement that I made earlier, I think that it would be helpful to use clearer terms so that people understand it. I also understand that there has never been any evidence from other areas that the moratorium has been widely abused, so I think that it would be helpful and that it could be managed well.

As the minister noted in his response to the stage 1 report, early indications from the consultation suggested that support for some areas of this legislation is not widespread and there are concerns about the entry criteria. It is welcome that the minister has recognised those concerns and will move forward with them.

In calling for an extension of eligibility, we recognise that that would require an expansion of debt advice services. As other members have mentioned, it is all very well for us to recognise that we might want to change the legislation, but we know that debt advice services are quite stretched. Those who work in the debt advice sector are already working to capacity. They must be given the training and support that are required to properly deliver the reforms as they come

through the different stages and are passed in the Parliament.

Citizens Advice Scotland believes that there should be more partnership working across mental health and money advice services, and a lot of members would agree with that. That could be achieved by embedding money advice services in mental health settings or by working closely with local community teams and groups. An important part of any legislation is how it works in practice. The community-based approach can be applied across various disciplines and to tackle various issues, but I am strongly of the opinion that this is a key area in communities and that those most in need would feel the benefits.

The points about the uprating of the allowances that were mentioned by the convener are quite important. I do not have time to go into them, and I am not on the committee, but from reading about it in the papers, I think that it would be important for the Government to look at that.

In concluding, I reiterate my party's support for the general principles of the legislation. The key aims of the bill are well intentioned and are shared across the chamber. We have identified that stakeholders broadly support it. I hope that the minister will address some of the issues that have been raised by the committee and by members in the chamber today. I again thank the clerks and the committee for the stage 1 report.

15:53

Keith Brown (Clackmannanshire and Dunblane) (SNP): We have heard some interesting and informed contributions from Murdo Fraser, who is legally qualified, from Fergus Ewing, who is also legally qualified and has been a practitioner in the area in the past, and from Colin Beattie, with his financial expertise. However, I will concentrate a little more on the general situation, which has given rise to the need for the bill, and on some of the general points that underlie the general principles, which are the subject of a stage 1 debate.

We are currently living through two major crises that are absolutely dominating the quality of life in our country. They are the cost of living crisis, which includes the cost of energy crisis, which we do not talk about so much any more, and the mental health crisis—two problems that are made worse by each other. The Covid-19 pandemic and Russia's invasion of Ukraine have helped to unleash economic uncertainty across the world. That is particularly true in Scotland, where the additional uncertainty and the massive costs of Brexit have wreaked even more havoc on the economy, impacting businesses, employment and individuals across the country. Those factors have

contributed to a cost of living crisis that is pushing many Scottish households into financial destitution. For some, unsustainable debt has become an unfortunate consequence of those crises, and we all know the strain that that can place on a person's mental health.

Scotland is in the midst of a rapidly worsening debt crisis. A report that StepChange Debt Charity Scotland published showed a 27 per cent increase in average unsecured debt levels in just one year—they rose from £12,730 in 2021 to £16,174 in 2022. For that reason, the bill could not be more timely, given its central aim of alleviating in a small way the struggles of grappling with debt and potential bankruptcy—two challenges that are often compounded by mental health issues.

It is worth mentioning that the changes to debt enforcement rules under the bill are not hugely dramatic or particularly contentious, as we have heard—they are pragmatic. All the measures that are in the bill have undergone public consultation at least once and have received broad support. They will require transparency from entities such as banks or employers about unsuccessful attempts to arrest a debtor's assets, while ensuring that debtors are entitled to a debt advice and information package ahead of relevant hearings, among other changes. The changes are fairly straightforward and will ensure greater transparency for all who are involved.

In relation to comments by Colin Beattie, Stephen Kerr asked an interesting question about the register. I think—unless any lawyers who are present want to correct me—that bankruptcy is always public and transparent, whereas it is proposed that the bill will create a public register that would refer to people's mental health situation. I share Stephen Kerr's concern and I am interested in how the Government will manage to reconcile the impact on individuals of having their mental health situation made public with the need for transparency.

Scotland has always had distinct laws from those for the rest of the UK on debt recovery, and the bill signals the beginning of a more compassionate and human approach to debt recovery that will protect our fellow Scots' dignity when they are at their most vulnerable. That is further shown by the bill's proposed mental health moratorium, which will provide individuals who have serious mental health issues with legal protection and a freeze on debt enforcement actions. That is one of the most important actions that can be taken to alleviate the stress on people and the impact on their mental health—it is a shield to protect our citizens when they are potentially at their most vulnerable. I take on board the points that a number of members have made about the need for more specificity, and I do not

envy the minister's task of getting something that is objective and might satisfy the concerns that have been expressed.

The specific tool that the working group recommended when the bill was being developed recognises the strong link between problem debt and poor mental health. The Royal College of Psychiatrists reports that half of adults with debts face mental health issues, as we have heard, while one in four individuals with mental health problems is in debt, so a symbiotic relationship is clear between debt and poor mental health. As lawmakers, we need to make laws that reflect that.

The bill's significance lies in the commitment to improving our existing system to protect the most vulnerable at a time when protection is truly needed. It is also important to remember that the bill represents only one aspect of a broader programme that is dedicated to improving how we deal with bankruptcy and diligence. My understanding is that, as we have heard, the Scottish Government intends to introduce additional changes through secondary legislation, which is a perfectly proper, legitimate and transparent process that is subject to democratic scrutiny. Some secondary legislation is expected to be laid before Parliament during the bill's progress.

Further, I understand that the Scottish Government has undertaken a longer-term review to assess the adequacy of current statutory solutions in the increasingly challenging time in which we live, so that we can continue to provide the necessary protection and support to guide individuals out of the throes of problem debt. There has been discussion about whether we should simply mirror what happens in England and Wales in many important respects. There are important ways in which debt collection in Scotland is much more humane and has developed over time. We should not throw that baby out with the bath water, and nor is it a good course of action to denigrate this Parliament and say that we should do what another Parliament has done. I have confidence in the ability of the Scottish Government and this Parliament to legislate properly in this area.

Our decisions on the bill should reflect our commitment to improving the current system along compassionate lines. We live in a different world now from the one that we lived in until recently, in terms of the prevalence of mental health issues, many of which are a result of the pandemic. Let us build an effective legal framework. As I said, the changes under the bill have received broad support from the public; let us make sure that the bill receives broad support from the Parliament, too.

15:59

Maggie Chapman (North East Scotland) (Green): We are all well aware that the actions and the decisions that we take can change people's lives. Some of what we do might seem small and insignificant, and some of the things we do might be small, but they could have significant positive impacts on the lives of a few people. The Bankruptcy and Diligence (Scotland) Bill will do exactly that. In the middle of technical changes to our bankruptcy laws is the potential to make the lives of people who are struggling with debt and poor mental health much more manageable.

On behalf of the Scottish Greens, I welcome the bill and I thank all the individuals and organisations who contributed in various ways to the Economy and Fair Work Committee's scrutiny of it. I appreciate the consideration and time that have been devoted to helping us to get to grips with the details of the proposals in the bill, and I am especially grateful to those who have challenged us to be bolder and to go further in order to deliver benefits to even more people who are struggling with poor mental health and debt issues.

Like many other members, I will focus my remarks on the provisions relating to the mental health moratorium. Debt has a huge impact on mental health—that was made very clear to us by participants in the evidence session that we held with One Parent Families Scotland and the Poverty Alliance. The personal stories of mental health issues spiralling out of control because of the pressures of debts, alongside other issues associated with family, work, physical health and so on, were emotive and very affecting. As Becca Stacey from the Money and Mental Health Policy Institute said,

"we know that people with mental health problems are three and a half times more likely to be in debt, and that half of the people who are in problem debt are experiencing a mental health problem."—[*Official Report, Economy and Fair Work Committee*, 20 September 2023; c 2.]

It is a vicious circle, debt and poor mental health being clearly linked and reinforcing each other.

It is clear that, despite the work that has been undertaken to shift perceptions and the actions that are taken by creditors when dealing with people suffering from mental health issues, some creditors still continue to demand repayments. Common debts are council tax, benefit overpayments, overdrafts and utilities bills. Given the public sector or publicly regulated nature of those things, that is very disappointing. Some creditors insist on on-going payments, even if repayment of the debt is never likely to be complete.

Fergus Ewing: I have a constituent who is a cleaner and works for the public services. He

inherited a small amount of money from his parents, which he used to buy a flat to rent out. His tenant has not paid the rent for a long period of time and has said that he will not do so, because he knows that he cannot be evicted. Thus, my constituent is facing severe mental stress. He is not wealthy—he is a creditor—so it is a two-way street. We must have a balanced system, otherwise society and contracts will not function as they should.

The Deputy Presiding Officer (Liam McArthur): I can give you the time back, Ms Chapman.

Maggie Chapman: Thank you, Presiding Officer.

Fergus Ewing raises an interesting point, but to try to bring tenants' rights into the debate is a bit shy of the mark. We need to ensure that society as a whole supports everybody and that homes are for living in, not for making profit.

