OFFICIAL REPORT
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Economy and Fair Work Committee

Wednesday 20 March 2024

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

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ECONOMY AND FAIR WORK COMMITTEE
10th Meeting 2024, Session 6

CONVENER

*Claire Baker (Mid Scotland and Fife) (Lab)

DEPUTY CONVENER

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

COMMITTEE MEMBERS

*Maggie Chapman (North East Scotland) (Green)
*Murdo Fraser (Mid Scotland and Fife) (Con)
*Gordon MacDonald (Edinburgh Pentlands) (SNP)
*Colin Smyth (South Scotland) (Lab)
*Kevin Stewart (Aberdeen Central) (SNP)
*Evelyn Tweed (Stirling) (SNP)
*Brian Whittle (South Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Tom Arthur (Minister for Community Wealth and Public Finance)
Daniel Johnson (Edinburgh Southern) (Lab)
Paul O'Kane (West Scotland) (Lab)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Economy and Fair Work Committee

Wednesday 20 March 2024

[The Convener opened the meeting at 09:30]

Bankruptcy and Diligence (Scotland) Bill: Stage 2

The Convener (Claire Baker): Good morning, and welcome to the 10th meeting in 2024 of the Economy and Fair Work Committee. The sole item of business today is consideration of the Bankruptcy and Diligence (Scotland) Bill at stage 2. I welcome Tom Arthur, the Minister for Community Wealth and Public Finance, who is accompanied by three Scottish Government officials. I also welcome Daniel Johnson and Paul O'Kane, who are not members of the committee but are here this morning to speak to their lodged amendments.

The officials who are seated at the table are here to support the minister but are not permitted to speak in the debates on amendments. Members are reminded to direct their comments or questions to the minister.

Before we begin, I will briefly explain the procedure for anyone who is watching. All amendments that have been lodged have been grouped for debating purposes into nine separate groups, as listed on the published groupings of amendments for stage 2, which is published on the Parliament's website. The nine groups will be debated in turn.

After an amendment has been moved, it can be withdrawn only with the agreement of the committee. I will ask for agreement; if the committee does not agree, there will be a vote.

Only committee members are allowed to vote. Voting will be by a show of hands. Members should keep their hands clearly raised until the clerk has recorded the vote. I will then read out the result.

In addition to the amendments, the committee is required to indicate formally that it has considered and agreed each section of the bill. I will put the question on each section at the appropriate point.

Section 1—Moratorium on debt recovery action: debtors who have a mental illness

The Convener: Amendment 18, in the name of Paul O'Kane, is grouped with amendments 18A, 19, 16, 17, 20 and 21.

Paul O'Kane (West Scotland) (Lab): Thank you very much, convener. Good morning, colleagues on the committee and minister.

I begin by offering my apologies for the need for a manuscript amendment. In my haste to get amendments lodged before the deadline, I failed to note a typographical error in my original amendment 18, which set the moratorium period at 30 days. Let me be clear that that was an error. I support the longer period that is now noted in the manuscript amendment. That is an explanation to the committee of the need for amendment 18A.

I will now speak to amendment 18 and its purpose. I understand that the committee has discussed the matter of a moratorium at length, in the light of the evidence that it heard during its stage 1 proceedings, that there is no universal agreement on the provisions that should or should not be included in a moratorium, and that there is a variance of views. I also understand that there has been a degree of debate about whether to have a moratorium established through the bill or in regulations.

I have lodged amendments 18 and 19 because it is important that we have more detail on how a moratorium might work and whom a moratorium might best serve. By doing that in the bill, we can have certainty and clarity on the moratorium more widely. My amendments have been lodged so that we can have a clear debate on the issue this morning.

I am happy to speak briefly to what amendment 18 would do regarding that moratorium. My amendment would give greater permanence to and clarity on the structure of any mental health moratorium by establishing in law that a moratorium on debt collection in cases of mental ill health will exist; establishing the conditions under which the individual is deemed to be receiving mental health crisis treatment; establishing who can apply for the moratorium on the debtor's behalf; establishing what must be contained in any application for a moratorium; and establishing the length that any such moratorium would last if granted to a debtor.

It was clear from my engagement with a number of organisations that, as I said, there is a variance of views. However, on balance, many mental health organisations are keen to see the moratorium outlined in the bill and for the provision to be broader than what has been proposed by the Government, so that we do not just deal with initial emergency treatment but go wider and deal with care in community spaces.

I will briefly touch on the other amendments in the group. Amendment 16, in the name of Colin Smyth, would compel ministers to make provisions in regulations for enforcement of the moratorium

and for sanctioning of creditors who did not abide by the regulations. The amendment would sit quite neatly with what I have outlined in amendment 18 by ensuring that people were compelled to comply with the outlined moratorium.

I also support amendments 20 and 21, in the name of Daniel Johnson, which push the Government on how it will consult Parliament and this committee on any regulations pertaining to a moratorium, if a moratorium is not established through the bill. Regardless of whether my amendments are agreed to, it is vital that we have a debate on a moratorium and that such a moratorium is clearly scrutinised by the Parliament and, crucially, by the stakeholders that I have mentioned, particularly those in the advice and mental health support sectors, to ensure that the moratorium works, is enforceable and provides the most benefit to the people who need it.

I move amendments 18 and 18A.

Colin Smyth (South Scotland) (Lab): Amendment 16, in my name, provides that, when regulations are made under section 1(2)(e), they must provide for sanctions for creditors who do not abide by the moratorium and for a complaints process for debtors.

Section 1 provides that the Scottish ministers

"may by regulations make provision"

about

"the consequences (if any) for creditors"

who abuse the moratorium. There must be a firm commitment to introduce sanctions for those who ignore the mental health moratorium. The existing plans advise that a debt adviser may inform the relevant authorities or regulatory bodies about a creditor's misconduct, but there is no detail on who those authorities or regulatory bodies would be. The Scottish Government must set out what the practical consequences will be for creditors who do not adhere to the obligations and advise which relevant authorities or regulatory bodies will be responsible for enforcing the consequences. Without proper sanctions, the integrity of the moratorium may be compromised, as we have seen in England and Wales.

Amendment 17 provides that, when a mental health moratorium is established by regulations, those regulations may not make provision to make information about applicants publicly available. That would mean that there could not be a public register and that such information could not be published in another way. Serious concerns have been raised with the committee that creating a public record of people's significant mental health issues could create undue stigma. Going through a mental health crisis can be daunting enough for someone without the added worry that that information could be made public. That could deter people from applying for the scheme and, therefore, severely limit its effectiveness, which might already be very limited, given the very tight proposed criteria.

The initial mental health moratorium consultation highlighted that the Scottish Government was considering the development of a public register of people who accessed the mental health moratorium if that could

"be done in a way that does not unduly stigmatise the individual."

However, it is not clear how that would be achieved, and there is scepticism that there is any capacity to build a public register in a way that would not cause undue stigma.

Furthermore, mental health moratoriums that operate across the rest of the United Kingdom do not use a public register and, in my view, there is no requirement for one in Scotland.

I am very supportive of the other amendments in the group from Paul O'Kane and Daniel Johnson, who have highlighted the real concerns that the committee has heard. Their amendments very much speak to the committee's view that the current criteria relating to a mental health moratorium are far too restrictive. That should change, either in the bill or through a process that allows the Parliament to properly scrutinise the criteria.

Daniel Johnson (Edinburgh Southern) (Lab): I will follow on from what Paul O'Kane and Colin Smyth have said. The key concern with the bill is not about the principle or its intent. The need to provide debt moratoriums for people who are in distress is well understood, and those arguments are well made. The issue is that this is a framework bill that does not provide much clarity on what impact a moratorium would have and on what the Government would be required to bring forward.

Section 1(2) includes various criteria regarding the regulations that the Government may bring forward, but there is no requirement for it to do so, nor does the list limit the range of things on which regulations may be made.

Indeed, under section 1(3), the Government will be able to make regulations that affect "any enactment"—any act of Parliament—and for any purpose. It is a very broad set of powers, and there is no clarity on precisely what will be introduced or what its impact will be. Given that we are talking about debt, which is a fundamental part of the way in which our economy works, and about its impact on individuals, it is important that any regulations that the Government introduces under

the bill are properly scrutinised. That is the intent of my amendments 20 and 21.

Amendment 20 would create a duty to consult before regulations are introduced. I have stipulated the types of organisations and agencies that the Government should consult. I contend that one might want to go further than that and clarify the type of consultation that ought to take place.

Amendment 21 sets out a time period and would place a requirement on the Government to come back to a committee of the Parliament to consult with it regarding the issue. If the measures were being introduced through primary legislation, that is exactly what the Government would have to do. It would have to consult widely with the relevant agencies and seek feedback, and there would have to be a stage 1 report.

The Government will say that the bill has been framed in the way that it has been framed in order to provide flexibility, so that it can get the measures right. However, although that may suit the Government and enable it to do its work, it will not enable the sort of public scrutiny and the detailed inquiry that the committee has been undertaking with the primary legislation. The reality is that the detailed measures will not get that level of scrutiny. Ultimately, we need steps such as a stage 1 report, stage 2 amendments and stage 3 finalisation to ensure that we get the measures right. To go back to a previous point, when we are talking about matters of financial distress and debt, we are talking about matters that are of fundamental importance and an area where there can often be unintended consequences. Therefore, quite simply, that level of scrutiny is required.

Furthermore, I would like the Government to consider whether it should limit the powers that are being conferred under section 1. The fact that we have an unlimited list and such broadly framed regulation-making powers is not appropriate. At the very least, the powers should be referred to in the long title of the bill—that is not unreasonable. It is not reasonable for ministers to seek powers under any piece of legislation, not just this one, that will enable them to introduce regulations on any matter that they so desire.

