

# **SOCIAL JUSTICE COMMITTEE**

Wednesday 9 October 2002  
(*Morning*)

Session 1

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## SOCIAL JUSTICE COMMITTEE

17<sup>th</sup> 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:

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 9 October 2002

(Morning)

[THE CONVENER opened the meeting at 09:43]

### Items in Private

**The Convener (Johann Lamont):** Welcome to this meeting of the Social Justice Committee. Does the committee agree that items 3 and 4 be taken in private as they relate to committee housekeeping issues and that item 5 be taken in private as it relates to a draft report?

**Members** indicated agreement.

## Debt Arrangement and Attachment (Scotland) Bill: Stage 2

**The Convener:** I ask Robert Brown to declare an interest.

**Robert Brown (Glasgow) (LD):** I apologise for coming in late. I got my times mixed up.

I declare my membership of the Law Society of Scotland and my consultancy with Ross Harper solicitors in Glasgow.

**The Convener:** I welcome Dr Richard Simpson, the Deputy Minister for Justice.

### Section 5—Variation of debt payment programmes

**The Convener:** Amendment 95, in the name of Tommy Sheridan, has already been debated with amendment 67. We have apologies from Tommy Sheridan, so I must ask another member of the committee to move the amendment.

*Amendment 95 moved—[Linda Fabiani].*

**The Convener:** The question is, that amendment 95 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)  
Fabiani, Linda (Central Scotland) (SNP)  
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 7, Abstentions 0.

*Amendment 95 disagreed to.*

**The Convener:** Amendment 96, in the name of Tommy Sheridan, has already been debated with amendment 67.

*Amendment 96 moved—[Linda Fabiani].*

**The Convener:** The question is, that amendment 96 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)  
Fabiani, Linda (Central Scotland) (SNP)  
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 7, Abstentions 0.

*Amendment 96 disagreed to.*

**The Convener:** I can see that people are looking a bit puzzled about those votes so I inform members that, if anyone says no to an amendment, there must be a formal division, even if everyone says no. It is not just me being ridiculous.

Amendment 40 is grouped with amendments 40A, 97, 41 and 42.

**Robert Brown:** Amendment 40 is designed to take into account the interests of both parties who are involved in a debt payment programme. In particular, it would give the creditor rights to make an application for review.

Section 5 deals with approval of variation of debt payment programmes. The argument relates to debtors who experience a material change in their circumstances, such as an increase in their salary. Often, that will be dealt with administratively and there will be no issue to resolve, but occasionally, that might not be the case. It seems appropriate that the creditor should have the right to apply to have the debt payment programme varied to take account of such changes of circumstances.

Amendment 40A is a reasonable and technical amendment, which I accept.

Amendments 41 and 42 are, in effect, consequential. Amendment 41 is slightly more substantial and tries to widen slightly the sort of variations that can be made to the programme. The Executive might have dealt with that issue already, so I will be interested in the minister's response.

I move amendment 40.

**The Deputy Minister for Justice (Dr Richard Simpson):** Extending the possibility of applying for a variation to creditors, as amendments 40 and 42 seek to do, seems to be sensible. A creditor may have been omitted or, if included, may subsequently have information about a change in the debtor's circumstances but find that the debtor has not taken steps to adjust the terms of the payment programme.

Throughout this process, we have discussed the protection of debtors' interests. I am told that money advice workers raised the suggestion that the amendments make with my officials at a money advice conference. However, there is the matter of balancing the differing interests. In the first instance, we need to include in the bill the provision that the two amendments suggest. When we have done that, regulations will make detailed provision about variation, which can be done under section 7(2)(j). We will take on board the

committee's views on the regulations and I have already given the committee an undertaking about the affirmative nature of the regulations. When the scheme comes into being, guidance materials will be provided.

We believe that amendment 41 is unnecessary and premature. It seeks to specify when a variation would be appropriate. As the bill already enables the regulations to make provision about the manner in which a debt payment programme may be varied, in section 7(2)(j), it would be unwise to specify the possibilities in the bill now rather than doing so comprehensively in the regulations.

Last week, members raised concerns about what would happen to a debtor whose circumstances changed in a very small way. We will seek to ensure in regulations that variations are made appropriately. In other words, debtors should not be unduly punished for improving their circumstances. Amendments 40, 40A, 42 and 97 strike a reasonable balance by allowing creditors and debtors to apply for a variation.

I move amendment 40A.

**Karen Whitefield (Airdrie and Shotts) (Lab):** I accept the intention behind amendment 40 and the Executive's consequential amendments. However, it is important that we make it clear in regulations that debtors will not be penalised by this provision. Someone's circumstances might change only minimally because they receive a small pay increase or start a new job that pays slightly more. I would much prefer it if they were able to pay that extra £5 or £10 each week or each month into a credit union, because that would mean that, instead of getting into further difficulties, they could build up a little money to fall back on, while paying off their debts as they are able to. I would have reservations if the scheme did not allow for such flexibility, although I accept that the intention behind amendment 40 is to strike a balance.

**The Convener:** If no other member wishes to speak, I call the minister to wind up on amendment 40A.

**Dr Simpson:** I take Karen Whitefield's point. We must ensure that the operation of the scheme favours neither creditors nor debtors and achieves a balance between the two. If such a balance provided a disincentive for debtors to change their circumstances, because it meant that they would simply lose any additional funds, that would be inappropriate.

However, if a creditor who is either included or not included in the original scheme becomes aware of a substantial change in the debtor's situation, they should be able to seek a variation. Amendments 40, 40A, 42 and 97 seek to achieve

that. That said, we will take note of Ms Whitefield's point about the regulations.

**The Convener:** The question is, that amendment 40A be agreed to. Are members agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

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)

#### AGAINST

Fabiani, Linda (Central Scotland) (SNP)  
 Gibson, Mr Kenneth (Glasgow) (SNP)

**The Convener:** The result of the division is: For 5, Against 2, Abstentions 0.

*Amendment 40A agreed to.*

**The Convener:** I call Robert Brown to wind up on amendment 40, as amended, and ask him whether he wishes to press or withdraw it.

**Robert Brown:** I will press amendment 40, as amended, for the reasons that have been stated. Although Karen Whitefield's point is well made, I think that it could be dealt with through good money advice and practice on the ground. By lodging amendment 40, I did not intend to interfere or to get at small increases in people's income. After all, the schemes have to contain some carrots.

I would also like the minister to reflect on whether the use of the phrase "such a debt" in paragraph (b) of the new subsection proposed in amendment 97 is completely tight. How would that relate to the scheme? Perhaps the wording could be examined a little more closely to ensure that no problems arise with the precise meaning.