People struggling with debt told us in committee that they now get repeated contact from creditors through texts, emails and letters—sometimes every day. Such pressure can only add to their stress and anxiety, even if the communications are not threatening. The incessant demands and pressures have significant negative impacts on people's wellbeing.

For those and other reasons, the introduction of powers to create a mental health moratorium is very welcome. Having a clear mechanism to ensure that creditors cease diligence proceedings while someone focuses on improving their mental health is necessary. I look forward to further discussions on potentially freezing interest repayment charges, restricting contact from the creditor and the like, and I support calls to include those informal forms of debt enforcement in the moratorium.

As we have heard, the bill is enabling legislation, with details of the mental health moratorium to be determined by regulations that are currently being developed following the conclusion of the recent consultation. I welcome the minister's commitment to keep the committee informed as regulations are developed, so that we can scrutinise them effectively—and I believe that we will scrutinise them effectively.

A significant area of concern with the moratorium proposal is that eligibility criteria are drawn far too narrowly. We heard from many witnesses and people with lived experience that many people who do not have compulsory treatment orders would benefit from accessing the much-needed support under the moratorium. We have already heard details of alternative approaches that would widen the eligibility criteria, so I will not rehearse those here. I also appreciate

that the minister has said that more time is required to analyse the consultation responses on that issue. I hope that we can agree on wider criteria as the bill progresses through its subsequent stages, because I think that there is general agreement—as there certainly was on the committee—on that issue.

Linked to that, I do not agree with the view held by some—it is also the view expressed in the consultation document on the operation of the moratorium—that

“we should start small, make sure the scheme works properly and then consider expanding it once we have sufficient experience under our belts”.

That approach threatens the success of the scheme as a whole. If only a handful of people can benefit from a moratorium because of the tightness of the eligibility criteria, we will not get the evidence or experience that we need and will not understand where the scheme is failing. We do not want the legislation to fall flat at the first hurdle.

Regarding other proposals in the bill, I share the concerns expressed by many about the creation of a public register and the stigma associated with that, so I look forward to receiving further information about that from the minister in due course. I welcome the minister's commitment to look for an opportunity to amend the stigmatising phrase “severely mentally impaired”. I also echo the calls from financial advice and support organisations, among others, to ensure that front-line debt advisers and mental health professionals get the appropriate specialist trauma-informed training and support required to ensure that they are adequately equipped to support people who are struggling with both mental ill health and debt.

I do not have time to address all the other proposals in the bill.

In closing, I thank the convener and other colleagues on the Economy and Fair Work Committee for the work undertaken on the bill to date. I thank the clerks for pulling together everything that we have discussed, and I look forward to our future discussions of the detail that we have talked so much about today.

16:06

Emma Harper (South Scotland) (SNP): I am not a member of the Economy and Fair Work Committee, but I am interested in ensuring that we get bankruptcy and insolvency right for people who are facing financial harm in communities across Scotland. I therefore welcome the fact that the bill will bring forward stakeholder-led recommendations to introduce improvements to current insolvency solutions and debt recovery processes. I thank all the committees, members and clerks for their scrutiny and thank everyone

who has provided evidence as the legislation has been taken forward.

In recent times, countries around the world have faced unprecedented challenges and strains on their economies. Scotland has not been immune to that, not least because of the Conservative-created cost of living crisis. The Covid-19 pandemic introduced huge uncertainty and had a far-reaching impact on business and on the employment arrangements of thousands of people in Scotland. Now that we are in the midst of a cost of living crisis that places many households in extreme financial difficulty, unsustainable debt will, unfortunately, be the regrettable consequence for many, so it is right that the processes we put in place to address that should be adequate and should treat people fairly.

It is essential that we look to maximise the effectiveness of the systems that provide the necessary protection and support to help people navigate their way out of problem debt. Scotland has good mechanisms for that, with far-sighted reforms that were introduced in 2015 placing high-quality consumer debt advice at the centre of the system. The debt arrangement scheme has been a major success and remains the United Kingdom's only statutory debt repayment solution. Reforms introduced immediately prior to the onset of the pandemic have enabled the scheme to grow, allowing more people to take control of their debt by using manageable payment programmes.

The Scottish Government committed to a policy review of Scotland's statutory debt solutions, with the aim of further enhancing and improving our system. The first stage of the policy review dealt with the priorities to be taken forward to address the immediate impact of the Covid-19 pandemic. The second stage was undertaken by stakeholder-led working groups that drew on a wide range of expertise and knowledge from representatives of all sectors in the debt landscape. I welcome the fact that those stakeholder groups, made up of people with lived experience, have informed the approach to the bill.

The bill contains a power that would allow the Scottish ministers to create a mental health moratorium. Others have already described that this afternoon, and charities such as Change Mental Health and the Samaritans have welcomed that step. That power, if used, would protect people with serious mental health issues from debt recovery action. The idea of a moratorium providing special protection to those with serious mental health conditions achieved broad support in the bankruptcy and debt advice review consultation.

Stephen Kerr: Emma Harper mentioned Change Mental Health and cited it as being in support of the bill. In principle, I am sure that it is.

However, she will have received a briefing, as I have, in which it outlines at least four or five specific areas of concern. One of them is eligibility, another is the mental health moratorium register—the public register that I mentioned—and it goes on like that. Does she recognise that the lack of detail and substance in the bill is a stumbling block to those of us who want to see real progress and to see Scots treated on a fair basis, and certainly no less fairly treated than people in England and Wales?

The Deputy Presiding Officer: Emma Harper, I can give you the time back.

Emma Harper: I thank Stephen Kerr for that intervention and respond by saying that Change Mental Health is supportive of how we take things forward. I support Kevin Stewart's statements about lived experience needing to inform the work as we take the bill forward at stage 2. I am confident that the committee will know how to address the bill and the issues that have been raised at stage 1 as we move forward after today's debate.

In thinking about the enabling power to establish the moratorium that is included in the Bankruptcy and Diligence (Scotland) Bill, responses to the Economy and Fair Work Committee's report show strong support for the principle of such protection, even if they understandably raise questions about the details.

I want to pick up on one other point that some organisations have touched on regarding bankruptcy, debt and employment. We are all too aware that, particularly due to Covid and the current cost of living crisis, many people have fallen into unsustainable debt, with around 700,000 people in Scotland reporting unsustainable levels of debt. Because of that debt, and even bankruptcy, people are being negatively impacted in their ability to obtain certain types of employment.

That creates a vicious cycle, as people who cannot get employment cannot pay their debt, whereas, if certain vetting and employment practices were changed, people would be able to establish payment plans to manage their debt in a more sustainable way. I therefore ask the minister whether he would consider entering into some kind of dialogue with the UK Government to explore whether certain types of debt could be omitted from, for example, Government and civil service vetting.

The bill is only one part of the programme of work to improve bankruptcy and diligence. The Scottish Government will introduce changes through secondary legislation, some of which, it is hoped, will be laid before Parliament during the progress of the bill. The Scottish Government has

also commissioned a long-term review to assess how far current statutory solutions meet the needs of a modern economy. Yvonne MacDermid OBE has accepted an appointment to lead stage 3 of that wider stakeholder review, and there are some matters that merit further consideration as part of the review, which is welcome.

The bill is yet another example of how Scotland is making the process of bankruptcy and insolvency fairer for those in this situation. I welcome the bill and will support it at stage 1.

16:13

Pam Gosal (West Scotland) (Con): I am delighted to contribute to the debate on behalf of the Scottish Conservatives.

The laws that deal with issues such as insolvency are vast and complex, which is unsurprising for an area of law that can affect people's wellbeing so significantly. For people who are suffering with mental health issues, debt is something that will only make things worse. We know that one in two adults who suffer from debt have mental health problems, and the Covid-19 pandemic still carries a legacy of financial challenges and increased debt for many individuals. Given that, the Law Society of Scotland is right to highlight that changes to the law in this area are overdue, so the bill can be welcomed as part of the wider strategy to improve debt solutions and diligence.

The bill will introduce minor and technical changes to the Bankruptcy (Scotland) Act 2016, which are to be welcomed. However, much of the debate on the bill focuses on the proposed mental health moratorium, which will provide additional protection for a specific group of debtors. That moratorium will be similar to the existing debt respite scheme in England and Wales, which provides a breathing space for those receiving treatment for a mental health crisis.

Although many stakeholders who provided views are highly supportive of that in principle, it is disappointing that the Scottish Government did not set out any details of its proposed moratorium until the consultation was launched last November. In addition, although we now have a rough sketch of how the moratorium might work, it remains the case that many important details will be decided through secondary legislation. It is welcome, at least, that the Government plans to reveal those draft regulations before stage 3. However, if more details on the regulations had been revealed sooner, that would have allowed for better scrutiny.

One key aspect that is still to be decided is who is eligible for the moratorium. The current proposals restrict it to those who are currently

subject to a compulsory treatment order. Rightly, the committee recommends that the Scottish Government consider a wider approach. That could include mirroring the approach that is taken in England and Wales with the debt respite scheme. Such an option is backed by groups such as Change Mental Health, and I hope that the Government will consider it. Other stakeholders, such as NatWest, have warned of potential side effects from extending the scope too far, and it is clear that there is a balance to be struck.