Murdo Fraser (Mid Scotland and Fife) (Con): The issues that are highlighted in this group of amendments go to the heart of what was a focus of discussion in the committee at stage 1. We took evidence about how the mental health moratorium, which everyone agrees needs to happen, should be captured in legislation, and whether we should leave it to the Scottish Government to introduce regulations, as the bill provides, or whether we should have more specificity in the bill as to how that will be set up.

In that respect, I am grateful to Paul O'Kane for lodging his amendment 18, which sets out to put in the bill more detail on how the mental health moratorium would operate. That is a welcome amendment, and I am minded to support it. I appreciate that the Government takes a different view and that it would prefer to have those matters in regulations.

If the Government is not minded to support Paul O'Kane's amendment, I nevertheless urge the minister to support the other amendments in the group. Daniel Johnson makes an important point about the need for regulations to be properly consulted on with relevant parties and the need to ensure that there is adequate scrutiny of the regulations before they come into law, given the importance of the matters that we are discussing. Colin Smyth made reasonable points about protections that could be put in place for creditors in relation to the operation of the moratorium.

I am minded to support all the amendments in the group, but I will be interested to hear what the minister has to say.

The Convener: Thank you, Mr Fraser. As no other members have comments to make, I invite the minister to respond to the amendments in the group.

09:45

The Minister for Community Wealth and Public Finance (Tom Arthur): Good morning. I put on record my thanks to members for the proposed amendments 18, 19, 16, 17, 20 and 21, which are in relation to section 1 of the bill.

As has been outlined, the bill currently provides an enabling power for Scottish ministers to implement a mental health moratorium by regulations. There is sound reasoning for having the detail of the moratorium process in regulations. As has been acknowledged by the committee and others, the mental health landscape is multifaceted and the treatment for those who have mental health issues is ever evolving. As a result, achieving a balance between protecting vulnerable individuals who have mental health issues and the rights of their creditors is a complex task.

Understandably, stakeholders expect a review of the moratorium to be undertaken after a reasonable period of time has lapsed since its introduction. Such a review might identify improvements to the moratorium process, such as further widening the eligibility criteria. Amendments 16 to 19 would alter that approach by requiring specific provisions to be included in the bill, as well as requiring specific provisions to be included or specifically prohibited from inclusion in the regulations.

Having specific provisions in the bill, as with amendments 18 and 19, would mean that any improvements that are identified from a review would require to be made through future primary legislation. That would take longer to implement than if changes are made through secondary legislation, and I wish to avoid any unnecessary delays in making improvements to the system. For that reason, the expert working group and stakeholders agree that having the details in secondary legislation is the most reasonable approach to take. It is also the reason that the details of the mental health crisis breathing space scheme in England and Wales are contained in secondary legislation.

Although I understand the desire to have aspects of the mental health moratorium prescribed in the bill, the provisions in amendment 18 have not been consulted on and their unintended consequences would need to be considered. That is where I would agree with the principle of amendment 20, which is that we get the process correct through consultation.

Section 1(2)(e) of the bill provides that the regulations that establish a moratorium may include provisions about

"the actions creditors must, may or may not take during the moratorium"

and

"the consequences (if any) for creditors of taking or failing to take such actions".

I believe that that is the correct approach, rather than requiring sanctions to be stipulated in the regulations, as stated in amendment 16.

I am mindful that many creditors that will be impacted by a mental health moratorium have regulatory bodies that can impose sanctions, such as fines. It might be best to use the consequences that have already been established rather than convoluting those with consequences that we propose. That was the approach that was proposed in the consultation, which received 77 per cent support from respondents. It is also the approach that has been taken in England and Wales, and the expert working group recommended mirroring that approach.

As I have said before, a review of the mental health moratorium might conclude that such an approach is not sufficient and, if so, regulations can be amended accordingly. Therefore, it is better to have a flexible approach to the bill when requiring sanctions to be stipulated in regulations. Section 1(2)(g) of the bill includes provisions to the effect that the regulations establishing the moratorium may make

"arrangements for the recording of, and access to, information that the moratorium is applying in relation to an individual".

There is no provision restricting what approach should be taken with respect to accessing that information.

I understand and fully sympathise with the concerns that have been raised about a public register for the mental health moratorium and the potential to stigmatise the individual. I have not committed to having a public register. I am listening to the various concerns that have been raised and am determined to achieve the right balance. I am sure that the committee will understand that I must also consider the rights of creditors. I want to ensure that, where possible, potential future lenders are aware that someone is in a mental health moratorium prior to lending, as is the case under the existing standard moratorium. That would be of benefit not only to the creditor but to the individual, who could be borrowing beyond their means and further exacerbating their difficulty.

The Convener: When the committee took evidence on the matter, our understanding was that a different system is used in England for the register. Is the minister considering the effectiveness of that system, which I understand is not a public register?

Tom Arthur: Yes, I am happy to confirm that we are considering the system that is provided for in the regulations in England, which is why I accept that a fully public register might not be the answer. However, it would be better for the bill not to restrict the options that are available for the recording of, and access to, information relating to a mental health moratorium, so that we avoid any unintended consequences of restricting what we can do in the regulations that would be consistent with addressing the concerns that the committee has expressed.

Colin Smyth: If, as the minister has said, the Government's view is that a register should not be fully publicly accessible, what is wrong with having safeguards in the bill to prevent that from happening?

Tom Arthur: My point on Colin Smyth's amendment 17 is that there is a risk of unintended consequences around the drafting of the amendment and the specific language that is used. There is concern that the amendment might unintentionally—I know that this would not be your intention, Mr Smyth—preclude the possibility of a register that is comparable to what is used in the equivalent scheme in England. It is not that I lack sympathy with the policy intent; the point is that we can address those issues in the regulations. However, I am happy to give further consideration to the points that you raise. Later in my remarks, I will come to what I think is a way forward for this and the other issues that are raised in your amendments.

With respect to amendment 20, the Scottish Government has consulted fully with the appropriate stakeholders, such as debt advice agencies, throughout the process of developing the bill and the regulations, and we will continue to do so. I have committed to providing the committee with a draft copy of the mental health moratorium regulations prior to stage 3, so members will have an opportunity to propose amendments if they believe that that remains necessary. Those regulations will be subject to wider public consultation.

That brings me to amendment 21. I am open to considering what enhanced processes we can put in place beyond our commitment to share draft regulations ahead of stage 3. However, I am concerned that the process that is outlined in amendment 21 could be overly onerous and lead to unnecessary delays in the introduction of the mental health moratorium. I ask Daniel Johnson not to move his amendment, but I would be happy to discuss the issue further with him, and any other members who might be interested, in advance of stage 3.

I ask Paul O'Kane not to press amendment 18 and not to move amendment 19, and I ask Colin Smyth and Daniel Johnson not to move amendments 16, 17, 20 and 21. Were they to do so, I ask the committee not to support the amendments.

The central concern that has been expressed is about the level of engagement that the Parliament will have with regard to the regulations, and I accept that that is a fair and legitimate concern. I suggest that the way that we could address it is to discuss, ahead of stage 3, what would be a satisfactory process for parliamentary engagement on the regulations, with regard to both the immediate priority of being able to introduce the regulations and have the scheme operational, and the need for clarity around what the process will be for the Parliament's involvement in reviewing the regulations at an appropriate point.

Daniel Johnson: I wonder whether the minister might reflect on two important principles in relation to process. The first is about the Parliament's ability to inform the redrafting or revision of regulations, whether in draft form or some other amendable form. The second, given the potentially substantive impact that some of the regulations could have, is the ability of a relevant committee to look in detail at and perhaps take evidence on those same regulations. Will the minister concede those principles and seek to introduce them in amendments at stage 3?

Tom Arthur: Mr Johnson makes some fair and reasonable points. I am not opposed to the principle of exploring how we can develop a form of super-affirmative procedure that would address the committee's concerns, while at the same time retaining the flexibility that comes through regulations.

I fully sympathise with and appreciate the points that have been raised about wanting detail in the bill, but the simple concern that I have in the circumstances is that, where we identify improvements, we would not be able to implement them, because that would require primary legislation.

Kevin Stewart (Aberdeen Central) (SNP): I, too, would like to have parliamentary scrutiny over all aspects, but, for me, the key thing is to have flexibility in the system, ensuring that those with lived experience, as well as those on the front line, can have their say in making changes if it is found that the system is not flexible enough.

I am pleased that the minister has said that he will give us advance sight of the regulations before stage 3, but what does the minister intend to do about continuing to take stock of how the regulations are working? When does he think would be a good time to review the system to see whether they are working? If the powers are in primary legislation, the minister will not have the ability to do that to the same degree as he can if they are in regulations and secondary legislation. Is there a commitment to review the system quickly after the regulations are in place?

Tom Arthur: Yes, but I would add, with regard to how the Accountant in Bankruptcy operates, with its statutory responsibilities, that there is a continual process of review, given how the landscape can evolve. When a new measure such as a mental health moratorium is introduced, careful monitoring would of course be part of that, so that would be happening anyway, as routine business.

This point could inform conversations ahead of stage 3, if members are agreeable, on what enhanced parliamentary scrutiny would look like. I would be happy to consider proposals for a requirement to review within a defined period, if there is a desire for that. In making commitments to review legislation, there is always a need to ensure that we do not commit ourselves to review prematurely, which would just be an exercise in conforming to statute but without adding real value. I recognise, however, that there might be a desire for that to take place within what would be regarded as a reasonable timescale. I do not think that it is strictly necessary, but, if there was an appetite from the Parliament, reassurance should be provided, specifically on the regulations and formalising the approach.

I will close on this key point. I ask members not to press or move their amendments in this group but to work with me ahead of stage 3 to identify a

suitable process of parliamentary oversight of and engagement on regulations, so that we can retain the flexibility that regulations provide while ensuring that the Parliament has the opportunity to engage.

Paul O'Kane: I reiterate the purpose of my amendment 18. It is clear from the debate that people want clarity and certainty about a mental health moratorium that goes beyond what has been proposed in the bill as introduced. The framework that I have used in my amendment models some of the areas that were covered by the committee report, and it considers how we expand the framework beyond formal emergency care.