**The Convener:** The question is, that amendment 40, as amended, be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

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)

#### AGAINST

Fabiani, Linda (Central Scotland) (SNP)  
 Gibson, Mr Kenneth (Glasgow) (SNP)

**The Convener:** The result of the division is: For 5, Against 2, Abstentions 0.

*Amendment 40, as amended, agreed to.*

*Amendment 97 moved—[Dr Richard Simpson].*

**The Convener:** The question is, that amendment 97 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

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

Fabiani, Linda (Central Scotland) (SNP)  
 Gibson, Mr Kenneth (Glasgow) (SNP)

**The Convener:** The result of the division is: For 5, Against 0, Abstentions 2.

*Amendment 97 agreed to.*

*Amendments 41 and 62 not moved.*

*Amendment 42 moved—[Robert Brown].*

**The Convener:** The question is, that amendment 42 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

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)

#### AGAINST

Fabiani, Linda (Central Scotland) (SNP)  
 Gibson, Mr Kenneth (Glasgow) (SNP)

**The Convener:** The result of the division is: For 5, Against 2, Abstentions 0.

*Amendment 42 agreed to.*

*Section 5, as amended, agreed to.*

### Section 6—Deduction from earnings

*Amendments 63, 98, 99 and 100 not moved.*

*Section 6 agreed to.*

### After section 6

**The Convener:** Amendment 101, in the name of Tommy Sheridan, is grouped with amendment 111. Will a member of the committee move the amendment?

**Mr Kenneth Gibson (Glasgow) (SNP):** I am happy to move and speak to amendment 101.

Section 7(2)(h)(i) enables the Scottish ministers to introduce regulations to enable creditors to raise

an objection to their consent to a debt arrangement scheme being dispensed with. However, what happens if the debtor's debt arrangement application is rejected? Under the bill, that would be that.

It would be more inclusive and practical to allow a right of recourse to the sheriff for impartial reconsideration of the matter. As the bill is drafted, a disgruntled debtor would only have the option of raising a petition of judicial review against the debt arrangement decision maker; that is, if the decision was irrational and unreasonable—if it met what are known as the Wednesbury grounds. That procedure is much more costly to the taxpayer than a straightforward referral of the case to a sheriff. The Housing (Scotland) Act 2001 permits disgruntled tenants access to the sheriff where they are aggrieved by certain formal decisions by their landlord. Amendment 101 is sensible and practical for all parties concerned. It would simply bring the bill into line with existing practice.

I move amendment 101.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** I am sorry that Tommy Sheridan is not here to hear me say this but I think that his amendment has good intentions. He is right that there should be a statement in the bill about a right of appeal for debtors if their application is refused. However, I do not believe that we need to set out in the bill the detail that is contained in amendment 101. The detail can and should be handled differently.

We will have the opportunity to examine the regulations later on. Amendment 111 would afford us the opportunity to ensure that we are happy with the arrangements for an appeals procedure. I ask members to support amendment 111 and I ask Kenny Gibson to withdraw amendment 101, although I do not know whether he is in a position to do that.

10:00

**Dr Simpson:** We believe that amendment 101 is premature. It had been intended that the regulations would provide for an appeal mechanism under the general power provided for by section 7(1)(a). If the committee considers it appropriate to make such provision in the bill—from the tenor of the discussion, that seems likely—amendment 101 is not the best solution. The alternative offered by amendment 111 is better because it allows the procedural detail to be specified appropriately in the regulations. That needs to be done in a co-ordinated way alongside regulations about the related procedure for enabling any disputed applications to be remitted to the sheriff for determination under the power provided by section 7(2)(i).

In addition, amendment 101 provides for suspension of diligence while an appeal against refusal of an application is being determined. That would have the effect of treating the application as if it had been granted, which would prejudice the outcome of the appeal.

We recommend that amendment 101 should be withdrawn or rejected and that amendment 111 should be agreed to instead.

**The Convener:** I ask Kenny Gibson to wind up and indicate whether he intends to press or withdraw amendment 101.

**Mr Gibson:** I intend to press amendment 101. I think that it is important to have this provision in the bill. I am becoming increasingly concerned, because when ministers object to amendments, the word “premature” seems to be used on almost every occasion. Perhaps the minister could just give us a list of all the amendments that he considers to be “premature” and save us a lot of debating time. It is becoming extremely irksome.

**The Convener:** The question is, that amendment 101 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Fabiani, Linda (Central Scotland) (SNP)  
Gibson, Mr Kenneth (Glasgow) (SNP)

**AGAINST**

Brown, Robert (Glasgow) (LD)  
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
Lamont, Johann (Glasgow Pollok) (Lab)  
Whitefield, Karen (Airdrie and Shotts) (Lab)

**ABSTENTIONS**

McIntosh, Mrs Lyndsay (Central Scotland) (Con)

**The Convener:** The result of the division is: For 2, Against 4, Abstentions 1.

*Amendment 101 disagreed to.*

### **Section 7—Debt payment programmes: power to make further provision**

**The Convener:** Amendment 102, in the name of Tommy Sheridan, is grouped with amendment 112. Is another member willing to move amendment 102?

**Mr Gibson:** I will again do an impersonation of Mr Sheridan, who unfortunately is in the High Court this morning. Amendment 102 is a straightforward amendment to ensure that regulations are introduced to oblige creditors to insert information in correspondence to alert debtors of the right to make an application under part 1 of the bill. The Executive has supported requirements for notification in, for example, the Mortgage Rights (Scotland) Act 2001, which



Cathie Craigie introduced. The provision would be consistent with previous legislation.

I move amendment 102.

**Karen Whitefield:** The intention of amendment 112 is to give ministers a specific power to impose a duty on creditors to inform debtors of their right to make an application under the bill; that would direct the debtor to a debt arrangement scheme at an early stage. I agree that there is some merit in Mr Sheridan's amendment 102, but I do not think that it goes far enough. There is a problem with the wording, which means that it would go into the bill at the wrong place. It is essential that debtors are informed of their right to make an application. If creditors are to be obliged to do that, there should be a penalty for not complying with that obligation.

There is also a technical point. It is my understanding that section 7(1) describes the general areas that the regulations will cover and that section 7(2) lists specific types of things that will fall within those general areas. The duty that we want to place on creditors should be included in the list in section 7(2), because it is one of the conditions with which creditors must comply under section 7(1)(b). I hope that other members will agree that amendment 102 should be withdrawn, because it does not go as far as it should. Although amendment 112 is intended to serve the same purpose, it is a much wider amendment. I hope that members will agree to amendment 112.

**Dr Simpson:** Mr Gibson will be delighted to hear that I am not going to suggest that amendment 102 is premature. However, amendment 102 is flawed, in that it would be inappropriate to place it in section 7(1). Section 7(1) enables such a condition, along with all other conditions that are placed on creditors, to be included in the regulations. The imposition that amendment 102 contains, which would be one of many, might be considered to be sufficiently important to merit inclusion in section 7(2), which lists specific classes of provision within the general principles that are outlined in section 7(1).

Amendment 112 is preferable because it would place the relevant condition in section 7(2), if the committee felt that it should be there. Amendment 112 is clearer, in that it indicates that the regulations may make provision about the circumstances in which notice needs to be given. Therefore, we recommend that amendment 102 should be withdrawn and that amendment 112 should be agreed to.

**Mr Gibson:** I am happy to accept the minister's recommendation, as I agree that amendment 102 is in the wrong place.

*Amendment 102, by agreement, withdrawn.*

**The Convener:** Amendment 43 is grouped with amendment 47.

**Robert Brown:** Amendment 43 calls on the committee to agree to leave out section 7(2)(c), which concerns public notice of applications and the approval of applications. I cannot see the purpose of public notice of applications that seek to approve or to vary a debt repayment programme, and I am not sure that such notice is desirable.