An effective moratorium must also provide the right level of protection for those who need it. For example, the Poverty Alliance highlights the importance of stopping creditor contact. It points out that the sending of regular text messages and letters by creditors, reminding people that their debts are constantly increasing, will only make their mental health issues even worse. The moratorium that is proposed by the Scottish Government would not stop that contact, freeze interest charges or stop threats of eviction. If the moratorium is to be effective, it cannot provide a half-hearted level of protection. It should not be less ambitious than the existing debt respite scheme, which offers additional protections such as the freezing of contact from creditors.

I therefore hope that the Government will listen to the advice of stakeholders and to the committee's recommendation that it should reconsider what the moratorium would protect against.

As my colleague Murdo Fraser highlighted, much of the debt in diligence proceedings is owed to public bodies such as local authorities. The ultimate recovery of that debt, where possible, is often in the public interest. It is therefore clear that a carefully drafted moratorium will strike the right balance between the rights of debtors and the rights of creditors.

The Bankruptcy and Diligence (Scotland) Bill is an important piece of legislation. It makes small reforms with important consequences.

Mental health issues and debt go together all too easily. Financial strain is a key driver of poor mental health, and anyone who struggles to cover essential bills is at higher risk of developing issues such as anxiety or depression. It is only right that such individuals are given the protection that an effective mental health moratorium could provide.

However, the Government still has work to do to ensure that the moratorium is effective. The onus now lies on it to address the issues that the Parliament has highlighted. I hope that the Scottish Government will take a constructive approach and work with MSPs and other stakeholders to ensure that the bill can live up to its full potential.

All parties can get behind the principles that are behind the bill, and I hope that all members will join the Scottish Conservatives in backing the Bankruptcy and Diligence (Scotland) Bill at stage 1.

16:19

Ivan McKee (Glasgow Provan) (SNP): It is a pleasure to speak in the debate, and I thank the minister and the committee for the work that has been done on this technical, but very important, subject. I found Murdo Fraser's comments helpful in outlining the reasons why we need bankruptcy legislation and in highlighting the balance that we require to strike between protection and allowing people to have a fresh start, and recognising the issue of moral hazard. The point was raised that, for many people who find themselves in such a situation, much of their debt will be due to the public purse. It is also important to recognise the impact that legislation in this area can have on the behaviour of financial institutions with regard to their willingness to lend. Those points were well made.

Although the bill is about bankruptcy measures relating to individuals rather than businesses, Stephen Kerr's point about the need to foster an entrepreneurial culture and spirit, and to get the balance right in that regard so that people feel able to start businesses and, if those businesses fail, to move on and apply their learning to support the broader economy, was well made.

I turn to the specific measures in the bill. It is true to say that households across Scotland are facing enormous pressures on their budgets. Household financial resilience was already low before the pandemic, with more than 600,000 people in debt. A YouGov poll that was conducted for Citizens Advice Scotland suggested that, over the course of the pandemic, more than 60,000 people in Scotland either got into debt for the first time or saw existing debts get worse. While the cost of living crisis has increased those pressures for everyone, inflation has been felt most acutely by those in low-income households, who have little or no disposable income with which to absorb those increases.

Poverty and poor mental health are interlinked and mutually reinforcing. Poverty is the single biggest driver of poor mental health, and living with mental health needs can increase the risk of poverty. Fifty per cent of adults who are struggling with debt also have a mental health issue, and many of the income shocks that can lead people into problem debt can also have a huge impact on their mental wellbeing. Those shocks include loss of employment, bereavement, termination of welfare payments and relationship breakdown. I

am pleased, therefore, that the legislation recognises that link.

I am also pleased that the Scottish Government will be holding a lived experience session at the end of February, to hear at first hand from those who have experienced severe mental health issues and debt challenges. I look forward to hearing the feedback from that event; I understand that it was recommended by the committee.

A moratorium on debt repayment can provide the space that is required for recovery, and halt the vicious cycle of increasing debt and worsening mental health. The Government has said that the aim of these legislative changes

"is to help and improve the lives of people who are struggling with problem debt and serious mental health issues."

There have been calls, and evidence has been taken during stage 1, to say that some changes must be made to ensure that the legislation achieves its aims. As it stands, the moratorium will apply only to those who are in compulsory treatment.

Comments have been made about the breathing space project in England and Wales. Although this Parliament should make its own decisions, it is always instructive for us to learn from what others are doing. The breathing space process is open to anyone who is receiving mental health crisis treatment, and the committee heard evidence from those who are in favour of widening the eligibility criteria in that regard. I am interested, therefore, in hearing the Government's response to the recommendations in that area. Those who are in crisis need such support, and it should be given at the earliest opportunity.

The Government's commitment to providing advice to individuals via the channel of their choice is welcome, but evidence suggests that there are concerns around the capacity of money advice services. That includes organisations such as Gemap—Greater Easterhouse money advice project—Scotland and the financially included project, among others in my Glasgow Provan constituency. It was reassuring to hear the minister mention that issue in his opening remarks, and I look forward to hearing how the Government will ensure that the sector is supported to deliver the services that will be required as we move forward.

The needs of those who have mental health issues are often complex, and engagement can be difficult as a consequence. In addition to ensuring capacity, we need to support the sector to develop and test ways of working better with those who are facing difficulties with their mental health.

Citizens Advice Scotland has indicated that there should be more partnership working

between money advice and mental health services. I am keen to hear how the Government could support collaborative working in that area. There is also scope for clearer guidance and training for mental health professionals and money advisers to allow them more effectively to support people who need to access the mental health moratorium. Guidance should also be available to creditors to make their roles and responsibilities clear. It is good to see that the Scottish Government is listening and agrees that clear guidance and training should be provided. It will be good, too, to see what that guidance looks like in practice.

I welcome the bill and look forward to seeing how the various recommendations will be incorporated. If the concerns that have been identified by members across the chamber are taken into account, that could be a productive step in addressing the mutually reinforcing relationship between poor mental health and poverty.

The Deputy Presiding Officer: We move to closing speeches. I am disappointed to note that one member who was participating in the debate is not in the chamber for those. I will expect an explanation and an apology for that.

16:25

Katy Clark (West Scotland) (Lab): It is a pleasure to wind up the debate on behalf of Scottish Labour and to follow Ivan McKee, who was correct to highlight the financial struggles that many people in Scotland currently face.

In the previous session of Parliament, the Economy, Energy and Fair Work Committee recommended that the Scottish Government review the solutions available to people with problem debt. Scottish Labour supported that recommendation. Although we broadly support the provisions in the bill, we believe that far more needs to be done to address how we deal with people who find themselves in debt, particularly in a cost of living crisis. We believe that many other areas of bankruptcy law also need updating. There has been some discussion of that in the debate, in particular on the thresholds—for example, those applicable to wage arrestments. As a member who has not sat on the current Economy and Fair Work Committee, I would be interested to hear from the minister whether further proposals will be introduced following the recommendation made in 2019.

Scottish Labour has issues with some aspects of the drafting of the bill. We believe that many clauses are too widely defined, which we hope will be addressed through amendment. We agree that the Parliament needs to see the detail before stage 3.

As Daniel Johnson said, Scottish Labour supports the general principles of the bill. However, like many other members, I hope that the bill will be strengthened as it progresses. I was not involved in the scrutiny process for the bill. However, many of the criticisms that I heard in today's debate, and which occurred to me when I looked at the black letter of the bill, I have heard many times about previous bills. There is a lack of detail on the face of the bill, and a similar lack of detail has been provided to the committee that is charged with scrutinising the bill's proposals. It is not acceptable that the Scottish Parliament is so often put in that position. I hope that those criticisms will be addressed as the bill progresses.

As Colin Beattie said, much of the focus of the debate has been on the proposals for a mental health moratorium on debt recovery action. Scottish Labour supports, in principle, the establishing of such a moratorium, but much of the detail on how it would operate in practice has been left to secondary legislation. The minister made it very clear that the bill is enabling legislation. We believe that such detail should have been provided on the face of the bill. We hope that amendments will provide clarity as the bill progresses. However, if the bill remains much as it is currently drafted, we further hope that the affirmative procedure will be used for any secondary legislation, given the level of detail that will have to be incorporated in the regulations.

As Stephen Kerr and a number of Conservative members pointed out, the proposals that have been presented to Parliament potentially give people with mental health problems fewer protections than those applicable south of the border. I agree with Keith Brown's suggestion that it would not be acceptable to simply mirror legislation south of the border—the law of bankruptcy is very different in Scotland, and always has been, from the legislation south of the border. However, it is completely legitimate to say that it would be shocking if we were to end up with poorer protections than those south of the border.

I agree with what Keith Brown said about the public register. Those are important points to put on the record, and I believe that the provisions on that need very careful consideration, given the human rights implications for those impacted, who are often some of the most vulnerable in our society.