Community settings are important, too, in acknowledging that people can access treatment for crisis in communities and in a variety of ways. It is important that we reflect on that.

As I said at the outset, there is a variance of views among those who have been consulted. For example, I acknowledge that Change Mental Health has been very supportive of the approach that I have taken through amendment 18, whereas Citizens Advice Scotland, which sits on the working group, has said that things should perhaps be done in a different way that allows for the flexibility that the minister has described.

10:00

On reflection, it is clear to me that putting something in the bill gives certainty and clarity, although I appreciate the minister's point about having flexibility. One of the arguments that has been put to me is that mental health law will change and that there has been a consultation process on that change. I do not think that that is insurmountable—something could be put into legislation and then be amended should, for example, mental health law change.

However, I recognise colleagues' point about people's lived experience and about those in the sector who have a view on the issue and might want to inform how we change the regulations on the moratorium in a more flexible way.

I also recognise the minister's offer to find consensus on a wider moratorium that reaches more people and gives them the support that they need when they are in debt crisis. A debate remains about whether we do that in the bill or through regulations. I am encouraged by the minister's willingness to further discuss any secondary legislation that he would want to introduce and anything that he would want the committee and the Parliament to scrutinise. I am willing to have that conversation, as I am sure my colleagues are. However, I reserve the right to carry out further consultation with stakeholders and to bring back a proposal at stage 3, if I think that that is the right thing to do.

My colleagues Daniel Johnson and Colin Smyth have clearly outlined the strengths and importance of their amendments.

I will end my comments here. I am happy to press manuscript amendment 18A, which amends amendment 18.

Amendment 18A agreed to.

The Convener: I call Paul O'Kane to press or to seek to withdraw amendment 18, as amended.

Paul O'Kane: On the basis of what I have said, I seek to withdraw amendment 18.

Amendment 18, as amended, by agreement, withdrawn.

Amendment 19 not moved.

The Convener: I call Colin Smyth to move amendment 16.

Colin Smyth: I am not clear from the minister's comments about whether the Government is committed to setting out sanctions for creditors in regulations. However, in the light of the commitment that we will see those regulations before stage 3, I will not move the amendment.

Amendment 16 not moved.

The Convener: I call Colin Smyth to move amendment 17.

Colin Smyth: Again, I am not clear on whether the minister is committing to including safeguards on public registers in the bill, but I welcome the opportunity to have further discussions about whether they can be added at stage 3, so I will not move the amendment at this stage.

Amendment 17 not moved.

The Convener: I call Daniel Johnson to move amendment 20.

Daniel Johnson: In the light of the minister's commitments and, indeed, his commentary on the key principles, I will not move amendment 20.

Amendment 20 not moved.

Section 1 agreed to.

After section 1

The Convener: I call Daniel Johnson to move amendment 21.

Daniel Johnson: On a similar basis, I will not move that amendment.

Amendment 21 not moved.

The Convener: Amendment 22, in the name of Paul O'Kane, is grouped with amendments 23 and 29.

Paul O'Kane: Public debt, which is debt that is owed to public authorities, including local authorities, is a growing issue for struggling households. Unlike private debt, it is not covered by Financial Conduct Authority regulation, which compels lenders to take measures to ensure that debtors are treated fairly, with consideration given to vulnerabilities.

Amendments 22 and 23 provide the committee with two options for addressing gaps in regulation. They would require ministers to provide regulations asking for local authorities that are pursuing debt to engage in a reasonable manner and with due regard to the position of the debtor. In particular, amendment 23 includes a provision that would ensure that debtors would get help to maximise their income through identified income maximisation services, which would help with servicing the debt that is owed to local authorities and would help debtors to get free of debt by ensuring that they fully accessed their potential income.

Amendment 22 is a more detailed version of the pre-action requirements and is based on rent arrears regulations. Amendment 23 offers a more simplified approach that might offer wider flexibility to ministers in that space, and it includes the aforementioned detail on income maximisation.

I believe that it is important that we have this debate about how to support people in this area. I have lodged my two amendments to provide options to the committee for discussion.

Brian Whittle (South Scotland) (Con): I am in agreement with the general principles of amendments 22 and 23, but I would like clarification of why you are highlighting local authorities. We recognise from the evidence that we took that the majority of the debt in this area falls to local authorities, but why are you singling out local authorities to be treated differently from any other creditor? The regulations, as they currently stand, do not support similar treatment of local authorities.

Paul O'Kane: We were looking at where the bulk of public debt falls, which is on local authorities, and we found, through some of the work that we have looked at, that there are often variances in how local authorities pursue debt and in the support that they give to people who require to repay that debt. Organisations such as Aberlour Child Care Trust have piloted a number of such schemes across Scotland, including in Dundee, to address how local authorities might interact with people differently in that space. In the light of that work, we were keen to bring forward regulations that ensure that there is a more uniform approach among local authorities.

On Mr Whittle's point about singling out or targeting local authorities, I do not think that that is the intention. It is about public debt more broadly, but it is also about the fact that the lion's share of debt that is collected—whether council tax, housing rent or school meal debt—is collected via local authorities. That is why the burden falls so heavily on local authorities.

That said, we recognise that the regulations would come with a potential financial implication for local authorities because of what they seek to do, and we would be keen to push the Government on the support that it offers to local authorities in that regard, as it has done with things such as school meal debt.

As I have said, the policy intent is to provide for regulations on actions that local authorities must take prior to pursuing debt that is owed to them and to require ministers to make provisions so that the debtor is aware of what is going to happen and has full support to maximise their income prior to the debt being collected.

Public debt is a significant and pressing issue in Scotland. As I mentioned, Aberlour has done a huge amount of work on the issue, and it highlighted in 2023 that 55 per cent of low-income families in Scotland that are in receipt of universal credit had at least one deduction from their monthly income to cover debts to public bodies.

Amendments 22 and 23 will begin the process of ensuring that public debt and debtors are treated fairly and with the same consideration that is required in relation to regulations on private lenders. The amendments seek to make the process around public debt collection fairer by creating more space for regulations that ensure that local authorities provide debtors with adequate information on the nature of their debt and the support that is available to them through debt advice packages. Similar actions were taken on rent arrears through Covid legislation, and these amendments are very much based on that.

Particularly important, given the scale of public debt, is that the duty to engage with income maximisation services would greatly help people who are in debt to boost their incomes and start to get out of a cycle of problem debt, and it would help local authorities to create more income for families to service the debts that they owe public creditors.

I move amendment 22.

Tom Arthur: Amendments 22 and 23 are drafted in similar terms, as Paul O'Kane acknowledged, and both seek to introduce an enabling power to require Scottish ministers to set

out in regulations what local authorities need to do before they commence debt recovery action.

The essence of amendments 22 and 23 is that they ensure that debtors are better informed about the debt itself, the help that is available and the potential consequences if they do nothing and a local authority should be doing more to help and support them. I agree with that, in principle. The Scottish Government has recognised that and is working with the Convention of Scottish Local Authorities on a migration to best practice on debt assistance and collection, noting the principles that were set out in the report "Collaborative Council Tax Collection", which was published by the Improvement Service and StepChange Debt Charity. It aims to use the existing flexibilities that are available to local authorities to take a compassionate and proportionate response to recovery of arrears.

As the committee might be aware, the Scottish Government recently allocated £200,000 to Citizens Advice Scotland and the citizens advice bureau network to provide pilot projects in three local authority areas. The projects will provide additional debt advice to individuals, with a focus on council tax arrears, and will support best practice approaches to council tax debt collection in those local authority areas. The pilot should provide us with invaluable information and help us to establish what is likely to work in the future.

Although I understand why amendments 22 and 23 have been lodged, they have not been consulted on. We therefore do not know whether taking a regulation-making power and making statutory provision about the matter is the right approach. It would be better to wait, allow the pilot projects to be completed and learn lessons from them before we decide how to move forward, rather than doing this through a statutory provision.

Amendment 29 would remove the ability of local authorities to add a 10 per cent surcharge to a debt when someone is in receipt of a council tax reduction or the Scottish child payment. Again, there has been no consultation on the matter. We do not know what the impact would be or how it would work operationally. For example, what would happen if the debt was incurred prior to the person being in receipt of those benefits?

On the impact of amendment 29, we do not know how many ratepayers with a non-domestic rates debt are in receipt of either council tax reduction or the Scottish child payment, but we anticipate that the number will be very low. On the basis of the available data, we know that, for the majority of non-domestic properties, the ratepayers are organisations and that, when the ratepayers are individuals, the properties that they occupy are generally in receipt of 100 per cent relief, mostly through the small business bonus scheme.

We must be cautious with amendment 29. We need to understand what issues we are trying to fix and then work together to determine how to address them. In that spirit, I am happy to consider each of the issues further and to discuss them with members to see whether we can agree on the most appropriate way forward. I would also like the opportunity to learn more from the pilot project that I mentioned earlier. On that basis, I ask Mr O'Kane not to press amendment 22 and not to move amendments 23 or 29. If he chooses to do so, I ask the committee not to support them.

The Convener: When are the pilot projects due to conclude, and when will it be possible to evaluate them?

Tom Arthur: They commenced in November. We are expecting some initial data in the coming months on the back of that, but I will need to confirm that. I am happy to come back to the committee on that specific point. I will provide more details in writing to Paul O'Kane ahead of stage 3, should he wish to reserve his position.

The Convener: Paul O'Kane, do you wish to respond to the debate, and do you wish to press amendment 22 or to seek to withdraw it?

Paul O'Kane: I wish to respond briefly. I have set out in detail the intent behind amendments 22 and 23, which is to ensure that people have all the support and advice that is required prior to the commencement of debt. Some important projects are on-going. I note that my amendments have been lodged after a long discussion with Aberlour, as I have said, and with support from Citizens Advice Scotland. It is important that we take a step forward on these important issues at this stage.