I agree that we need to have a public register, to which creditors who are not party to the original arrangements can refer to find out whether a debt arrangement scheme is in operation, but it is demeaning, embarrassing and unnecessary to give public notice of applications. If we are talking about a notice in the *Edinburgh Gazette*, that might not matter, because no one reads it, but a notice in *The Herald* would be different. We need to know what is envisaged. The proposed method does not seem to be satisfactory.

Amendment 47 deals with the other side of the coin. It stresses that the register that is to be set up should be a public register, so that interested parties can refer to it. I would be interested to hear the minister's view on that. There are many registers in Scotland, such as the Land Register of Scotland, the Register of Sasines and books of council and session. Arrangements for access to those registers are well known. It is important that the register that is set up is a public register.

I move amendment 43.

**Cathie Craigie:** I have concerns about section 7(2)(c) and I am sympathetic towards amendment 43. I am not sure how public notices would be made public. A notice in *The Herald* or *The Scotsman* would be a shocking way to go and I would not want that to happen. I agree that there must be a way of finding out whether a person is on the list when an attachment is sought, but I do not think that the information should be displayed by public notice. We should protect people from that. I am interested to hear the minister's reasons why section 7(2)(c) was included in the bill.

**Mr Gibson:** I agree fully with Cathie Craigie and Robert Brown about amendment 43. Making public notice of applications for debt payment programmes could cause considerable embarrassment to, and bring humiliation on, individuals. I will support amendment 43 unless the minister comes up with an extremely good reason why I should not do so.

I am a bit concerned about amendment 47, which would require the register to be public. I think that the way in which the bill is currently drafted is more appropriate, but I will listen to what the minister has to say about access to the register.

**Dr Simpson:** Amendment 43 would delete the enabling power of section 7(2)(c) to make provision in the regulations about public notice of approval of applications. Notice by inclusion in an accessible register is essential if creditors are to be made aware of the fact that they are prohibited from carrying out diligence. It will be necessary to have a means of alerting any creditors who may have been omitted so that they can be included. We absolutely do not have in mind advertising each application in the newspapers. Subject to the conclusion of the consultation, inclusion in a public register should be enough.

I acknowledge and understand the committee's concerns about debt being publicised. If the enabling power to make regulations is deleted by amendment 43, we will be unable to do that. Perhaps the provision in section 7(2)(c) needs adjusting rather than deleting. We could consider suggesting an alternative formulation at stage 3.

Given the purposes of the register, amendment 47 seems unobjectionable. Again, I acknowledge and understand the committee's concerns about the word "public" in respect of such a register. We need to achieve a situation in which people do not have easy access to the register on a casual basis. People should have a purpose for accessing the register. It will not be easy to achieve that while making it sufficiently easy for creditors to gain access to the register.

We recognise that there is a slightly difficult problem, but we recommend that amendment 43 should be withdrawn. We would accept amendment 47, which would state that the register would be public.

**Robert Brown:** This may seem a contrary attitude to take, but I am inclined to press amendment 43 and not to move amendment 47. There is an issue about whether the register should be public or semi-public, so I would be happy for the minister to reconsider the phraseology of section 7(2)(c). However, I am bound to say that I think that section 7(2)(u), which provides for the establishment of a register—be it public or otherwise—is more than adequate in giving the Executive the powers that it needs to deal with the issue.

Against the background of the committee's well-founded objections to the phraseology of "public notice of applications"—that is what section 7(2)(c) says—I will press amendment 43. If amendment 43 is agreed to, I accept that the minister may want to come back at stage 3 if he thinks that such a move would leave inadequacies and that further changes need to be made.

I will press amendment 43.

*Amendment 43 agreed to.*

*Amendment 44 not moved.*

*Amendment 111 moved—[Cathie Craigie]—and agreed to.*

*Amendment 103 moved—[Mr Kenneth Gibson].*

**The Convener:** The question is, that amendment 103 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

Fabiani, Linda (Central Scotland) (SNP)  
 Gibson, Mr Kenneth (Glasgow) (SNP)

**The Convener:** The result of the division is: For 0, Against 5, Abstentions 2.

*Amendment 103 disagreed to.*

**The Convener:** Amendment 45 is grouped with amendment 45A.

**Robert Brown:** Amendment 45 raises a slightly different issue, on which I will be interested to hear the comments of committee members and the minister. The amendment concerns what a debtor is able to do during the currency of a debt arrangement scheme. The debtor's ability to incur further debt or to enter into credit arrangements is important. Perhaps the issue could be dealt with in other ways—for example, by debt advice arrangements involving a money adviser. However, because the whole concept of the debt arrangement scheme would be undermined, we do not want new creditors coming in as the debt arrangement scheme proceeds. That will have to be restricted in some way.

Looking again at amendment 45, I realise that the words "further debt" could lead to difficulties, because they could refer to council tax or to various other accounts. I would like to hear members' comments, but I hope that the minister will give a reasonable response on the principle behind amendment 45.

I move amendment 45.

10:15

**Dr Simpson:** Amendment 45A supplements amendment 45 by clarifying what is intended by the debtor's ability to incur further debt. Amendment 45 would add an enabling power to make further provision in regulations on restricting the debtor's ability to incur further debt or to enter into credit agreements during the currency of a debt payment programme.

This issue is probably already covered by paragraphs (b) and (c) of section 7(1). However, the Executive would have no objection to the inclusion of the additional provision via amendment 45, subject to its being supported at the conclusion of the consultation on the issue, and subject to its amendment by amendment 45A. Either way, detailed provision in the regulations would be subject to the approval of the committee and the Parliament.

We do not want to be unduly restrictive by suppressing someone who is managing their affairs well but who needs a small amount for essentials. Such a situation was referred to by Karen Whitefield in an earlier debate. I understand that, in voluntary practice, money advisers calculate the surplus income that is available for the repayment of debts, allowing for a small amount of leeway so that unexpected eventualities can be covered. We want to take a sensible and workable approach, building on the success of existing arrangements. It is in everyone's interests that the programmes, once set up, should be maintained.

If amendment 45 is agreed to, I hope that the committee will also support amendment 45A.

I move amendment 45A.

**Karen Whitefield:** I understand the intention behind amendments 45 and 45A, but I have slight concerns. It is difficult to prevent people from incurring further debts, especially when they have fixed and limited incomes. I would have reservations if somebody who was participating in a debt repayment scheme could not make a legitimate application to the social fund to get money to buy, for example, a new cooker, or if they could not buy a new school uniform from a catalogue for their child. People on low incomes find it easier to pay things off in small amounts.

We may want to encourage people to give money to a credit union so that they can build up a little fund to fall back on, but people often do not have any extra left over to allow them to do that. They may not be very good at managing their finances and we need to encourage them and support them so that they can manage their finances better. There has to be some balance.

**Cathie Craigie:** I understand where Robert Brown is coming from with amendment 45, but I do not really know where the Executive is coming from with amendment 45A. It would be very difficult for us to stop people incurring further debt. How would we deal with somebody who did not pay their council tax? How would we deal with somebody who incurred further debt with their fuel suppliers? I do not think that the wording of amendment 45 is right.

The issue has been flagged up and we know

that it must be debated further; we could do so before stage 3. I ask Robert Brown to withdraw amendment 45 so that we can go into the matter in more detail.

**Mr Gibson:** My concern is that the proposal would be unworkable in practice. I would therefore like amendment 45 to be withdrawn.