The convener of the committee outlined the range of evidence that the committee took in order to engage with those who work in the debt sector and she made clear the committee's disappointment at the lack of detail that was provided to enable the committee to carry out its role in scrutinising the proposals. She spoke about the small number of people who may benefit from

the proposals, in particular in relation to the moratorium, and highlighted the high numbers of people who are in debt and who have mental health problems, as well as the high percentage of people who have mental health problems who are in debt. That point was well reinforced by Kevin Stewart. We note the representations made by Change Mental Health, which said that the eligibility for entering a mental health moratorium is too narrow; the committee convener reinforced that point.

We support, in broad terms, the proposals in the bill. In particular, we support the proposal to allow the minimal asset process bankruptcy to take place after five years. We think that that is consistent with the approach that has been discussed today to enable people who get into difficulty the possibility of a fresh start.

Murdo Fraser highlighted the lack of capacity in the debt sector. That very important point has been made by several members. In the past, there have been very strong representations in the Parliament for a debt amnesty for low-income families and those in receipt of benefits. There have been calls for debt advice levies on financial benefits and a range of extra resources for front-line advisers.

I believe that that issue is central to the debate, because whatever legislation we have in place, we have to recognise that those who are seeking to rely on the legislation are at a particularly vulnerable point in their lives; they are often very vulnerable people. It is essential that there is a framework around the legislation so that it can be used appropriately.

16:33

Brian Whittle (South Scotland) (Con): I apologise to members and, in particular, to the minister for my late arrival in the chamber. I wish that I could come up with some wonderful reason for that, but, unfortunately, I simply misread the start time of the debate. To be fair, as has been pointed out to me, I was earlier than I am usually late.

I echo the thanks of the committee convener to everyone who gave evidence to us about the bill, to SPICe for its helpful background briefings and to the committee clerks for their assistance in the preparation of the report.

As has been demonstrated in the debate, the committee agreed the report unanimously, with very little disagreement throughout the evidence-gathering process. There have been some interesting speeches in the debate—for a technical bill, perhaps that was rather unexpected—and I highlight the experience of Fergus Ewing and the intervention from Daniel Johnson.

My colleague Murdo Fraser, with his usual attention to detail, helpfully framed the implications of bankruptcy law and the negative connotations of the term “bankruptcy”. In doing so, he highlighted that bankruptcy provides a solution for people who find themselves unable to meet their financial obligations, avoiding the need for debtors to be pursued by creditors indefinitely. In effect, it offers a way to clear the decks, so to speak. However, we always need to understand that there is a balance to be sought between creditors and debtors.

In evidence, we heard that, in the cases that we are considering, it is predominantly public bodies such as HMRC and local councils—especially in respect of council tax arrears—that are the main creditors. That throws up the need to balance the needs of debtors against the collection of funds that support public services.

As committee members have mentioned, the bill is mostly about minor and technical changes to existing bankruptcy legislation. Much of the evidence that was taken and discussed in the committee centred around debtors with significant mental illness and therefore their capacity to adequately attend to the debt recovery processes against them. We all agree that that is a legitimate reason to support a moratorium on the recovery of said debt.

Other members who have spoken in the debate have cited a similar scheme in England and Wales—breathing space—in which individuals who receive what is termed crisis treatment are afforded such protections. That includes those who are subject to compulsory orders but, crucially, it includes those who suffer from conditions of comparable severity who receive crisis, emergency or acute treatment without compulsion. During our evidence session, the committee heard that the proposed entry criteria should not apply only to those who are subject to compulsory orders, which would exclude those with severe and significant mental health conditions who have voluntary treatment. The narrowness of the criteria was criticised by several agencies that gave evidence, such as One Parent Families Scotland and the Poverty Alliance. The concern was that the approach would help only a very small number of patients, including many who would also need that particular service.

Furthermore, there was concern about the resource required to make such a mental health moratorium work in practice. My interaction with Daniel Johnson highlighted the need for the Scottish Government to furnish us with more information and to allow sufficient time for detailed parliamentary scrutiny prior to the commencement of stage 3.

My colleague Stephen Kerr highlighted the need not to create law in such a vacuum and the limitations of secondary legislation. There is no point in delivering a bill that cannot be practically delivered, no matter the good intention of the Scottish Government.

The suggestion is that mental health experts be allowed to certify a required level of impact from mental health problems using a form that is similar to the debt and mental health evidence form that is currently used in the money advice sector, and that they should consider using entry-level criteria that are similar to those used by breathing space in England and Wales. It is important that the resource issue is addressed for mental health support and to ensure that the money advice sector is adequately resourced to attend to the potentially expanding workload.

It was noted that the proposed moratorium may put additional pressures on the money advice sector and that that sector was already operating under significant restraints. Once again, that raises the issue of the Scottish Government's need to address the resource requirement to make the implementation of the bill practical. Training and guidance to the sector must form a big part of the bill's implementation.

The Delegated Powers and Law Reform Committee noted that moratoria are meant to be temporary and that the bill fails to specify a maximum duration. However, we support a two-stage approach, with an open-ended first phase to allow the individual to focus on recovery without having to contend with the serious worries of debt. We welcome the minister's assurances that there will be no plans to reduce the standard moratorium from its current six months.

An issue that the committee discussed was that those in compulsory treatment who do not have the capacity to consent to a mental health moratorium or who have legally recognised representation to do so for them will not be able to access the scheme. We ask the Scottish Government to ensure that the process allows access to all those who are eligible.

I note that, on the other side of the issue, there are creditors and that any delay in payment of the debts could jeopardise some businesses. In delivering the bill, creditors' needs should not be overlooked.

The bill might not impact on many individuals, but the protection that it will afford to those who are in need is significant to them. The committee has raised concerns, as other members have done, about the lack of detail from the Scottish Government on how the bill will be implemented. It is therefore welcome that the minister has

committed to delivering those details prior to stage 3.

Once again, I thank all those who gave evidence, the committee clerks and my fellow committee members for the work that was done in bringing the report to Parliament.

16:40

Tom Arthur: I begin by thanking all members across the chamber for their contributions to a thoughtful and considered debate. I also reiterate my thanks to the members and clerks of the Economy and Fair Work Committee, to all the people who have given evidence and to those who have engaged with the Scottish Government through the stakeholder working groups and the recent consultation.

The bill is on a matter that naturally creates a great deal of consensus and a consensual tone, because it deals with part of the fundamental architecture that underpins a functioning state: the ability to enforce contracts. There is an important balance to be struck, as has been reflected in the debate, between the interests of debtors, whom we want to ensure have maximum protection, and the interests of creditors.

The word "credit" is vital, given its origins in trust, and given the confidence that is needed for creditors and for a functioning system for insolvency. Without that trust and confidence, we could unintentionally harm the very people whom we want to protect, and we could deny access to credit to the people whom we want to ensure can access credit.

The debate and the bill cut to some fundamental issues, despite the short and technical nature of the bill. I will reflect on a number of outstanding contributions that were made during the debate—in particular, comments by my colleague Kevin Stewart, by Fergus Ewing, who made a very powerful speech, and by Murdo Fraser. I am very grateful to those members for bringing their extensive experience to bear, in the debate. I say to them personally, and to all members, that I would be very keen—to pick up on a point that Pam Gosal raised—to have direct engagement with MSPs, Opposition spokespersons and Economy and Fair Work Committee members ahead of stages 2 and 3, and to share more of the work that the Government is undertaking, in order to ensure that we build maximum consensus.

We could touch on a number of themes. If I distil them down into a handful, they are the balance between what should be in primary and secondary legislation; the entry criteria; the question of a public register; and the broader point about the balance of interests, which will inform much of what we do.

I turn first to the issue of primary and secondary legislation. I might be standing here in my capacity as a Government minister, but I never forget that I stand here first and foremost as an elected member of the Parliament. We all have a duty to defend the interests of the Parliament. I completely understand and appreciate the interest that members have in ensuring that Parliament can play its full role and that as much information as possible is provided in the text of bills.

Decisions about what should be in a bill and what should be in secondary legislation are not taken lightly. The position that we have adopted here is not entirely dissimilar to the arrangements in England and Wales, which have been referred to, with our having a parent act and the substantive aspects of the scheme being set out in regulations. We have sought to allow flexibility and to recognise that this can be a dynamic area of law. Our position will allow us to respond through secondary legislation, which we think is a proportionate use of Parliament's time.

However, I recognise the concern about detail, which is why we have made a commitment to provide draft regulations to the Economy and Fair Work Committee ahead of stage 3, and to hold a full public consultation on the regulations, which will afford the committee a substantial period of time to consider them.

I wish to provide reassurance to members who have expressed concerns about whether there might be an element of overreach in the regulation-making powers. Section 1(1) says:

"The Scottish Ministers may by regulations make provision establishing a moratorium on debt recovery action by creditors against individuals who have a mental illness."

The purpose of the regulations and of the moratorium is clearly set out, and that creates the context in which those further powers would be utilised.

Subsection (4) adds:

"Regulations under this section are subject to the affirmative procedure."

I mention that to give Katy Clark reassurance on that particular point.