On amendment 29, perhaps this is a difference of opinion, but it was our intent that the rates that the 10 per cent surcharge exemption provision would apply to would be all rates and not just non-domestic rates. I appreciate that the minister has arrived at a different position in that it applies only to non-domestic rates, but it is our view that the surcharge should be limited across all rates. That position is supported by Citizens Advice Scotland and Aberlour.

It is important that, as a package, the amendments would provide more clarity across all 32 local authorities and would provide more support for people to break out of a cycle of problem debt.

Tom Arthur: For clarification, the pilot project that I referred to will conclude at the end of this month, so we hope to provide information on it quite shortly.

10:15

The Convener: Do you wish to press amendment 22 or withdraw it?

Paul O'Kane: I seek to withdraw it.

Amendment 22, by agreement, withdrawn.

Amendment 23 moved—[Paul O'Kane].

The Convener: The question is, that amendment 23 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

The result of the division is: For 2, Against 4, Abstentions 2.

Kevin Stewart: I do not think that is right, convener.

The Convener: No, because there are nine of us. [*Interruption*.] Apologies.

For

Claire Baker (Mid Scotland and Fife) (Lab)
Colin Smyth (South Scotland) (Lab)

Against

Colin Beattie (Midlothian North and Musselburgh) (SNP)
Maggie Chapman (North East Scotland) (Green)
Gordon MacDonald (Edinburgh Pentlands) (SNP)
Kevin Stewart (Aberdeen Central) (SNP)
Evelyn Tweed (Stirling) (SNP)

Abstentions

Murdo Fraser (Mid Scotland and Fife) (Con)
Brian Whittle (South Scotland) (Con)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 23 disagreed to.

Before section 2

The Convener: Amendment 24, in the name of Daniel Johnson, is grouped with amendments 27, 28 and 30.

Daniel Johnson: I will be relatively brief. My fundamental view is that, although we can provide people with the ability to do things, that does not necessarily mean that they will have the wherewithal, understanding or knowledge to take up those possibilities. That is particularly true when people are having to deal with potentially complicated financial matters at a point when they are in severe distress.

Amendments 24, 27 and 28 are about ensuring that people are provided with debt advice and information in a timely manner, so that they can take up the provisions that the bill will provide for. Amendment 30 would ensure that the Government collected and published data outlining whether people had taken up that advice.

In a sense, my amendments are quite simple: they are about ensuring that people have the information and that we understand how that information is being used.

I move amendment 24.

Tom Arthur: I thank Daniel Johnson for using his amendments to highlight the important role that the debt advice and information package plays for people who are experiencing debt issues, and I welcome his desire—which, I am sure, we all share—to make improvements to the current processes.

However, I have some concerns about the approach that is taken in amendments 24, 27 and 28. One of those concerns is about ensuring that the information that would be provided during the discussions that were held by creditors would be of a high standard. The Bankruptcy and Debt Advice (Scotland) Act 2014 introduced a requirement for anyone who was considering statutory debt solutions to have received advice from a qualified adviser. The Government wanted to ensure that the advice was accurate and consistent, and that each individual circumstance could be considered. I want us to ensure that that is the case for anyone who is given advice about debts in this context. We need to maintain those high standards.

I also have concerns about a creditor's ability to hold a discussion on the content of a debt advice and information package. If the creditor was simply to read from the package, I am not sure what value that would add. Some creditors might decide to train their staff to hold such discussions, but we would need to be sure that the content of those discussions was accurate and of a high standard.

That would come at a cost. It is likely that other creditors, especially smaller creditors, would pass on the discussion to an alternative contact, perhaps from the debt advice sector, and we would need to be clear that the debt advice sector could handle an increase in demand. We have heard that it is already under pressure, and I caution against adding more pressure to it at this time. Using an alternative contact might also result in delaying the creditor's pursuit of the debt while they wait for the discussion to take place.

When we talk about creditors, particularly where diligence is concerned—we have touched on this already this morning—we tend to think about local authorities, which is only to be expected, as they are the biggest users of diligence. However, it is worth bearing in mind that anyone who is trying to recover a debt can use diligence, provided that they follow the correct process. That includes the local plumber or joiner, credit unions and someone who lent a family member money. If we are to

introduce new requirements, we need to think about how the process involves all creditors, not just local authorities.

Amendment 30 would require a review of the impact of a debt advice and information package in providing support to individuals experiencing debt recovery action. I am happy to look at alternative ways to encourage people to get the help that they need and to advise on where to find that help, as well as to explain the consequences of doing nothing about the debt. Through amendment 30, the member has highlighted some ways in which we can do that—for example, through online videos and instant messaging—and I very much welcome those suggestions.

I would be happy to conduct further discussions with the member to further understand his concerns and to ensure that they are included in the review of the document. In looking at alternative ways to encourage people to get the help that they need, I am happy to consider the proposals that the member has suggested. However, I remain to be convinced that, at this stage, there is a need to legislate for the review to take place. Earlier, I touched on the way in which the AIB operates, whereby there is an on-going process of review and learning engagement, but I would be happy to discuss that in more detail with the member. I therefore ask the member not to move amendment 30.

Given the concerns that I have outlined, and given that we are already in the process of reviewing the debt advice and information package, I ask the member not to press amendment 24 or to move his other amendments in the group.

Daniel Johnson: The fundamental principle is that people need to be provided with advice in a timely manner. I hear what the minister is saying about not wanting to put undue pressure on already stretched services, but I contend that that probably suggests that there is a need for more help and advice to be provided. Rather than the proposal creating an issue, I think that it highlights a need that requires to be met.

I recognise that there are implications, and the amendments are very much probing amendments. The minister is offering to have further discussions, and I am very happy with that. It is about maintaining good information that can be used and deployed by anyone, and perhaps there is a way through with that in mind.

On that basis, I will seek to withdraw amendment 24 and will not move the other amendments in the group.

Amendment 24, by agreement, withdrawn.

Section 2 agreed to.

After section 2

The Convener: Amendment 7, in the name of the minister, is grouped with amendments 1 and 8.

Tom Arthur: The Scottish Government wants to ensure that the current Scottish statutory debt solutions remain fit for purpose and continue to be updated to reflect a modern society. All three amendments have come from recommendations that were made in the committee's stage 1 report.

Amendment 7 comes from the recommendation to consider the Law Society of Scotland's suggestion in relation to the payment of interest where sequestration is recalled. That suggestion is that, within the first six months of a sequestration, recall may be awarded on the basis of full repayment of the debts without interest being charged. However, where debts are repaid more than six months after the sequestration begins, interest would have to be paid in order for a petition or application for recall to be successful.

The Scottish Government believes that it is important and beneficial for a debtor to be able to follow a recall process that enables them to extract themselves from an insolvency process timeously where they need not have been made bankrupt and are able to settle their debts in full.

It is also right that creditors should have their debts settled as quickly as possible. Where there is an undue delay in the settlement of those debts, they should be entitled to be compensated with the payment of interest. It is accordingly important, as in bankruptcy generally, to seek to strike a balance between the rights and interests of debtors and those of creditors. I believe that payment of interest on creditors' debts where those are paid more than six months after the award of sequestration, where recall is being sought, strikes that fair balance and brings clarity to an area of the law where I know there has been some doubt up to this point.

Amendment 8, which again comes from a committee recommendation, will provide sheriff officers with more time to cite the individual to appear at a hearing in a sequestration case. That is achieved by removing the upper limit on the window for citation, which is currently 14 days before the hearing date set by the court.

Amendment 1 would also provide sheriff officers with more time to cite the individual. However, that would be achieved by increasing the upper limit to 21 days instead of removing it completely. Amendment 8 removes the upper limit completely, which will make it competent for sheriff officers to serve the warrant citing the individual on any day from the date the sheriff grants the warrant up to six days before the hearing date. Amendment 8 will therefore provide greater scope for sheriff officers to competently cite the individual by giving

them as much time as possible to serve the warrant on individuals, especially in more rural areas or where the individual works away from home frequently and multiple visits from sheriff officers are required to ensure that the warrant is personally served on the individual.

The change that is introduced by amendment 8 will have no adverse effect on debtors, as it will mean in effect that an individual in problem debt could have more notice before having to appear in court than is currently allowed, giving them more time to get appropriate advice.

Although I support the principle of amendment 1, it allows for only a limited extension of the time in which a petition can be served on an individual. As stated previously, amendment 8 will extend that further and be more beneficial to all parties involved, including debtors.

Having engaged with the Society of Messengers-at-Arms and Sheriff Officers, which originally raised the issue with the committee, we have concluded that the upper limit on the window for citation should be removed rather than extended. The Government's amendment will allow a petition to be served from the date the sheriff grants a warrant to cite up to six days before the hearing. Therefore, I ask the committee to support amendments 7 and 8 and I invite Mr Fraser not to move amendment 1.

I move amendment 7.

Murdo Fraser: I should perhaps have put on the record earlier that, as is stated in my entry in the register of members' interests, I am a member of the Law Society of Scotland, although I am not currently practising as a solicitor.

I have lodged a number of amendments that pick up issues that the committee identified in our stage 1 report. Some of those are intended as probing amendments, so I might not press them to the vote. Amendment 1 picks up the points that are covered in paragraphs 122 to 125 of our committee report and follows on from evidence that we heard from the Society of Messengers-at-Arms and Sheriff Officers about the time limits for serving bankruptcy petitions. We heard about the difficulties that those limits cause them, particularly in remote, rural and island communities—an issue that the minister has just identified.

My proposal, which is contained in amendment 1, is that the petition period be extended to 21 days. I have listened carefully to what the minister has had to say on the matter. I also note the commentary that Dr Alisdair MacPherson and Professor Donna McKenzie Skene of the University of Aberdeen have provided to the committee on the issue; they are more supportive of the minister's approach, which is contained in his amendment 8, than they are of mine. Of course, I would always defer to legal experts on this issue. On that basis, I would be happy to support the minister's approach and not move amendment 1.

