SOCIAL JUSTICE COMMITTEE

Wednesday 2 October 2002
(*Morning*)

Session 1

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

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SOCIAL JUSTICE COMMITTEE
16th Meeting 2002, Session 1

CONVENER

*Johann Lamont (Glasgow Pollok) (Lab)

DEPUTY CONVENER

*Mr Kenneth Gibson (Glasgow) (SNP)

COMMITTEE MEMBERS

*Robert Brown (Glasgow) (LD)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
Linda Fabiani (Central Scotland) (SNP)
*Mrs Lyndsay McIntosh (Central Scotland) (Con)
*Karen Whitefield (Airdrie and Shotts) (Lab)

COMMITTEE SUBSTITUTES

Sarah Boyack (Edinburgh Central) (Lab)
Ms Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Tommy Sheridan (Glasgow) (SSP)
Dr Richard Simpson (Deputy Minister for Justice)

CLERK TO THE COMMITTEE

Jim Johnston

SENIOR ASSISTANT CLERK

Mary Dinsdale

ASSISTANT CLERK

Craig Harper

LOCATION

Committee Room 2

Scottish Parliament

Social Justice Committee

Wednesday 2 October 2002

(*Morning*)

[THE CONVENER *opened the meeting at 10:32*]

Item in Private

The Convener (Johann Lamont): Welcome to this meeting of the Social Justice Committee. We have received apologies from Linda Fabiani.

Do members agree that item 4 should be taken in private, as it relates to a draft report?

Members *indicated agreement*.

Subordinate Legislation

Housing (Scotland) Act 2001 (Registered Social Landlords) Order 2002 (SSI 2002/411)

Homeless Persons Interim Accommodation (Scotland) Regulations 2002 (SSI 2002/412)

Housing (Scotland) Act 2001 (Appointment of Arbiter) Order 2002 (SSI 2002/413)

Homeless Persons Advice and Assistance (Scotland) Regulations 2002 (SSI 2002/414)

Housing (Scotland) Act 2001 (Scottish Secure Tenancy etc) Amendment Order (SSI 2002/415)

Housing (Scotland) Act 2001 (Registration of Tenant Organisations) Order 2002 (SSI 2002/416)

The Convener: Item 2 on our agenda is consideration of statutory instruments. Today the committee will consider six statutory instruments subject to the negative procedure. The Parliament has the power to annul the orders by resolution within 40 days of each instrument being laid. The committee is required to report to the Parliament by 7 October 2002.

At its meeting of 17 September, the Subordinate Legislation Committee determined that the attention of the Parliament need not be drawn to the Housing (Scotland) Act 2001 (Appointment of Arbiter) Order 2002 (SSI 2002/413) and the Housing (Scotland) Act 2001 (Scottish Secure Tenancy etc) Amendment Order (SSI 2002/415).

At its meeting of 24 September, the Subordinate Legislation Committee considered responses from the Scottish Executive on the Housing (Scotland) Act 2001 (Registered Social Landlords) Order 2002 (SSI 2002/411), the Homeless Persons Interim Accommodation (Scotland) Regulations 2002 (SSI 2002/412), the Homeless Persons Advice and Assistance (Scotland) Regulations 2002 (SSI 2002/414) and the Housing (Scotland) Act 2001 (Registration of Tenant Organisations) Order 2002 (SSI 2002/416).

No motions to annul have been lodged. Members have before them the relevant extract from the 35th report of the Subordinate Legislation Committee for 2002.

Are members agreed that the Social Justice Committee has no recommendation to make on any of the instruments, but draws to the attention of the Parliament the issues that the Subordinate Legislation Committee has raised?

Members *indicated agreement*.

Debt Arrangement and Attachment (Scotland) Bill: Stage 2

The Convener: Item 3 is consideration of the Debt Arrangement and Attachment (Scotland) Bill. I ask Robert Brown first to declare an interest.

Robert Brown (Glasgow) (LD): I declare my membership of the Law Society of Scotland and my consultancy with Ross Harper and Murphy solicitors in Glasgow.

The Convener: I welcome Dr Richard Simpson, the Deputy Minister for Justice. Members will wish to note that a number of manuscript amendments were lodged after the 2 o'clock deadline on Monday. In fact, 36 amendments in the name of Tommy Sheridan were lodged 50 minutes late. I make the general point that I am disinclined to allow the practice of using manuscript amendments, but I have agreed to accept them on this occasion. It is important that people stick to deadlines. The deadline is the ultimate time by which amendments must be lodged. In this case, I understand that the clerks were working until half-past 11 at night. It would help them and our progress if members were to lodge amendments as early as possible, rather than holding on to them until the deadline. We are all aware of the issues. We are considering the bill at stage 2 and I hope that people will note that, in future, the earliest possible lodging of amendments would be greatly appreciated.

I want to explain how we are dealing with stage 2. Members should check that they have before them a copy of the bill, the marshalled list of amendments and the suggested grouping of the amendments. The amendments have been grouped to facilitate debate. The order in which amendments are called is dictated by the marshalled list. Members will have to get used to working between the marshalled list and the groupings, but I have great faith that they will be able to do that. All amendments will be called in turn from the marshalled list and will be taken in that order. We cannot move backwards through the marshalled list; once we have moved on, that is it.

Section 1—Debt arrangement scheme

The Convener: Amendment 66, in the name of Tommy Sheridan, is grouped with amendments 106, 48 and 49.

Tommy Sheridan (Glasgow) (SSP): I will need a copy of the groupings, as I only have a copy of the marshalled list.

I thank the convener for agreeing to accept the amendments and I note the points that she made in her opening remarks. I have apologised to the clerks. It was an oversight by my office. We had the amendments first thing in the morning and thought that the deadline was 4 o'clock rather than 2 o'clock as that is the deadline on every other day that we discuss amendments, and will be the deadline from now on. It was a complete oversight, and I apologise profusely. When we discovered the oversight, we lodged the amendments immediately.

Amendment 66 is straightforward. It is designed to ensure that it is absolutely clear in the bill that a debtor will incur no additional expenses in using debt arrangement schemes.

Members will be aware that, under section 7(2)(x), ministers will be allowed to make regulations concerning fees or expenses for debt applications and variations. The committee is agreed that the bill already relies on too many regulations and that much more of the detail should go into the bill. It is vital that the issue is addressed in the bill, so that no debtor who makes use of a debt arrangement scheme incurs further legal or administrative cost, which might prohibit their use of the debt arrangement scheme.

I move amendment 66.

The Convener: I call Kenny Gibson to speak to amendment 106 and the other amendments in the group. If Tommy Sheridan has any points to make on the other amendments in the group, I will let him make them later.

Mr Kenneth Gibson (Glasgow) (SNP): The purpose of amendment 106 is to ensure that charges that are levied for the application, variation and recording of the debt repayment programme are applied only to the creditor or their agent, not to the debtor. It would be counterproductive for people who are in debt to have to pay to access a debt repayment programme. That view is consistent with the Debtors (Scotland) Act 1987, under which all court processes are free to debtors.

The Convener: Do you wish to speak to the other amendments in the group?

Mr Gibson: The other amendments are broadly similar, and I am sympathetic to them.

Robert Brown: It is fair to say that the motivation behind the amendments is similar, but it would be inappropriate and unhelpful if challenges were made to the procedure for debt arrangement schemes, which is a radical and forward-looking proposal.

I will be happy to hear the minister's comments on how the schemes will be paid for. I am clear that it is not desirable that the procedure—unlike charges and other things under the court

process—should incur further charges to debtors. That would be counterproductive. The gist of amendments 48 and 49 is to make that clear without proposing an alternative. The issue is for ministers to think about.

The Deputy Minister for Justice (Dr Richard Simpson): Several of the amendments seek to add to or delete from the list of matters on which the regulations may make further provision. Some of the proposed additions are premature, as the bill contains a power for regulations to make detailed provision for such matters. Some of the amendments seek to go further and include detailed provision for the scheme in the bill rather than in the regulations. The Executive opposes amendments of that type. Amendment 66 is the first of a number of amendments that will be discussed today, which the Executive will oppose for reasons connected to the regulations. It might be helpful to the committee if I lay out the Executive's arguments now, and then advise members when they apply to amendments as they arise, to save undue repetition.

The bill provides that details about the debt arrangement scheme will be specified in the regulations. That is necessary because of the timetable that the Parliament has set for scrutiny of the bill. We do not need to re-examine that matter in detail, but it is necessary to recognise that the bill must deal with the fact that the Abolition of Poindings and Warrant Sales Act 2001 was passed before this bill and the matters that surround it had been considered. It was the unequivocal will of Parliament that that abolition should occur; however, the consequence is that the time scale for scrutiny of this bill has been compressed.

The Executive has consulted on detailed proposals for the debt arrangement schemes. The responses to that consultation are being analysed independently, and we will publish the results as soon as we can. We are just as keen as the committee is to put the debt arrangement scheme in place as soon as is physically possible. However, as I have said before, it is equally important to get the scheme right, so that it is genuinely workable and useful and is as widely accessible as possible.

We will prepare the regulations taking full account of the responses to the consultation. The Executive cannot agree to amendments that seek to specify details of the debt arrangement scheme, and which, in effect, predetermine the outcome of the consultation. The Executive sets great store by the inclusive consultation process. Members may remember that my personal commitment to open and inclusive consultation was demonstrated in the Health and Community Care Committee's report on the Stobhill secure unit.

I am confident that all of us—the Social Justice Committee, the Parliament and the Executive—wish to adhere to the principles of open and effective consultation. The Executive aims to set up a scheme that will be as practicable, useful and widely accessible as possible. To do so, it must take account of all the views expressed in the consultation when it prepares the regulations.

10:45

It is worth noting that the committee's report refers primarily to debtors' interests. Although that focus might well be understandable, given the evidence that the committee has received, it worries the Executive and me. The scheme is meant for the benefit of creditors as well as debtors, and it will not work if we look after the interests of one group and not of the other. Any undue weight that might be attached to debtor interests could lead to an adverse response by creditors in relation to other matters, which might affect the future contract or credit terms offered to people on low incomes who are in the greatest need of such services. They, above all others, require the law's protection, but failing to strike a balance might ultimately harm, not help.