We might be in danger of opening a can of worms. I do not know how we could ensure that the bill would work effectively with this provision in it, as it would mean that some people would face debt restrictions that would force them to go to loan sharks, which would place them outside the system.

The proposal must be rethought, because it might not be workable in practice and it might make the situation worse rather than better.

**Dr Simpson:** I have listened carefully to the discussion. Some good points have been made about the possibility of involving a credit union or a social fund.

Amendment 45A clarifies amendment 45. The debts that Cathie Craigie talked about should be taken into account in the debt arrangement scheme by the money adviser. When the money adviser draws up a programme, they will take into account existing or continuing debts, such as fresh debt that is being incurred by way of council tax and fuel bills. Amendment 45 tries to ensure that the debtor will not knowingly take on new debt or engage in new credit arrangements. As I have indicated, the matter could be dealt with elsewhere—for example, by placing it in the regulations—but including it in the bill would clarify the point that debtors are expected not to take on fresh debts, which are separate from increasing, continuing debts.

**Robert Brown:** On a point of order, convener. Would it be helpful if I expressed my attitude to what has been said about my amendment?

**The Convener:** That is not a point of order, but you can express your attitude quickly, if you like, and I will rule you out of order afterwards.

**Robert Brown:** That would be helpful.

Like the minister, I think that many interesting and valid points have been made. Subject to the understanding that this issue will be considered again, I agree that there is the nub of an issue. There is the question of getting the system right and ensuring that it is workable.

**The Convener:** I am sorry, Robert. I know what you are trying to do, but we must work according to the procedure. I have been given a row by the clerk for being too flexible.

The question is, that amendment 45A 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)  
 Fabiani, Linda (Central Scotland) (SNP)  
 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 7, Abstentions 0.

*Amendment 45A disagreed to.*

**Robert Brown:** Amendment 45 deals with a power to make restrictions on the debtor's ability to incur further debt, not necessarily to forbid that ability in all circumstances. It was deliberately intended in that way.

Kenny Gibson made a point about people going to loan sharks. Oddly, however, I think that the situation would be the other way round. People will go to loan sharks in desperation if no other course is open to them. The more reputable creditors will not extend credit if a debt arrangement scheme is in place. To some extent, therefore, the loan shark issue is an irrelevance.

Having said that, the points that Kenny Gibson, Cathie Craigie and Karen Whitefield made are valid and I agree that the matter should be considered again. It would be helpful if the minister would do that and let us have his view before stage 3. I still think that the issue of future credit must be taken into account, as well as the issues around it such as whether the system would be workable and what the associated penalties would be.

*Amendment 45, by agreement, withdrawn.*

*Amendment 64 not moved.*

*Amendment 46 moved—[Robert Brown].*

**The Convener:** The question is, that amendment 46 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Brown, Robert (Glasgow) (LD)  
 Fabiani, Linda (Central Scotland) (SNP)  
 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 3, Against 4, Abstentions 0.

*Amendment 46 disagreed to.*

**The Convener:** Amendment 104, in the name of Kenny Gibson—[*Interruption.*]

**Mr Gibson:** Excuse me, I am having one of my many coughing fits.

10:25

*Meeting suspended.*

10:27

*On resuming—*

**The Convener:** I call the meeting back to order. Amendment 104 is in a group on its own.

**Mr Gibson:** Thank you for your care and understanding, convener.

Amendment 104 seeks to remove Scottish ministers' powers to regulate the collection and sale of a debtor's assets within the debt repayment programme. According to the explanatory notes that accompany the bill, the purpose of the debt arrangement scheme is

"to enable multiple debts to be assessed with the support of money advisers and paid in accordance with a debt payment programme over a period of time."

Amendment 104 would mean that, during participation in a debt arrangement scheme, enforcement action and sequestration action against the debtor would be prohibited. It is not appropriate to include powers to collect and sell assets to distribute to creditors under the scheme. Such powers of seizure and disposal of assets are harsher than those under other common forms of diligence, such as earnings arrestment, and would give creditors additional rights beyond those that currently exist. With the exception of summary warrant procedures, a creditor would have to go to court to prove the debt before considering action. As it stands, the bill will allow ministers to grant creditors powers to seize a debtor's assets without going to court.

I move amendment 104.

**The Convener:** No other members wish to contribute, so I call the minister.

**Dr Simpson:** Amendment 104 seeks to delete section 7(2)(l), which features an enabling power to make further provision in the regulations for the appropriate sale or disposal of assets, and for the distribution of the proceeds to creditors. The provision is not about seizure.

During consultation, views were sought on an option to realise particular assets and pay the proceeds into the scheme for distribution among creditors. Consequently, section 7(2)(l) was included in the list of powers for the regulations to

cover such matters, in the hope that it would be considered appropriate in the light of consultation.

The proposal was recommended in the Scottish Law Commission's 1985 report, which first recommended a debt arrangement scheme. The intention is to make the scheme more balanced towards creditor interests, which would otherwise be more likely to seek the debtor's sequestration. It is likely that the proposal would be feasible only in the relatively small number of cases in which debtors have substantial assets that can be sold and the proceeds used towards settlement of debts. No suggestions were made about the types of asset that might be covered, although views might have been expressed on that. If the option were to be considered appropriate, the exact manner in which it would operate would need to be worked out, included in the regulations and scrutinised by the committee. The provision would affect assets of substantial value—certainly not ordinary possessions—and would be part of a larger debt arrangement scheme.

It would be premature to delete section 7(2)(l) without awaiting the results of the consultation. I know how much Mr Gibson hates to hear me say that, but the consultation will provide further information that will allow us to produce appropriate regulations. Deleting section 7(2)(l) would be inappropriate.

**Mr Gibson:** My concern is—

**The Convener:** Can you wait until I call you?

**Mr Gibson:** The minister has finished.

**The Convener:** I will call you.

Thank you minister. I call Kenny Gibson.

10:30

**Mr Gibson:** Retaining section 7(2)(l) would create a back-door route to realising a debtor's assets without proof from a court action. The sale of a debtor's assets would undermine the purpose and benefits of the proposed repayment programme. Therefore, section 7(2)(l) should be deleted. We should not always wait for consultation. As was said last week, the analysis of the consultation should have been ready before this stage. It is not appropriate for ministers to hide behind consultation during discussion of amendments. I will press amendment 104.

**The Convener:** The question is, that amendment 104 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Fabiani, Linda (Central Scotland) (SNP)  
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 2, Against 5, Abstentions 0.

*Amendment 104 disagreed to.*

*Amendment 112 moved—[Karen Whitefield]—and agreed to.*

*Amendment 105 moved—[Mr Kenneth Gibson].*

**The Convener:** The question is, that amendment 105 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**

Fabiani, Linda (Central Scotland) (SNP)  
Gibson, Mr Kenneth (Glasgow) (SNP)

**The Convener:** The result of the division is: For 0, Against 5, Abstentions 2.

*Amendment 105 disagreed to.*

*Amendment 47 not moved.*

*Amendment 106 moved—[Mr Kenneth Gibson].*

**The Convener:** The question is, that amendment 106 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Fabiani, Linda (Central Scotland) (SNP)  
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 2, Against 5, Abstentions 0.