Daniel Johnson: I wish to make a specific point and a general point. The specific point is that, although what the minister has just said is all true, subsection (3) enables ministers to

"make different provision for different purposes"

and to

"modify any enactment".

That is quite broad.

My more general point is that it is all well and good having a framework bill, but such a bill must

set a frame, with points and principles, which will then be further elucidated. Will the minister reflect on that? As the bill stands, the Government could choose not to introduce any of the provisions that are set out in section 1(2). In essence, we do not know what proposals will be brought forward—it is completely open. Will the minister acknowledge that point?

Tom Arthur: That is why we consulted on the regulations and made the commitment to provide them in draft form to the committee. There has been an opportunity for members, the committee and stakeholders to participate in the consultation, and we will reflect carefully on what emerges from it.

I recognise the points that have been raised. I also recognise the evidence that the committee received from Citizens Advice Scotland, which spoke favourably of creating the scheme through regulations because doing so will give us the required flexibility.

I appreciate that there are conflicting views on whether we should start small or be more expansive when introducing the scheme, but the regulations will allow us to start small, recognising the importance of getting the balance of interests correct. We can then, based on evidence and learning, expand the scheme, again through regulations. However, I am happy to reflect further on the points that have been raised in the debate.

I turn to what would be in the scheme. The question of criteria has received considerable attention. As members would imagine, I want to give further careful and detailed consideration to the criteria, and to reflect further on the committee's views, the evidence that it has received and the input that we have received through our consultation. I also want further engagement with members of Parliament.

I recognise that the issue of the criteria gets to the heart of the point about balance and balancing interests. We want the scheme to add value and to provide something that is of use, even if it has a material and positive impact only on a small number of people. We recognise the point about the balance of the interests of debtors and creditors.

Brian Whittle: Does the minister accept that it is important that we recognise, through the bill, how serious mental illness pertains to people's ability to deal with debt? We must also ensure that the resources are available to ensure that the bill is implemented in practice.

Tom Arthur: Yes, we absolutely recognise the importance of close engagement with both the debt and money advice sector and mental health professionals, to ensure that the scheme is properly resourced so that it can be effective.

I recognise that one of the consequences of having more expansive criteria might be more people using the scheme, so we would have to take that into consideration.

Another point that I want to mention—

Stephen Kerr: Will the minister give way?

Tom Arthur: Yes, briefly, because there is another point that I want to make.

Stephen Kerr: It will be a very brief intervention. Will the minister give an undertaking now, before Parliament, that the protections that will be offered to people in Scotland who are in those distressing circumstances will be no less than those that are available to people in similar situations in England and Wales? Will he give that very firm assurance that we will not have less protection available for these vulnerable people than is available in England and Wales?

Tom Arthur: I appreciate the member's point, so let me answer it sincerely. We have a different suite of law regarding mental health in Scotland, and a different framework in which we operate, but I recognise the intent and his wanting to ensure maximum protection.

The recommendations are stakeholder led, so I want to work with stakeholders and colleagues in Parliament to ensure that we offer the best possible protection. I am committed to working constructively in that spirit, which is why I have committed to writing to the UK Government on, for example, matters relating to prepayment meters.

I am very happy to engage on that and to explore our not only achieving parity with, but surpassing, the protections that are available in England and Wales. Ultimately, that will require a process of collaboration and engagement with stakeholders to ensure that we develop a scheme that works effectively in Scotland and that has no unintended consequences.

I hope that Stephen Kerr can accept, in the spirit in which it is intended, my response on how we want to take things forward.

I want to turn primarily to one other thing before I conclude: the public register. I appreciate that it has caused understandable concern. We want to ensure that we can balance the interests of debtors and creditors, but we would not want to do anything that had the consequence of stigmatising the scheme and, in doing so, impacting on uptake of the scheme. That would be self-defeating. It is a matter to which we will give further detailed consideration and on which we will have further engagement. There is recognition of the need to protect legitimate creditor interests in the scheme, but we cannot do that in a way that risks stigma and undermining the scheme from the outset.

A number of the other points that have been raised can be considered through secondary legislation. I have committed to having further engagement and discussion with stakeholders on the minimal asset process and on earnings arrestment. My door is open to members, too, in that regard.

Murdo Fraser raised a number of issues, including discharge of trustees, the petitioner for serving bankruptcy, the arrestee's duty of disclosure and compliance. On all those issues, we are having more engagement with stakeholders, including through meetings with officials. I am happy to have discussions with members who are interested in those areas.

I thank members for their thoughtful and considered contributions to the debate, and I reiterate my thanks to the committee and to all those who have contributed to the process. I very much look forward to further engagement with stakeholders ahead of stage 2, and I reiterate that my door is open to any member who wants to engage further on the issues. I ask members to back the general principles of the bill at decision time.

Motion without Notice

16:50

The Deputy Presiding Officer (Liam McArthur): I am minded to accept a motion without notice under rule 11.2.4 of standing orders that decision time be brought forward to now. I invite the Minister for Parliamentary Business to move such a motion.

Motion moved,

That, under Rule 11.2.4, Decision Time be brought forward to 16:51.—[George Adam]

Motion agreed to.

Decision Time

16:51

The Deputy Presiding Officer (Liam McArthur): There is one question to be put as a result of today's business. The question is, that motion S6M-12070, in the name of Tom Arthur, on the Bankruptcy and Diligence (Scotland) Bill at stage 1, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Bankruptcy and Diligence (Scotland) Bill.

The Deputy Presiding Officer: That concludes decision time.

Dunoon Grammar School

The Deputy Presiding Officer (Annabelle Ewing): The final item of business is a members' business debate on motion S6M-10234, in the name of Donald Cameron, on celebrating the work of Dunoon grammar school. The debate will be concluded without any question being put. I ask members who wish to speak in the debate to press their request-to-speak buttons.

Motion debated,

That the Parliament congratulates the pupils, staff, parents and partners of Dunoon Grammar School on the school's ongoing and award-winning work collaborating with the local community and public bodies for the benefit of all; understands that the school has collaborated with a large number of organisations, including Apps for Good, Argyll Holidays, the Dunoon Film Festival, Police Scotland and the Wood Foundation, ensuring that its pupils leave school with a wider experience of the world outside; notes that the school is involved with a company set up to develop Dunoon as an adventure capital of Scotland, and provides a junior board to the company; commends what it sees as the empowering leadership of the school's head teacher, David Mitchell, who, it understands, supports staff, pupils, parents and partners to operate in the knowledge that the head teacher has their support; recognises that the school has been facilitated and supported by Argyll and Bute Council; believes that Dunoon Grammar School demonstrates that a school can be the heart of, and make a significant difference to, its community, and hopes that lessons can be learned throughout Scotland from the successful partnership between Dunoon Grammar School and Argyll and Bute Council.

16:53

Donald Cameron (Highlands and Islands) (Con): I am delighted to bring this debate to the chamber to highlight to the Scottish Parliament the fantastic work of Dunoon grammar school. I thank Gillian Hunt, who is in the public gallery, for all her encouragement to me in lodging the motion and for her enthusiasm. I also thank David Mitchell, the headteacher of Dunoon grammar school, who I will mention a few times during my speech. He, too, is in the gallery, or is making his way there—the early decision time might have caught him on the hop. A group of young people from Dunoon grammar who have been in the Parliament this afternoon are also in the gallery.

Dunoon grammar has achieved so much under the leadership of David Mitchell and his staff. Such is the sheer number of achievements of the staff and pupils of the school over the years that, in my time as an MSP, I have submitted eight motions recognising various successes. The school is at the heart of its community. It is also very open and welcoming to politicians. In fact, my first experience of the school was at a hustings there during the 2016 election campaign. I have also spoken alongside Mike Russell, the former cabinet

secretary and MSP for Argyll and Bute, at a class for modern studies pupils in the school.

Such are the successes of Dunoon grammar that, in 2019, it was the first-ever Scottish school to be named in the European entrepreneurial school of the year awards for its work in promoting entrepreneurial initiatives. Teams of pupils have won awards at the Apps for Good UK showcase over the years, with two teams from Dunoon grammar winning prizes in 2023. Dunoon grammar is a regular entrant in the Scottish education awards, for which David Mitchell was nominated last year, and the school won the Gaelic education award in 2022. However, perhaps most notably, in 2022, Dunoon grammar was named the world's best school for community collaboration by the global teaching platform T4 Education.

None of those achievements has been accidental, and all have happened because of the school's relentless focus on being an institution that actively collaborates with the community that it serves. There have been a number of such collaborations.

The Minister for Public Health and Women's Health (Jenni Minto): I absolutely recognise the glowing way that Donald Cameron is speaking about Dunoon grammar school—many of my visits have had the same positivity. Does he agree that we should express our thanks to the following teachers: Paul Gallanagh, for the work that he has done with regard to entering the school for those things, and Scott McKinnon and Pam McNaughton, for their work on developing the young workforce?

Donald Cameron: I am grateful to Jenni Minto for mentioning those teachers. It is important that we get on record the names of not just the headteacher but other leaders in the school who have driven it forward.