Having proper regard to the consultation responses will enable us to take all interests into account in a balanced and measured way to ensure that workable, practical and user-friendly arrangements can be put in place. The technical detail must be worked out carefully. I want to be sure that there are no other unintended consequences for other areas of law and that we avoid any potential impact on the European convention on human rights and on reserved matters. The Executive aims to develop creative and workable solutions that balance interests.

The Executive position is that all matters of detail should be determined in the light of the consultation's results, and the bill is framed in such a way as to be able to include those in the regulations. As a result, I will oppose any amendments in relation to the regulations. That said, I welcome the opportunity provided by many amendments for an open debate on issues of concern.

If the committee agrees not to approve any amendments that would prejudge the consultation, the Executive, in the spirit of openness and transparency, will be happy to lodge an amendment that will allow scrutiny of all the regulations by affirmative procedure. That will give Parliament a full opportunity to consider and debate the detail of the debt arrangement scheme with the benefit of the consultation responses. Although that will inevitably mean a slight delay to the introduction of the scheme, it is clear that the committee's overriding concern is to scrutinise the

detail. Such an approach would allow the Executive to examine the committee's line of argument alongside the consultation. I have written to the committee to follow up some of the issues that were raised in the stage 1 debate.

Amendment 66 seeks to protect the debtor from expense. Amendment 106 would mean that fees would be chargeable against creditors. Amendment 48 would prevent any fees from being charged and amendment 49 would specifically prohibit the regulations from making provision for fees payable by a debtor. It is considered desirable for the bill to state that the regulations might make provision for charging fees, but that does not mean that fees will necessarily be charged, or charged in a particular way. Much will depend on the outcome of the consultation exercise.

In the consultation, we specifically sought views on fees and the funding of the scheme. It would do respondents a great disservice if the issue were predetermined without their voices being heard and would affect the importance that the committee clearly attaches to consultation. Therefore, I ask members either to withdraw or not to move amendments 66, 106, 48 and 49. If they decide to put the amendments to a vote, I hope that the committee will reject them.

Tommy Sheridan: I remind the committee that we are at stage 2 of a very important bill. One would have hoped that, at this stage, we would be discussing the detail of the legislation. It is not acceptable to say that, because further consultation is under way, members should not support amendments that seek to toughen up the bill and fill in some of the holes that were recognised during the stage 1 consultation process. Allowing the Executive to introduce many regulations at a later date does not make for good legislation.

The matter of the consultation raises baby-and-bath-water issues. Further consultation on matters that must be subject to more debate is important, but the idea that we cannot at this point rule out expenses for debtors who take part in debt arrangement schemes is entirely wrong and goes against the grain of what we have been talking about when we have been considering the bill. We want to encourage people to get involved in the schemes and we will not do that by indicating that they may incur costs. It would be helpful to write into the bill at this point the fact that they will not incur additional expense.

I intend to press amendment 66.

The Convener: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gibson, Mr Kenneth (Glasgow) (SNP)

AGAINST

Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 66 disagreed to.

Section 1 agreed to.

Section 2—Debt payment programmes

The Convener: Amendment 67 is grouped with amendments 68, 78, 79, 83, 84, 95 and 96. Amendments 67 and 68 are alternatives, so if amendment 67 is agreed to, amendment 68 will still be called but will become an amendment to leave out "debt arrangement tribunal" and replace it with "debt arrangement adjudicator". The same applies to amendments 83 and 84 and amendments 95 and 96.

Tommy Sheridan: I apologise for the complication that the convener has just described, but it results from a desire to offer alternatives to the committee.

The amendments are intended to create an independent, impartial and robust decision-making mechanism to decide debt arrangement applications. Currently, section 2(2) and section 8 mean that the Scottish ministers will appoint an organisation or body to decide debt arrangement applications. However, that leaves far too many gaps in the bill and does not allow the robustness that all the independent advice agencies would like to be introduced. If we do not have a debt arrangement tribunal or a debt arrangement adjudicator, ministerial appointees will decide whether an application for a debt arrangement scheme is acceptable.

I ask the committee to ensure the establishment of a body that has all the elements that are required to provide a compulsory character to the debt arrangement scheme proposal. That would ensure that creditors are not able to torpedo sincere and robust applications that would allow debtors to deal with their multiple debt problems on the ground that they disagree with the debt arrangement scheme. My amendments would establish a tribunal that would properly consider every application.

The appeal mechanism that I propose would ensure that the scheme is fair to creditor and debtor. Such an appeal mechanism goes to the heart of the bill, because the worry is that, without

such an appeal facility, far too many debtors will be unable to access the debt arrangement scheme.

I think that all committee members are of the opinion that accessing the debt arrangement scheme will allow people with multiple debt problems to secure a reasonable solution to those problems. Therefore, I would prefer to establish a debt arrangement tribunal rather than a debt arrangement adjudicator, because a tribunal would be more robust and more easily understood and would have mechanisms for appeals. A tribunal would also operate along the lines of employment tribunals, which are widely used and respected. However, if it were felt that a tribunal would be a step too far, appointing an adjudicator would be an alternative.

Whatever the committee decides, it is important that there is a transparent body that can examine applications reasonably and can provide an appeal process for decisions on whether applications are accepted.

I move amendment 67.

Dr Simpson: I listened to Mr Sheridan's introduction of amendment 67, but it is still not clear to me why he has seen fit to lodge a substantial number of amendments that are the same in essence but which have different numbers. It would not be particularly useful to go over the detail of the various amendments. The Executive is opposed to both sets of amendments. We believe that the bill's framework for the debt arrangement scheme is the best route to follow and that it will enable us to take full account of views expressed in the consultation.

Like Tommy Sheridan, some members may prefer a tribunal and others may worry about the formality of judicial or quasi-judicial bodies. In the consultation, the Executive set out in detail why it considered it appropriate to follow the course suggested. I do not intend to repeat all that. Suffice it to say that, after careful consideration of the alternatives, it was considered appropriate to build on the arrangements of current successful voluntary repayment programmes and to do so in a simple, user-friendly and cost-effective manner. We believe that creating judicial bodies to administer finances would be detrimental to the ability of those who administer justice—who are already hard pressed—to carry out their judicial duties.

We still have to take account of the views that have been expressed in the consultation, but early indications suggest that there is overwhelming support for the introduction of a statutory debt arrangement scheme and for the Executive's approach. People have made many suggestions about the detail of the scheme, which we want to take on board to ensure that the scheme works as well as possible. We conclude that amendment 67 and the amendments grouped with it—amendments 68, 78, 79, 83, 84, 95 and 96—should be rejected.

Tommy Sheridan: I thought that I had made it clear why there are two separate sets of amendments and two separate choices relating to each of those sets of amendments. The basic fact is that if the scheme remains voluntary, it will be half baked and will not provide the defence for debtors that I think the committee is trying to achieve. A voluntary scheme would allow any single creditor to press on with diligence in order to get higher up the pecking order in a multiple debt situation. Therefore, that is why—[*Interruption.*]

The minister keeps speaking while I am speaking. It is no wonder that he did not hear me the first time.

The Convener: I will deal with anyone who is out of order. Mr Sheridan may continue.

Tommy Sheridan: All the agencies whose consultation views I have read, including Money Advice Scotland and Citizens Advice Scotland, have stated clearly that they require a non-voluntary scheme, because a voluntary scheme would make it easy for creditors to withdraw. Therefore, I press amendment 67.

The Convener: The question is, that amendment 67 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 0, Against 6, Abstentions 0.

Amendment 67 disagreed to.

Amendment 68 not moved.

11:00

The Convener: Amendment 31 is grouped with amendment 60.

Robert Brown: First, I have an observation on the minister's earlier statement. Along with Tommy Sheridan, I am not entirely satisfied with what he said as a way forward on a major bill that sets out the rights and duties of citizens on such key issues. Somewhere within the bill and the amendments there is a division between rights

and principles, which should be in the bill, and administrative arrangements, which we all agree should be introduced through subordinate legislation.

The effect of the debt attachment arrangements is a matter of principle that should be in the bill. Amendments 31 and 60 are designed to deal with the situation while a decision is awaited. We can all envisage a situation where someone is harassed by creditors while their application sits on a desk for an indefinite period of time either before it is determined under the arrangements laid down by Scottish ministers, or while it awaits a decision from the sheriff.

The amendments deal reasonably with those two slightly different situations by deeming the approval of the application so that it can go ahead in the meantime if there is an appeal, and they allow the protection of the diligence stopping—

The Convener: I am sorry Robert but could you wait a moment. I ask people to quieten down. I am having difficulty hearing the member.

Robert Brown: The amendments allow a deemed approval if there is a delay caused by the ministerial arrangements. Amendment 60 would, in effect, allow a temporary approval if there were an appeal to the sheriff. Such an appeal could go on for some time before a decision is made.

Such things should be contained in the bill. The amendments are reasonable. In responding to them and to later amendments, I hope that the minister will indicate what he understands is the distinction between the issues of principle and detail that arise in the bill, notwithstanding the problem of the consultation.

Finally, will the minister tell us whether he expects to be able to indicate his position on some of the issues to do with the debt arrangement scheme before stage 3? That would assist us.

I move amendment 31.

Tommy Sheridan: Can I speak to amendment 71?

The Convener: No. We are dealing with amendments 31 and 60. I will let you know when we get to amendment 71.

Mrs Lyndsay McIntosh (Central Scotland) (Con): I have concerns about possible breaches of the ECHR. I understand that there might be some difficulty. Perhaps the minister could assure us that this part of the bill is rock solid.

Dr Simpson: Robert Brown's points are very important and we must ensure that the principles are adequately established in the bill and that the interpretation and practice are in the regulations. I accept that.

We hope that the analysis of the consultations on the debt arrangement scheme will be available to us at the end of October. They will then be available before stage 3. That will allow us to consider at stage 3 some of the more contentious issues to do with whether the interpretation and practice should remain in regulation or should be in the bill.

At the outset, we accepted that we are not following the precise course of action that we would have liked. We accept Mr Sheridan's point that it would have been better if the results of the consultation were available to the committee and to the Executive so that we could have made the decisions earlier. We will do our best to get at least the debt arrangement scheme elements in front of us in time.