*Amendment 106 disagreed to.*

*Amendment 48 not moved.*

**The Convener:** Amendment 65 is in a group on its own.

**Karen Whitefield:** During evidence taking on the bill, concerns were expressed by a number of

money advice organisations about the debt arrangement scheme and access to it. Many members who spoke in the stage 1 debate raised that issue. Amendment 65 is an attempt to take on board those concerns and the concerns that were raised in response to the Executive's consultation. We accept that debtors who can contribute only small amounts to paying off their debts might be excluded. I believe that the vast majority of people want to make a real attempt to pay off their debts. People do not take on credit lightly, but, unfortunately, circumstances are sometimes outwith their control, which leads to difficulties.

It is important that the Executive takes on board all the consultation responses. I urge ministers, when they produce the regulations, to examine the legitimate concerns that money advice organisations have expressed. It is essential that the Executive devises terms that will enable as many people as possible to access the scheme.

The debt arrangement scheme proposals are—rightly—intended to build on existing voluntary repayment programmes. I appreciate that those voluntary systems do not yet provide mechanisms for distribution from people with low surplus incomes. I am encouraged by the Consumer Credit Counselling Service's recent pilot study on that. However, the amendment's intention is to provide a general power to undertake pilot studies. That general power will allow Scottish ministers to undertake a pilot to examine the concerns of those who have little surplus income and to do likewise for other parts of the debt arrangement scheme that might benefit from such an initiative.

The wide provision in amendment 65, which would allow pilot schemes to be established generally, is a useful additional tool for the debt arrangement scheme. Having discussed that with some money advice agencies, I know that they generally support the proposal. I ask the committee to support the amendment.

I move amendment 65.

**Dr Simpson:** I am conscious of the committee's desire to allow those who genuinely wish to pay their debts to do so, even if they are in straitened circumstances. That reflects the Parliament's wishes. If such schemes are to operate, they must be piloted. Karen Whitefield mentioned the CCCS pilot, but other money advisers are engaging in voluntary scheme pilots under which people make small payments. Amendment 65 would allow pilots to be undertaken and the Executive welcomes it.

**Karen Whitefield:** I am grateful to the Executive for accepting the amendment, which I will press.

*Amendment 65 agreed to.*

*Amendment 49 not moved.*

*Section 7, as amended, agreed to.*

## Section 8—Functions of the Scottish Ministers

**The Convener:** Amendment 2 is in a group on its own.

**Dr Simpson:** Amendment 2 is purely technical. As drafted, section 8(1) would allow ministers to delegate their powers to others to make subordinate legislation under part 1. That was never the intention. The Executive records its gratitude to the Subordinate Legislation Committee, which noted the need to clarify that provision. Amendment 2 will ensure that Scottish ministers cannot delegate those powers.

I move amendment 2.

*Amendment 2 agreed to.*

*Section 8, as amended, agreed to.*

## Section 9—Interpretation of Part

*Amendment 107 moved—[Linda Fabiani].*

**The Convener:** The question is, that amendment 107 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Fabiani, Linda (Central Scotland) (SNP)  
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 2, Against 5, Abstentions 0.

*Amendment 107 disagreed to.*

*Amendment 108 not moved.*

*Amendment 3 moved—[Karen Whitefield]—and agreed to.*

*Section 9, as amended, agreed to.*

## Section 10—Attachment

**The Convener:** Amendment 50 is grouped with amendment 51.

**Robert Brown:** The substantial amendment in the group is amendment 51, which deals with summary warrants. The committee will remember that one of the clear points that emerged from our inquiry into the abolition of poindings and warrant sales was that failure to pay council tax is responsible for the largest number of diligences involving poindings and warrant sales. I was surprised by the extent to which that is the case. It is a recent phenomenon, in response to difficulties with the poll tax and so on.

For a while, many people have had concerns about the way in which summary warrants may develop. Instinctively, they feel that the system is not quite right. Payment of taxes—charges to the Inland Revenue as well as council tax—is not usually a matter of huge debate or controversy. For that reason, certification without the need to go to court is not necessarily inappropriate.

We are trying to put in place a new arrangement that ensures that debtors are encouraged to enter into debt arrangement schemes to do something about their problems. If there is to be diligence under a summary warrant, in the form of attachment, we need to consider whether appropriate and formal notice will be given. I am aware that councils churn out notices with red lines, underlined passages and statements threatening the addition of 10 per cent to charges or other nasty things if council tax is not paid. There is a difference between those notices—which resemble many creditor letters—and the sort of formal notice that is given by a charge for payment served by a sheriff officer, with the associated documentation.

I would like the minister to comment on this issue. I know that it is part of a wider issue, but I am not satisfied with the current arrangements and believe that improvements could be made.

I move amendment 50.

**Dr Simpson:** Part of the impetus for amendments 50 and 51 may be to ensure that a summary warrant holder has to go through the same procedures as other creditors before he can enforce his warrant. However, it is important to note that all the procedures in part 3 for exceptional attachment orders will apply to someone who is seeking to execute a summary warrant in domestic cases, in the same way as they apply to any other holder of a decree. The domestic debtor will enjoy exactly the same protections, regardless of the type of creditor.

Amendments 50 and 51 assume that the debtor will not know about the debt without having received the charge to pay. That is not correct. Central and local government—the only creditors that can use summary warrants—have a statutory duty to notify debtors about their liability before a summary warrant is obtained. In practice, the debtor will be aware of the existence of the debt by other means.

Amendments 50 and 51 are unnecessary for domestic cases because it is not competent for someone to execute an exceptional attachment order without first going through all the part 3 provisions. Therefore, in the main, only non-domestic cases would be directly affected.

The principal effect of the amendments would be to prevent summary warrant holders for

commercial debt from proceeding with attachment without first going through an additional layer of procedure. That would have a significant impact on local and central Government debt enforcement by the likes of the Inland Revenue, HM Customs and Excise, and local government for business rates. There would be an impact on taxpayers and reserved areas would be affected.

The amendments would change the way in which diligence is authorised under summary warrants. An attachment executed under summary warrant could not proceed without a charge to pay being served on the debtor, and an anomaly would be created between the way in which summary warrants authorise attachment and the way in which they authorise other diligences.

The Executive has consulted—separately, in the consultation paper “Enforcement of Civil Obligations in Scotland”—about the way in which any form of diligence should be conducted on the authority of a summary warrant. That is a separate and much wider issue.

For those reasons, we recommend that amendments 50 and 51 be rejected.

**Robert Brown:** Although Richard Simpson is right to say that part 3 contains arrangements to protect the debtor under the provisions on the exceptional attachment order, the attachment does not apply, as the minister said, only to non-domestic cases, but to domestic cases where items outside the house are attached—the garage or the car, for example. There are issues with that. In fairness, I think that Richard Simpson realises that.

I am conscious that specific provisions for the exceptional attachment order would create an anomalous position with the general summary warrant procedure. Against the background of the consultation that is taking place on the civil diligence arrangements, I am prepared to withdraw amendment 50 and not to move amendment 51. However, I reserve the right to return to the issue when we consider civil diligence in due course.

**The Convener:** Robert Brown has indicated that he wishes to withdraw amendment 50. Do members agree that he may do so?

**Members:** No.

**The Convener:** In that case, the question is, that amendment 50 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Fabiani, Linda (Central Scotland) (SNP)  
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 2, Against 5, Abstentions 0.