I was discussing community collaboration, and I will focus on one project. An empty toy library in Dunoon, which was owned by Argyll and Bute Council, has been passed to the school, which has plans for it to become a new community facility. Pupils will play an integral role in the success of the project. For example, there are plans for it to host adult learning classes that are delivered by young people, for a garden run by the school's learning centre and for a community cafe where young people can learn skills for future life. That positive project is not only being pursued for the benefit of pupils; it is giving back to the local community and bringing an empty space into good use.

Pam Duncan-Glancy (Glasgow) (Lab): Does the member agree that focusing on the Scottish credit and qualifications framework and on offering

alternative courses for young people—as he has just described is happening through the community focus in that award-winning school—is useful for young people, who need all sorts of support to achieve the best that they possibly can in school?

Donald Cameron: I agree that having a breadth of subjects available is intrinsically important to young people. The member will know about the challenges that we all face with subject choice in schools in Scotland.

My point is that the project that I mentioned gives back to the local community. A report by Gillian Hunt in 2023 entitled “High Dunoon: How one Scottish school empowered its staff and pupils, and transformed a community” explains that work and those projects and why they have been such a success. The report was taken up by the think tank Reform Scotland and featured in a number of national newspapers last year. The foreword states:

“in a Dunoon context the word ‘community’ is widely cast, as you will see”.

It goes on to talk about the

“exemplary environment for young people to learn, grow, find future opportunities, and contribute their own ideas.”

It continues:

“Teachers are encouraged to think for themselves, and take an ‘outward looking’ approach to their job. External partners in the public, third and private sectors have become part of the DGS family.”

That sums up what Dunoon grammar does, and how it could be a wider model for other schools across Scotland.

That is not to say that the school is perfect. It would be wrong not to acknowledge that in Dunoon, as in many other towns in rural Scotland, there are deep-seated challenges. Within that community, vulnerable people still need support, and young people’s mental health still needs to be addressed.

Stephen Kerr (Central Scotland) (Con): On the member’s point about the transformative power of the school, would he agree that the pivotal thing that makes it all possible is leadership? That is what we see at Dunoon grammar: leadership. There is a leader, and a leadership team.

Does the member believe that if every school in Scotland had that empowered sense of leadership—and autonomy, even—we could transform every one into a Dunoon grammar?

Donald Cameron: I am firmly of that view, and Stephen Kerr sets out eloquently what I personally believe.

I am not saying that Dunoon grammar is unique. Plenty of other Scottish schools have a similar level of engagement with their communities, and allow their teaching staff to think creatively outside the box. Other schools do remarkable things too, which I am sure that other members will draw to our attention.

However, Stephen Kerr mentioned leadership, and the school is very fortunate to have David Mitchell as the headteacher there. It is no wonder that he was shortlisted for the headteacher of the year award at the Scottish education awards in 2023.

Finlay Carson (Galloway and West Dumfries) (Con): Will the member take an intervention?

Donald Cameron: I think that I can—

The Deputy Presiding Officer: I can give Mr Cameron a wee bit of extra time, because he has been generous with taking interventions.

Finlay Carson: I thank the member for giving way, and I apologise for missing the start of the debate.

I want to put on record that the headteacher, David Mitchell, cut his teeth in Dumfries and Galloway, so Dunoon’s gain is certainly Dumfries and Galloway’s loss. The culture around the school in Dunoon is admired everywhere, and Dumfries and Galloway could certainly take some lessons from what is happening there.

Donald Cameron: I did not know that, so I thank Finlay Carson for that information.

Given that much of the decision making around education is the responsibility of local authorities, it is down to the leadership of those authorities to make or break innovation in education. It is important to recognise that all the many achievements of Dunoon grammar have occurred under existing structures and systems. Nevertheless, if there were greater freedom for, and greater empowerment of, headteachers, even more such achievements could happen.

I must draw my remarks to a close, but first I lay down a direct challenge to the Cabinet Secretary for Education and Skills, who I am delighted to see is in the chamber to respond to the debate. What will the Scottish Government do to learn the lessons of Dunoon grammar’s success and ensure, in any way that it can, that that success can be replicated across Scotland?

The school is a brilliant example of what can be achieved when teachers are given the freedom and support to think and act creatively, and when pupils are made to feel part of something bigger and are encouraged to think about social good. On that note, I should mention that there are Dunoon grammar pupils currently undertaking work in

Tanzania. Dunoon is a brilliant example of what can be achieved when a local community has a stake in the success of its school.

Dunoon grammar and David Mitchell—his team, his leadership, his teachers and his pupils past and present—have achieved so much and will no doubt go on to achieve much more. To help Dunoon grammar and every other school in Scotland, however, it is imperative that we in the Parliament remove the barriers to success and let our schools flourish.

17:03

Emma Harper (South Scotland) (SNP): I, too, take the opportunity to congratulate Dunoon grammar school. I congratulate Donald Cameron on bringing the debate to the chamber, and I am happy to support his motion. I also add my thanks to all at Dunoon grammar school for their hard work and their dedication and commitment to the community, and for providing a school-age learning experience that spans a lifetime for the pupils.

The school's many achievements, which have been well rehearsed by Donald Cameron, are testament to its ethos of continually improving and doing all that it can to ensure the best outcomes for young people.

Dunoon grammar school has a long and distinguished history spanning more than 350 years of growth, of which high standards of academic and personal development have been the hallmarks. A huge well done goes to all in the school community.

In preparing for the debate, I had a wee discussion with my head of office, who attended Ayr grammar school, and we had a blether about the history of grammar schools in Scotland. Scotland has many schools, including Ayr grammar and Dunbar grammar in my South Scotland region, which are called grammar schools but are now essentially the same as other state schools. Although, historically, those grammar schools would have acted independently and are, in some cases, still viewed as providing high-quality academic education, it is important to note that they are not the same as grammar schools in England and Northern Ireland.

With that in mind, I will share some of the exceptional work of schools in the South Scotland region, which are working to provide the best possible educational outcomes.

One such school is Lockerbie academy in Dumfries and Galloway, under the leadership of Brian Asher. Lockerbie academy is very much an integral part of the town. It embraces fully the town motto, "Forward", building on its vision around

improving the future of the local area for pupils and the community.

Lockerbie academy has a

"twin purpose, to be a place where pupils feel cared for and above all, come here to learn",

which drives their desire to be the best that they can be.

Every year since the Lockerbie air disaster, the academy has worked with Syracuse University in New York as part of an exchange programme. Two pupils from Lockerbie travel to Syracuse, and vice versa, to lay a wreath on behalf of the town in remembrance of all those who died in the air disaster. That is massively appreciated by the town and the wider community, and it has led to the school being nationally recognised by Education Scotland for its leadership of that scheme.

Other fantastic examples are Dumfries high school and Kyle academy in Ayr, both of which have been leading the way with the vision schools Scotland programme. The programme aims to encourage and empower Scottish schools to enshrine Holocaust education in the curriculum, in order to ensure that every young person learns of the horrors of the Holocaust.

Just last week, I had the opportunity to meet Dumfries high school secondary 6 pupils Brogan Matthews and Katie Donald, and their teachers—Lizzie Smithard, who is their history teacher, and Philip Cubbon, who is the headteacher—at Dynamic Earth for a vision schools Scotland award ceremony.

Brogan and Katie have been leading the way with Holocaust education in the school, and they had the opportunity to visit Auschwitz earlier this year. That work is vitally important, and I thank the pupils and the school communities of Dumfries high and Kyle academy for their work.

Finally, I mention Stranraer academy, which was recently awarded the Young Enterprise team programme award. Stranraer academy stands now where my first secondary school was a long time ago. It runs a programme over a full academic year that involves students from S5 and S6 starting their own student company. The pupils go through key milestones of developing an idea, conducting market research and creating the product or service. Ultimately, it is then promoted and traded. The award that those pupils received was well deserved.

In closing, I put on record my thanks to all our fantastic schools, and to Donald Cameron for lodging the motion, bringing the debate to the chamber and raising the profile of Dunoon grammar.

17:07

Liam Kerr (North East Scotland) (Con): I thank Donald Cameron for bringing the debate to the chamber and so giving me the opportunity to make a brief speech.

Last May, Chris Deerin, the director of Reform Scotland, said, in the “High Dunoon” report that we heard about, that,

“There is much focus, in the media and elsewhere, on what is wrong with Scottish education ... But it’s also important to talk about the success stories—those projects from which others can learn and benefit.”

He makes an important point. We all know, as David Mitchell, the school’s headteacher, put it, that,

“the current financial situation makes it even harder to provide a wide range of opportunities for young people”,

as do the many other issues currently impacting on Scottish education, which we have rehearsed in the chamber many times. Nevertheless, as Gillian Hunt, the educational consultant who authored the report says, all that Dunoon grammar school has achieved has been done

“without additional resources or any special measures”.

That is why it is crucial not only that Parliament celebrates Dunoon grammar’s success—which we have heard, and will hear, so much about today—and that we commend the pupils, staff and partners who have made it all happen, some examples of which Donald Cameron gave earlier, but that we find out what is working, and explore and evaluate what makes that model a success. Crucial to that seems to be the idea of an education system or a facility that does not exist in isolation or in a silo, but, rather, works and exists as part of an ecosystem.