Amendments 31 and 60 would introduce conditions into the mechanisms for approval in debt payment programmes. We believe that they, like other amendments, are premature.

Amendment 31 is a matter of detail for inclusion in the regulations, if that is merited on analysis of the consultation results. However, I contend that the amendment is likely to generate more practical difficulties than it seeks to clarify and that it is too restrictive. What if an application has not been determined because it has not been completed properly or because clarification of a particular point is necessary? In such circumstances, the sensible thing to do would be to contact the applicant or send the application back for adjustment. The restrictive condition that is set by the amendment would probably cause such applications to be refused outright to avoid their being granted by default. In addition, the amendment does not sit well with the Executive's proposal for the scheme that some applications will be remitted to the court for determination.

Amendment 60 is another item of detail. The intention is that the debt payment programme would operate as if it had been approved until the sheriff decided to approve it. That does not make sense. What would be the point in asking the sheriff to determine the issue? If it is intended that diligence and sequestration should be suspended pending a decision, the amendment would not achieve that. Views have been sought about the stage at which that should happen. There are, of course, many options, each of which has different consequences for the participants' legal rights and responsibilities. Amendment 60 is premature.

The point that Robert Brown made seemed to relate to the protection of the debtor from further harassment at the point at which the debt arrangement scheme is being considered. That is a separate point and is not covered by the amendments. However, we will consider the issue and perhaps consider proposals for stage 3.

I hope that amendments 31 and 60 will be rejected.

The Convener: I invite Robert Brown to wind up and say whether he intends to press or withdraw amendment 31.

Robert Brown: I understand what the minister said. There are issues relating to the phraseology of amendment 31, but I welcome his assurance that he will reconsider the matter.

A different category of situation exists in relation to amendment 60, which deals not just with administrative arrangements but with the legal effect of lodging an appeal. I have difficulties in following the minister's suggestion that that does not operate as a diligence stopper, as I understand that the approval of the schemes is the diligence stopper. Therefore, it seems that the proposal would have the effect that I suggest it would have and that I wish it to have. I would like to press amendment 60 to a vote.

Amendment 31, by agreement, withdrawn.

The Convener: We will return to the other amendment in the group as we progress through the marshalled list. Amendment 32 is grouped with amendments 70 and 71.

Robert Brown: Amendment 32 is a fairly minor amendment. I am conscious that the more that we specify the details of the application form, the more bureaucratic it will become and the more potential there will be for the kind of problems to which the minister referred when he spoke about incorrectly completed forms. Amendment 32 would allow a leeway. The debtor may not know about or may have forgotten all the ins and outs of his debts—he may have thrown away the papers, for example—and the amendment allows things to proceed notwithstanding such likely difficulties.

Tommy Sheridan will speak to amendments 70 and 71, but they seem to suffer from the difficulty that they add even further to the bureaucracy that applications create. If there is a whole list of provisions in the bill, it becomes more difficult to complete an application and to get it right. I sympathise with what he is trying to do, but it would be better if amendments 70 and 71 were not accepted. I oppose those amendments.

I move amendment 32.

Tommy Sheridan: On the points that Robert Brown has just made, I accept that the size and complexity of the application and the number of questions are important considerations. However, I trust that we are taking for granted the fact that proper legal and money advice will be available to debtors—I hope that that will be the case. We will not be expecting debtors to fill in the application forms themselves; we expect them to have professional help and advice.

Amendments 70 and 71 are important. I have later amendments that relate to application for debt arrangement schemes in cases where a charge or arrestment is already in place. The bill currently says nothing about that. There may be arrestment on a bank account where somebody who has multiple debts holds a couple of thousand pounds. That person could apply for a debt arrangement scheme and be accepted, but there would be no effect on the arrestment of the moneys, which could, if released, help to meet the multiple debts. In order for action to be taken and to allow that to be taken into account, the information must be previously submitted to the debt arrangement application. If that information is not available, it would be difficult to say, in retrospect, "Wait a wee minute. I still have another arrestment to work out and I've still got this money held up in charges."

My amendments are designed to extract further information, so that there can be a full account in relation to the debt arrangement application, in anticipation of all outstanding arrestments, legal charges and other diligence being taken into account and included in a debt arrangement scheme, rather than being excluded. If they are not included, there is a danger that the debt arrangement scheme itself will be less effective.

Dr Simpson: Amendments 32, 70 and 71 deal with matters of detail that we believe should be included in the regulations, if merited on analysis of the consultation results. The bill already specifies that the regulations are to make further provision about applications in section 7(1)(a), and guidelines will supplement that by covering how forms should be completed.

As Mr Brown said, the debtor should know, or should be able to find out, the information required. We believe that there is a danger in permitting the debtor to be vague about his debts and about his creditors, particularly as participation in the scheme prevents creditors from exercising their rights to enforce. It may be that Mr Brown intended amendment 32 to refer to the best of the debtor's knowledge and belief, rather than to his "ability". If that is indeed the case, we would be prepared to consider such an amendment at stage 3.

Amendments 70 and 71 specify the information that is to be included in forms about what diligence has been carried out and what expenses have been incurred as a result. It could be useful to specify details about diligence to assist with the provisions for halting diligence. However, amendment 70 names but a few types of diligence and so would be flawed or not in the best terms. Such provisions will, however, be considered for the regulations, and the Executive would be happy to discuss the matter further with Mr Sheridan to clarify fully his intentions.

The specification of expenses incurred is unnecessary, and amendment 71 is therefore superfluous. Expenses form part of the total debt, and section 2(3) already covers that. In addition, section 7(2)(p) says that the regulations will provide for what will happen to existing diligence, and we have asked for views on that in our consultation.

On that basis, I ask that amendment 32 be withdrawn and that amendments 70 and 71 either not be moved or that those amendments be rejected.

Robert Brown: The minister has made a helpful concession on amendment 32, which I accept. I shall therefore ask the committee's leave to withdraw that amendment.

I would like to comment on a point that Tommy Sheridan raised about arrestments and other diligences. There are a number of areas where there could be earnings arrestments, maintenance orders, Child Support Agency orders or other such things. It would be not unhelpful for such things to be in the bill, as they go to the heart of the rights and wrongs of the whole situation. I know that that is tricky, given what the minister said about consultation on the regulations. However, it is a difficulty if people cannot refer to the bill and find out about its effect.

Amendment 32, by agreement, withdrawn.

The Convener: Amendment 69 is grouped with amendments 63, 98, 99 and 100.

11:15

Tommy Sheridan: Amendment 69 is designed to protect debtors who face employment problems because of an earnings arrestment that results from a debt arrangement scheme application. Whether it happens to someone in the police, the Benefits Agency or the financial industry, an earnings arrestment might not result directly in the termination of employment, but it could in some cases. It is important that the application form provides information to allow debtors to secure employment protection.

Amendments 98 and 99 are consequential on my proposals for a debt arrangement tribunal and a debt arrangement adjudicator. Amendment 100, which is consequential to amendment 69, would ensure that Scottish ministers would take on board the information on the form that would be included by amendment 69. The aim of the amendments is to protect the employment of debtors who apply for debt arrangement schemes.

I move amendment 69.

Robert Brown: Amendment 63 is along the same lines. There are concerns that in some instances—whatever the theory is—employers can be awkward about employees who have deductions and court procedures flinging about in the background. One can understand the problems that that raises. My lengthy discussions with Citizens Advice Scotland raised three issues. First, debtors should be fully involved in and responsible for the arrangements. Secondly, given the threat of a problem with an employer, there is a greater onus on employees to comply with the programme—there is an alternative element of compulsion. Thirdly, a requirement for a bank mandate will have other charges, which might not help.

Amendment 63 puts the matter in terms of the debt payment programme, which is correct. Tommy Sheridan's amendment 69 mentions the form, which is a different issue. I have concerns about what the bill should state about the form, but amendment 63 relates to the debt payment programme.

Dr Simpson: We believe that amendments 63, 69 and 100 are premature. They seek to provide an exception to the requirement that an applicant who is in employment must provide a mandate for his employer to make deductions from his earnings for payment to the programme. Under section 2(2), the debtor must consent to the programme. Clearly, if the debtor believes that the programme would affect their employment, they would not consent to it.

We consulted on whether deductions from earnings should be required. We do not know whether the proposals in the amendments have been supported by the consultation, nor what exceptions there should be. It was necessary to place in the bill the duty to notify the employer because the employer will be under a duty to make the deductions. However, the bill allows for regulations to make further provision about the way in which programmes will operate and the conditions that should be applied.

I am also concerned about the terms of amendments 69, 63 and 100, because I believe them to be unwise. They seek to anticipate unacceptable reactions on the part of employers but, by implication, rather curiously condone or accommodate them. Such activities may well offend against employment legislation, under which they would be more properly addressed.

The proposed arrangements are not dissimilar to current arrangements for deductions to be made by an employer when an earnings arrestment has been served. Research on the operation of the Debtors (Scotland) Act 1987, previously carried out for the Scottish Law Commission, indicates that the serving of an earnings arrestment does not appear to have an adverse effect on the employer-employee relationship. Experience with

earnings arrestments suggests that the fears that underlie amendments 69, 63 and 100 may be unfounded.

Amendments 98 and 99 are similarly intentioned, but are linked to and consequential on Tommy Sheridan's tribunal or adjudicator proposals, which we discussed earlier.

We recommend that amendments 69, 63, 98, 99 and 100 should be withdrawn or not moved, or rejected.

Tommy Sheridan: I intend to press amendment 69, because sometimes there is a gap between the real world and the advice from the Scottish Law Society and others on the pressures that are brought to bear on employees who are subject to earnings arrestments. Having the capacity to make that point on the application form would be an important safety valve, so I press amendment 69.

The Convener: The question is, that amendment 69 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 0, Against 6, Abstentions 0.

Amendment 69 disagreed to.

Amendment 70 moved—[Tommy Sheridan].

The Convener: The question is, that amendment 70 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gibson, Mr Kenneth (Glasgow) (SNP)

AGAINST

Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 70 disagreed to.

Amendment 71 moved—[Tommy Sheridan].

The Convener: The question is, that amendment 71 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 0, Against 6, Abstentions 0.

Amendment 71 disagreed to.