The Convener: Thank you. I invite the minister to close the debate or respond to any points.

Tom Arthur: I have no further comments, convener.

Amendment 7 agreed to.

Section 3, as amended, agreed to.

After section 3

Amendment 1 not moved.

Amendment 8 moved—[Tom Arthur]—and agreed to.

Sections 4 and 5 agreed to.

After section 5

10:30

The Convener: Amendment 2, in the name of Murdo Fraser, is grouped with amendments 3, 9 and 10.

Murdo Fraser: Amendments 2 and 3 deal with another issue that the committee identified in its stage 1 report: a situation when a debtor cannot be traced or is found to be unco-operative and, therefore, a trustee seeks to be discharged from their responsibility. Evidence on the issue was given to the committee by the Institute of Chartered Accountants of Scotland, which is keen for a change in the law to avoid situations in which, in effect, a trustee ends up being in place in perpetuity—which would come at a cost to the trustee, who might inevitably be a professional person or body—because there is no avenue for an insolvency practitioner to get a discharge. The purpose of amendments 2 and 3 is to address that point by allowing trustees in such a situation to be granted the right of discharge, with particular safeguards added.

The minister also has amendments in the group, as was the case in the previous group, so I shall listen with interest to what he has to say.

In the meantime, I am happy to move amendment 2.

Tom Arthur: Both Government amendment 10 and Murdo Fraser's amendment 3 seek to introduce a process to allow sequestrations to be transferred to the AIB when a debtor fails to co-operate with their trustee. They both address a recommendation that the committee made, as we have heard. However, there are some important differences between how the two amendments would achieve that aim, and those differences

mean that, although I support the principle of amendment 3, I invite Murdo Fraser not to move it and the committee to support amendment 10.

My amendment 9 is ancillary to the changes in amendment 10 and is intended to avoid introducing any doubt about the current position under the Bankruptcy (Scotland) Act 2016. Although Murdo Fraser's amendment 2 is also complementary to his other amendment, it seeks to change the current position on a trustee's resignation and entitlement to fees when dealing with an untraceable debtor, so I cannot support it.

It is not unreasonable to expect a bankrupt debtor to co-operate with their trustee in return for relief from debts. However, we accept that, in some cases of serious or long-term non-co-operation, there is an issue with trustees being left unable to be discharged and having to carry out nugatory administrative tasks.

Under the provisions applying to bankruptcies made on or after 1 April 2015, the discharge of a debtor from bankruptcy is within the Accountant in Bankruptcy's discretion. If a debtor co-operates with their trustee, they can ordinarily expect to be discharged from bankruptcy and have their debts written off after one year.

Although the Accountant in Bankruptcy's general policy position has been to refuse discharge in instances of non-co-operation, the AIB recognises that it is not appropriate to defer discharge indefinitely when the failure to co-operate is not significant to the administration or likely final outcome of the case—for example, when contributions have been paid but some of the paperwork is missing. In August 2023, an advice letter that addressed that point was issued to trustees. Therefore, the Accountant in Bankruptcy does not refuse discharge in all cases of non-co-operation.

However, that leaves cases in which non-co-operation is more substantial. That can leave the trustee in limbo, despite having done everything that they could have reasonably been expected to have done to get the debtor to engage with the process. Private trustees accept these appointments. They have chosen to act as a trustee, sometimes in exchange for a fee from the creditor, so there is a reasonable expectation that they will make all reasonable efforts to engage with the debtor over a reasonable period of time and that they should be able to demonstrate that they have done so. However, ultimately, if a debtor steadfastly refuses to co-operate, a case will reach a point at which there is no benefit to anyone from the trustee remaining in post, unable to carry out the statutory functions of their office.

I turn to the differences between the amendments. My amendment 10 provides that, when a debtor has not co-operated with their trustee and, as a result of that non-co-operation, the trustee has been unable to carry out their statutory functions, and a period of five years has elapsed, the trustee may apply to the Accountant in Bankruptcy for authority to resign from office. If that is granted, the Accountant in Bankruptcy will be deemed to be the trustee and will take over the case.

A period of five years is considered to be appropriate. It may be apparent much earlier that an individual is unwilling to engage with the process of their sequestration, but we expect that trustees will have made some effort to persuade a debtor to co-operate—and, in most cases, a period of five years is sufficient for dealing with assets, contributions and acquirenda. Some cases take longer to complete, but that is not necessarily due to non-co-operation and is not inconsistent with the debtor's discharge at an earlier date.

It is important that this function be one of last resort, designed to deal with the most serious cases of persistent and continuing non-co-operation. It should not be used lightly.

It is also worth noting that amendment 10 will allow for the counting of any part of the five-year period that predates the changes in the bill. That means that cases in which non-co-operation is already an issue will be included—provided, of course, that the other tests are met.

By contrast, amendment 3, in the name of Murdo Fraser, does not specify any minimum period of time over which non-co-operation would require to be established. Under amendment 3, a trustee could apply to resign at any time—even very soon after the sequestration had been awarded. As I said, my view is that a minimum period of time should elapse before the trustee may seek to resign, to ensure that the power is available only for cases of true and long-term non-co-operation.

Similarly, under amendment 10, trustees will have to provide evidence of non-co-operation and show that they have made reasonable efforts to secure the debtor's co-operation before the Accountant in Bankruptcy will be able to grant authority for the trustee to resign office. The amendment includes a process for review by the Accountant in Bankruptcy and, if necessary, for onward appeal to a sheriff. Review and appeal are available for the trustee, the debtor, and any creditor who objects to the trustee's application being granted by the Accountant in Bankruptcy.

By contrast, amendment 3 does not require the trustee to provide evidence about the debtor or demonstrate that they have made reasonable efforts to secure co-operation; it does not provide any rights of review or appeal; and it does not give

the AIB any discretion in the process—it seems that, if a trustee applied for change, the Accountant in Bankruptcy would be compelled to grant that application without hearing from any other affected parties. That is not a fair way of approaching the process. It is important that the AIB, as decision maker, is able to hear from all interested parties on any given application, and that those decisions are subject to review or onward appeal. The Accountant in Bankruptcy must also have some discretion to refuse applications for discharge if the AIB takes a different view of the case.

When it comes to how a trustee should be released from a sequestration, I consider that the trustee should resign, as provided for in my amendment 10, rather than be discharged, as is proposed in amendment 3 and in amendment 2 as regards untraceable debtors. Resignation is more appropriate if the case is incomplete and the office of trustee remains necessary. When trustees resign, they are entitled to outlays and remuneration for work done as trustee up to the date of their resignation, and to be paid out of any funds that have been ingathered from the sequestrated estate or contributions. However, if any amount is not paid because those funds are insufficient, the trustee must make a claim on the estate as an ordinary creditor should anything be ingathered after their resignation.

My amendment 10 also makes some administrative processes discretionary for cases that have been transferred to the Accountant in Bankruptcy under its provisions. The intention is that the ball be put into the debtor's court. As long as the debtor refuses to co-operate, nothing else will happen and they will remain bankrupt. As soon as the debtor co-operates, it will be in the power of the Accountant in Bankruptcy to complete whatever actions remain outstanding and to grant the debtor's discharge. It is important that there should be a route out of bankruptcy, and that people should not remain bankrupt for longer than is necessary, but I remain of the view that discharge should not happen until a debtor has made reasonable efforts to engage with the process.

Amendment 10 provides the same administrative discretion in cases that meet the same conditions but in which the Accountant in Bankruptcy is already the trustee. That is not the case with amendment 3, which would leave an undesirable disconnect between cases that are managed by the AIB as a trustee and cases that are managed by a private trustee.

Amendment 9, in my name, makes a small change to section 142 of the Bankruptcy (Scotland) Act 2016, consequent on amendment 10, to maintain the current position and to avoid any implication that the process is different where a trustee resigns in the case of a debtor who cannot be traced.

I ask the committee to support amendments 10 and 9, and I ask Mr Fraser not to press amendments 2 and 3. If he chooses to do so, I ask the committee to reject them.

Murdo Fraser: I listened intently to the minister's detailed explanation, and I think that he makes a reasonable case. I would be interested in hearing the views of ICAS, which originally raised the issue with the committee, on the minister's proposed way forward. We have the opportunity to revisit the issue at stage 3, so I am happy not to press my amendments at this stage and to support the minister's amendments. However, we reserve the right to come back at stage 3 with a further amendment, once we have had the opportunity to consult stakeholders on the matter.

Amendment 2, by agreement, withdrawn.

Amendment 3 not moved.

Amendments 9 and 10 moved—[Tom Arthur]—and agreed to.

The Convener: Amendment 11, in the name of the minister, is in a group on its own.

Tom Arthur: The committee will be relieved to hear that I will speak only very briefly to amendment 11. This is a technical fix to correct an anomaly that has arisen as a result of various changes to bankruptcy legislation since 2007. Commissioners can have an important role in supervising the actions of trustees, but it is the Accountant in Bankruptcy's responsibility to supervise both trustees and commissioners. It is therefore inappropriate to have commissioners in a case where the Accountant in Bankruptcy is the trustee.

Cases with commissioners are fairly unusual, so the anomaly, which since 2007 has allowed commissioners to be in office even when the Accountant in Bankruptcy is the trustee, has not caused any major difficulties in practice. However, it is clear that the current situation is not what was intended in policy terms. Amendment 11 is intended to return the position to what it was prior to 2007, which was that no commissioners may be elected when the Accountant in Bankruptcy is the trustee in sequestration and, in a situation where a commissioner already holds office, that commissioner would cease to hold office if the Accountant in Bankruptcy then becomes the trustee.

I move amendment 11.

Amendment 11 agreed to.

The Convener: Amendment 12, in the name of Colin Smyth, is grouped with amendments 25 and 26.

Colin Smyth: Amendment 12, in my name, would increase the protected minimum earnings amount in earnings arrestment to £1,000, which would bring it into line with the amount for bank account arrestments. That would give much-needed respite to those who are in debt at a time when many families are facing a cost of living crisis.