*Amendment 50 disagreed to.*

*Amendment 51 moved—[Mr Kenneth Gibson].*

**The Convener:** The question is, that amendment 51 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Fabiani, Linda (Central Scotland) (SNP)  
 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 2, Against 4, Abstentions 1.

*Amendment 51 disagreed to.*

10:45

**The Convener:** Amendment 109 is in a group on its own.

**Linda Fabiani (Central Scotland) (SNP):** Amendment 109, which relates to page 6, line 13, is fairly straightforward. The amendment proposes an addition to section 10(5), which defines the debt advice and information package. Currently, subsection (5) says:

“‘debt advice and information package’ means a document or bundle of documents containing such information (including information regarding the availability of money advice within the debtor’s locality)”.

Amendment 109 would add “free legal and independent” before “money”. That would ensure that, when a debt advice and information package was sent out to debtors, it would give details of where free legal advice and independent money advice could be obtained. In other words, it would answer the requirement for choice and the possible need for legal advice to challenge or query the validity of the debts as well as to find out the best way to meet the debts under a debt arrangement scheme.

I move amendment 109.

**Robert Brown:** Amendment 109 is not necessary or particularly helpful. The availability of

money advice is the central issue. There are legal provisions, and all sorts of other things are available. I am on record as a strong supporter of the availability of independent advice. However, the availability of that advice, rather than information about its availability, is the necessity.

Amendment 109 concerns the debt advice and information package. I am not sure that it aids matters to complicate the information that is sent out. The bigger and more complex the package that goes out, the less likely it is that debtors will do something with it. The straightforward “availability of money advice” in the bill as introduced is the proper way to tackle the matter. I am not favourably disposed towards the amendment.

**Dr Simpson:** Amendment 109 would require information on the availability of free legal advice as well as independent money advice to be given to debtors in the debt advice and information package. The amendment goes too far for the purposes of the bill. One of the key policy imperatives behind the bill is to provide access to free and freely available money advice to those who want and need it. To be user-friendly, the package needs to be succinct and short. If the package had to detail the availability of free legal advice as well, that would be a much bigger exercise and would be for wider purposes than the aim of the bill.

We have discussed the independence of the money adviser and dealt with a number of issues that relate to that. In particular, we discussed the matter in relation to amendment 38. We do not need to extend those discussions. We have gone some way to meeting the committee’s concerns about the money adviser taking on confusing roles. We do not require to reiterate that on amendment 109. We therefore recommend that amendment 109 should be rejected.

**Linda Fabiani:** I intend to press amendment 109, because I feel that it represents a fairly simple addition to section 10. Free legal advice is available; the effect of the amendment would merely be to point people in the right direction and to show where that free legal advice could be obtained.

**The Convener:** The question is, that amendment 109 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Fabiani, Linda (Central Scotland) (SNP)  
 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 2, Against 5, Abstentions 0.

*Amendment 109 disagreed to.*

**The Convener:** Amendment 4 is grouped with amendments 5, 6, 7 and 8.

**Dr Simpson:** I seek the committee's approval of this group of technical amendments to section 10. The amendments are designed for two purposes. First, they allow a particular item to be included within the definition of "document of debt". As drafted, the provision covers a bill of exchange protested for non-payment by a notary public that has not been registered in the register of protests or in the books of the competent sheriff court. Registration is necessary to enable an extract of the registered bill of exchange to be obtained, which constitutes a warrant authorising diligence. The amendment is necessary to exclude such documents from the definition of "document of debt".

Secondly, the amendments allow the definition of "document of debt" to be modified. The omission was noted by the Subordinate Legislation Committee.

Amendments 4 to 8 will ensure, collectively, that the provisions in the bill work effectively.

I move amendment 4.

*Amendment 4 agreed to.*

*Amendments 5 to 8 moved—[Dr Richard Simpson]—and agreed to.*

*Section 10, as amended, agreed to.*

*Section 11 agreed to.*

### **Section 12—Times when attachment is not competent**

**The Convener:** Amendment 110 is in a group on its own.

**Mr Gibson:** Section 12(1) states:

"It is not competent to execute an attachment on a Sunday, New Year's Day, Good Friday, Christmas Day or such other day as may be prescribed by Act of Sederunt."

Amendment 110 seeks to recognise in the bill that Scotland is a multicultural society, of many faiths and none. It seeks to ensure that the beliefs of non-Christians are taken cognisance of when an attachment is sought and that no action is taken on days special to them.

I move amendment 110.

**Karen Whitefield:** Amendment 110 has some merit, particularly if we are to be seen as an

inclusive society in taking account of people's different religions. While I do not believe that we can accept the amendment—I will explain why shortly—I think that the Executive needs to consider the issue, and I hope that the Executive could come back with a suitable solution at stage 3.

The reason that I do not think that the amendment is acceptable relates to its inclusion of days of

"personal significance to the debtor",

which I think is too wide a provision. Somebody could claim that every day of the year was of personal significance to them. Furthermore, there is no definition of "personal significance". I do not agree with that wording, although I think that there is some merit in the amendment's religious aspect, which I ask the Executive to consider.

**Linda Fabiani:** To me, this is a straightforward equalities issue and is about showing respect for everyone who lives in this country.

**Robert Brown:** I come to this in a slightly different way. I understand that the phraseology reflects the existing restrictions on certain types of diligence in the previous law. Obviously, that goes back in time.

I understand and accept Kenny Gibson's point, but I have two objections. First, it is bad law to have an arrangement about a procedure that depends on people's personal situations. Specific days would have to be identified or the whole thing would become unmanageable and unworkable.

The phrase

"known to be of religious or personal significance to the debtor"

seems to provide an opportunity for someone who is being chased for a debt to say that any day is a particularly significant day for them. I do not understand how that could work.

My second objection is more fundamental. The days that are specified—Good Friday and Christmas day—are not included in the bill because of their religious significance. I do not think that new year's day has particular religious significance, except perhaps in Scotland. Those days are specified because they are public holidays, during which there might be difficulty in obtaining legal advice or assistance, or money, or in going to the bank. There are various practical reasons for their inclusion.

Perhaps the list of days should be extended or altered. There is an issue to be considered, but it is about finding an objective way of ascertaining whether there are practical reasons for including certain days that have nothing to do with religion or with recognising one person's faith. Perhaps

section 12 needs to be modernised, but I do not believe that Kenny Gibson's amendment 110 is the way to do it. I hope that the minister will take on board those two points.

**Cathie Craigie:** Had we reached amendment 110 last week, I might have been tempted to support it. However, in considering the issue and trying to come up with an amendment to amendment 110, I found it was much more difficult than I had thought.

At first, I thought that the bill was very Christian and that it did not consider the multiple cultures and the many different religions that we have in Scotland. However, in thinking the matter through and doing a wee bit of research, I found that the wording in the bill reflects the wording of other legislation under which we have to operate. I understand that the wording reflects the Debtors (Scotland) Act 1987 and that it is intended to reflect national holidays rather than religious holidays, as Robert Brown pointed out.

Some people might criticise the wording for not being as inclusive as it should be. I ask Kenny Gibson not to press amendment 110, but to allow discussions to take place between now and stage 3 so that we can come up with a wording that will reflect what the committee wants.

We should remember that the bill has been considered by the Equal Opportunities Committee. I do not know whether that committee considered this aspect in detail, but it did not highlight the issue of the wording not including the whole of Scottish society.