The Convener: Amendment 72 is grouped with amendments 73, 33, 44 and 103. Amendments 72 and 73 are alternatives, so if amendment 72 is agreed to, amendment 73 will still be called, but amendment 73 will become an amendment to leave out the text that is inserted by amendment 72. If amendments 72 or 73 are agreed to, I cannot call amendment 33, on the grounds of pre-emption.

Tommy Sheridan: Amendments 72, 73 and 103 relate to amendments that we have already discussed, and concern a central issue that will be a thread throughout the debate on the bill, which is whether the debt arrangement scheme is voluntary. If it remains voluntary, the problem is that horses and carts will be driven through it, and creditors will be able to withdraw and ruin the scheme. Although there may not be much value in my pressing amendments 72, 73 and 103 to a vote, it is important that the issue is discussed again and again, because it is vital that creditors face some compulsion to take part in the scheme.

I move amendment 72.

Robert Brown: My concern is slightly different from Tommy Sheridan's, and relates to the question of the prescribed number of creditors. At the moment, the bill states:

"It is not competent for a debt payment programme to provide for the payment of debts which"—

I beg your pardon, I have lost my place.

The consent of all the debtor's creditors must be incorporated. The bill makes provision to depart from that. This is an important matter to be included in the bill, and there are two aspects to it. If creditors take no action on intimation, it is reasonably clear and is the practice under existing money advice arrangements that an implied consent is created. Amendment 33's purpose is primarily to provide for that. If a creditor does not object to the application, that is tough—the creditor loses their opportunity and agreement is deemed to have occurred.

Amendment 44 would widen the power slightly to deal with the situation after creditors object. I

accept that it can be said that all that is the detail, but the number of creditors and the arrangements for them enter into the realm of being a principle of the bill. People should know where they stand and the bill should determine that. I think that I am right in saying that that happens with such matters as bankruptcy proceedings, but I may be wrong about that.

Dr Simpson: Amendments 72 and 73 are consequential on other amendments that have been discussed, which relate to Tommy Sheridan's tribunal and adjudicator proposals. For the reasons that have been given, we oppose those proposals.

The other amendments in the group would add items to or delete items from the list of matters on which the regulations may make further provision. The proposed additions are premature, because the bill contains a power for the regulations to make detailed provision for those matters. The Executive opposes amendments that fall into that category, because provisions should be specified in the regulations, after full account has been taken of the consultation exercise.

The level of consent and the circumstances in which it can be dispensed with, which amendments 33 and 44 make proposals on, are matters on which views were sought in the consultation. Amendment 33 would deem consent to have been given. Subject to consultation views, I am not convinced that that is the right way to go. Deeming creditors to have notice of all programmes on a register may not, in practice, be an effective method of advising creditors of a programme's approval.

Section 2(4) envisages that the consent of some creditors may not be needed. As such, it is possible that a creditor whose debt is not in the programme may not be aware of the application for approval. Appropriate terms will be devised that have regard to the analysis of all consultation responses.

Section 7(2)(g) deals with dispensation of consent and gives the creditor the opportunity to object to the method by which their consent is disposed of. A balance is involved. Nevertheless, the creditor's consent may be dispensed with, so amendments 33 and 44 should be opposed.

Amendment 103 has a similar intention and was part of Tommy Sheridan's tribunal and adjudicator package. I ask Tommy Sheridan to withdraw amendment 72 and not to move amendments 73 and 103 and I ask Robert Brown not to move amendments 33 and 44. I ask the committee to reject those amendments.

Tommy Sheridan: In the interests of time, I will withdraw amendment 72 and not move amendments 73 and 103. However, I hope that committee members will keep in the forefront of their minds the voluntary nature of the scheme up to now.

Amendment 72, by agreement, withdrawn.

Amendment 73 not moved.

Amendment 33 moved—[Robert Brown].

The Convener: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brown, Robert (Glasgow) (LD)
Gibson, Mr Kenneth (Glasgow) (SNP)

AGAINST

Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 0.

Amendment 33 disagreed to.

Amendment 60 moved—[Robert Brown].

The Convener: The question is, that amendment 60 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brown, Robert (Glasgow) (LD)

AGAINST

Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Gibson, Mr Kenneth (Glasgow) (SNP)

The Convener: The result of the division is: For 1, Against 4, Abstentions 1.

Amendment 60 disagreed to.

The Convener: Amendment 74 is grouped with amendments 75, 34, 76 and 77. If amendment 74 is agreed to, I cannot call amendments 75, 34 or 76. If amendment 75 is agreed to, I cannot call amendment 34 on the ground of pre-emption.

11:30

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I lodged amendment 74, which would amend section 2 by leaving out lines 17 and 18 on page 2 of the bill, because I have concerns about setting financial limits to a debt arrangement scheme.

In our evidence, we have been advised that it is not unusual for clients to present themselves to money advisers' offices with debts in excess of £10,000. That is the figure that it has been suggested that the Executive may set. People who work on the ground say that clients can approach them with debts in excess of £25,000. Those people should be able to get advice and help from money advisers and enter into voluntary repayment schemes. I want as many people as possible to be able to be involved in debt repayment schemes, which is why I believe that we should not set a limit.

I take on board what the minister has said this morning about the need to have a debate. I also listened carefully to what he said about the consultation. It is important that the Parliament listens to consultation responses, so that people see that they can make a difference by being involved in the shaping of legislation. However, the committee should also be involved in that debate. I have listened to what the minister said and would like to hear his views on amendment 74.

If amendment 74 is agreed to, the other amendments in the group would not be necessary, although I understand why composition of debts and the limits on debt repayment schemes have been linked. I shall listen carefully to what the minister has to say.

I move amendment 74.

Mr Gibson: It is not good enough for the Executive to hide behind just about every amendment by saying that, if the results of the consultation exercise show that something has merit, it will be dealt with in regulations or guidelines. The committee has taken evidence on the bill over several months and one would have thought that any consultation exercise would have been completed prior to stage 2. I am becoming increasingly irritated by the way in which the Executive continues to hide behind consultation exercises, which it has used as an excuse to oppose every amendment so far today.

The purpose of my amendment 75 is to make the upper monetary limit for the debt arrangement scheme a reasonable amount. In evidence to the committee, the Scottish Sheriff Court Users Group, Money Advice Scotland and South Lanarkshire Council all suggested the sum of £25,000, which mirrors the limit that is provided for under the Consumer Credit Act 1974. That sum would recognise that many people have debts in excess of £10,000, which is believed to be the proposed limit for the debt arrangement scheme. The sum of £25,000 would be a sensible compromise between £10,000 and Cathie Craigie's suggestion that there should be no upper limit.

Amendment 76, which is in my name, would address several concerns that were raised with the committee about the ability to access the scheme without the agreement of all creditors and about the composition of debts. There were also fears that an individual might not be able to benefit from the scheme if the debts could not be paid off during the scheme's duration. Amendment 76 would break the logjam and widen accessibility to encompass the vast majority of debtors. I believe that incorporating amendment 76 into the bill would show clear intent in that regard.

Robert Brown: I am in considerable sympathy and agreement with my colleagues on this subject. I will not move my amendment 34, because it is at least in part covered by the terms of amendment 76. Like Kenny Gibson, I take the view that the debt arrangement scheme should not be unavailable to a debtor who has a single or several creditors or to a debtor who cannot pay in full within the period of the scheme. We will return to the issue of debtors who cannot pay in full when we consider other amendments.

Tommy Sheridan: I concur with Kenny Gibson's comments on the feeling of shadow boxing that is going on just now. We are told that every issue that we raise will be dealt with and that we should not worry. The point is that we are at the detailed assessment stage of the bill, which is where we are supposed to deal with the detail. That is what makes the process questionable.

The committee will be aware that under the bill as drafted the Executive intends in section 2(5)(a) to impose an aggregate limit on the level of debt that will be allowed for admission to a debt arrangement scheme. The Executive's civil diligence consultation paper hints at an overall limit of £10,000. The evidence from all those who work at the coalface of debt advice is that that is clearly far too low. The Consumer Credit Act 1974, as Kenny Gibson said, and the Debtors (Scotland) Act 1987 both set limits of £25,000 for individual debts. Amendment 77 would bring the bill into line with two existing acts.

Cathie Craigie argued that there should be no limit at all. In reality, any debts that are bigger than £25,000 will more than likely be mortgage debts, which are already dealt with under the Mortgage Rights (Scotland) Act 2001. It is important that we set in the bill a limit that is manageable and realistic. The advice that we have had is that the Executive's limit of £10,000 would be ridiculous.

Dr Simpson: I will deal first with Kenny Gibson's point about the consultation process running in parallel. That was not the Executive's desire; it is simply the way that things have happened. That is a matter of considerable disquiet for us, as it is for the committee, and we are not particularly happy about it. Although we would not wish to prejudge

the result of the consultation, there seems to be considerable evidence that £10,000 is an inappropriate level. However, it does not seem appropriate to us at this time to accept a specific limit of £25,000 either. We think that, after consultation, the conditions for entry to a debt programme will be acceptable to the committee. I am sorry that that is not as strong as members would like.

We could come back at stage 3 with an amendment that would replace the proposed requirement with a permissive power, which would mean that the system was more flexible. If the consultation process points to a preference for no upper limit, that could be reflected in the regulations, along with other key provisions about access to the scheme. I am certainly concerned that some of the information that I have received indicates that there are debts of £25,000 or more that are not simply related to mortgages. I have heard personal representations on that issue, so I am concerned about setting a specific limit in the bill.

We will deal with the matter through affirmative regulations and will consider making a permissive power. As the bill is written, we have to state what the upper limit is. We would not be able to have no limit unless we accepted amendment 74, which we are not minded to do. We want to consider making permissive powers, so that we can consider stating the upper limit through regulations that are subject to the affirmative procedure. On that basis, I hope that amendment 74 will not be pressed and that amendments 75, 34, 76 and 77 will be rejected or not moved.

Cathie Craigie: If people with debts of more than £25,000 cannot access the debt arrangement scheme, they will find themselves sequestrated. The evidence that I get from people who work in the local money advice agencies is that people do not want to be sequestrated, as that can affect their future employment and all sorts of other things in their lives. People want to pay off their debts if they can. That is why debt arrangement schemes must be able to take into account people's individual circumstances and identify whether someone will be able to pay off their debts over a reasonable period. Setting the limit at £25,000 will exclude many people from the scheme.