The committee received significant evidence of people experiencing severe hardship because of funds being taken off their wages to pay debts. One survey from Advice Scotland that was provided to the committee highlighted cases in which people were unable to pay for the essentials, had fallen into arrears and were left unable to pay other debts. Respondents to that survey reported a deterioration in their mental health. One woman said that she was struggling to keep her head above water because of the amount that the courts were taking off her wages. Another person reported being

"stuck in the vicious circle of being unable to pay current year's council taxes due to wage arrestment to pay off previous years".

Some people had considered leaving their jobs to escape arrestments.

Unfortunately, advice agencies are increasingly finding that earnings arrestments are unduly harsh on people who are in debt. For example, they do not discriminate between the composition of the household that those who have their earnings arrested live in, so the arrestments apply whether someone belongs to a single-person household or a household where there are three children and only one earner. Raising the minimum threshold to £1,000, which I stress would be in line with the protected minimum balance for the arrestment of funds in bank accounts, could make a real difference to people. It is important to point out that that would not reduce the amount that creditors can recover; it would just affect the time period over which they can do so.

Amendment 25, in my name, relates to bank account arrestments and clarifies the position in relation to whether social security benefits can be attached by a bank account arrestment. My clear policy aim in the amendment is to protect funds deriving from social security payments automatically and without the need for any challenge by a debtor.

10:45

There is currently a mechanism by which a debtor can challenge unduly harsh arrestments, and that should extend to funds deriving from social security benefits. However, that necessitates an application to court, and we know that, in such cases, benefits have not always been protected. There is well-known case law that shows that to be the case, such as Woods v Royal Bank of Scotland. I accept that that case was some time ago, but there are more recent cases such as North Lanarkshire Council v Crossan in 2008, in which it was confirmed that benefits were attached, and more recently—last July—Edinburgh Sheriff Court held that to be the case in McKenzie v City of Edinburgh Council.

What is frustrating for advice agencies is that, when funds in bank accounts are arrested, the creditor often still refuses to release funds, despite the law saying that benefits do not lose their character as benefits when paid into a bank account. People therefore often need to go to court to get their funds back, as was the case in McKenzie v City of Edinburgh Council. That is despite most social security law containing specific inalienability clauses that say that benefits cannot be alienated from the person for whom they were intended and cannot be attached.

My proposed amendment would aim to restate that law in the Debtors (Scotland) Act 1987. It would basically state that, where the funds in an account come wholly from social security benefits, they cannot be attached. Where the funds are not wholly benefits and are mixed in with other income such as earnings, they could still be attached, and people would need to use the existing remedies under the 1987 act to apply to the court for some, or all, of the funds to be released.

It would also protect banks that attach funds in good faith without knowing that they were benefits, so those banks would have no liability to the person to whom the funds were owed. The provision would be especially helpful for people on benefits and advice agencies, as it would clarify the law for creditors, and in particular for local authorities, which are responsible for the vast majority of bank account investments. They would know in the future that, where people can show that the funds in the account are wholly benefits, the funds should be released to the person who owns the account.

Although the first £1,000 in bank account investments is protected anyway, where people's benefits amount to more than £1,000, which may be the case if they are receiving housing costs or adult disability payments, the provision would ensure that their full benefits are protected. Equally, it would protect people who may receive backdated benefits—for example, adult disability payments—when they win an appeal. I believe that that was always Parliament's intention, and the courts have always taken that approach. My amendment would reinstate that position.

I move amendment 12.

Paul O'Kane: Amendment 26, in my name, deals with minimum protected balances for debtors. As we have heard, minimum protected bank balances provide individuals with a level of security in case of hardship and prevent them from being pushed into desperate circumstances by aggressive debt pursual. However, the value of that protected balance can be retained only if there is a measure of uprating; otherwise, as inflation continues over time, the protected balance may become less and less valuable to the debtor. The amendment therefore clarifies that ministers should examine the level of protected balances on an annual basis without creating an automatic uplift. It would create a presumption in favour of the uplift, but it would allow for extraneous circumstances and parliamentary scrutiny in order to give proportionality.

The amendment deals with minimum protected balances as set out in section 73F of the 1987 act, and inserts an obligation on ministers to—as I said—increase the minimum protected balance each year. The amendment is similar to other protections as outlined in this group, as it protects the balances of people who find themselves in problem debt and are trying to break out of that cycle. We know that the principle of uprating is used across various different parts of Government policy, in particular for annual uprating of social security payments, which are frequently uprated by inflation to provide income security for vulnerable individuals in difficult financial times, as we have just been through.

As I said, the affirmative procedure means that there is not an automatic process of uprating; rather, it can be scrutinised by Parliament with reference to specific economic circumstances in each financial year. However, it will be assumed that the provision would create a presumption in favour of uprating of minimum protected balances.

Tom Arthur: I thank members for their amendments in this group.

The amendments would amend the Debtors (Scotland) Act 1987, affecting the powers that allow creditors to obtain repayment of debts by arresting earnings from an employer or attaching funds deposited in a bank account. They are all intended to place some limitations on the use of those powers to protect debtors who are struggling to pay their debts. I ask the committee not to support the amendments at this stage, and I will explain my reasons for doing so. However, I hope to work with members and others to identify a way forward to deliver at least some of the intent of the amendments before stage 3.

I agree, in principle, that diligence needs to include sufficient protections for debtors from undue hardship. Those matters need careful consideration to ensure a balance between the interests of debtors and creditors and the impact on the employers and banks that are also affected by those changes of their application in practice.

I do not believe that the changes that the amendments propose and their consequences have been sufficiently considered. As we have heard, amendment 12 would increase the monetary threshold at which an earnings arrestment can take effect. When a person earns less than £1,000 per month, amendment 12 would remove the ability to recover the debt through an earnings arrestment altogether; for those people earning above the threshold, it would reduce the amount that a creditor can recover each pay period to repay the debt. That concern has been raised on several occasions, and I appreciate that the committee included a recommendation in its stage 1 report that the Scottish Government consider such a change. I reassure the committee that I have been exploring the issue and gathering information to allow me to assess the potential impact that such a change would have.

Ministers already have the power to change the earnings arrestment figure through negative procedure regulations, and that has been the method considered appropriate for the figure to be updated. The Scottish Government has reviewed the earnings arrestment tables in schedule 2 of the 1987 act every three years, with the exception of last year, when we brought forward the review, as we recognised the pressures that the cost of living crisis and high inflation were putting on families. That approach has sought to maintain the correct balance between protecting both those people who are in debt and subject to an earnings arrestment and the creditors seeking to recover the debt.

More than 90 per cent of earnings arrestments are served by local authorities seeking to recover unpaid council tax. Those local authorities have found diligence to be the most effective means of recovering debt. I have heard concerns from COSLA—I understand that it has written to the committee to outline them—about changes to the current system of earnings arrestment and the potential impact that those changes would have on the councils' ability to deliver services to their communities. Local authorities are clear that they use earnings arrestment as a last resort when someone has refused to engage with them over the debt.

The Institute of Revenues Rating and Valuation has written to me to advise that around £30 million was collected from 34,000 successful wage arrestments last year. Although data is limited, if we assume that each of those arrestments affected an individual earning at least £1,000 a

month—I offer this purely for illustrative purposes—the potential loss to local authorities could be around £26.5 million. That is an alarming amount, and very much a worst-case scenario, but the cost is substantial even with more cautious estimates.

We also know that the Scottish Courts and Tribunals Service is a major user of earnings arrestment for the pursuit of unpaid court fines, with 838 arrestments issued in the last quarter for which figures have been published—that is, from October to December 2022. The Society of Messengers-at-Arms and Sheriff Officers, when giving evidence, also raised concerns about the lack of evidence to support an increase of the monthly threshold of £1,000.

I hope that the committee will appreciate that I cannot simply ignore those representations, in the same way that I cannot ignore the call that earnings arrestments are too harsh. I need to find a good balance in this. If we make earnings arrestments ineffective, there is a risk that creditors will simply resort to pursuing bankruptcy more often, which is something that I would like to avoid—I think that we would all agree on that.

I have not yet found a solution, but I continue to look into it. This is an area that can be addressed through existing powers under the 1987 act, and regulations have regularly been made to increase the thresholds and bands. I would like more time to reflect on the matter and to bring forward any considered and appropriate proposals at a later date through regulations.

I have seen the recent letter from Dr MacPherson and Professor McKenzie Skene, which sets out some ideas that seem to me to be worthy of consideration.

The Convener: The minister refers to making proposals “at a later date”. The committee’s concerns on this matter came from a feeling that the cost of living crisis was putting undue pressure on households in debt, that there were additional current pressures and that a swift response was needed. I would be concerned about the timescale of “a later date” if changes were to be made.

Tom Arthur: I appreciate the point that you make. That explains why we took the extraordinary step of having an uprating of the thresholds a year ahead of schedule. We have the power to achieve that through regulations.

The point that I am making before the committee in this specific instance, in considering an amendment regarding matters that could be addressed through regulations, stems from the representations that I have had from various key stakeholders, including local government. I certainly appreciate the intent behind amendment 12, and I sympathise with its objectives. However, I cannot ignore the significant representations that have been made, so I want further time to engage with stakeholders to see whether we can identify a position of consensus and fully understand what some of the unintended consequences may be. I feel that that is a responsible approach to take, given the representations that have been made to me and to the committee.

I understand that amendment 25 seeks to put a recent decision by the sheriff court on to a statutory footing. The aim is to prevent attachment of funds in a bank account when those funds are solely derived from social security benefits. I am sympathetic to that aim, but I believe that it needs further consideration and consultation with stakeholders. In particular, there are practical considerations about how banks would apply the rule and identify funds that come wholly from benefits. I want to ensure that any amendments along those lines are on the right side of the social security reservation.