**Dr Simpson:** I understand where Mr Gibson is coming from, and the committee's desire to have modern legislation that reflects a multifaith community, but Robert Brown is correct in saying that the days that are listed are standard holidays rather than religious days. However, the way in which they appear in the bill makes it look as though they are religious holidays. That is particularly true of Good Friday and Christmas day.

Amendment 110 is not sufficiently specific and would be unworkable or meaningless in practice. We would have been well disposed towards amendments on the provision and had, indeed, encouraged suggestions. However, it is highly unlikely that creditors or officers would ever have any knowledge of days of religious—or, in particular, personal—significance to the debtor. Even if it was known that someone was of particular religious or ethnic origin, it is possible that they would not be practising their religion and that would have to be determined. The days might, therefore, not be of special significance to that debtor. In any case, who could say what would be of significance to someone—a birthday, an

anniversary or a child's birthday? Where would we stop the process of determining a day's being of personal significance to the individual, and how would we determine that?

If specific days were suggested that would be workable, the Executive would be interested in considering the matter. We would be happy to work with Kenny Gibson and the committee to deliver meaningful text as well as to meet his intention. Kenny Gibson may have some specific days in mind, and we would be happy to discuss them with a view to lodging an amendment at stage 3. An alternative action might be for us to leave simply the final part of the sentence, regarding days

"as may be prescribed by Act of Sederunt."

That would allow us to determine by act of sederunt what days were appropriate.

Another possibility would be for us to discuss the principles on which the exclusion should operate and include those in the bill. I accept that we have more work to do and I welcome the fact that amendment 110 has been lodged. It is, therefore, with some regret that I recommend that amendment 110 should be withdrawn or disagreed to, as it is not sufficiently specific and would be unworkable in practice.

11:00

**Mr Gibson:** I am glad that amendment 110 has provoked some discussion. I have just heard from Lyndsay McIntosh that the Equal Opportunities Committee did not appear to notice section 12. The importance of amendment 110 is not in the wording, but in the fact that it highlights the issue that Scotland is a changing and evolving society. Cathie Craigie made an important point. Last week, she was trying to amend my amendment, but she, like me, had difficulty in getting the wording right. I included the phrase "personal significance" because, without it, the exclusion would apply only to people who had a religious belief, and many people—including members of the committee—do not have a religious belief.

I am prepared to withdraw the amendment in the hope that the Executive will consider amending section 12(1) at stage 3. I am willing to work with other members to create an amendment on which we can all agree.

*Amendment 110, by agreement, withdrawn.*

*Section 12 agreed to.*

*Sections 13 and 14 agreed to.*

### **Section 15—Power of entry and valuation**

**The Convener:** Amendment 113 is grouped with amendment 117.

**Mr Gibson:** Amendment 113 has been lodged because there is no reference in section 15 to the officer's being accompanied by a witness. We believe that it is of the utmost importance that an officer is accompanied by a witness to corroborate, among other things, the execution of diligence.

Amendment 117 is along similar lines and is dependent on amendment 113. It is also on the subject of corroboration.

I move amendment 113.

**Dr Simpson:** The presence of a witness in accompanying an officer during the carrying out of the procedures for executing an attachment will be specified in the rules of court that are to be made under the bill. An act of sederunt has been drafted, in line with the bill as it develops, under the responsibility of the Sheriff Court Rules Council. Rules of court will come into force from the date of royal assent, so that the necessary procedural arrangements will be in place. I confirm that the draft rules reflect the need for a witness. There is, therefore, no requirement to include such provision in the bill. The rules of court will provide generally for procedural matters in relation to attachment. It would be undesirable to provide specifically for some procedural matters in the bill and to omit others. Accordingly, I ask that amendment 113 be withdrawn and that amendment 117 be not moved.

**Mr Gibson:** Given what the minister has said, I am happy to seek leave to withdraw amendment 113 and not to move amendment 117.

*Amendment 113, by agreement, withdrawn.*

**The Convener:** Amendment 114, in the name of Karen Whitefield, is grouped on its own.

**Karen Whitefield:** Amendment 114 has two main purposes, which concern increasing protection of the debtor. Deleting the words that say that the debtor must make the application if he thinks that the valuation is too low would allow the sheriff to reach that decision if his or her information suggested that that was the case. It would not be up to just the debtor to act; the sheriff could intervene if the situation did not look right.

If a debtor wants to make such an application, the amendment makes it much clearer when the 14-day period starts. It is easier for him or her to know when the attachment took place, rather than when the officer of the court made a report of it.

I move amendment 114.

**Dr Simpson:** The Executive agrees that amendment 114 is sensible and will support it.

**Karen Whitefield:** I am grateful to the Executive for its support and I will press the amendment.

*Amendment 114 agreed to.*

*Section 15, as amended, agreed to.*

### **Section 16—Unlawful acts after attachment**

**The Convener:** Amendment 115 is in a group on its own.

**Mr Gibson:** Section 16(6) is interesting and puzzled me. It says:

"Any person (other than the creditor or the officer) who wilfully damages or destroys any article which that person knows has been attached is acting in breach of the attachment."

That suggests that it is lawful for the creditor or officer of court to damage wilfully or destroy attached articles. Amendment 115 would delete the words

"(other than the creditor or the officer)"

so that no one can wilfully damage or destroy any article under the bill.

I move amendment 115.

**Dr Simpson:** Section 16 prohibits the removal, sale, gifting or other disposal of attached articles and their wilful destruction or damage by the debtor or a third party when in their possession. That applies in the period after the assets have been attached, but have not yet been removed for auction. The section's purpose is to prevent attempts to defeat an attachment.

The possession aspect is relevant. Neither the creditor nor the officer is in possession of the attached articles during the period concerned, so the legal meaning or consequences of the section would not be affected by deletion of the phrase in brackets that the amendment would remove. The amendment would make the situation clearer. Accordingly, we will support amendment 115.

**Mr Gibson:** I am pleased that the minister accepts the amendment as a point of clarification.

*Amendment 115 agreed to.*

*Section 16, as amended, agreed to.*

### **Section 17—Release of mobile home from attachment**

**The Convener:** Amendment 116 is in a group on its own.

**Cathie Craigie:** Amendment 116 deals with mobile homes. The amendment would apply when a mobile home that the debtor owned was attached. The amendment would ensure that someone else who lived in that home was made aware of the attachment and the threat that they might lose their home.

If the occupier of the mobile home did not receive notice, they would not know about the

attachment. We have discussed under previous bills how the first that such people know of the situation is when someone removes their home. If amendment 116 is agreed to, such people will be given notice and will be able to take action to have the attachment removed or to make other arrangements.

I move amendment 116 and ask members to support it.

**Dr Simpson:** Amendment 116 is necessary. It would ensure that someone who might be affected by the bill is given notice and can take the action that section 17 allows. The amendment is welcome and the Executive agrees with it.

**Cathie Craigie:** I have nothing further to say on amendment 116. I want to press the amendment.

*Amendment 116 agreed to.*

*Section 17, as amended, agreed to.*

### **Section 18—Report of attachment**

*Amendment 117 not moved.*

*Section 18 agreed to.*

**The Convener:** We also need to consider sections 19 to 25.

**Mr Gibson:** My understanding was that we would go up to only section 20 today, which is why I lodged no amendments to the following sections.

**The Convener:** I ask the clerk to clarify what was agreed.

**Jim Johnston (Clerk):** There was an announcement in the business bulletin and it was agreed that the committee would consider up to the end of part 2—which is up to section 44—on the second day.

**Mr Gibson:** When I spoke to the clerk last week, he said that we would go up to section 20.

**The Convener:** We cannot have a debate about that now. It is clear from the note that members were given that we would go up to the end of part 2.

*Sections 19 to 25 agreed to.*

**The Convener:** We will now have a 10-minute suspension.

11:11

*Meeting suspended.*

11:24

*On resuming—*

### **Section 26—Notice of public auction**

**The Convener:** We will recommence consideration of the bill. Amendment 9 is grouped with amendments 10, 11 and 16.

**Dr Simpson:** This is a group of technical amendments that will allow auctions to be held in places that are not auction rooms. The amendments address a practical difficulty pointed out by the Society of Messengers-At-Arms and Sheriff Officers.

Some assets, such as heavy plant or machinery, would, where it were possible, be difficult and expensive to relocate to an auction room for a sale. The amendments give the officer who is authorised to arrange the auction discretion to decide when and where an alternative place of auction is appropriate. Inevitably, such situations will arise only in cases that do not involve domestic premises. However, for the avoidance of doubt, the amendments rule out the possibility of the alternative location being a home. The amendments will also allow assets that are attached along with those that it is impractical to take to an auction house to be auctioned at the alternative location to minimise costs and to rule out the need for two auctions.

I move amendment 9.

**Robert Brown:** I seek clarification on the question of houses that are attached to businesses in some way. Are there difficulties in the definition of dwelling-house that might cause problems? I have no reason to think that there are difficulties, but the question crossed my mind as I looked at the amendments. For example, some tied dwelling-houses are part of larger premises.

**Dr Simpson:** The term “dwelling-house” is defined in section 44.

**The Convener:** Robert Brown asked a direct question and I want to clarify whether he wants to say any more or whether other members wish to contribute. If not, I ask the minister to wind up and to respond to the question.

**Dr Simpson:** My apologies, convener. Section 44 states that the definition of a dwelling-house does not include

“a garage, even although it forms part of the structure ... or ... other structures or buildings used in connection with the dwellinghouse”.

I think that that covers Robert Brown’s point. If he feels that there is a problem, he might want to consider an amendment at stage 3. We would be happy to discuss that with him. However, section 44 is fairly clear.

*Amendment 9 agreed to.*

*Amendments 10 and 11 moved—[Dr Richard Simpson]—and agreed to.*

*Section 26, as amended, agreed to.*

*Section 27 agreed to.*

### **Section 28—Cancellation of auctions**

**The Convener:** Amendment 12 is grouped with amendments 13 to 15.

**Dr Simpson:** Again, this is a group of technical amendments. Section 28 allows an auction to be cancelled on no more than two occasions, where the debtor and creditor have come to an arrangement for the repayment of a debt. Section 28(4) provides for any necessary subsequent resumption of the auction if the debtor defaults on the arrangement.

Amendments 12 to 15 give debtors an opportunity to respond to an allegation that they have breached an agreement made with the creditor. They provide that the sheriff will not make an order under subsection (4) to resume the auction without first giving the debtor the opportunity to make representations or, if they so wish, to be heard. That is an added debtor protection, which I am sure that the committee will welcome.

*I move amendment 12.*

*Amendment 12 agreed to.*

*Amendments 13 to 15 moved—[Dr Richard Simpson]—and agreed to.*

*Section 28, as amended, agreed to.*

*Section 29 agreed to.*

### **Section 30—Disposal of proceeds of auction**

*Amendment 16 moved—[Dr Richard Simpson]—and agreed to.*

*Section 30, as amended, agreed to.*

*Sections 31 and 32 agreed to.*

### **Section 33—Retention and availability of report of auction and auditor's report**

11:30

**The Convener:** Amendment 17 is in a group on its own.

**Dr Simpson:** Amendment 17 is another technical amendment, although it may appear to be somewhat more than that, as it deletes an entire section. We believe that section 33 is unnecessary. As it stands, it provides for the sheriff clerk to retain and make available the report of auction and auditor's report. There exists in any case a general requirement to retain sheriff court records. The provisions of section 33 effectively come under those sheriff court rules, and the amendment therefore removes section 33 so as to avoid unnecessary duplication.

*I move amendment 17.*

*Amendment 17 agreed to.*

*Sections 34 to 39 agreed to.*

*Schedule 1 agreed to.*

*Sections 40 to 43 agreed to.*

### **Section 44—Interpretation of this Part and Part 3**

**The Convener:** Amendment 18 is grouped with amendments 22 to 25 and 29.

**Dr Simpson:** This is another group of technical amendments. Amendments 22 to 25 are necessary to ensure a smooth transition between the two types of diligence, that is the transition between poinding and warrant sale stopping and attachment starting. They will allow the diligence of poinding and warrant sale to be completed if already started when the bill comes into force. That will apply only to premises that are not a dwelling-house and only until 31 March 2003.

Amendment 25 allows the types of diligence that are permitted by a summary warrant to be changed when poinding and warrant sale are abolished and attachment introduced. That is relevant to attachment in non-domestic premises only—it must be remembered that it will always be necessary to apply for an exceptional attachment order for domestic cases.

That is necessary because of the way in which summary warrants are granted under other legislation. Such warrants name the specific types of diligence that they authorise, whereas other types of warrant to do diligence simply authorise all lawful diligence.

Amendment 18 is required purely as a consequence to amendment 25. The attachment will be usable for the purposes of the proceeds of crime legislation, so that attachments may be used as a means of recovering the proceeds of crime.

Amendment 29 provides that, if that is done before an administrator or trustee is appointed under such legislation, their powers under that legislation will not be affected.

*I move amendment 18.*

*Amendment 18 agreed to.*

*Section 44, as amended, agreed to.*

### **Schedule 2**

#### **NON-ESSENTIAL ASSETS**

**The Convener:** Amendment 118 is in a group on its own.

**Cathie Craigie:** Yes. If you bear with me, I will get to the right page. Amendment 118 is an

amendment to schedule 2, in line 4 on page 34. It is to add to the list of essential items. The list includes a number of items that are essential for everyday use in the home, but it omits to mention equipment for drying clothes. I believe that it is required to include such things as tumble-driers that are used by families with young children, carers and everybody. Those should be considered essential items, I hope that members will agree.

I move amendment 118.

**Dr Simpson:** I agree that clothes-drying equipment should be on the exemption list. The list reflects—as the bill does elsewhere—the Scottish Law Commission's recommendations on exemptions. The bill should, therefore, include reasonable and sensible exclusions. No one has been able to suggest any further additions. The Executive asked key interest groups about the list in schedule 2 and hoped to get suggestions about other essentials, but it received none. The proposal is a good one and we agree with amendment 118.

Paragraph 5 of schedule 2 allows us to add to or remove articles from the list in future. That is a general power to keep the bill up to date with what is regarded as being essential in any household. We welcome amendment 118 as an addition to the bill.

*Amendment 118 agreed to.*

*Schedule 2, as amended, agreed to.*

**The Convener:** We now move into private session, as items 3 and 4 relate to committee housekeeping issues and item 5 relates to consideration of a draft report.

11:37

*Meeting continued in private until 11:55.*

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