As the minister said, debts that add up to £25,000 and more are not just mortgage debts; they can include debts for store cards or for a new kitchen, for example. The debts are not generally mortgage debts, although mortgage repayments will be part of them. We must establish legislation that does not tie the money advisers' hands, but that gives them scope to negotiate on behalf of and work with the people whom they are out there to serve.

In an ideal world, the consultation would have been completed before we reached stage 2. However, we know the time constraints that have been imposed. I do not align myself with Kenny Gibson's point about hiding behind consultation; it is important that we go out there and consult. I understand that, if I ask to withdraw amendment 74 and the Executive does not lodge an amendment to address the issue, I will be able to lodge another amendment at stage 3. Therefore, I seek to withdraw amendment 74 and I ask colleagues on the committee to resist the other amendments in the group, if they are moved, so that we can see what the consultation says and, I hope, produce a bill that will be able to serve many more people.

Amendment 74, by agreement, withdrawn.

Amendment 75 moved—[Mr Kenneth Gibson].

The Convener: The question is, that amendment 75 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gibson, Mr Kenneth (Glasgow) (SNP)

AGAINST

Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Brown, Robert (Glasgow) (LD)

The Convener: The result of the division is: For 1, Against 4, Abstentions 1.

Amendment 75 disagreed to.

Amendment 34 not moved.

Amendment 76 moved—[Mr Kenneth Gibson].

The Convener: The question is, that amendment 76 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brown, Robert (Glasgow) (LD)
Gibson, Mr Kenneth (Glasgow) (SNP)

AGAINST

Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 0.

Amendment 76 disagreed to.

The Convener: Amendment 35, in the name of Robert Brown, is grouped with amendments 86, 88, 89, 62, 64 and 46.

Robert Brown: Amendment 35 deals with several issues. The consultation paper talks about the payment of debt in full over three to five years. Many people, including me, feel that debt repayment arrangements that go on for ever have problems. First, they are likely to be hugely demoralising for the debtor. Secondly, partly because of that, they are unlikely to be an effective mechanism over that length of time. Thirdly, the debtor must receive some encouragement vis-à-vis the level of his or her weekly or monthly repayments on huge debts.

It is important that there should be an arrangement that sees an end to those problems. The principle should be that there is a debt repayment period of no more than, say, five years, that the money adviser considers how much the debtor can pay and that the money adviser's statement is taken into account in relation to the freezing of interest or the composition of debts, which the committee has already considered and which I support in principle.

11:45

Kenny Gibson's amendment 86 and Tommy Sheridan's amendment 88 deal with elements of those issues, as does amendment 89. I have tried to deal with the points in a slightly different way in amendment 62, which says that, if the payments vary because the debtor's circumstances change, for example, the period for repayments can be extended. Such a provision would be useful against a background in which the repayment scheme was working and there was a good chance for it to continue to do so.

Amendment 64 is a consequential amendment but amendment 46 is substantial. It deals with the freezing of interest and the composition of debt in relation to the regulations that ministers may make under section 7. The committee has considerable sympathy for what the amendment would do. Although most of us would accept that freezing of interest should not happen automatically or in every case, the power to enable it to happen in suitable instances, which would be related to the debtor's ability to pay within a reasonable period, is important. I hope that the minister will be prepared to give us an undertaking on that. With regard to the point that was made about procedures and substance, I believe that the amendment is extremely important and should be incorporated into the bill. I hope that, whether the minister is willing to talk about it today or wants to wait until after the consultation, he will tell us before stage 3 whether the Executive is prepared to accept the idea of interest freezing and composition of debt.

I stress that interest, particularly if it is left to accrue in contractual terms at high rates that are beyond the judicial rates, can do horrible things to debt. The issue of fairness and balance between creditors and debtors leads to the inescapable conclusion that provision for such an arrangement is necessary to make the scheme sensible and workable in the practical situations that people are dealing with. Such a provision is in the interests of both sides of the transaction.

I move amendment 35.

Mr Gibson: I am sympathetic to all the amendments in this group. Like amendment 35, amendment 86 relates to the freezing of debt. It would prevent the accrual of interest on debts covered by the scheme for its duration. That would ensure that another barrier to the successful implementation of the scheme would fall. In giving evidence, a number of organisations supported the freezing of interest, including Citizens Advice Scotland, Money Advice Scotland and Debt on our Doorstep.

Without an interest freeze, debtors, particularly those who suffer high interest rates, might never clear their debt, never mind clear it within the period of the scheme, especially if interest payments are only marginally below the level of repayments.

Tommy Sheridan: If someone has multiple debts and a sum of their money—£3,000, say—is subject to another form of diligence, such as a bank arrestment, they might want to enter into a debt arrangement scheme to deal with all their debts together. However, the bill excludes the arrested sum of money from the debt arrangement scheme calculations. I do not think that that is sensible; it is helpful neither to other creditors nor to the debtor. The amendment seeks to allow for an arrestment or a charge that is being repaid within an approved debt arrangement scheme to fall at the date on which the debt arrangement scheme is approved so that all the moneys that are arrested or frozen are available to be allocated across the debt arrangement scheme.

Amendment 88 asks that the debt arrangement scheme should take precedence over any previous diligence. That would allow moneys in the possession of the debtor to be better used to try to get them out of the debt hole that they are in. If the moneys that are subject to other diligence may not be used, the hole will simply get deeper and deeper. As Kenny Gibson and Robert Brown have said, many bodies have given evidence to the Social Justice Committee to the effect that, if contractual interest on debts is not frozen at the time of a debt arrangement scheme, many people will never see the end of their multiple debts.

My worry is that the Scottish Executive may be advised that it cannot alter agreed rates of contractual interest because they are regulated by the Consumer Credit Act 1974, which is a reserved matter. Amendment 89 offers a solution to that problem. It would not touch interest, but it would diminish the principal sum of the debt by the amount by which the interest increases. In effect, that would write off part of the principal debt but would have nothing to do with the Consumer Credit Act 1974. Without impinging on a reserved matter, we could still achieve the aim that many agencies have asked for. I ask committee members to support amendments 88 and 89.

Cathie Craigie: I want the bill to be able to freeze interest payments for those who cannot afford to pay them. However, I have concerns about that being done across the board; I think that a little more work is required on the idea. I also want the bill to be able to deal with the issues of composition that have frequently been raised in evidence and that will come up in the consultation exercise.

I oppose Robert Brown's amendment 35. The way I read it, it provides for a period of five years and nothing else. I feel that that is far too prescriptive. If somebody has multiple debts in excess of £25,000, the chances of their being able to pay those debts over five years are probably pretty low. Advice that I get from those who work with people who find themselves with that kind of debt is that those people can get involved in voluntary schemes that can extend for far more than five years.

To get the bill right, I hope that members will hold back until we have heard the results of the consultation. We could come up with provisions that serve people who find themselves with multiple debts much better than amendment 35 would.

Dr Simpson: We believe that amendments 35, 86, 88, 89, 62, 64 and 46 are premature or flawed. I shall deal with each one in turn. Questions of the time for repayment, of interest rates and of composition are, collectively, important to ensure that those who can pay do so and that those who cannot pay are appropriately protected. We believe that the regulations must and will ensure that that is the situation.

We believe that the amendments are premature because they would be a substitute for the enabling provisions in the bill. The bill gives sufficient power, under section 7(2)(m), for the regulations to specify the period of a debt payment programme and sections 7(1)(c) and 7(2)(p) could allow for the freezing of interest and/or composition. However, I accept that section 7 does not contain the words "freezing of interest" and "composition". We will consider Robert Brown's point about the importance of those words appearing in the bill. We do not want to exclude other elements that might be important, but it might be helpful to reconsider that point.

Those elements can be considered if such arrangements are merited in the light of consultation. At the moment, we are minded not to circumvent the consultation process by predetermining the manner in which those elements are handled, although we accept that the principle should be considered.

There is a doubt about whether those options would be wise in the blanket manner in which they have been suggested—as Cathie Craigie said, a blanket provision does not allow for the flexibility that we seek. As outlined in the recent memorandum to the Social Justice Committee, freezing of interest and composition—discharge on less than the full payment—are complex issues, about which many views have been expressed. They were discussed at stage 1 in terms of access to the scheme—another matter of considerable importance. It is important to consider those issues, paying particular attention to any cumulative effect. It will be necessary to get the balance right to ensure that the scheme works effectively towards getting the debts paid off in a managed way.

I acknowledge the committee's genuine concern, which arises from its consultation, but we must ensure that we treat interest rates, composition and the length of time as parts of a total collective scheme, considering all the elements. It will be important to handle the issues carefully to avoid unintended consequences for Scots law of contract and property, which was Mr Sheridan's point. A freeze on interest rates—however desirable it might be in terms of social policy—cannot be achieved simply by the stroke of a pen. It would act to override otherwise legally binding contractual arrangements that had been freely entered into. There are also serious concerns about how it might affect creditors' rights to property under article 1 of protocol 1 of the European convention on human rights.

If a blanket imposition disproportionately restricted creditors' rights, it could generate a response that could lead to a restrictive change in future contract terms. As has been suggested, it might trespass on matters that are reserved to Westminster, such as consumer credit. That could undo the good work that has already been achieved in current voluntary repayment programmes. Other solutions might achieve the same goal while generating good will and maintaining a balance of the parties' interests.

Amendments 62 and 64 are consequential on amendment 35 and would be meaningless unless amendment 35 was agreed to. We assume that amendment 88 also seeks to freeze interest, albeit

by a different formulation. For the reasons that I have given, that would be unacceptable. However, it is not clear what the effect of amendment 88 would be. Indeed, we believe that under subsections (1) and (2) of section 4, enforcement of previous arrestments is covered separately from new debt arrangement schemes. Section 4(2) states that it is not competent

"to commence or execute any diligence to enforce payment of … any debt owed by a debtor who has debts which are being paid under an approved debt payment programme."

It refers not to a debt arrangement scheme, but to a debt payment programme. There is a difference, which I hope deals with Tommy Sheridan's point, although we will consider the matter carefully.

Amendment 88 refers to a certain proportion of the debt being exempt from any proceedings, diligence or debt payment programme. That might suggest that the obligation to pay that sum would remain, but the creditor would have no means of enforcing payment. If that is the intention, it is the worst of both worlds—the debt remains, but the creditor cannot recover it.

Amendment 46 would add an enabling power to make further provision in the regulations about freezing interest and the composition of debts. Amendment 86 would also do so for the purpose of preventing the accrual of interest. Again, we believe that that is premature. Moreover, it is covered by section 7(1)(b), which, as I said, allows for detail in the manner in which programmes are to operate, including the conditions that must be complied with. It is also covered by section 7(2)(p), which provides for the manner in which the rights and remedies of creditors and third parties are affected by a programme. All that, of course, would be dependent on taking account of the views that are expressed about the matter by all interests in the consultation and of the views that are expressed in debates on the bill. In any event, freezing interest payments and composition of debts without the consent of the creditors may raise issues of infringement of the creditors' rights under the ECHR.

Amendment 89 also addresses the issue of freezing interest rate payments. I refer members to my arguments in respect of the other amendments in the group. I ask Robert Brown to withdraw amendment 35. I also ask members not to move or to reject amendments 86, 88, 89, 62, 64 and 46.

12:00

Robert Brown: The debate on this group of amendments has been the most important that we have had this morning. We have had a useful exchange of views. There is merit in some of the detail that the minister has set out, including his comments about the five-year period. There is also merit in some of Cathie Craigie's comments.

I think that I am right in saying that the minister has undertaken to come back to the committee on the detail. He said that he would do that following the consultation and prior to stage 3. Against that background, I am prepared to withdraw amendment 35 and some of the amendments that are consequential on it.

I will, however, press amendment 46, as many of the arguments that the minister made against it do not stand up to close examination. The Human Rights Act 1998 is often dragged into such debates. However, the act is not set in tablets of stone. A balance has to be struck in all these matters. I am not suggesting that there should be a blanket freezing of interest or composition of the debt, but the Executive should have powers to lay down appropriate arrangements. I am thinking of instances in which debtors cannot pay the debt in full within a reasonable time.

Given that background, I do not think that the Human Rights Act 1998 is relevant. The freezing of interest or composition of the debt are important issues and, as such, they cannot be dealt with in regulations at a later stage or in another piece of legislation. The provisions of amendment 46 are vital to the working and success of the bill and the argument that they infringe voluntary arrangements does not stand up. The amendment relates to the time when people have gone beyond voluntary arrangements and into debt arrangement schemes. We are talking about the time that court orders and so forth are flying about the place. Debt payment programmes are by their nature compulsory.

To some extent, the argument about the loss of rights to creditors is academic if a debtor cannot pay their debts in the first place. We need to find the best mechanism to deal with the issue. I think that there is general support that the freezing of interest and composition of debt should be included in the bill. When we consider section 7, I will press amendment 46.

Amendment 35, by agreement, withdrawn.

Amendment 77 moved—[Tommy Sheridan].

The Convener: The question is, that amendment 77 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gibson, Mr Kenneth (Glasgow) (SNP)

AGAINST

Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Brown, Robert (Glasgow) (LD)

The Convener: The result of the division is: For 1, Against 4, Abstentions 1.

Amendment 77 disagreed to.

Section 2 agreed to.

After section 2

Amendment 78 moved—[Tommy Sheridan].

The Convener: The question is, that amendment 78 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 0, Against 6, Abstentions 0.

Amendment 78 disagreed to.

Amendment 79 moved—[Tommy Sheridan].

The Convener: The question is, that amendment 79 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 0, Against 6, Abstentions 0.

Amendment 79 disagreed to.

The Convener: We now come to section 3.

Dr Simpson: I wonder if I might ask your indulgence for a five-minute break at this point.

The Convener: I intended to have a break a bit later.

Dr Simpson: I would be very grateful if we could have a break now.

The Convener: I have never had such power. We will take a break now. I ask members to return no later than 12.15. I suspend the meeting for 10 minutes.

12:05

Meeting suspended.

12:15

On resuming—

Section 3—Money advice

The Convener: Amendment 80 is grouped with amendments 1, 81, 82, 36, 37, 105, 107, 108 and 3. If amendment 1 is agreed to, amendments 81 and 82, which will be debated in this group, and amendments 83 and 84, which were debated with amendment 67, will be pre-empted.

Tommy Sheridan: I am genuinely excited about this part of the debate, because it appears that an amendment might actually succeed, which would be a marvellous achievement for this morning's discussion.

My amendments 80, 81 and 82 are necessary because, at present, the bill would compromise the role of the independent money adviser. Section 3 as drafted would require the money adviser to give advice but, at the same time, to act as a monitoring or compliance officer, informing the Scottish ministers or their appointees of any missed payments. Such a double role would constitute an unacceptable conflict of interest for independent money advisers, and it would certainly undermine the confidence and trust that debtors place in advisers.

One solution would be to separate the roles, and my amendments propose the creation of a separate role of compliance officer. A compliance officer, critically, should not be a money adviser or an adviser in the same organisation or office as the money adviser who is giving advice. That is necessary to guarantee transparency and to avoid any conflict of interest. We all agreed with the evidence that we heard at stage 1, which suggested that advice must remain impartial and independent. Creating the role of compliance officer would allow that to happen.

Amendment 105 is perhaps somewhat contradictory. I have been arguing all morning for more to be put in the bill and the minister keeps telling us either that less is best or that it is a matter for consultation. In amendment 105, I am arguing for something to be removed from the bill. Section 7(2)(t) allows ministers to introduce regulations to set out the functions of money advisers. I think that that provision is unnecessary, because the bill already ensures that only money advisers approved by the ministers can give advice under the legislation. Do we really need to write a script for what advisers should and should not do? Advisers can simply be removed from the approved list if they are not up to scratch. We should not have a prescribed set of details for what are, after all, independent money advisers. On this occasion, I am arguing for something to be taken out rather than for something extra to be put into the bill.

I move amendment 80.

Karen Whitefield (Airdrie and Shotts) (Lab): Amendments 1 and 3 clarify the role of money advisers, who are intended to support the debtor in maintaining the programme. The committee took considerable evidence on this issue, and members raised it during the stage 1 debate. The bill from section 3(2)(b) to the end of section 3(4) provides for the money adviser to monitor the debtor's compliance with the provisions of the debt repayment programme and to report to Scottish ministers. Section 9(1)(b) defines a money adviser as someone

"who has been approved by the Scottish Ministers"

to "monitor the compliance" of the debtor.

Committee members agreed with the evidence that we took at stage 1 that such a situation would raise issues of trust. It is important for a person who is in debt to feel that they can trust and confide in the money adviser and that the adviser will work with them to support them. Giving the money adviser the function of monitoring compliance will cloud trust and judgment.

A number of organisations, including Citizens Advice Scotland, expressed concerns about this issue. It is clear that we need to distinguish between the role of the adviser and the monitoring of compliance with the scheme if the adviser is to be seen as independent and if there is to be a bond of trust between the adviser and the debtor. Amendments 1 and 3 address such concerns and I am pleased that Kenny Gibson supports them.

The Executive has explained that the debt arrangement scheme should build upon existing voluntary repayment programmes. It has been said that the success of such programmes is significantly enhanced when the money adviser gives on-going support to debtors and reviews their cases regularly. That worthwhile approach should be pursued in regulations. However, it is not clear whether that will be achieved if the bill is not amended. Amendments 1 and 3 would put beyond doubt the separation of roles. Although I appreciate Mr Sheridan's attempts to clarify the matter, I think that his amendments only add confusion. Amendments 1 and 3 are more succinct and address the concerns that the committee raised on this matter at stage 1.

Robert Brown: I share Karen Whitefield's concerns about the duplication of roles, and I would appreciate it if the minister would tell us how the arrangements would operate in practice. It is clear that we must address how we will deal with monitoring if amendments 1 and 3 are agreed to.

We must enhance the money adviser's independence, because he probably should not be a mere debt collection agent in the way that has been suggested. However, there is still an issue about how the monitoring arrangements will be carried out.

Amendments 36 and 37 take into account various points. Amendment 37 is an attempt to address something of the same issue that is addressed by amendments 1 and 3, because the conflict of interest at the heart of the debate might be clarified partly by highlighting that the money adviser should

"act solely in the best interest of the debtor".

Amendment 36, which deals with a slightly different issue, would require the debtor to provide information about any relevant change in circumstances, which is quite important for the bill's balance. After all, we are dealing with the rights of debtors and creditors and there should be openness in declarations. Any variation of circumstances should be declared early on through the debt advice arrangements.

Dr Simpson: Sections 3 and 4 focus on money advisers, and it is crucial to the bill's success that their role is clear. Section 3(2)(b) through to the end of section 3(4) as currently drafted provide for money advisers to monitor the debtor's compliance with the provisions of the debt repayment programme and to report to the Scottish ministers. Section 9(1)(b) defines a money adviser as someone who has been approved by the Scottish ministers to monitor the debtor's compliance with the provisions of an approved payment programme.

A number of organisations, as well as the Social Justice Committee, expressed their concerns about that proposal and, clearly, the committee has listened to those organisations. They considered, and the committee agreed, that there needed to be a distinction between the role of the adviser and any monitoring of compliance with the scheme if the money adviser is to be seen as truly independent and if there is to be a bond of trust between the adviser and the debtor. The amendments in this group seek to answer some of those concerns.

The Executive explained that the debt arrangement scheme should build upon the existing voluntary repayment programmes. It was said—members have repeated the point today—that the success of voluntary programmes is enhanced significantly when the money adviser gives on-going support to debtors and reviews their cases regularly. That is a worthwhile aim that should be pursued in the regulations and in the functions of the money adviser. It is not clear that that is what will be achieved by the current provisions to monitor compliance. We believe that amendments 1 and 3 will put matters beyond doubt.

Amendment 36 seeks to specify details in the bill rather than in the regulations, by imposing certain duties on debtors and money advisers regarding the notification of any relevant change in a debtor's circumstances. There is already adequate provision in the bill to enable that type of detail to be specified in the regulations, should that be merited in the light of the consultation exercise.

Section 3 provides for the way in which money advisers will deal with applications to a debt payment programme under the debt arrangement scheme. Section 7(1)(b) enables the regulations to provide for the manner in which programmes are to operate, including the conditions that are to be complied with. Section 7(2)(t) enables the regulations to make further provisions about the functions of money advisers.

As I have said, the Executive believes that in addition to money advisers advising and acting in debtors' interests, providing continuing support to debtors will be a necessary element in ensuring the success of programmes that are made under the scheme. However, the question whether money advisers should be actively involved in notifying a debtor's change in circumstances is speculative and premature.

Amendment 37 would have the effect of putting a provision in the bill such that money advisers would act solely in the best interests of the debtor. We agree with the principle, but we do not think that amendment 37 is the way to achieve it. Section 7(2)(t) enables the regulations to make provisions on the functions of a money adviser. The issue is for the regulations, and should be considered alongside any other related functions of the money adviser. The appropriate terms should be devised, having regard to detailed analysis of the consultation responses. Additionally, the issue is addressed through quality standards and quality assurance. We have asked that all the new money advisers work to a currently recognised set of standards. We shall work, through enhancing the central support for money advice, to strengthen and develop common standards and quality assurance methods for money advice.

Amendments 80, 81, 82, 105, 107 and 108 attempt to define the role of a new compliance officer and the advice that will be made available to those who participate in debt payment programmes. I do not believe that the amendments are the right way to correct the misunderstanding that has undoubtedly arisen about the intention in the bill behind the term "monitoring compliance". However, we believe that the committee's amendments 1 and 3, which we support, remove any confusion about the money adviser's role.

The Executive supports amendments 1 and 3, and urges the committee to do so, but does not support amendments 80, 81, 82, 36, 37, 105, 107 and 108.

The Convener: The question is, that amendment 80 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 0, Against 6, Abstentions 0.

Amendment 80 disagreed to.

Amendment 1 moved—[Karen Whitefield]—and agreed to.

Amendment 36 not moved.

Amendment 37 moved—[Robert Brown].

The Convener: The question is, that amendment 37 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brown, Robert (Glasgow) (LD)
Gibson, Mr Kenneth (Glasgow) (SNP)

AGAINST

Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 0.

Amendment 37 disagreed to.

12:30

The Convener: Amendment 38 is grouped with amendment 85.

Robert Brown: Amendment 38 deals with an area that we have tackled in various ways in our discussions on the Debt Arrangement and Attachment (Scotland) Bill and the Housing (Scotland) Bill. It relates to the issues concerning the ability of in-house council money advisers to erect fully effective Chinese walls. In the majority of cases, council money advisers give advice on debts that are due to the council, such as rent and council tax debts. I dare say that the system works satisfactorily in many cases, but a definite theoretical problem—and, occasionally, a practical problem—arises when one has to devise

programmes that involve prioritisation of debts and when issues arise about the amount of money that goes on each debt.

To some extent, the bill has missed the opportunity to build up support for the independent advice sector—citizens advice bureaux and other organisations of that sort. Amendment 38 is designed to provide a boost in that respect. It would require local authorities to ensure that a choice of independent money advice was available in their area. The issue is important, because people do not always identify readily with in-house organisations. They do not always regard in-house council organisations, for example, as being separate from the council. Therefore, it is necessary that people should be able to choose a money adviser. Making that a duty of the local authority, which can disperse funds at the local level, is the proper way to do things.

I move amendment 38.

Mr Gibson: Amendment 85 is similar to amendment 38, but I think that it has more punch to it, in that it suggests that sufficient funds should be provided.

In the stage 1 debate, I mentioned that although local authorities provide independent money advice, it is important that they are seen to provide such advice by funding independent money advisers from other organisations. That is what amendment 85 seeks to achieve. It does not seek to prevent local authorities from having their own money advisers, but seeks to ensure that independent money advisers are funded to provide an adequate service. I invite members to support amendment 85.

Karen Whitefield: I will speak against amendment 38. My constituency benefits greatly from an independent money adviser and from the services of citizens advice bureaux. Although I am a great supporter of independent advice services, I do not believe that local authorities cannot deliver such services. The majority of the funding that CABx and other independent agencies receive comes from local authorities, which in turn receive their money from the Scottish Executive. Those advice services are no more and no less independent than the services that are provided by local authorities.

I do not agree with the premise of amendment 38. It is unhelpful to suggest that local authorities cannot deliver independent money advice and that their money advisers do not work in the best interest of those who seek help and assistance from them.

Cathie Craigie: I will speak against amendments 38 and 85. Over the past few weeks, I have taken the time to speak to some local money advisers outwith the local authority to find out what the relationship is and what their thoughts are. The information that I got was that they are all seen as part of a team whose members work together hand in glove. Nobody said that the money advice that local authority advisers would give on council tax arrears and rent arrears would be any different from the advice that would be given by the local citizens advice bureau.

As Karen Whitefield said, where does one stop in asking how independent money advisers are? We have all been vocal in making the point that voluntary sector organisations should be independent, regardless of the source of their funding. The voluntary sector guards its independence well. Where are we to stop? The amendments are perhaps a slight on the local authority money advisers who give good independent advice daily.

If I remember rightly, the social justice side of the Executive published information that indicated that the money that was made available to local authorities was dispersed fairly between the local authorities and the voluntary providers. The amendments are not necessary. I hope that the members will not press the amendments, but if they do, we will vote against them.

Tommy Sheridan: Amendment 85 is more powerful and more appropriate than amendment 38. There is a difference between talk of availability of independent money advice and the provision of that advice in an accessible form. The convener will be aware of the gaps in her constituency that were revealed in Glasgow City Council's review of benefit and money advice across the city. That review showed that, in far too many areas, such independent advice is under-resourced and underprovided for.

Unless it is stipulated in the bill that independent money advice services must be properly resourced, those services will, frankly, be the first to go when budgets are tight and restricted. Because such services are not sexy enough and do not have a high profile, they are the first to go. That has happened in Glasgow over the past five to seven years. Unless strong provision is written into the bill to say that such services must stay because they help to combat poverty and inequality, I am afraid that insufficient pressure will be put on local authorities to provide the resources when they have to juggle restricted budgets.

I hope that the committee will support amendment 85, because it is required.

Dr Simpson: The Executive is opposed to both amendments, both as a matter of policy and because we believe that they are premature and flawed.

Amendment 38 would place a duty on local authorities to ensure that, within their area,

debtors have access to readily accessible independent money advisers. We want to see the ready availability of well-informed, well-trained and well-supported money advisers, whether they are employed by the local authority or by voluntary sector advice agencies. However, amendment 38 is not the right way to proceed. First, the terms of the amendment are unclear, as it gives no definition of what is meant by "independent" and "readily accessible". Secondly, the extent of the duty that it imposes is unclear. Thirdly, the amendment is unnecessary, because the Executive has already required local authorities to ensure that choice of money advice is provided in their areas and expects money advice provision to operate to recognised standards.

The key issue is the quality of money advice. Good-quality advice that operates to recognised standards is of primary importance. If standards are consistent, the independence of the money advice provider is irrelevant. Quality standards and quality assurance address the issue of independence in the sense of the adviser acting in the best interest of the person who consults them. We debated that in the previous group of amendments, and the Executive accepted the principle that the adviser must act in the debtor's best interests. Further development and strengthening of standards and quality assurance will be addressed through enhanced central support for money advice.

The Housing (Scotland) Act 2001 includes a duty on local authorities to provide advice. That provision is distinguished from amendment 38 in that it is much more focused, does not require independence and does not demand further explanation or definition of the terminology that it uses.

Amendment 85 is unnecessary. The Executive has provided an additional £3 million in recognition of the fact that additional money services are central to the new approach to debt management that is encapsulated in the recommendations of the working group on a replacement for poinding and warrant sale in "Striking the Balance: a new approach to debt management". When distributing that money, we realised that local authorities promised to be the quickest and best routes to ensure the extension of money advice services and to make those services freely and widely available.

Local authorities are an important—but not the only—source of income for local debt advice services. To place a statutory duty on local authorities to assess the adequacy of funding for all debt advice services would impose a significant change in the relationship between local authorities and the independent providers—as Cathie Craigie said, they tend to work as a team. From the plans that we have received on where the money will go, we have every reason to believe that the funding that is given through local authorities will enhance not only their own money advice provisions, but the other sector's advice services. In fact, the plans that have been presented to us show that almost half of the new provision will be in the voluntary sector.

There have been calls to ring fence that money, and Mr Sheridan has repeated those calls today. Ring fencing is not necessary, nor is it desirable. We have put in place other mechanisms to assess whether the additional money is delivering the desired outcomes. We now have the baseline information. We shall monitor the additional provision that is proposed in the authorities' plans and assess whether it is sufficient. For the Executive to take national control of funding for debt advice services would undermine the flexibility to respond to local needs and circumstances.

I urge the committee to reject amendments 38 and 85.

Mr Gibson: I have a point of clarification before Robert Brown winds up. The minister said that I did not explain what "independent" meant. However, amendment 85 clearly says:

"money advisers, independent of the authority".

Is that not clear?

Robert Brown: I am grateful for the minister's comments on amendment 38. However, I do not altogether accept them. A fault line has run through the debate—right back to our consideration of the Housing (Scotland) Bill and before—about the place in which advice services should be provided. I take the view that there should be choice. Amendment 38—and, for that matter, amendment 85—seeks only to make it compulsory for local authorities to provide that choice.

There is no real doubt about what "independent", "money advisers" or "readily accessible" mean. Those are practical issues. In the context, people are used to dealing with such decisions all the time. There is no argument about that.

I find myself disagreeing strongly with Karen Whitefield when she suggests that, because CABx and other independent money advice services are funded by the local authority, they are no more independent than in-house services. With respect to Karen Whitefield, that is quite a ridiculous proposition, which does not stand up to the most minimal of examinations.

I do not dispute that money advisers in the council sector provide good-quality money advice. However, because the council sector has a clear

conflict of interest, it does not provide independent advice. Some of that can be overcome by quality standards, but it would be more effective to provide that advice and ensure that it is available at the choice of the debtor in the independent and voluntary sector. Amendment 38 is intended to achieve that.

The Convener: The question is, that amendment 38 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brown, Robert (Glasgow) (LD)
Gibson, Mr Kenneth (Glasgow) (SNP)

AGAINST

Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 0.

Amendment 38 disagreed to.

Amendment 85 moved—[Mr Kenneth Gibson].

The Convener: The question is, that amendment 85 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brown, Robert (Glasgow) (LD)
Gibson, Mr Kenneth (Glasgow) (SNP)

AGAINST

Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 0.

Amendment 85 disagreed to.

Section 3, as amended, agreed to.

Section 4—Effect of debt payment programmes

Amendment 86 moved—[Mr Kenneth Gibson].

The Convener: The question is, that amendment 86 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gibson, Mr Kenneth (Glasgow) (SNP)

AGAINST

Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Brown, Robert (Glasgow) (LD)

The Convener: The result of the division is: For 1, Against 4, Abstentions 1.

Amendment 86 disagreed to.

12:45

The Convener: Amendment 87 is grouped with amendments 61, 90, 93 and 94.

Tommy Sheridan: Amendment 87 would plug what I think and what legal advice given to me suggests is a hole in the bill. Many people have a loan that is secured on a house. Let us say that the loan is for £7,000 and the debtor wants to pay under a debt arrangement scheme. If the debt arrangement scheme had been approved and payments were being made, the creditor could still raise court proceedings against the debt that was secured on the house or issue a calling-up notice or a default notice against the debt under the Conveyancing and Feudal Reform (Scotland) Act 1970. Such a notice would transfer ownership of the house or allow resale of the house, in theory.

That action is still available because it is not diligence. As the minister knows, diligence is only post decree. The remedies under the 1970 act are pre-decree, so they are not caught by section 3. Section 3 appears to miss the pre-decree measures that are available under the 1970 act.

If that hole is not plugged, it could lead to a debt arrangement scheme being blown apart, because a creditor could still raise an action in relation to a calling-up notice or a default notice against a loan secured on a home. That loophole is important and I would like the minister to respond to those points. If the loophole exists, I hope that it will be closed. If it does not exist, I would like to hear the explanation.

As for amendment 93, if a creditor obtains a decree for payment, they can use that to serve an inhibition order, which the committee will know prevents the debtor from selling their house. If the debt is being repaid under a debt arrangement scheme, it is fair and sensible that the inhibition notice should fall. If an inhibition notice was served against the debtor before they entered a debt arrangement scheme, the inhibition notice should not retain its capacity if the debtor enters a debt arrangement scheme. The bill does not deal with that. Diligence that is in place stands, because section 4 prevents only future diligence. I ask the minister to clarify that. Section 4 does not refer to current diligence.

It is the case—and we heard evidence to this effect—that debts are often exacerbated by the

high level of legal charges and expenses applied by creditors and their agents. Amendment 94 seeks to take a sensible approach and make provision for such expenses to be written off. If they are not written off, that could result in quite severe financial hardship for the debtor or the debtor's family. The amendment is essential.

I intend to move amendments 87, 93 and 94. I feel that the minister must address the gap that amendment 87 seeks to fill.

I move amendment 87.

Robert Brown: Amendment 61 is designed to do the same thing as Tommy Sheridan is trying to do with amendment 87. I think that his phraseology is probably better, but I shall reserve my position until I hear from the minister.

I oppose amendments 93 and 94. Members will probably be aware that inhibition is a holding mechanism. It does not enforce, but prevents the sale of a house. If we did not allow that to continue to have effect, we could end up in a position where the debtor sells his house, gets control of a large amount of money and walks off with it. I can see that there might be other circumstances, but I cannot support amendment 93.

Amendment 94 is part of the composition argument. I do not believe that we need specific provisions to deal with legal expenses separately from anything else.

Dr Simpson: We believe that the amendments in this group are premature, as each of them seeks to exempt an element from inclusion in the debt payment programme. Those matters have been consulted on, although the results of that consultation and whether they support the specific terms of the amendments are not yet known.

Amendments 90 and 93 seek to specify the effects on specific diligences. They refer only to some diligence and appear only partially to achieve their intended result. Amendment 94 is curious, as the expenses of enforcement form part of the debt legally owing. Similar issues arise in relation to this matter as arise in relation to the composition of debts, which we will address in later amendments.

There is a danger that amendments 61 and 87, which would affect heritable security rights, stray into the area of Scots law on property and contract and have not been fully thought through. We must be clear about the implications of amendments and must consider any such conditions in the context of the totality of the scheme. In particular, we must consider the period over which the scheme will run. If there were to be no limit, the lender would be unable to recover property that could be very valuable over decades. What effect would that have on the economy and the availability of mortgages? We must do things in a co-ordinated way and think carefully about how everything fits together, otherwise the scheme will be unworkable and could face failure from inception.

Amendments 87, 61, 90, 93 and 94 should be rejected. On amendment 90, it is not competent, under section 4(2)(b), to commence or execute diligence, which includes on-going diligence.

Robert Brown: Will the minister come back to us before stage 3 on the standard security issue? It is important that we know the position on that.

Dr Simpson: We will come back to you on that.

Robert Brown: Thank you.

The Convener: I call Tommy Sheridan to wind up and to indicate whether he intends to press or withdraw amendment 87.

Tommy Sheridan: I intend to press amendment 87. I do not think that the minister has given a proper response to the suggestion that there is a major loophole in the bill. Either now or the next time he speaks, the minister should spell out clearly whether he is suggesting that all diligence is included in the bill. My reading of the bill is that only post-debt arrangement scheme diligence is included. If the minister is suggesting that all prior diligence is included, I would like him to spell that out. I apologise if I am not reading the bill properly, but the area is important. In my opinion, he has not addressed in any way, shape or form the potential loophole in relation to the Conveyancing and Feudal Reform (Scotland) Act 1970.

The Convener: If the minister wishes to clarify that point, I ask him to do so briefly.

Dr Simpson: We believe that section 4(2)(b) covers that point. The section sets out that:

"It is not competent … to commence or execute any diligence to enforce payment of … any debt owed by a debtor who has debts which are being paid under an approved debt payment programme."

We will consider the arguments that Mr Sheridan has put to the committee before stage 3 and come back to the committee on them.

The Convener: The question is, that amendment 87 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gibson, Mr Kenneth (Glasgow) (SNP)

AGAINST

Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 87 disagreed to.

Amendment 61 not moved.

Amendment 88 moved—[Tommy Sheridan].

The Convener: The question is, that amendment 88 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gibson, Mr Kenneth (Glasgow) (SNP)

AGAINST

Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 88 disagreed to.

Amendment 89 moved—[Tommy Sheridan].

The Convener: The question is, that amendment 89 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Gibson, Mr Kenneth (Glasgow) (SNP)

The Convener: The result of the division is: For 0, Against 5, Abstentions 1.

Amendment 89 disagreed to.

Amendment 90 moved—[Tommy Sheridan].

The Convener: The question is, that amendment 90 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gibson, Mr Kenneth (Glasgow) (SNP)

AGAINST

Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Brown, Robert (Glasgow) (LD)

The Convener: The result of the division is: For 1, Against 4, Abstentions 1.

Amendment 90 disagreed to.

The Convener: Amendment 91 is grouped with amendments 39 and 92. I ask the minister to speak to and move amendment 91 and to speak to the other amendments in the group.

Dr Simpson: Section 4 makes provision for the stopping of diligence and sequestration. It also provides for the preservation of creditors' rights and remedies in relation to debts during the operation of the debt payment programme. The intention is that all debts will be included in a programme. However, in the case of debts that are overlooked, section 4 is not restricted to debts that are included in the programme. That means that all rights to do diligence or sequestration will be stopped when a programme is approved.

The purpose of amendment 39 appears to be to ensure that creditors whose debts are not within a debt payment programme are not affected by section 4 unless the creditor has access to a register that gives them notice of the existence of the programme. That seems to be a fair point.

However, as I said in relation to amendment 33, deeming creditors to have notice of all programmes on a register may not, in practice, be an effective method of advising creditors that a programme has been approved. Section 2(4) envisages that the consent of certain creditors may not be needed. As such, it is possible that a creditor whose debt is not in the programme may not be aware of the application for approval. To achieve the desired result and ensure that sections 4(2) to 4(4) will not operate in the absence of notice, the Executive has lodged alternative amendments 91 and 92.

There is also a technical problem with amendment 39 in that it refers to a register that does not exist. Section 7(2)(u) provides only for a power to establish a register. The Executive's amendments 91 and 92 overcome that difficulty by focusing on notice rather than a named register.

I move amendment 91.

Robert Brown: In the light of the minister's amendments, which were lodged after my amendment, I will not press amendment 39. However, it is important that the register that comes into effect under the regulations has a standing that is equivalent to the Register of Sasines. People must have open access to the register.

Mr Gibson: The committee has suffered from premature rejection all morning. I am concerned that the minister's amendments are flawed. We should wait until we have a full analysis of the consultation before we proceed.

Tommy Sheridan: That is a fair riposte to what we have heard from the minister all morning.

As we are discussing section 4, I take the opportunity to press him on what he means by

"to commence or execute any diligence"

because I am not clear whether execution of diligence refers to continuing diligence, such as an arrestment or a bank freeze. If the minister is spelling out for us that all diligence against someone who enters the scheme will freeze, I would like him to say that for the record.

13:00

Dr Simpson: I will address the two points that committee members have made. First, on the nature of the register that we are proposing, I confirm for the record that it is our intention that it will be open. I hope that that satisfies Robert Brown. Secondly, on Tommy Sheridan's point, it is our understanding that the word "execute" will apply to continuing diligence. We are clear on that point also, and I have placed that on the record.

Amendment 91 agreed to.

Amendment 39 not moved.

Amendment 92 moved—[Dr Richard Simpson]—and agreed to.

Amendment 93 moved—[Tommy Sheridan].

The Convener: The question is, that amendment 93 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 0, Against 6, Abstentions 0.

Amendment 93 disagreed to.

Amendment 94 moved—[Tommy Sheridan].

The Convener: The question is, that amendment 94 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gibson, Mr Kenneth (Glasgow) (SNP)

AGAINST

Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 94 disagreed to.

Section 4, as amended, agreed to.

The Convener: We will end today's consideration of the bill at this stage. We will commence where we left off at our next meeting. I thank everyone for their attendance.

13:02

Meeting continued in private until 13:05.

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Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178