In Dunoon grammar school we see a school that already operates in that way and that exemplifies the idea of taking a village to raise a child. As the “High Dunoon” report put it,

“The school sits at the heart of this environment and its purpose is clear - to provide everything and anything that students need to thrive and be successful. And a huge part of this is making sure that this environment and wider community can thrive and be successful too.”

Fergus Ewing (Inverness and Nairn) (SNP): I warmly endorse Mr Kerr’s sentiment that we should be more positive about the achievements in schools throughout the whole country. I claim no moral superiority in respect of casting stones over anyone else here, but does Mr Kerr not agree that the nature of negativity that far too often characterises the debate about education in the chamber does none of us any good and perhaps does the institution as a whole considerable, gratuitous harm?

Liam Kerr: That is a very interesting point, and I am grateful for the intervention. As I suggested earlier, there are significant challenges facing the Scottish education system. I do not think that it would be right in a debate such as this for me to go into what I believe some of those are, but it is the responsibility of the Parliament to address those challenges by setting them out clearly and trying to work in a cross-party way to find the solutions. I agree that, where success such as we see at Dunoon grammar school is apparent, it absolutely deserves to be celebrated and aired in order that lessons can be learned.

We heard about some of the school’s successes earlier. One of the results was that the school won the T4 Education world’s best school prize for community collaboration in 2022. There are only five prize categories, and they are open worldwide. To put it in context, the year that Dunoon grammar school won that prize, the runners-up were from India and Brazil. It is truly incredible.

We have heard about some of the key factors that led to that success, and we will no doubt hear about them further. They can be summarised as truly collaborative partnerships in the community, an outward-looking approach and a focus on how sectors can learn from one another and apply that learning. From the report, from what we will hear in the debate and from the various commentaries that I have looked at when researching my remarks, one thing is clear: at the heart of all this is the headteacher, David Mitchell, who joins us in the public gallery, and who has driven that approach. He has even been described—rightly, it seems—as a “local hero”, although, of course, many others have also contributed to the school’s success. Jenni Minto mentioned two others in her intervention earlier.

I will close with the words of Gillian Hunt, as they embody what we are discussing today. Writing for Reform Scotland last year, in “Making effective collaboration in Scotland a reality”, she said:

“I challenge the new First Minister and their Education Secretary to refocus attention on education, and to ensuring that all of our children and young people succeed. I urge them to recognise the need to create a new system, an ecosystem and to actively promote and support the contribution of third sector organisations to this ecosystem.”

That seems to me to be inarguable, and I look forward very much to hearing the cabinet secretary’s response to that challenge later this evening.

17:14

Rhoda Grant (Highlands and Islands) (Lab): I add my congratulations to Donald Cameron on securing the debate. I also congratulate Dunoon

grammar school, its headteacher, staff and pupils on their huge achievement of winning the award for best school in the world for community collaboration, and I recognise the role of Argyll and Bute Council in supporting the school.

The school has taken part in a number of projects, one of which involved streaming bingo and other games to local care homes during the Covid pandemic. That must have been a lifeline for the people in the care homes, and it will have strengthened the intergenerational bonds in the community.

The school has also launched an app to help its neighbours to reduce food waste. Perhaps most importantly of all, it has a student advisory board for the Dunoon project. The Dunoon project is looking at an awful lot of things that will help to put Dunoon on the map and make it a centre for excellence for outdoor activities and other things.

Being on the advisory board allows students to work closely with the project. That will help Dunoon not only here and now, but in the future. In fact, it is providing a future for those very pupils, because it will provide them with job opportunities in years to come, in addition to the skills that they are learning every day as part of that experience.

Learning in different ways benefits all young people, because they can learn in a way that suits them best. We all learn differently, and take on information in a very different way, but seeing different ways of learning motivates everybody, and means that everyone can take part. If someone is not very good at book learning, they may be very practical instead, and all those skills come into play when there is a rich diversity of ways in which people can learn.

The headteacher says that that sort of approach is about allowing the students

“to take part in activities that actually are real learning experiences.”

They may not feel, or seem, like that, but they are, and they add to people’s knowledge. I congratulate the school on enabling that—everyone wins from that approach.

One issue that I have taken up over a long period of time is rural depopulation. We know that young people are pushed out of their communities because of depopulation; Argyll and Bute has seen a fall in population of 2.4 per cent. It is so important that those young people are part of the future of those communities, and that they build the future for themselves and create opportunities that will allow them to stay at home.

Last week, *The Herald* ran a major week-long series on the population crisis in the Highlands and Islands. The series was looking at the situation a bit further north than Dunoon—the

journalists were based in Fort William, but they saw for themselves what is required to retain young people in such communities. First and foremost, what young people need is a home, but they also need to feel part of their community, and have the same opportunities in that community as they would have if they moved elsewhere.

That is why the work of Dunoon grammar school is so important. Those young people are not only being furnished with the imagination to create opportunities themselves; they are actually being a part of the community as they learn. Other schools could learn from what Dunoon grammar is doing.

Fergus Ewing: Concerning Rhoda Grant’s remarks about population and depopulation in the Highlands, and education, and the excellent series of articles by *The Herald* about the current problems that the more remote Highland communities and islands face in particular, there is a serious risk of massive further depopulation, of 10 or 15 per cent. That is a serious—perhaps the most serious—threat to education, given the risk that schools will simply close because of dwindling school rolls. Repopulation with development in the Highlands, encouraged and enabled by this Government, is, therefore, absolutely essential.

Rhoda Grant: I absolutely agree. We do not want to halt depopulation by keeping our young people in their communities if that is somehow a lesser opportunity for them. We have to create the opportunities in those communities in the future, so that young people are not forced out. I hope that young people in Dunoon will have choices about where they make their futures, and that making their future in Dunoon will be an excellent opportunity for them.

17:19

Ariane Burgess (Highlands and Islands) (Green): I thank my colleague in representing the Highlands and Islands region, Donald Cameron, for lodging the motion and providing us with an opportunity to discuss the excellent work that is carried out at Dunoon grammar school and the potential that it demonstrates for community-supported education across Scotland.

I had the pleasure of visiting Dunoon grammar in the lead-up to the 26th United Nations climate change conference of the parties—COP 26—when I met students who were part of the eco-sustainability group to discuss the action that is needed on climate and nature. I had a tremendous conversation with them. At that time, David Mitchell, the headteacher, also gave me a tour of the school and showed me all the other amazing activities that people were up to. I had the opportunity to talk to other students and to staff,

and I certainly got a tremendous impression of what was taking place in the school.

I am looking forward to returning to the school soon, to meet Mr Mitchell again and to work with pupils on developing a place plan for their community, alongside Dunoon Community Development Trust. It is wonderful to see Mr Mitchell, pupils and staff in the public gallery this evening.

Dunoon grammar's example does not simply reflect excellent practice in community engagement—it is transforming what a community is perceived to be, and how our young people engage with their local environment, neighbours and culture. That community engagement goes much deeper than the fundraising events and occasional open days with which we are all probably familiar. Working in partnership with third sector organisations and social enterprises to achieve common goals inspires pupils and adds to the vibrancy of life in the town.

How many pupils will know what a place plan is, let alone take an active part in creating one? Yet we all know how vital safe, connected and flourishing community spaces are to young people, whether that is about creating places that make it easy for them to travel on foot or by bicycle, ensuring high-quality play and recreation provision, or creating environments that are well lit and feel safe for meeting friends.

Making our built environment, especially in rural areas, a welcoming space for young people is a key, but often overlooked, aspect of rural population. So, too, is ensuring that there are secure, well-paid jobs in a variety of sectors and, crucially, that the young people who are growing up in rural communities are equipped with the skills that they need to secure those jobs. We know that, in the past year, the number of jobs in the renewables industry has increased by 50 per cent in Scotland, and many of those roles are in my Highlands and Islands region. There is also a growing demand for skilled tradespeople and engineers to build the 11,000 rural homes that the Scottish Government is committed to creating; to retrofit and insulate existing homes; and to install and maintain low-carbon heating systems.

Increasingly, we are opening up a range of new jobs by tackling the climate and nature emergencies, through peatland and rainforest restoration, woodland and deer management and ecotourism. Those job opportunities, like the development roles in the carbon neutral islands scheme, give young people the opportunity not just to have fulfilling work in their rural communities, but to play a part in shaping the future of those places. Perhaps the place-plan work at Dunoon grammar will inspire a few students to become much-needed planners.

However, education is about so much more than producing the workers of the future. It is about developing creative, critical thinkers, nurturing talent and inspiring the next generation through curiosity and a love of learning.

Fergus Ewing: Ariane Burgess talks about the importance of jobs in the Highlands. A great many such jobs consist of people working in the oil and gas industry, who live there, commute to work offshore and form a staple part of many communities. Does the member, like me, value, cherish and support the jobs in that sector, which will be necessary for some considerable time to come?