There are already provisions in the 1987 act for an application to the sheriff for the release of funds where an arrestment is considered unduly harsh. That existing protection requires the sheriff officer to consider the source of the funds, and it already provides some of the protection sought through amendment 25, although I acknowledge that a court application is required and the measures do not operate automatically.

I am happy to consider further what needs to be done in addition to the existing protection, so I am grateful to the member for lodging amendment 25, as it highlights some of the issues that we need to consider and consult on. The amendment lists eight social security benefits as included, but we need to consider whether others should be included, too, and how any list would be future proofed. The amendment requires the funds to be wholly from benefits and leaves the facts of that to the judgment of the creditor before funds are released. That might be difficult in practice. How would any change interact with the protected minimum balance?

The letter from Dr MacPherson and Professor McKenzie Skene sets out a number of issues that we need to consider. There will no doubt be other practical and technical matters to consider with all interested parties, and that means I cannot support the provisions in amendment 25 at this time and in this form.

Amendment 26 proposes to create a requirement on ministers to review, on an annual basis, the protected minimum balance when bank account arrestments are executed, and to uprate that figure if it is materially lower than the inflation-adjusted figure and amend it through affirmative regulations.

The protected minimum balance is an important protection for individuals, so that only funds above the minimum in a bank account can be attached by a creditor. The figure for the protected balance was increased to £1,000 as recently as November 2022, following changes made under the Coronavirus (Recovery and Reform) (Scotland) Act 2022. That was a significant increase of roughly 52 per cent from the figure that applied before then. That increase was made very much from the viewpoint of wanting to protect universal credit payments, and we need to consider the interaction of all the various protections.

The 2022 act also gives ministers powers to further vary the figures by regulations under the negative procedure. I believe that that power, which was approved just two years ago, is the appropriate method for dealing with this issue, rather than the automatic changes through affirmative procedure that are required under amendment 26.

11:00

As was mentioned by the Society of Messengers-at-Arms and Sheriff Officers at an evidence-taking session, no statistical evidence is available that confirms whether the current figure is correct and what impacts it has had. That highlights the need for more detailed and longer-term investigations and consultation with stakeholders to establish what, if any, changes would be required under existing powers. That said, I agree entirely that the protected minimum balance will need regular updating. As I have outlined, we already have the means to do that and, indeed, have been able to do it previously.

For all those reasons, I ask the members not to press amendment 12 and not to move amendments 25 and 26. If the amendments are pressed or moved, I ask the committee not to support them.

Colin Smyth: As the convener has said, amendment 12 is absolutely in line with the calls from the committee to update the outdated level of protection from arrestment of earnings, given that, at the same time, the Government is talking about a cost of living crisis. The minister referred to COSLA's concerns, pointing out that arrestments are used only as a last resort, but I have to say that I take the figures that he quoted with a huge pinch of salt. It would take an enormous leap of faith to believe that increasing the protected minimum amount will have the impact that the minister has referred to, not least because local authorities have other methods of recovering debt other than through earnings arrestments. Most earnings arrestments will remain effective as a means of recovering debt, even with an increase to £1,000, but local authorities will continue to use bank account arrestments, attachments, exceptional attachment orders, charges for payments, direct deductions from benefits and, ultimately, sequestration to recover debts.

Moreover—and this point has not yet been made—I believe that increasing this protection would encourage a collaborative approach between councils and advice agencies and provide more of an incentive to refer on debtors to ensure that their benefits are maximised, to help them pay their debts and reduce their liability for council tax arrears and to help them enter into repayment plans with creditors. It will, I think, have those positive effects.

The discussion has very much focused on the impact on councils, but another factor that has not been mentioned is the impact on residents themselves. Increasing the protected minimum amount will make more wage arrestments affordable to far more people and will make them an awful lot more sustainable. It is also likely to reduce the number of people having to refer to solutions such as sequestration, as a result of which creditors usually receive a nil dividend; protected trust deeds, which also produce very low dividend; or debt arrangement schemes, in which creditors receive only 78p in the pound. Ironically, in many cases, increasing the minimum protected amount could also increase the amount of overall debt that many councils recover from individual debts.

Another factor that has to be considered is that by increasing the protected minimum amount and making earnings arrestments more affordable for people, we will allow more to escape that vicious cycle of debt, in which they cannot pay their current or on-going council tax and therefore accrue more arrears. The effect of that will be increased in-year collections of council tax, which will reduce the funds that local authorities require to service debts.

Crucially, failing to increase the level that is protected to a reasonable level—and, indeed, doing so annually—skews the balance very much in favour of the creditor, because the level that is protected will fall in real terms, unless increased on an annual basis. However, I take on board the view that it might be desirable to make additional changes, and some of the correspondence that we received late yesterday suggests a number of improvements to mitigate the impact of my amendment, such as increasing the percentage recovery rates beyond the protected amount. That is something that I will certainly look at for stage 3.

On amendment 25, I think that it has been accepted that the current law is not robust enough, and I have not heard any argument against strengthening it. The principle of the amendment is robust, but I take on board the need, perhaps, for

further changes, and I am happy to discuss such changes with the minister in the hope that we can find a way forward with this amendment and, indeed, amendment 12.

I very much welcome amendment 26, in the name of Paul O'Kane. There seems little point in having a minimum protected balance if the value of that is eaten away over time. Amendment 26 would provide that ministers must "bring forward regulations" to adjust the minimum protected balance in line with inflation when the sum is considered to be

"materially below its inflation-adjusted level".

That seems a common-sense approach.

It is interesting that the minister, in his response, talked about recent increases in the figure related to bank accounts. That backs up my point regarding amendment 12 that we have not seen a similar approach to the level for wage arrestments. At this stage, I will not press my amendment 12, in the hope that we can find a way forward to, at the very least, bring those wage arrestment figures in line with those that we have for bank accounts.

Amendment 12, by agreement, withdrawn.

Amendment 25 not moved.

Section 6—Arrestment and action of furthcoming

The Convener: Amendment 13, in the name of the minister, is grouped with amendments 4, 14, 5 and 6.

Tom Arthur: The Scottish Government thanks Murdo Fraser for his proposed amendments 4, 5 and 6, which I will address shortly. First, I will talk to my amendments 13 and 14. The purpose of the amendments is to enable a creditor or an officer of court to serve an arrestment schedule, earnings arrestment schedule or current maintenance arrestment schedule electronically, where the arrestee or employer has expressed to the creditor or the officer of court that they are willing to receive documents in that way. That new option in serving an arrestment is in addition to existing methods of service by personal delivery and by post.

It has been brought to my attention by Alan McIntosh—whom I know the committee has had some engagement with—that amendment 14, as currently drafted, might have some potential unintended consequences by encouraging personal service, which was not the policy intention. I thank Mr McIntosh for that observation. I intend to remedy the issue at stage 3, to reflect the policy intention of providing an additional method of service by electronic means.

Electronic forms of communication are part of a modern society and it seems reasonable to extend that to the service of arrestment and earnings arrestment schedules. Arrestment schedules are predominantly served on banks, with creditors seeking to recover debt from a person's bank account. It is hoped that introducing the amendment will help to simplify the process for banks where they choose to receive the schedules electronically. There is no change to how a debtor is notified about an arrestment.

Earnings arrestment and current maintenance arrestments are used by creditors to recover a debt through a person's earnings. The person's employer is notified of the arrestment through an arrestment schedule, which is currently either hand-delivered to the employer or sent by post. Sheriff officers have reported that it is becoming increasingly difficult to serve an arrestment schedule personally because of the hybrid working models that have resulted in offices being staffed less frequently, which provides fewer opportunities for a sheriff officer to serve the relevant documents.

Introducing the ability to serve those documents electronically will provide an alternative method of service, which I understand that employers have indicated to sheriff officers they would welcome. Most employers use technology, and receiving an arrestment electronically will make that simpler for many employers.

Amendment 14 will also introduce a technical amendment to section 70(5) of the Debtors (Scotland) Act 1987 to ensure that an earnings arrestment schedule or current maintenance arrestment schedule can be competently served on an employer on a Sunday or public holiday if service is by post or electronic transmission.

Amendments 4, 5 and 6 would remove the requirement for the arrestee—often a bank—or the employer to notify the creditor in all instances when no property has attached or an earnings arrestment has been unsuccessful and replace it with a requirement to notify the creditor only where the creditor specifically requests confirmation. The amendments would also remove the requirement for the notification to be sent within a defined period of the arrestment schedule being sent, and replace it with a requirement to notify

"as soon as reasonably practicable"

following receipt of a request from a creditor. I caution against agreeing to amendments 4, 5 and 6, as they have the potential to delay creditors in receiving important information, which would not be the case under the current drafting of sections 6 and 7 of the bill.

The bill, as introduced, will strengthen the effect of section 70A of the 1987 act. That will be

achieved by requiring the employer to notify the creditor, when an earnings arrestment has been unsuccessful, within 21 days of the arrestment schedule being served. It will also strengthen the effect of section 73G of the 1987 act, by requiring the arrestee to notify the creditor as to why no property has attached within three weeks of the arrestment being executed.

In both circumstances, under the bill as introduced, the employer or arrestee would be required to respond only once. We would anticipate that they would do that at the time when they are actioning the arrestment and learn that it is unsuccessful. For a creditor, learning that an arrestment has been unsuccessful is invaluable in helping them to determine what their next steps should be.

The member's proposed amendments 4, 5 and 6 would also remove the defined deadlines that have been set for the arrestee to confirm to the creditor why nothing has attached and for the employer to notify the creditor of an unsuccessful earnings arrestment. That would leave the period of response open to interpretation by different arrestees and employers, to the detriment of the creditor.

Government bodies such as HM Revenue and Customs and councils, which use summary warrant procedure, would be prevented from requesting information under proposed amendment 4. I would caution against that as, without access to information, some actions that could be stopped may continue when that is not in the interests of any party.

The Scottish Government wants to have diligence procedures that are fair to all parties involved. The effect of the current wording at sections 6(2) and 7(2) of the bill will ensure that creditors are provided with the information that they require within a defined time frame. That will enable them to decide whether further action is necessary and remove the need for speculative repeat service of arrestments on third parties.

The Accountant in Bankruptcy will continue to liaise with banks, employers and sheriff officers in order to minimise the burden on the arrestee and employers, while balancing the information requirements for the creditors.

For those reasons, the Government does not support amendments 4, 5 and 6, and I ask Murdo Fraser not to move them.

I move amendment 13.

Murdo Fraser: My amendments 4, 5 and 6 address points that were discussed in paragraphs 127 to 134 of the committee's stage 1 report. Sections 6 and 7 of the bill would introduce a new duty of disclosure on the arrestee. The arrestee—the person who is in possession of the assets that belong to the debtor, which is usually a bank or a financial institution—would be required to tell the creditor when diligence has been unsuccessful. That is a new requirement that has been introduced. The arrestee must tell the creditor whether the arrestment has been successful within a specified time period of 21 days.

As we heard in committee evidence, the issue is that that would have significant resource implications for banks and other financial institutions. In its submission to the committee, the NatWest Group said that it would have to respond to approximately 70,000 arrestment requests every year, and that there would be no particularly useful purpose in telling creditors that those requests had been unsuccessful. Therefore, it seems to be an unduly onerous requirement to put upon financial institutions.

In amendments 4,5 and 6, I am proposing what is, in effect, a halfway house. They are not about entirely removing the obligation for disclosure. However, they try to qualify that requirement and ensure that it is less onerous for the financial institutions.

Amendment 4 relates to cases in which the arrestee must disclose information in relation to bank arrestments that have been unsuccessful. It provides that the arrestee need disclose information to the creditor only when the creditor requests that information, where it was not under summary warrant procedure, and that the information should be provided

"as soon as reasonably practicable".

Amendment 5 amends section 7 of the bill to say that a person should respond only to a specific request that has been made.

Amendment 6 says that a person needs to respond only

"as soon as is reasonably practicable"

after the request has been received, rather than within 21 days.

To me, that strikes a reasonable balance. The bill proposes a new onerous requirement on arrestees to report. The costs of doing that may well be significant; I do not know whether the minister can enlighten us on the Government's assessment of what the additional cost will be. My amendments are not about removing the requirement altogether. Rather, they qualify it and try to strike a balance between the interests of the creditor and the interests of the arrestee. It seems to me to be a reasonable set of proposals.

11:15

Colin Smyth: I take on board that amendments 13 and 14 would allow the use of, for example, electronic means as a way of serving arrestment schedules. That is understandable and a better use of technology, but I ask the minister to say more about how he intends to tackle the unintended consequences that Alan McIntosh has highlighted.

Mr McIntosh identified that the amendment removes the requirement that an earnings arrestment schedule can be issued personally only if there is a reason why it cannot be served on an employer by registered post or by recorded delivery. That is important because the current cost to do so by post is £42.91, whereas the cost of using a personal delivery service would be £86.02, which is more than double the cost. Given that more than 50,000 earnings arrests were served in 2022-23, the cost implications of that change are significant and would ultimately land on the debtor.

I hope that the minister will confirm whether he is considering reintroducing the requirement that the use of postal services should remain the preference ahead of personal delivery, and that personal delivery should be used only if postal services or electronic means cannot be used, given the cost of that to the debtor.

Tom Arthur: I offer a clarification for Colin Smyth, which I sought to make clear in my introductory remarks. I am very grateful to Mr McIntosh for raising that point. The potential unintended consequence that has been identified is not the policy intent, which was to provide an additional option, not to create a situation that was materially different to the existing process.

With regard to Mr Smyth's request, we will, as I said, look to introduce an amendment at stage 3 to remedy that, to ensure that the policy intent is met and that the unintended consequence that Mr McIntosh has identified does not materialise. I would be happy to engage with the member directly ahead of stage 3 to provide that reassurance.

We will address the issue at stage 3, and I reiterate my gratitude for it being brought to the Government's attention.

On Mr Fraser's points, I appreciate his approach in trying to identify a halfway house. The Government has engaged and consulted on a range of proposals. I recognise the implications for arrestees that he mentioned. That is why, as I said earlier, the Accountant in Bankruptcy is committed to a process of engagement and to minimise the administrative implications.

I note that the arrestee will already have to undertake and be subject to a process. If there is no requirement to report, there is always the risk that, should someone follow up to identify whether an arrestment has failed, a duplication of work will occur. However, I reassure the member and the committee that we are committed to engaging constructively to ensure that the measure can be implemented as effectively as possible and to minimise any additional administrative requirements. It is an important provision that will strengthen the existing processes and support the rights of creditors.

On that basis, I ask the committee not to support amendments 4, 5 and 6.

Amendment 13 agreed to.

Amendment 26 moved—[Paul O'Kane].

The Convener: The question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Claire Baker (Mid Scotland and Fife) (Lab)
Colin Smyth (South Scotland) (Lab)

Against

Colin Beattie (Midlothian North and Musselburgh) (SNP)
Maggie Chapman (North East Scotland) (Green)
Murdo Fraser (Mid Scotland and Fife) (Con)
Gordon MacDonald (Edinburgh Pentlands) (SNP)
Kevin Stewart (Aberdeen Central) (SNP)
Evelyn Tweed (Stirling) (SNP)
Brian Whittle (South Scotland) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 26 disagreed to.

Amendment 4 moved—[Murdo Fraser].

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Claire Baker (Mid Scotland and Fife) (Lab)
Murdo Fraser (Mid Scotland and Fife) (Con)
Colin Smyth (South Scotland) (Lab)
Brian Whittle (South Scotland) (Con)

Against

Colin Beattie (Midlothian North and Musselburgh) (SNP)
Maggie Chapman (North East Scotland) (Green)
Gordon MacDonald (Edinburgh Pentlands) (SNP)
Kevin Stewart (Aberdeen Central) (SNP)
Evelyn Tweed (Stirling) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 4 disagreed to.

Section 6, as amended, agreed to.

Section 7—Diligence against earnings

Amendment 14 moved—[Tom Arthur]—and agreed to.

Amendment 5 moved—[Murdo Fraser].

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Claire Baker (Mid Scotland and Fife) (Lab)
Murdo Fraser (Mid Scotland and Fife) (Con)
Colin Smyth (South Scotland) (Lab)
Brian Whittle (South Scotland) (Con)

Against

Colin Beattie (Midlothian North and Musselburgh) (SNP)
Maggie Chapman (North East Scotland) (Green)
Gordon MacDonald (Edinburgh Pentlands) (SNP)
Kevin Stewart (Aberdeen Central) (SNP)
Evelyn Tweed (Stirling) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 5 disagreed to.

Amendment 6 moved—[Murdo Fraser].

The Convener: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Claire Baker (Mid Scotland and Fife) (Lab)
Murdo Fraser (Mid Scotland and Fife) (Con)
Colin Smyth (South Scotland) (Lab)
Brian Whittle (South Scotland) (Con)

Against

Colin Beattie (Midlothian North and Musselburgh) (SNP)
Maggie Chapman (North East Scotland) (Green)
Gordon MacDonald (Edinburgh Pentlands) (SNP)
Kevin Stewart (Aberdeen Central) (SNP)
Evelyn Tweed (Stirling) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 6 disagreed to.

Section 7, as amended, agreed to.

Section 8—Provision of debt advice and information package

Amendments 27 and 28 not moved.

Section 8 agreed to.

After section 8

The Convener: Amendment 29, in the name of Paul O'Kane, has already been debated with amendment 22.

Paul O'Kane: On the basis that the minister and I have a difference of opinion, I will move the amendment.

Amendment 29 moved—[Paul O'Kane].

The Convener: The question is, that amendment 29 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Claire Baker (Mid Scotland and Fife) (Lab)
Colin Smyth (South Scotland) (Lab)

Against

Colin Beattie (Midlothian North and Musselburgh) (SNP)
Murdo Fraser (Mid Scotland and Fife) (Con)
Gordon MacDonald (Edinburgh Pentlands) (SNP)
Kevin Stewart (Aberdeen Central) (SNP)
Evelyn Tweed (Stirling) (SNP)
Brian Whittle (South Scotland) (Con)

Abstentions

Maggie Chapman (North East Scotland) (Green)

The Convener: The result of the division is: For 2, Against 6, Abstentions 1.

Amendment 29 disagreed to.

Sections 9 and 10 agreed to.

After section 10

The Convener: Amendment 15, in the name of the minister, is in a group on its own. I call the minister to speak to and move amendment 15, which is the one that we are all waiting for.

Tom Arthur: I am happy to oblige, convener.

Amendment 15 will allow arrestments of ships to found jurisdiction to take place on a Sunday and will bring the procedure into line with other forms of ship arrestment. Arrestment to found jurisdiction is an action that is brought specifically to establish jurisdiction in Scotland. Changes to other forms of ship arrestment in Scotland were made in 1993 and 1994 following a recommendation from the Scottish Law Commission, which allowed those forms of ship arrestment to be made on any day. However, no such change was made to arrestment to found jurisdiction. Consequently, that form of ship arrestment could not be executed on a Sunday.

It is clear that that has created a gap that could be exploited by someone owing a debt, if a ship docks in Scotland on a Sunday with the intention of leaving later that day. If the creditor was unable

to establish jurisdiction on the ship when it docks in Scotland, they would not be able to rely on the other forms of ship arrestment to secure their claim and prevent the ship from sailing again that day.

Although ship arrestments are not carried out frequently, they can cover claims of significant value. The amendment, which allows all forms of ship arrestment to take place on a Sunday, will support creditors in attempting to recover debts that they are owed.

I move amendment 15.

The Convener: As members have no comments, do you have anything to add, minister?

Tom Arthur: Thank you for the offer, but I have nothing to add.

Amendment 15 agreed to.

Amendment 30 not moved.

Sections 11 to 13 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank everyone for their attendance.

Meeting closed at 11:26.

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