Ariane Burgess: I appreciate the member's intervention. What I value and cherish is that we have a future for future generations in Scotland, and on this planet, and I want to see a just transition for those oil and gas workers to other sectors. Renewable energy is one of those sectors, but there are many other opportunities and we need to get on with that.

The approach that is taken at Dunoon grammar is not just about financial resources, although investing in closing the poverty-related attainment gap is vital. It is about reassessing what is truly valuable to a community and ensuring that local education provision meets those needs.

Dunoon grammar is not afraid to take risks—it tackles challenges head on and empowers pupils and staff to find new solutions and take those risks themselves. As MSPs, how can we work with local authorities to ensure that more schools can follow Dunoon grammar's example? How are we supporting collaboration between schools and community organisations? Crucially, how are we supporting the sharing of knowledge and expertise between schools so that best practice, such as that at Dunoon grammar, is captured and innovation is celebrated?

17:25

The Cabinet Secretary for Education and Skills (Jenny Gilruth): I thank Donald Cameron for lodging the motion, and I thank colleagues across the chamber for a positive debate.

As Cabinet Secretary for Education and Skills, I welcome the opportunity to celebrate excellence in education. Undoubtedly, there is much to celebrate at Dunoon grammar school, as we have heard. I have committed to visit the school in the coming weeks with my colleague Jenni Minto, who is the constituency MSP.

Dunoon grammar school's success is testament to the hard work of the staff and the opportunities that have been created by the teachers and senior leadership team, working shoulder to shoulder

with the local community. Its success is also, of course, testament to the pupils, who, like all our young people, have been through much in recent years. However, they continue to inspire all of us.

Members across the chamber have made contributions to the debate. Before I come to them, I welcome the pupils in the gallery and, in particular, their headteacher, David Mitchell. There was some debate among MSPs about where he belongs in respect of his constituency and his origins—that is what MSPs do. Welcome to our Parliament. This is your Parliament, and it is fantastic to see you here.

Donald Cameron spoke with great warmth about the reception that he received from modern studies pupils. I have to say, as a former modern studies teacher, that I would expect no less.

The school is the world's best school for community collaboration. What an accolade. I very much look forward to visiting it in the not-too-distant future to see for myself the excellence on offer.

I will respond to some of the points that have been raised in the debate.

Emma Harper spoke about the history of the school. As we all know, Scotland has a very proud educational legacy. We would do well to learn from that and to build on that history.

Emma Harper also spoke about the vision schools programme and Holocaust education. Only last week, I met Kyle academy at Dynamic Earth. I was delighted to be involved in the awards ceremony that recognised the intrinsic importance of Holocaust education in Scotland's schools.

Liam Kerr mentioned the educational ecosystem. I know that that was inspired by the report. I hope to meet Gillian Hunt, who is in the gallery today, on my visit to Dunoon in the next few weeks. Liam Kerr knows that I will always work on a cross-party basis in relation to education, and his office will soon receive an invitation to mine, if it has not already received it. That invitation has been extended to members of the Opposition to talk to them directly about educational reform. I hope that, in the coming weeks, subject to parliamentary business being agreed, we will have a wider debate across the chamber about educational reform. I look forward to working with members on that.

Finlay Carson: Does the cabinet secretary agree that good educational facilities, such as Dunoon grammar school, underpin the long-term sustainability of areas, particularly rural areas, not just for the people who currently live in them, but for those who may be attracted to move to them? More jobs, businesses, homes and good education are absolutely key to that. If she agrees

with that, will she join me in condemning the proposed fast-track mothballing process for Dalry secondary school in rural Glenkens, and will she encourage consideration of wider community wellbeing in relation to the long-term future of that school, similar to what we have seen with Dunoon grammar school?

Jenny Gilruth: Finlay Carson has raised a specific local issue. The mothballing of any school is a matter for the local authority but, as cabinet secretary, I retain some powers in that area. When that issue comes to me, I will look at the recommendation from school inspections.

Much of what we have heard today reflects some of the very best of the curriculum for excellence and the developing the young workforce strategy. It is more than a decade since we launched that youth employment strategy. I am always struck by how the debates on school reform sit in a rather siloed area. Mr Dey, of course, leads on wider skills reform work. I think that those two agendas could be better joined up, and I look forward to working with the Opposition on that. That work is already being done in what we have heard today about some of the real strengths in Scottish education.

Curriculum for excellence offers a broad framework, which gives teachers the empowerment and freedom to provide learning and teaching experiences that best suit the needs of their individual young people. It is a far less prescriptive system than the one that existed prior to its introduction.

Liam Kerr: I am enjoying listening to the cabinet secretary's comments, but I want to make sure that she will address a particular issue. Rhoda Grant made an interesting point about rural depopulation, and a related challenge is to ensure that rural areas have sufficient teachers. What is the Government doing to ensure that new teachers choose to make their lives and careers in our more rural areas, in order to ensure the future of those key parts of our country?

Jenny Gilruth: That is a substantive question and I would like to give Liam Kerr a more substantive answer. As he might be aware, I commissioned work on that very point from the strategic board for teacher education last year, which will provide me with a report on options for moving forward.

At the current time, we have a waiver system, which allows probationary teachers to tick the box, as I did some years ago, that incentivises young people—or perhaps older people—to go to other parts of the country to learn how to become a teacher. As Liam Kerr knows, we have seen a fall in the number of teachers who have been ticking the box. Part of that fall has been informed by the

pandemic, with fewer people willing to move now than prior to the pandemic. However, we will need to look at that work in further detail.

The challenge that I, as cabinet secretary, face in that space is that I am not an employer of teachers—that is a matter for local authorities. I need to work with the Convention of Scottish Local Authorities on that very important matter, which is why the new Verity house arrangement that we have with COSLA will be pivotal to driving change in that area.

Liam Kerr might be aware that one of his colleagues has been raising questions on that very point in relation to issues in Aberdeenshire, which I will look to visit in the next couple of weeks. In doing so, I will look to address the member's point in much more detail, alongside the General Teaching Council for Scotland, which makes decisions about where student teachers are allocated.

We cannot have a one-size-fits-all policy for the whole country. We need to recognise local differentiation, and local authorities can put in place some support. In the past, some of our island authorities have provided financial incentives to encourage people to move there, and there is a range of other opportunities that the strategic board for teacher education will give me further advice on.

Fergus Ewing: I should not eschew this opportunity to ask what progress the cabinet secretary is making in promoting the uptake of the indispensable skill of touch typing among children in schools in Dunoon, Aberdeen and every other place in Scotland. That would be an incredibly cheap but enormously valuable investment in skilling our children for the needs of the century.

Jenny Gilruth: I am always impressed by Mr Ewing's ability to get touch typing into the *Official Report*. Pupils in the public gallery will understand that Mr Ewing has a keen interest in that subject area and, broadly, I support him. The Government has invested in digital connectivity and there is more that we need to do in that regard, particularly in relation to the proposed changes to our qualifications, many of which will rely on that digital connectivity.

We heard from a number of members about the breadth of qualifications that are now on offer in the senior phase, even in comparison with those that were offered 20 years ago. In her intervention, Pam Duncan-Glancy made an interesting contribution in relation to the SCQF and why that framework is important in giving parity of esteem across the board. Traditional pathways are being replaced by much more flexible routes to recognising achievement, which is good for our

young people because, as we have heard today, there is no one-size-fits-all model.

Rhoda Grant talked about the challenges in relation to depopulation. That is why the flexibility that curriculum for excellence lends is important. Dunoon grammar school has facilitated access to more than 50 skills-based courses to empower students to work in professions that are vital to the local economy and keep them in the local area. That practical, experience-based curriculum also allows our young people to learn about crucial industries such as travel and tourism, design and maritime studies. The school also works hard to develop entrepreneurial skills in its young people. We have also heard that young people at the school have a key role to play in the Dunoon project—the town's plan to build a massive mountainside tourist attraction—which will create jobs for Dunoon's young people.

That community collaboration has been a theme of today's debate. It is a wider approach to school education, which does not look just within the school building. It is clear that, with support from a strong headteacher and leadership team, the wider school community has enabled young people to have the best opportunities at Dunoon grammar school—not only in their local communities but more broadly and, indeed, internationally, as we have heard through the debate.

From engaging remotely with care home residents during the pandemic, as we heard from Rhoda Grant, to presenting climate change solutions at COP26, as we heard from Ariane Burgess, the young people of Dunoon grammar school epitomise what it means to be effective citizens—one of the four capacities that underpin curriculum for excellence. I am proud to have recently looked at the fantastic work that is under consideration at Dunoon grammar school and I will ensure that that work helps to inform our education reform plans as we move forward.

Donald Cameron set me a challenge, which I whole-heartedly accept. We have to learn lessons from the outstanding examples that have been set by schools just like Dunoon grammar school. I commit to visiting the school in the coming weeks, to ensure that our education reform work is informed by the same excellence in our classrooms as has been exhibited by Dunoon grammar school.

The Deputy Presiding Officer: That concludes the debate.

Meeting closed at 17:35.

This is the final edition of the *Official Report* for this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba