SOCIAL JUSTICE COMMITTEE

Wednesday 30 October 2002
(*Morning*)

Session 1

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CONTENTS

Wednesday 30 October 2002

SOCIAL JUSTICE COMMITTEE
18th 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)

WITNESSES

Anna Donald (Scottish Executive Development Department)
Isabel Drummond-Murray (Scottish Executive Development Department)
Lindsay Manson (Scottish Executive Development Department)
Murray Sinclair (Scottish Executive Legal and Parliamentary Services)

CLERK TO THE COMMITTEE

Jim Johnston

SENIOR ASSISTANT CLERK

Mary Dinsdale

ASSISTANT CLERK

Craig Harper

LOCATION

The Chamber

Scottish Parliament

Social Justice Committee

Wednesday 30 October 2002

(*Morning*)

[THE CONVENER *opened the meeting at 09:45*]

Items in Private

The Convener (Johann Lamont): Welcome to this meeting of the Social Justice Committee. Item 1 is to ask members to agree that items 5 and 6 be taken in private. Item 5 relates to the committee's approach to a bill and item 6 relates to a draft report. Is that agreed?

Members *indicated agreement*.

Homelessness etc (Scotland) Bill: Stage 1

The Convener: Item 2 concerns the Homelessness etc (Scotland) Bill, for which members will note that we are the lead committee. We previously agreed to take evidence from Scottish Executive officials to inform our stage 1 report. I welcome the officials who are with us today: Isabel Drummond-Murray, Lindsay Manson, Anna Donald, Murray Sinclair and Catriona Hardman. Perhaps Lindsay Manson will make a brief opening statement before we move to questions.

Lindsay Manson (Scottish Executive Development Department): Members will see from the long title of the bill that its purpose is

"to make further provision about homelessness; to provide for the giving of notice to local authorities of proceedings for possession and enforcement of standard securities; to amend section 18 of the Housing (Scotland) Act 1988 in relation to recovery of possession of assured tenancies for non-payment of rent; and for connected purposes."

The committee will probably be familiar with the background to the bill, but I will briefly summarise how we reached this stage.

In 1999, ministers set up the homelessness task force, the members of which were drawn from a range of key bodies involved in dealing with homelessness. The task force's remit was to

"review the causes and nature of homelessness in Scotland; to examine current practice in dealing with cases of homelessness; and to make recommendations on how homelessness in Scotland can best be prevented and, where it does occur, tackled effectively."

The task force's first report made various proposals for initial changes to the homelessness legislation, which were implemented through part 1 of the Housing (Scotland) Act 2001. The act introduced a number of changes, including the requirement on local authorities to prepare homelessness strategies and to provide free advice and information on homelessness to any person in their area. That was done to address prevention and alleviation issues. A minimum package was also introduced, under which all homelessness applicants would receive temporary accommodation and advice and assistance. Those who are in priority need and are unintentionally homeless also became entitled to permanent accommodation.

The task force then went on to consider more fundamental changes, not just to legislation but across a wide range of areas that impact on homelessness. In total, the task force met 30 times. In February this year, it published its final report, which contained 59 recommendations, all of which were accepted by the Executive. The report was endorsed by the Parliament in March.

In May, we consulted further on five recommendations, which are being implemented through the bill. The expansion and eventual abolition of priority need is covered by sections 1 to 3 of the bill. Arrangements for applicants who have a priority need but are considered to be intentionally homeless are covered in sections 4 to 6. The suspension of local connection powers, which currently allow local authorities to refer an applicant to another authority, is covered by section 7. The requirement on landlords to notify local authorities of repossession action, which would allow early action to be taken, is covered by section 10. The recommendation that grounds for repossession should allow the sheriff discretion where third-party actions have played a part is covered by section 11.

In addition, in section 8 we have re-emphasised the importance of the needs of children, and in section 9 we have updated references to domestic violence. The bill's accompanying documents provide greater detail on each of the provisions and include a summary of some of the issues that arose from the consultation exercise.

It is important to emphasise that the proposals should not be viewed in isolation but should be seen as part of the on-going development of work to prevent and alleviate homelessness. Improving the homelessness legislation is the subject of just one section in the homelessness task force's final report. The other sections on housing policy, benefits, prevention of homelessness, effective responses and delivery are also key.

Effective homelessness strategies will be vital because they link with local housing strategies. Throughout the development and delivery of those strategies, it will be essential to achieve effective partnership working with other key bodies, such as NHS boards and the voluntary sector.

The remaining recommendations are being implemented by the Executive, local authorities and a range of partner organisations. Implementation of the recommendations is supported and monitored by the homelessness monitoring group, which reports to the minister. As with the homelessness task force, membership of the homelessness monitoring group is drawn from a cross-section of organisations with homelessness interests. The group has already begun its work and meets for the third time this afternoon.

An action plan for the delivery of each recommendation is being developed and progress is reported to the monitoring group. In addition, a range of mechanisms, including the improved collection of statistics, is being developed to ensure that the monitoring group has access to relevant and up-to-date monitoring data.

I hope that I have given a brief overview of how we have developed the bill and of the context in which it sits. We will be pleased to take questions.

The Convener: Before members ask their questions, I remind them that we have with us today Scottish Executive officials, not ministers, so the questions that we ask should be about the factual basis of the bill. If, at any stage, the officials feel that they have been asked a question that they cannot appropriately answer, we will not press them. We will simply ensure that those matters are pursued with the minister.

I am grateful for the overview that you have given. The policy memorandum states:

"partnership working, changing practices and a more strategic and effective use of resources are crucial to the effective implementation of the recommendations".

Will you explain what that means in practical terms and what outcomes have been achieved to date?

Lindsay Manson: In the first instance, the strategic approach to addressing homelessness has been acted on through the development of homelessness strategies by local authorities. Those strategies are currently being developed and the local authorities have been asked to submit them by the end of the financial year, in March 2003.

The guidance on the development of those strategies was drawn from the homelessness task force's report so, although there was early guidance for local authorities to begin to assess the issues and problems in their areas, the detailed guidance on strategies was developed after the task force's report was available and took account of the recommendations.

At an early stage, the task force flagged up the involvement of health boards in, for example, homelessness issues and the development of the homelessness strategies. A separate health and homelessness steering group has been established to oversee the development in health boards of health and homelessness action plans. Those plans have been coming into the Executive and have been discussed by the local authorities, the health boards and us. They will become integral parts of the homelessness strategies.

I am sorry; there was a second part to your question.

The Convener: What does

"partnership working, changing practices and a more strategic and effective use of resources are crucial to the effective implementation of the recommendations"

mean in practical terms and what outcomes have been achieved to date?

Lindsay Manson: There is certainly clear evidence of cross-working among local authorities,

voluntary organisations, health boards and others to develop homelessness strategies. There are already improvements in practices and in the responses. We are beginning to see more single assessments of homeless people, rather than homeless people being assessed individually by local authority housing departments, then by social work sections, then by the health boards. There are examples of that in Edinburgh, Glasgow and elsewhere.

The greater outcomes will come in the longer term as the strategies are fully developed and then implemented.

Robert Brown (Glasgow) (LD): It is fair to say that the bill's theme is legislative widening working in tandem with the assessment of resource implications. That is quite a difficult area because of the revolving-door syndrome. Beyond what is contained in the local authority housing strategies, what action has been or is being taken by the Executive to assess the national resource implications of the measures? What support will need to be given to help local authorities to assess the need and to deal with it?

Lindsay Manson: Initial funding was made available by the Executive to local authorities so that, in the first instance, they could carry out the assessment and develop the strategies. The funding was also made available to increase the availability of temporary accommodation so that local authorities could respond to their early expanded duties under the 2001 act.

At an early stage, the task force recognised that its vision had to be for the long term and could not be implemented overnight. It would simply be impossible to ensure that immediate resources were available. That is why the task force report set a 10-year target. That is also why it built into the 10-year target—as have been built into the bill—stages at which the availability of resources would be reviewed before the next stage in expansion was taken. Clearly, further resources have been made available through the spending review, which set out a line for taking forward the Executive's action on homelessness.

The monitoring group will have a strong role to play in assessing local authorities' readiness to respond. The monitoring group has made a commitment that expansion will not take place until it is clear that local authorities are able to respond.

Robert Brown: Is there a feel at this stage for the total resource implications of putting all of this in place? On a linked point, how does the bill play with the withdrawal of rough sleepers initiative funding, which I think will happen in a couple of years' time?

Lindsay Manson: The rough sleepers initiative funding has not been withdrawn but has now been transferred to local authorities' revenue support grant, so the funding will remain within local authorities' budgets and will be overseen by the local outcome agreements that we have reached with local authorities.

There is no absolute feel for the total cost. The task force report contains a mixture of things, some of which will cost more but some of which should be expected to identify savings once things are being done better. For example, research showed that repeat homelessness was a key area for local authorities. There is an expectation that, if we can respond more effectively first time round to people who present as homeless, there will be a reduction in the numbers who come back through the system. At the moment, people sometimes come back twice, three times, four times or more.

Throughout the period, work will carry on to allow the monitoring group to assess the extent to which the initial expansion of priority need adds to local authorities' burdens. It is not expected that it will add a great burden, because the group to which priority need was expanded was already covered in the code of guidance, so in the main we would expect local authorities to be accommodating them anyway. Before we expand each of the next phases, we will carry out an assessment of the implications.

Robert Brown: Obviously, it is difficult to assess the cost savings, but is there a feel for how great the percentage savings might be?

Lindsay Manson: No detailed analysis of the cost savings has been done. We will not have the information to do that until we receive the local authority assessments and strategies in March next year. That is why the expansion of the next phase of priority need is not expected to happen until 2006. That is also why the minister's statement will not require to be written until 2005. We will want to have the detailed information, which we know local authorities are collecting at the moment, so that we can make a proper assessment. Local authorities are collecting a fund of information that was not previously available centrally.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): You mentioned the on-going work of the homelessness monitoring group. How will the group report back to partner organisations, such as local authorities?

10:00

Lindsay Manson: The group has undertaken to submit regular reports. We would expect those to come out annually, roughly. We are not saying specifically that they will come out annually, because particular issues might come up that will influence the timing of the issuing of the reports.

The group will report to ministers, but will do so publicly, so the report will be available.

Between reports, it is important that the monitoring group obtains information from local authorities about the progress that is being made. This afternoon, the group will consider a paper on performance monitoring and the monitoring of actions. It will consider several mechanisms that either are in place or will need to be put in place to give the group the information that it will need to take decisions and to relate to local authorities and other parties.

Cathie Craigie: You referred to the enhanced rights and the consequent increase in applications under the bill, which the explanatory notes recognise. We have noted a recent rise in applications as people have become more aware of issues around homelessness. We all recognise that local authorities and registered social landlords will need more resources. How many additional houses will we need to build or modernise to accommodate the increase in demand, and indeed the increased expectations of homeless applicants and people on local authorities' transfer lists?

Lindsay Manson: We expect that the detailed information that we would need to answer that question fully will be contained in the homelessness and local housing strategies. Local authorities have been asked specifically to ensure a strong link between the two. The fact that there is a year's gap between the availability of the homelessness strategy and the availability of the local housing strategy will allow such an assessment to be made. We will seek a response from local authorities in their local housing strategies, taking into account their assessment of homelessness in their areas.

Cathie Craigie: So it is recognised that there will be a need. Obviously, there will be forward planning of the financial resources.

Lindsay Manson: Yes. There is a recognition that there will be a need—there is already a continuing need—for an increase in the supply and quality of housing and for an improvement in how current housing stock is used. It will be important for local authorities to consider not just the top-level number of the houses that they have, but where the appropriate houses for the nature of the problem that they have identified are.

Specifically, we are asking local authorities to consider the extent of youth homelessness in their area and whether the housing supply that they have identified is appropriate to address the problem. Is it, for instance, appropriate to put a young person in a peripheral estate alongside families, when they may make a better success of a tenancy much closer to the city centre or to other social networks? The issue is about the appropriate use of the current housing supply as well as about recognising the need for improved quality and supply.

Cathie Craigie: The bill adopts a different approach to the expansion of priority need from that outlined by the task force in its final report. The task force recommended a second stage of expansion of the definition of priority need, which could have included "other vulnerable groups" or individuals

"aged under 25 and those over 55".

What considerations resulted in the Executive's decision not to adopt that second stage of expansion of the definition of priority need?

Lindsay Manson: Principally, the decision was made in response to consultation responses, many of which said that age was not a measure of vulnerability and that there was therefore no reason why age should be taken as the second stage rather than anything else. Many respondents felt that it was better for the monitoring group to consider whether there were more appropriate vulnerable groups that could be included. There is still a commitment to expansion, but the question is what that expansion should be.

Cathie Craigie: The expanded definition does not include asylum seekers or refugees. Why not?

Lindsay Manson: I will ask Murray Sinclair to answer that.

Murray Sinclair (Scottish Executive Legal and Parliamentary Services): As I understand it, our policy is that the definition should be extended to cover refugees. However, as you know, asylum is a reserved matter, so the Parliament does not have competence in that regard, which is why the provision is not in the bill. Having said that, the policy is clear and the Scotland Act 1998 provides mechanisms to deliver that policy, notwithstanding the reservation of the power. Those mechanisms are often used to address this sort of problem. We are working with colleagues in Whitehall to investigate the best option for delivering that policy.

The Convener: I would like to pursue the question of priority need. Section 1(3) would insert the following words in the Housing (Scotland) Act 1987:

"by reason of the circumstances in which the person is living, the person runs the risk of sexual or financial exploitation or involvement in the serious misuse of alcohol, any drug … or any volatile substance".

How do you envisage such a risk being determined practically? Would there have to be someone in the home with a drink or drug problem or could the person be up the stairs or in the neighbourhood? Is it a practical definition that would focus on individuals?

Lindsay Manson: Our intention is to give legislative form to what is in the guidance.

The Convener: Would the condition apply to somebody who said that they were homeless because the people upstairs were drug users and they felt that their children were vulnerable?

Lindsay Manson: We would expect the local authority to be able to take a view on the extent to which that person was at risk. The amendment to the 1987 act attempts to deal with the risk factor.

The Convener: Is the point that a young person in that situation would be more at risk than a settled family with children would be?

Lindsay Manson: We visualised less a situation in which a family was living next to a drug user than a situation in which a young person had cut loose and was squatting in flats or whatever in company that would put them at a greater risk than they would be in if they were accepted as homeless and were housed.

The Convener: I have talked to people who, in effect, have become homeless because the drug-related activity upstairs from them made them fearful that their children would become involved. Would such people be included in the condition that the bill would insert in the 1987 act?

Lindsay Manson: If the local authority considered their fears to have grounds.

Anna Donald (Scottish Executive Development Department): The definition of priority need would have to come after the homelessness assessment. The question of vulnerability would be considered only after the person was assessed as homeless. A family with children would be considered to have a priority need for accommodation anyway, because of the fact that children were involved.

Linda Fabiani (Central Scotland) (SNP): Will you clarify how the bill will affect local authorities' current practice, which is that only one offer of accommodation need be made to a homeless person? A lot of homeless people who are offered accommodation in places in which many people have drink or drug problems do not think that it would be appropriate for them to accept that kind of property. What will their position be?

Lindsay Manson: That issue is not addressed specifically in the bill, but it is addressed in the task force's report. The task force recommended that homeless people should be treated in the same way as other people who receive offers of accommodation. Generally, that should involve more than one offer of accommodation. The task force's recommendation has been written into the guidance that was issued to local authorities on the development of their strategies. Communities Scotland will monitor the delivery of those strategies, particularly the number of offers of accommodation.

Karen Whitefield (Airdrie and Shotts) (Lab): The bill will remove the duty on local authorities to investigate whether someone has made themselves homeless intentionally and replace it with a right to investigate such matters and the discretion to do so. What options have you considered to ensure the consistent use of that discretion across local authority areas?

Lindsay Manson: All local authorities will have the discretion, which will inevitably lead to it being used in different ways. The important point is whether the discretion is used fairly and whether the outcomes for the people who apply are fair. An assessment of the discretion's use will be included in Communities Scotland's assessment of the delivery of the strategies. Communities Scotland will examine the extent to which local authorities investigate intentionality and what the outcomes are. That study will look across local authorities and at individual local authorities to see the use that is made of the discretionary power. However, because the power is discretionary, it is inevitable that local authorities will use it differently.

Karen Whitefield: The discretionary nature of the power means that there must be an acceptance that local authorities will generally use the power in the same way. There should be clear guidance about when the discretion is to be used.

Lindsay Manson: The declaration of how local authorities will use the power will be included in the strategies that they are developing.

Karen Whitefield: The intentionality provisions will result in local authorities having a continuous duty to ensure that individuals do not fall out of the system and that they continue to receive temporary accommodation and support. Does the Executive envisage circumstances in which a local authority will no longer be responsible for offering someone accommodation? If so, do you have any examples of that? Is it possible that, despite a local authority's best intentions to offer short-term accommodation, some people might not take up that offer or the offer of support services that the local authority has gone out of its way to provide? In such situations, will the local authority still be required to accommodate the person? If not, should the bill be amended to recognise the difficulties that some local authorities might face?

Lindsay Manson: In those circumstances, the duty to accommodate will end only if the individual finds their own accommodation and chooses not to accept the accommodation that the local authority offers. The task force's starting point is that although a small group of people has been identified as intentionally homeless, before that assessment those people were identified as being in priority need and therefore vulnerable. Irrespective of the intentionality finding, those people remain in the vulnerable category.

The task force considered that the response to that group of people had to assume their continued vulnerability and need for accommodation. It is expected that the end result of actions taken in such circumstances will always be that the individuals or households will return to a normal tenancy and be given whatever support and assistance is possible. The assumption is that it is easier to give such assistance when a person is in a tenancy than if they have fallen out of the tenancy into a cycle of homelessness and rough sleeping, which makes it more difficult to identify where they are and what is happening to them. If people have issues that cause them difficulty with maintaining a tenancy, those difficulties will only become worse if they are in a precarious accommodation situation, rather than accommodated by a local authority. The task force acknowledged that, in some instances, the situation would not necessarily be easy.

10:15

Karen Whitefield: I accept that the situation will not be easy. One hopes that, in most cases, a local authority could support an individual or family to address some of their chaotic behaviour. People who have chaotic lifestyles sometimes do not accept the support and advice that are available or the assistance that is being offered to sustain a tenancy. If that is the case, is it fair that local authorities should face the additional burden of striving constantly to offer such services? I hope that such circumstances are unusual, but at such times, it might need to be acknowledged that a local authority had done all that it could do.

Lindsay Manson: It is recognised that if the support that a local authority offers is not accepted, at least accommodation of some form should be available—not a short tenancy, but accommodation that we have linked to section 7 of the Housing (Scotland) Act 2001, which gives local authorities a wide range of possible forms of accommodation for such individuals.

Karen Whitefield: As local authorities will be required to provide support services to individuals, what options have been considered for informing individuals of their responsibilities and rights under the bill?

Lindsay Manson: We can provide such guidance, but we have not thought about its detail. When the provision has commenced, it will be important that local authorities, individuals and RSLs are clear about what will be available. Local authorities will be responsible for providing advice and assistance to individuals. That guidance can be developed.

Karen Whitefield: Could the committee be involved in developing that guidance, as with the guidance on the housing legislation? The committee feels that it could make an input.

Lindsay Manson: We expect to develop guidance in consultation with the committee.

Mrs Lyndsay McIntosh (Central Scotland) (Con): The supporting people initiative is the new integrated policy that will be the be-all and end-all. How will it affect local authorities' ability to make support services available? What plans does the Executive have for local authorities regarding the support levels that they can expect so that they can plan to build on the services that they will have to provide? You said that the guidance would develop. Will you give more detail about that?

Lindsay Manson: Are you asking about the information that we will give to local authorities?

Mrs McIntosh: Yes.

Lindsay Manson: Local authorities are heavily engaged in developing their supporting people strategies. At the risk of referring to too many strategies—

Mrs McIntosh: Overstrategised.

Lindsay Manson: Yes. Supporting people strategies will be linked closely to local housing strategies. When support that is provided in the context of the intentionally homeless sections falls within eligible support for supporting people, it may be funded through supporting people, but if it falls outwith that, it may be funded from other sources or by other providers. As local authorities develop their homelessness strategies, we will expect them to consider specifically their expected support requirements when they examine the extent of intentional homelessness in their areas.

Mrs McIntosh: I am cognisant of your earlier comments, but what options have been considered for the type of temporary accommodation that should be on offer to an individual who falls short of meeting the terms for a short Scottish secure tenancy?

Lindsay Manson: We asked specifically in the consultation document whether the type of tenancy should be defined in the legislation. The greatest proportion of responses said that it should not be so defined and that the situation in each case would be so individual that it should be for the local authority to consider individually the appropriate accommodation. However, we recognised the need for minimum standards, which is why we linked the provision of accommodation to section 7 of the 2001 act. That will set out the minimum standards and arrangements for occupancy agreements, for example, for such accommodation.

The homelessness task force identified the Dundee families project as an example of a form

of accommodation and support that meets the needs of some families. At the other end of the scale, people may require accommodation but much less support.

Mr Kenneth Gibson (Glasgow) (SNP): The task force recommended the suspension of the local connection criteria, and the bill appears to modify those criteria to try to meet the task force's aims. Are there any legal reasons for that approach being adopted in the bill?

Lindsay Manson: I will give a policy reason and Murray Sinclair may want to add something. From a policy perspective, it was thought to be the way of achieving the greatest flexibility. It will allow ministers to make relatively quick modifications, individually or more generally, in response to problems that are identified by the local authority as a result of the suspension.

Murray Sinclair: That is right. The policy intention was to take as wide a power as possible to give sufficient flexibility, and we have tried as a matter of law to provide that wide power and enable the policy, as it develops over time, to be achieved.

Mr Gibson: You talk about greater flexibility, but do not local authorities already have the power on local connection points and does not the change diminish the local authorities' autonomy by giving control to the Scottish Parliament?

Lindsay Manson: The policy starting point was that, generally speaking, homeless people are more likely to be successfully resettled if they are able to live where they choose to live. They tend to choose to live in their local area, and it is only in unusual circumstances or for specific reasons that they choose to live elsewhere. The starting point was the task force's recommendation that the local connection power should not exist. Therefore, we wanted to remove it from current use but to be able to replace it if specific problems arose that had not been identified initially.

Mr Gibson: The task force had some concerns that the suspension of the local connection power may result in an

"increased and unmanageable flow of homeless applicants".

How would you recommend that a local authority should address that issue, were it to arise? I am thinking specifically of the concerns of some people in rural areas who fear that small rural communities may have difficulties in addressing applications from homeless people who are from cities and other urban areas but view rural areas as more desirable places in which to be homeless.

Lindsay Manson: One of the difficulties that the task force faced was the fact that there is little evidence of what is happening at the moment. Because local connection exists, it acts as a damper to our having any statistics to show what is going to happen. The task force's wish was to have it removed, but it could not say for certain what would happen if it were to be removed.

The important element in the existing legislation is the provision that, before local connection can be suspended, a minister must make a statement about how it will be suspended and what criteria will be used to reinstate it in individual cases or more generally. The monitoring group will have to monitor closely what happens when local connection is suspended after the statement has been made and the criteria have been set, so that it will be able to respond quickly. The general presumption of local authorities should be that there is no local connection after it has been suspended. However, in case that proves to be a burden on certain local authorities, we have approached the legislation in such a way as to ensure that a quick response can be made.

Mr Gibson: Does the Executive intend to fund local authorities fully to address the additional staffing and training needs that may arise through the implementation of the bill?

Lindsay Manson: Funding is made available through the funding review to implement the recommendations of the homelessness task force, but I do not think that we have assessed whether that work will be fully funded. We need to know, from the local authority assessments and strategies, what work must be done to address homelessness locally.

Mr Gibson: If significant financial burdens are placed on local authorities, the only way in which the authorities will be able to fund them—unless the Executive funds them fully—is by cutting services in other areas. That issue has caused some friction between the Executive and local authorities in recent years. Would not the Executive wish to make a commitment to funding that work fully, to ensure that the bill is implemented smoothly? If the Executive does not do that, local authorities, although they might want to implement the bill, may need to use the resources in other areas to fulfil their statutory obligations.

Lindsay Manson: That is not a commitment that I can give. However, the expectation is not only that certain matters will require further funding, but that there will be improvements in the delivery of some services, which will lead to efficiency savings. We will see how the package comes together as a whole.

Linda Fabiani: I want to talk a wee bit about what happens just now with regard to repossessions and evictions and how you see those things happening after the bill is

implemented. Everybody recognises that eviction should be the last resort. The homelessness task force recognised that, as did the committee. However, although guidance exists, its spirit is sometimes breached and the threat of eviction is used to control rent arrears, for example. Will any mechanism be put in place—perhaps through the homelessness strategies and monitored by Communities Scotland—to clamp down on such bad practice, so that eviction and the threat of eviction are truly a last resort?

Lindsay Manson: I am sorry for the delay in answering—20 meetings of the homelessness task force covered a lot of ground and I am thinking through its response.

The task force recognised the unfairness of eviction as a consequence of housing benefit delay, and that issue is addressed in the bill. Beyond that, the task force was concerned about the pressure on local authorities to report rent arrears and ensure a high rent collection rate. The monitoring group is involved in discussions with Audit Scotland concerning the way in which some of the reporting, through the local authority performance assessment, might be adjusted to identify whether there is more than just a financial consequence of rent arrears. The financial consequences of having someone homeless may be much greater than the financial consequences of the rent arrears.

The task force raised that issue. It also identified that local authorities should improve their administration of housing benefit to achieve better flow.

10:30

Linda Fabiani: I am concerned not so much about evicting people for rent arrears—the new legislation on housing benefits is good in that respect—but about the automatic issuing of eviction notices as a way of controlling rent arrears. That takes no account of the fact that the rent arrears problem may result from an internal housing benefit problem in the council. Three months down the line, that problem may trigger a notice to quit. I am concerned about good practice. Councils should not use the threat of eviction when it is unlikely that they would be granted an eviction order if it came to it, as such orders would amount to harassment. Local authorities and housing association landlords are guilty of doing that.

Anna Donald: A more general category of recommendation is that local authorities should review their rent arrears and anti-social behaviour policies to ensure that those policies do not lead to avoidable or preventable homelessness. As part of the development of the strategy, they should involve landlords in other sectors in those reviews.

Linda Fabiani: I assume that Communities Scotland will have that kind of policy.

Anna Donald: Yes. It is followed through into the guidance for the strategies and the assessment of those strategies.

Linda Fabiani: Partners in the private sector, including mortgage lenders, have said that they are not convinced that things will go smoothly after the bill is passed. The bill includes a requirement for lenders to notify local authorities if they are going to repossess a home. What consultation has been conducted with those private partners and have their concerns about the different working practices of local authorities been taken on board so that, as Karen Whitefield said, national guidance can be drawn up on how those things should proceed?

Isabel Drummond-Murray (Scottish Executive Development Department): As part of the consultation exercise, we wrote to the five bodies that we thought would be particularly interested in the recommendations. We have received responses from the Council of Mortgage Lenders and the Scottish Landowners Federation. The member is right, in that those bodies highlighted the fact that, if the notification procedures are to work, they need to be processed and placed to ensure that local authorities can respond.

We have a guidance power, which means that we can explore such issues to ensure that the mechanism is workable and effective and not just the added bureaucracy that the CML may be worried about. We are happy to continue to consult those bodies to make the mechanism workable.

Linda Fabiani: Does the Convention of Scottish Local Authorities have input into the consultation on behalf of the local authorities?

Isabel Drummond-Murray: On the notification side?

Linda Fabiani: No. On the general guidance about how such things should be dealt with.

Isabel Drummond-Murray: Yes. We will certainly involve COSLA, as a member of the monitoring group and through the normal consultation methods.

Robert Brown: I have one further follow-up question about hidden homelessness. Given that we are dealing with the regime as it is, with all the implications that that brings, does the Executive have a feel for what may come out of the woodwork—if I could put it that way—in respect of the new demands that the bill will put on public authorities and the financial impact of those demands?

Lindsay Manson: It is difficult to have a clear feel for that. I am sorry that my answer is always that the assessments will give us a lot of information, but that is what we believe. Local authorities have been working for 18 months to investigate homelessness in their areas. We hope that a lot of valuable information will result from that process.

The bill's definition of homelessness is relatively wide, but the definition that was used by the task force was wider. That is the definition that we have given to the local authorities as the definition that should be used in examining homelessness in their area. We have also given that definition to health boards to use when they are developing health and homelessness action plans. We expect that those assessments will consider not only people who are homeless, but people who are at risk of homelessness—the people who are, in a sense, the hidden homeless.

We are already seeing increased applications as a consequence of improved responses and we expect that to continue. We do not have a clear assessment yet of what the level will be.

Robert Brown: Once the local strategies are in place, will you be able to get a better handle on the matter and to say that a certain amount of facilities of this or that kind will be needed across the country? Will you then be able to put everything together to find out what we need to fill the gaps and what the cost will be?

Lindsay Manson: Yes. The introduction of local strategies will certainly give us such a picture. However, I do not want to suggest that that is the only way in which that will happen. We have also improved considerably the statistical collection arrangements, which were previously rather rigid and rather late in reporting. We have improved both the timing of the statistical collection and the breakdown of information that it provides on the households that apply and what their concerns are.

We will be considering a range of other options for getting information from local authorities and other organisations to inform the monitoring group's assessment of what is going on. One of the monitoring group's priorities is to receive information from different sources and in different ways in order to monitor and to ensure that it is not simply getting the picture from one source. The group will be discussing the issue this afternoon, and no doubt will do so many times in the future.

The Convener: We have reached the end of our questions. I thank the witnesses for their attendance. Committee members will agree that the evidence was very useful. If, on reflection, the witnesses feel that they want to expand on any points or to raise other issues, we would appreciate it if they would let us know in writing.

Subordinate Legislation

Scottish Secure Tenancies (Exceptions) Amendment Regulations 2002 (SSI 2002/434)

Housing (Scotland) Act 2001 (Housing Support Services) Regulations 2002 (SSI 2002/444)

The Convener: The committee has before it two negative statutory instruments, which means that the Parliament has the power to annul the orders by resolution within 40 days of each being laid. We are required to report to the Parliament on the Scottish Secure Tenancies (Exceptions) Amendment Regulations 2002 by 4 November and on the Housing (Scotland) Act 2001 (Housing Support Services) Regulations 2002 by 11 November.

At its meetings on 1 October and 8 October, the Subordinate Legislation Committee determined that the Parliament's attention need not be drawn to the instruments. Furthermore, no motions to annul have been lodged. Members should have the relevant extract from the Subordinate Legislation Committee's 36th and 37th reports in 2002. If members have no comments, I ask the committee whether it agrees that it has no recommendations to make on the two instruments. Are we agreed?

Members *indicated agreement*.

The Convener: I suspend the meeting for five minutes.

10:37

Meeting suspended.

10:48

On resuming—

Debt Arrangement and Attachment (Scotland) Bill: Stage 2

The Convener: I call the meeting to order and welcome everyone to day 3 of our stage 2 consideration of the Debt Arrangement and Attachment (Scotland) Bill. At this point, I invite members to declare any interests.

Robert Brown: I want to mention my consultancy with Ross Harper and Murphy Solicitors and my membership of the Law Society of Scotland.

The Convener: I also welcome to the meeting Dr Richard Simpson, the Deputy Minister for Justice.

Section 45—Restriction on attachment of articles kept in dwellinghouses

The Convener: No amendments to section 45 have been lodged. However, we have to agree to that section. Before we do so, and in accordance with normal practice, there is an opportunity for a debate on the section. I am content to allow a short debate on exceptional attachment orders, which section 45 will introduce.

Tommy Sheridan (Glasgow) (SSP): As the convener is aware, I lodged an amendment that would have deleted section 45. I hoped that the convener would make a statement about why she refused to accept that amendment.

It is obvious that she has made a judgment under advice from the clerks that the exceptional attachment orders are central to bill, but that is a very political interpretation of the bill. The evidence that the committee heard from Money Advice Scotland, from Citizens Advice Scotland and from the Scottish Association of Law Centres was unified in that they believe that exceptional attachment orders are not in any way central to the bill's provisions. The evidence of all those organisations was that they feared that exceptional attachment orders would become general attachment orders and be used against individual debtors in their dwelling-houses. That would create the problem of people being further humiliated and harassed over their debt and facing the prospect of goods being removed from their houses, which was part and parcel of the evidence that convinced people to reject poindings and warrant sales in the first place.

Procedurally, I find myself quite powerless because although I lodged the amendment properly and timeously, the convener has taken an individual decision not to accept it. She might recall that I flagged the issue up during the stage 1 debate. I suggested then that there was a conflict of interest because she took part in a working group that proposed exceptional attachment orders and she is now the convener of a committee that is refusing to debate whether they should be kept in the bill.

I appeal to the convener to reconsider her decision not to allow an amendment to delete section 45. Although we can discuss the issue, it is just hot air at the end of the day because the convener is not going to allow a vote on whether the section should be in the bill. I hoped that, having heard the evidence of the debt advice agencies, members of the committee would have accepted that exceptional attachment orders are not central to the bill in any way, shape or form. They might be central to the bill from the point of view of the Executive and others with legal interests, but those at the coalface who deal with people in debt have stated categorically that the orders are not essential. In many respects, they could undermine some of the good aspects of the bill.

I appeal to the convener to reconsider accepting my amendment so that we can have a proper debate on whether there is a conflict of interest in her being a member of the group that proposed exceptional attachment orders in the first place and the convener of a committee on which she is using her power to reject a debate on the topic and ensure that there is no vote. I think that that is wrong and it does not reflect the weight of evidence that the convener heard during the whole process. The bill will be weakened by retention of exceptional attachment orders.

During the stage 1 debate, members of the official Opposition made it plain that although they supported many of the good aspects of the bill, they had serious concerns about section 45. I think that they hoped that they would be able to amend the bill and remove that section during stage 2. If that is not going to be the case then perhaps the stage 1 debate was not held in the clear light of day, as it should have been.

The Convener: I will deal with procedural matters in a moment.

Linda Fabiani: I express my disappointment that the convener also disallowed a similar amendment that was submitted on behalf of the Scottish National Party. I ask that she reconsider that decision.

The SNP said clearly during stage 1 that it was against the use of exceptional attachment orders. To us, they are only warrant sales by another name. I believe strongly that the Parliament made

it clear that it wanted to abolish warrant sales, but in fact we have not done so.

The SNP and the Scottish Socialist Party are not the only ones who hold that position. During the stage 1 debate, a member of one of the Executive parties stated clearly that, if the issue was not debated during stage 2, he would have to reconsider whether he could vote for the bill at stage 3. I ask the convener to reconsider her position on discussion of the matter.

Robert Brown: I disagree fundamentally with Tommy Sheridan and Linda Fabiani on those procedural and substantial points. The issue is obviously political—there are no two ways about it—but that is the whole point. If there is a major problem with the principles of the bill, that is an issue for stage 1, which is when such matters should be dealt with. The Parliament's procedures are designed to avoid wrecking amendments to provisions that the Parliament has approved in principle. We must keep that in mind.

It is unfortunate that Tommy Sheridan brought up the red herring of the convener's position. I do not regard her as having a conflict of interest—I do not think that any reasonable person would.

The central issue is the political one, on which the arguments have been rehashed and batted backwards and forwards over a long time. We have views on it, those outside the Parliament have views on it and we all know where we stand on it. At the end of the day, the decision was taken to approve the principles of the bill at stage 1. That is where we stand and that is why amendments such as Tommy Sheridan's are not admissible at stage 2. That is entirely correct and is the proper way in which the matter should proceed.

Karen Whitefield: I whole-heartedly agree with Robert Brown's position. Not only has the Parliament debated and agreed to the general principles of the bill, the committee has agreed to them. Although the SNP has changed its position today and did so during the stage 1 debate, the SNP members of the committee signed up to the report that endorses the principles of the bill. They have now changed their position. Perhaps they have spent a little bit of time on doing some more work and have had a few things pointed out to them. That is neither here nor there. The issue is that they signed up to the report. It is wrong to suggest that the convener is acting in a way that is designed to limit debate. The issues were debated fully during the committee's consideration of its stage 1 report and again during the stage 1 debate in the Parliament.

Cathie Craigie: I feel that I have to come in to support the convener. I do not have much to add to the points that Robert Brown and Karen Whitefield made. If we were to accept Tommy Sheridan's argument, the processes that the Parliament has adopted for dealing with bills would have to be reconsidered. We investigate thoroughly and scrutinise bills at stage 1, when the Parliament has an opportunity to agree to the general principles of a bill. Clearly, the majority of members agreed to the principles of this bill. Tommy Sheridan's amendment to leave out section 45 could therefore be seen as a wrecking amendment. I do not know whether it was lodged timeously, but if it was, that would be a change from his previous amendments to the bill. We should now proceed to deal with the concerns that were raised in the evidence that the committee took during its stage 1 inquiry.

Mr Gibson: I must respond to the distortions that we have heard from Karen Whitefield. It is clear that the SNP has given the issue considerable reflection. We made our position clear in the stage 1 debate.

The committee's report does not say that the exceptional attachment order is a wonderful and fundamental part of the bill. For example, the report says that parts of the exceptional attachment order are

"draconian, harsher for debtors … Many of the protections and 'diligence stoppers' … will be lost."

The report also states, among other things, that exceptional attachment orders are unworkable. We should try to get the balance right. Section 45 has been added to the bill because the Executive knows that we will support measures such as debt arrangement schemes. It has been cobbled together and added to the bill to bring back things such as warrant sales and poindings, which were abolished by previous legislation. We should get our feet back on the ground and stop distorting the reality of the situation.

11:00

The Convener: I will wind up by clarifying the procedural position. Not all members are making this serious allegation, but members should think carefully about alleging that a convener is operating partially when, in their role as convener, they attempt to follow rules and procedures.

Members will be aware that under rule 9.10.4 of the standing orders it is for the convener to determine any dispute on the admissibility of amendments at stage 2, which is what I have done in this instance. The general criteria that apply when making decisions on admissibility are set out in part 4 of the "Guidance on Public Bills".

My decision, which I did not take lightly, was made on the advice of the clerks. On the issue of my membership of the working group on a replacement for poinding and warrant sale, members will be aware that I declared my

membership of that group when the committee began its stage 1 consideration bill at its meeting on 15 May 2002.

No member of the committee, nor any other member, has suggested that my membership of the working group may have had a bearing on my role as convener of the Social Justice Committee when we considered the bill at stage 1 or earlier during stage 2—at least, I do not think that the issue was raised during stage 1. I take my role as convener seriously, as do conveners from all parties. Through our discussions in the conveners liaison group, we all seek to ensure that we maintain integrity and consistency when we deal with committee procedures.

I regard the convener's role, which is an important one that I take seriously, as separate from any political views that I might have on any particular amendment. Therefore, I regard the suggestion that I would seek to manipulate the procedures of the Social Justice Committee to pursue an individual political position—whatever that may be—as an offensive attack on my integrity. Members should also note the advice from the clerks that, of course, section 45 could have been amended, but it cannot be deleted.

We can now move on.

Karen Whitefield: On a point of order, convener. Kenny Gibson suggested that I distorted—

The Convener: I am not sure whether that is a point of order. Perhaps you could—

Karen Whitefield: I will just highlight paragraph 58 of the committee's report, which makes clear both the committee's position on exceptional attachment orders and the fact that the committee did not state that the bill was poindings and warrant sales by another name.

The Convener: Okay, that point is made. Can we move on?

Mr Gibson: I did not actually use that phrase.

The Deputy Minister for Justice (Dr Richard Simpson): I do not want to enter this procedural debate, but I want to make one point for the record. What unites all members who are present is the view that the exceptional attachment orders must be exceptional. If the exceptional attachment order becomes a general attachment order—which is what Mr Sheridan, on advice from those at the coalface, suggests—I would be filled with dismay.

If, through the rules of court, the regulations—which we will discuss and which will become affirmative if the committee agrees—and the guidance, the bill does not achieve a situation in which the exceptional attachment orders are genuinely exceptional, I am sure that the monitoring arrangements will reveal that. In such circumstances, the Executive, united with Parliament, will wish to return to the legislation. The policy intention is absolutely clear: the use of the term "exceptional" is not just semantic. Exceptional attachment orders are to be exceptional.

The Convener: Thank you.

Section 45 agreed to.

Section 46—Exceptional attachment order

The Convener: Amendments 52 and 58 are in the name of Robert Brown.

Robert Brown: I am surprised that amendments 52 and 58 were grouped separately from amendments 53, 54, 56 and 57 because my intention was to draw attention to the impracticability of attachment, removal and auction all happening at once.

The Society of Messengers-at-Arms and Sheriff Officers drew our attention to the professional issues involved. Amendments 52 and 58 propose to insert the word "valuation", because otherwise there is a defect in the bill that affects everybody's rights—not least those of the debtor. It is important to balance the extra cost and intrusion against the need for speed and reasonableness.

Amendments 52 and 58 are relatively uncontroversial, so I say no more about them now, except to ask that the committee support them.

I move amendment 52.

Tommy Sheridan: I hope that the minister will address a problem that might otherwise require an amendment at stage 3. Section 46(2)(d) states that an exceptional attachment order shall

"empower the officer to open shut and lockfast places for the purpose of executing the order."

There is no specific reference to making safe a dwelling-house that has been subject to an order. There is evidence of homes being forcibly entered and not made safe. I am sure that the minister would want to avoid such situations. In other instances, sheriff officers have secured the services of a joiner to remove locks and then install new locks, leaving an instruction that the keys can be collected from sheriff officers' offices. The problem with that is that the cost of securing a joiner's services and purchasing a lock is added to the debtor's bill. There is no reference to that in the bill. Will the minister tell us whether there will be such a reference in the section entitled "Exceptional attachment order" and if not, why not?

Dr Simpson: I will address amendments 52 and 58 and, if you wish, convener, I will also respond to Mr Sheridan's reference to section 46(2)(d), if that is in order.

In the light of Mr Brown's explanation, amendments 52 and 58 should probably be in the next group. They appear to be about non-essential assets being valued when they are attached. In practice, those processes will occur together and the rules of court will make provision for how it is done. We have no objection to clarifying the matter of valuation in the bill and we are prepared to discuss it with Mr Brown at a later stage, even if the committee accepts our suggestion that we should not proceed with amendments 52 and 58 now.

Timing is a separate matter, which is introduced by amendments in the next group. I intended to address timing when we discussed the next group, but as Mr Brown has referred to those amendments, I would like to explain the Executive's position now, if that is appropriate.

The Convener: Are you suggesting that we deal with amendments in the next group?

Dr Simpson: As Mr Brown has referred to the fact that amendments 52 and 58 are strongly linked in intention to amendments 53, 54, 56 and 57, I ask the committee not to accept Mr Brown's amendments 52 and 58 at present, because they are required to introduce the next group of amendments.

The Convener: You should speak to the amendments that are in the current group, but in clarifying why you do or do not support those amendments, you can use whatever material you wish to support your argument.

Dr Simpson: We have no objection to introducing an amendment at stage 3 to make it clear that valuation must take place. Provided that that is acceptable, we recommend that amendments 52 and 58 should not be agreed to at present.

The Convener: I remind members—and this is as much for my benefit as for that of others—that they should speak to amendments in the group being considered. If they wish to make general points about a section, I will ensure that there is a debate about each section as we come to the end of it.

Dr Simpson: Do I take it, therefore, that you do not want me to reply to Mr Sheridan now, convener, but at the end of our consideration of section 46?

The Convener: Yes.

Dr Simpson: I will do so.

Robert Brown: There is a link between the amendments in this group, which is on valuation, and my amendments in the next group, which is on removal and auction. The Executive should consider the matter closely, and Richard Simpson has given that undertaking. Given that, and given the fact that its provisions are linked to other matters, I would be prepared not to press amendment 52. I therefore seek the committee's leave to withdraw the amendment.

Amendment 52, by agreement, withdrawn.

The Convener: Amendment 134 is grouped with amendments 135, 53, 136, 54, 56 and 57. I point out that amendments 53 and 136 are alternatives. In other words, if amendment 53 is agreed to, amendment 136 becomes an amendment to leave out and replace the text that amendment 53 would insert.

Mr Gibson: Members will recall, and the minister will be aware of, written evidence submitted to the committee from the Society of Messengers-at-Arms and Sheriff Officers, which stated:

"We consider that the drafting of Section 46(2)(a), giving authorisation for the immediate removal of non-essential assets following attachment, would lead to unnecessary confrontation between the officers executing the attachment and the debtor. It would also be unworkable in practice. The officer would require to arrange transportation prior to every visit, with no precise idea of what non-essential assets, if any, are going to be attached and removed."

Given that the messengers-at-arms and sheriff officers are the people who will have to do the work at the coalface, so to speak, what they say should not be taken lightly. Amendments 134 and 135 attempt to ensure that attachment and removal becomes a two-stage process. Amendment 136 gives a reasonable time frame during which removal can take place if necessary, and the debtor may use the extra time to settle the debt or to make arrangements to pay. Without those amendments, section 46 will make the bill more draconian than the existing legislation in some respects.

I support amendments 56 and 57. I believe that the immediate removal of the debtor's non-essential property is unduly harsh, impractical and unnecessary, and threatens to bring the bill into disrepute.

I move amendment 134.

Robert Brown: I mentioned a few minutes ago a link with the amendments in the previous group. The question of whether attachment and removal is a one-stage or two-stage process is central, and Kenny Gibson has already discussed that.

On the practical side, we must consider cost, reasonableness, intrusion and practicability. As Kenny Gibson has said, the sheriff officers have given us the benefit of their professional experience. The proposed procedure would not exist in the same format or context as the preceding poinding and warrant sales provisions.

All the preceding stuff—exceptionality, the need for justification and the matter of rules of court—has to be taken into account. A fair degree of additional information has to be given to debtors before the actual arrival of sheriff officers at the house to carry out the procedure.

If sheriff officers were to go to a house lacking clarity about what inside it may be subject to an attachment, they would have to do everything at once. They would have to arrange for a van and in some instances a valuer, if any unusual articles required specific expertise. That all adds cost to the arrangement procedure. It may be that, notwithstanding all that has happened before, the debtor is hostile to the presence of the sheriff officers—perhaps not unreasonably—and there is some element of confrontation.

I am seeking to widen the powers that are available. My amendments in this group are subtly different from those of Kenny Gibson. Basically, I am trying to give the court the power—which, no doubt, will be filled out, in terms of rules of court—not to carry out the attachment and removal in one stage, if that is unnecessary. There may be cases in which it is appropriate to do that, to reduce costs and so on; however, there will be other cases in which the court, the council or the Executive should have a bit more expression than is given by the phraseology governing the present arrangements. Amendments 56 and 57 are also designed to make that possible. I recommend amendments 53 and 54 to the committee.

11:15

Dr Simpson: Although Robert Brown's and Kenny Gibson's amendments are framed in different ways, they are intended to achieve substantially the same purpose and the Executive is opposed to them for the same reasons. The amendments would create an additional procedural step by separating the attachment—or, in Robert Brown's amendments, the attachment and valuation—of non-essential assets from their removal. It appears that part of the intention is to provide another opportunity to give notice to the debtor that he or she is in imminent danger of facing the removal and sale of assets. I understand that motivation, but it is misconceived.

The working group, which recommended the approach that is taken in the bill in its report "Striking the Balance", devised the procedure bearing in mind the need to avoid intrusive and repeated entry into a person's home. It set about finding other ways of giving notice to the debtor of the risk of enforcement action being taken against him or her and of doing so at earlier stages, so that it would not be necessary to use separate attachment and removal steps as a fallback means of giving a final warning. The bill in its entirety creates a new approach to debt management and enforcement. We want to avoid thinking in terms of old procedures and the current actions of sheriff officers; we must approach the matter differently. Let us not forget that we are talking about only a few cases in which an exceptional attachment order becomes necessary for the few who can, but persistently refuse to pay. Other ways have been devised to assist those who can pay to do so.

In its second memorandum to the committee, the Executive said that the inclusion of a formal valuation is unnecessary because of the multistage process that must be gone through before any exceptional attachment order can be granted. Assets will be removed from a debtor's home only at the end of a lengthy process in which he or she will have received ample warning of what could happen, as well as numerous opportunities to seek a negotiated settlement. That process will require creditors to attempt to negotiate a settlement with debtors and explore other means of enforcement; to provide advice and information; and to have the matter considered by the court, with opportunities for voluntary declaration and for the court to order an adviser to visit.

On the basis that the amendments would increase the intrusion and the costs to the debtor, by introducing a two-stage process, and given that we are talking about the end of a lengthy process, I suggest that the amendments would not be in the interests of the debtor. Therefore, despite the motivation behind them, I ask members to withdraw or reject them.

Mr Gibson: I intend to press amendment 134, although I note the minister's comments. He is right to say that we are trying to introduce a further safeguard for the debtor. However, he did not touch on the fact that the people who are responsible for implementing the process have said that it would be unworkable. Neither did he mention the issue of transport, to which I have referred, or the possibility of confrontation that could result from that. Amendment 134 would enhance the bill; therefore, I wish to press it.

The Convener: The question is, that amendment 134 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 134 disagreed to.

The Convener: Amendment 19 is grouped with amendment 20.

Dr Simpson: Amendments 19 and 20 are technical amendments to clarify the meaning of section 46(2)(b). It became obvious during stage 1 that a number of readers of the bill found section 46(2)(b) unclear. Amendments 19 and 20 aim to clarify what is meant in that paragraph. Some people thought mistakenly that the paragraph meant that articles kept in dwelling-houses could be attached on the authority of a summary warrant, without the need to obtain an exceptional attachment order. That is neither the intention nor the legal effect of the wording.

Creditors who execute a summary warrant in domestic cases will not be able to attach articles unless and until the sheriff grants an exceptional attachment order, which is the same as for any other creditor. However, if a simple reading of the text has given rise to misinterpretation or ambiguity, we should adjust the text to avoid doubt or misinterpretation. Accordingly, the Executive has lodged amendments 19 and 20 so that the matter is free from doubt.

I move amendment 19.

Amendment 19 agreed to.

Amendment 135 moved—[Mr Kenneth Gibson].

The Convener: The question is, that amendment 135 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 135 disagreed to.

Amendment 53 moved—[Robert Brown].

The Convener: The question is, that amendment 53 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 53 disagreed to.

Amendment 136 moved—[Mr Kenneth Gibson].

The Convener: The question is, that amendment 136 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 136 disagreed to.

Amendment 20 moved—[Dr Richard Simpson]—and agreed to.

Amendment 54 not moved.

The Convener: Amendment 127 is in a group on its own.

Tommy Sheridan: Amendment 127 will test the credibility of the minister's statement that he intends exceptional attachment orders to be truly exceptional. The amendment would reduce the number of citizens who will be liable to exceptional attachment orders. The recipients of the benefits that are mentioned in the amendment are means tested before they receive those benefits. Such people are poor to begin with. If they were not poor, they would not receive those benefits. The ability to take further action against such people is clear because all of the benefits are subject to arrestment. In local authorities such as Glasgow, it is now common and accepted practice that if debtors can prove that they receive income support, no poinding or warrant sale is carried out and an arrestment of benefit is sought.

I hope that, eventually, people in Scotland who are poor and have a low income will not get into serious debt, but, in the meantime, it is clear that a benefit arrestment that is set at the statutory maximum of 5 per cent of income support is preferable to a poinding or warrant sale or an exceptional attachment order.

Amendment 127 further clarifies the intention of the bill: not to penalise those who are already poor, but to exempt them from the exceptional attachment orders. The minister said that he intends that the orders be exceptional. I do not foresee any circumstance in which an exceptional attachment order should be carried out on debtors who are directly in receipt of the benefits listed in the amendment or who are dependants of a sole provider of income in a family that is reliant on the benefits. There should be no need for an exceptional attachment order to be carried out, because other means of debt recovery are already available.

I appeal to the minister to make the credibility of his statement on the exceptional nature of the exceptional attachment orders stand up. If the minister is not willing to support the exemption of citizens in receipt of such benefits, his statement does not stand up to scrutiny, because the poorest citizens would still be subject to exceptional attachment orders, particularly given the restrictions on access to debt arrangement schemes. In many respects, such people will be unable to access debt arrangement schemes because of the various restrictions that the bill imposes.

I move amendment 127.

Linda Fabiani: Members may remember that, in the stage 1 debate, my colleague Kenny Gibson raised that issue. In fact, he attempted to lodge a stage 2 amendment similar to amendment 127, but Mr Sheridan beat him to it.

I agree with everything that Mr Sheridan said. I too appeal to the minister. I think that "genuinely exceptional" were the words that the minister used for the circumstances that would have to exist before an exceptional attachment order would be made. I ask the minister to prove that he means those words by supporting amendment 127.

Mr Sheridan has also said that other methods of getting money back are already in place. It is common for debtors to have their benefit reduced to pay debt, and we can have wages arrestments for debtors who work. To me, it is unthinkable that, if the provisions are to be genuinely exceptional and we are trying to care for the poorest in our society, we would not say that those who are on income support, jobseekers allowance, working families tax credit and disabled person's tax credit should be exempt from exceptional attachment orders.

I support Mr Sheridan's amendment 127 on my, Mr Gibson's and the SNP's behalf.

Karen Whitefield: Tommy Sheridan's amendment 127—however well intentioned—will not necessarily test whether the exceptional attachment order is exceptional. The test is that, if a debtor is too poor to enter the debt arrangement scheme, they are too poor for an attachment to be made against them. That is the way that it should be.

The committee has already considered amendments that address some people's concerns that those on very low incomes may still desire to attempt to pay off their debts. However, that does not mean that they would be able to enter the debt arrangement scheme as it stands, because their income is so low. That is why the Executive accepted an amendment, which I lodged, to pilot schemes and to ensure that those who are poor are not further disadvantaged by being forced into schemes that they cannot pay.

The premise is that, if a debtor is too poor to enter the debt arrangement scheme, they are certainly too poor for an attachment to be made against them.

Dr Simpson: Amendment 127 seeks to exclude debtors who are on certain income-related allowances from being subject to an exceptional attachment order. It similarly seeks to protect the debtor where anyone who lives with and is financially dependent on the debtor—or vice versa—is in receipt of those allowances. That seems to be based on the premise that those who qualify for such benefits cannot pay their debts, irrespective of the amount concerned. Blanket exclusion on that basis is flawed for a number of reasons.

In 2001, more than 400,000 people in Scotland were on income support. Is it reasonable to assume that none of them is in a position to pay their debts, no matter what the amount? I do not think that that is the case. Nor do I think that most of them would wish to avoid paying their debts if they possibly could. Many people would find that assumption patronising.

The amendment would create unfairness between those on benefits and those just above the qualifying level. It would not deal with those who qualify for benefits, but do not take up their entitlement. It might have the unintended knock-on effect of making lenders wary of extending credit to people receiving the benefits specified. The amendment would create all sorts of anomalies and be open to abuse. A debtor would be exempted because their 18-year-old child living at home receives jobseekers allowance or because they have a lodger on benefit.

The better course is to retain the existing provisions in the bill, which enable people's circumstances to be assessed on a case-by-case basis.

On a point of clarification, not every creditor can deal with what Linda Fabiani and Tommy Sheridan have referred to as an arrestment, but which should more properly be called a direct deduction from benefit order. Not all creditors can take out such an order. Only some creditors, such as the utilities companies, have that power. The issue is a great deal more complicated than amendment 127 allows, which is why I recommend that it be rejected.

11:30

Tommy Sheridan: Minister, that is probably one of the worst arguments that I have ever heard for not supporting an amendment. You said that 400,000 or so people—I think that 420,700 is the figure that was supplied by the justice department—were in receipt of income support in November last year. You then said that we should not assume that none of them was in a position to pay their debts, as if that were a reason to oppose the amendment. No one has suggested that those people are not in a position to pay debts. In fact, we have suggested that they can pay their debts if other ways to do so are offered to them. We are suggesting that they should not be subject to exceptional attachment orders. You have failed to address that.

You brought up the hoary old chestnut about the possibility that credit might not be made available to people who were exempted from exceptional attachment orders. However, this committee has been told time and again by representatives of the credit industry that that is not a factor. Why you are bringing it up again today is beyond me. Please listen and read the evidence.

You talked about anomalies, saying that the amendment would mean that someone could be exempted from an exceptional attachment order because they had a lodger. Well, that lodger had better be someone upon whom the debtor is financially dependent. The amendment makes that quite clear. You are suggesting that a person who wanted to become exempt from an exceptional attachment order could simply get themselves a lodger. However, as the amendment states, the important matter is financial dependence. I will read it out for you as I can see that you are shaking your head. The amendment talks about the

"financial circumstances of the debtor, or any person with whom the debtor resides and who is financially dependent on the debtor or on whom the debtor is financially dependent."

That is quite clear, so you should not have raised that red herring.

I intend to press the amendment to a vote. Karen Whitefield's suggestion that, somehow, people will be exempted from exceptional attachment orders if they are too poor to gain access to debt arrangement schemes is precisely the point that was disputed by the evidence from debt agencies, Money Advice Scotland, Citizens Advice Scotland and the Scottish Association of Law Centres. All of them said that, on the basis of the current restrictions, the majority of their clients, many of whom are in receipt of benefit, would not be able to get on the debt arrangement schemes. That means that they will face the exceptional attachment orders. One way to ensure that people with benefits do not have their doors kicked in and goods removed from their houses is to exempt them from exceptional attachment orders. We know that there are other ways of attaching benefit at a reasonable level that will not lead to penury. From that point of view, I hope that this committee will mimic the practice that local authorities already adopt and that you will support the amendment.

The Convener: The question is, that amendment 127 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 127 disagreed to.

The Convener: Amendment 130 is in a group of its own.

Mr Gibson: Amendment 130 is a practical amendment that I hope the minister will consider sympathetically, given his experiences in his previous life. The amendment is not intended to remove contact between debt advisers and debtors but simply to replace the notion of making a visit to the debtor with that of making contact with them. As a former general practitioner, the minister will be aware that, for every patient who can be seen on a home visit, seven or eight can be seen in the surgery. The same principle applies to debt advice agencies. Indeed, Citizens Advice Scotland is concerned about the arrangements in the bill and is keen that the words

"for a visit to the debtor"

be replaced with

"that the debtor be contacted".

There is no reason why the bill should require a visit to be made. A solution can be reached just as effectively through contact by other methods—I am sure that many MSPs deal with their constituents by phone just as much as they do in person.

When considering this amendment, people should take into account the increased workload that money advisers will have. In addition, given the large areas involved, the amendment will be helpful in rural areas, where it is unreasonable to expect money advisers to travel 40 or 50 miles to visit someone to deal with a matter that could easily be resolved in other ways.

I move amendment 130.

Robert Brown: I have some sympathy with what Kenny Gibson is saying, although I should point out that section 46(5)(b) gives the sheriff power to make such other order as they see fit. Having said that, I think that the thrust of the section relates to the order for the visit. It might be reasonable to take a broader view and say that there should be a visit or contact, rather than only a visit. Perhaps the Executive might be prepared to consider the matter. It is not a hugely important matter of principle, but, as Kenny Gibson rightly says, the practicality might mean that the idea should be reconsidered by ministers. It might be helpful if slightly more suitable phrasing could be introduced in stage 3.

Mrs McIntosh: I am in favour of this amendment. Making contact with the debtor instead of making a visit might allow a more effective use of time and resources.

Dr Simpson: Amendment 130 is no doubt motivated by a desire to ensure that there is no unwarranted intrusion into a debtor's home. However, the existing provision meets the working group's recommendation that a visit by a money adviser could benefit a debtor who may be too frightened to open their correspondence or who is incapable of doing so. It was thought that the adviser would be likely to achieve greater success by communicating in person. From my former life, I am aware that telephone conversations are not always satisfactory as it is difficult to assess the reaction of the other person over the phone and a number of mistakes can be made that one would have been less likely to make in person. The recommendation that face-to-face contact be made is central to the aims of reaching out to the most vulnerable with the genuine assistance of money advice.

I understand that many money advisers welcome this provision as an opportunity to reach people in need of their services but I know that others have some reservations about how they would go about presenting themselves to the debtor. I have separately mentioned the arrangements and the investment that the Executive has made for central support for money advisers. Training for money advisers from the central support organisation should assist in addressing those concerns.

As Robert Brown has pointed out, section 46(5)(b) allows the sheriff, before deciding whether to make an exceptional attachment order, to make such order as they think fit. If a different course appears appropriate from the circumstances of the particular case, the sheriff will have the ability to deal with it accordingly.

Having said all that, I am really not in favour of telephone contact as a satisfactory substitute. I take Kenneth Gibson's point that there may be some people who would not wish to be seen on their own home base but would rather have face-to-face contact in the money adviser's premises. That is a choice that we will examine, and I shall consider the matter. I cannot undertake at this point to make an amendment, but I am prepared to consider further discussions if amendment 130 is withdrawn.

The Convener: I ask Kenny Gibson to wind up and to indicate whether he intends to press amendment 130 or withdraw it.

Mr Gibson: I am relieved that Dr Simpson did not diagnose patients over the phone. The whole point of contact is that people can go into the money adviser's premises. It seems unnecessary that the money adviser should have to go out and visit someone when that person could simply come and see them. I am sure that many cases could be adequately discussed over the phone. If not, obviously a visit might be necessary.

I was considering withdrawing amendment 130 but, as I have not had any real assurances from the minister, I would like to press it.

The Convener: The question is, that amendment 130 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)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)

AGAINST

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

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 130 disagreed to.

The Convener: We now consider section 46. As ever, we are entitled to a short debate on the section, and the minister has committed himself to commenting on the contribution that Tommy Sheridan has already made. Does any other member want to contribute?

Tommy Sheridan: Sorry, convener. I realise that I should have made all my contributions together. I have already made a contribution about the power to open shut and lockfast places, and I am sure that the minister will respond to my comments. Will he also respond to the issue of how valuation will be assessed in relation to the bill? Given that there is no prior knowledge of the goods within a home, could the minister explain how the valuation is to be calculated?

Is the minister willing to reconsider the wording of the first line of section 46(5), to replace the word "may" in the phrase

"Before deciding whether to make an exceptional attachment order, the sheriff may make—"

with the word "shall"? That would simply strengthen the legislative purpose, as "may" leaves discretion and "shall" does not. I would appreciate it if the minister could comment on that.

The Convener: Before I call the minister to respond, I think that I should make a distinction between holding a short debate and suggesting amendments, as there will be a further opportunity to lodge amendments at a later stage. We are not debating amendments now but debating the general issues in section 46.

Dr Simpson: A number of points have been raised in the debate, both in consideration of amendments and in the additional comments by Mr Sheridan. There are issues under section 46(2)(d) that we should consider further, and we shall do so.

It is our view that the valuation would be based on the amount that the assets would be likely to fetch if sold on the open market. In practice, sheriff officers place a value on assets based on their experience of estimating the amounts that assets will fetch at public auction. They can apply that knowledge and experience at any time, and there is no practical reason that makes it necessary for them to attend premises on a separate occasion to do that. We had that debate on another amendment, but we may have to return to the issue.

We are comfortable with the wording of section 46(5), and particularly with section 46(5)(b), so we do not want to change that.

Section 46, as amended, agreed to.

Section 47—Exceptional circumstances

The Convener: Amendment 131 is grouped with amendments 120 and 132.

Tommy Sheridan: Amendment 132 would increase the discretion available to the sheriff and to any legal representative of a debtor. The term "reasonable" should be inserted to create an argument for the sheriff and the debtor or the debtor's representative over the specific circumstances in which an exceptional attachment order should be granted. It is a common argument in many debtor and homelessness cases, and the bill would be strengthened were amendment 132, or indeed amendment 120, to be accepted. I hope that at least one of the two will be agreed to, because that would strengthen people's ability to make a case as to why a particular exceptional attachment order should not proceed.

I move amendment 131.

11:45

Cathie Craigie: I will restrict my remarks to supporting amendment 120. The purpose behind it is to require sheriffs to consider whether it is reasonable to grant an exceptional attachment order under all circumstances. It would further enhance debtors' protection if another test, which the sheriff would have to consider before granting an exceptional attachment order, were to be added to those already provided.

The committee recognised the value of that approach when it took evidence during the summer. We heard some specific suggestions calling for an amendment similar to the one that I have lodged as amendment 120. The suggestions were sensible, and I think that sheriffs should take a general view about the whole of the circumstances of the individual. Some people might say that sheriffs will do that as a matter of course. However, I do not think that it does any harm to specify that in the bill. I will move amendment 120 at the appropriate time and ask that members support it.

Linda Fabiani: I seek a point of clarification from Mr Sheridan. I may have missed something in what he said, but I wonder whether he could explain the logic behind amendment 131.

Dr Simpson: Amendments 120 and 132 seek to achieve the same purpose and make the same sensible suggestion. We believe that amendment 120 does so with greater precision. Accordingly, we would hope that the committee will support amendment 120, and that it will reject amendments 131 and 132.

Tommy Sheridan: To answer Linda Fabiani, amendment 131 is simply a tidying-up amendment, to remove the word "and" from where it is; it will be placed later in the section through amendment 132.

The point that I was trying to make in amendment 132 is also made in amendment 120. It would appear that the Executive is going to support amendment 120, so I will not press my amendments.

Amendment 131, by agreement, withdrawn.

The Convener: Amendment 137 is grouped with amendment 119.

Mr Gibson: The amounts specified for the minimum sum that is expected to be recovered at an auction for the purposes of the sheriff making an exceptional attachment order are too low, which could result in multiple applications for exceptional attachments. As Money Advice Scotland made clear in its evidence, there is also a possibility that less well-off debtors may not even realise their chargeable expenses. Poorer debtors are therefore likely to be especially penalised if the figures are as set out in the bill. Amendment 137 seeks to double the recoverable percentage of the due debt that would trigger an exceptional attachment order.

I had submitted an amendment identical to Cathie Craigie's amendment 119—she beat me to it. I am therefore happy to support that amendment.

I move amendment 137.

Cathie Craigie: I was impressed by the volume of evidence that we received saying that the threshold for the amount of debt that is likely to be recovered is too low. The purpose of amendment 119 is to increase the threshold from £50 to £100. Exceptional attachment orders are to be granted only if there is a reasonable prospect of recovering a specific amount of money towards paying off the debt. I do not think that £50 is enough, and think that £100 would be a more suitable amount. I hope that the committee will agree to that.

If £100 turns out to be too low a threshold, there is provision in the bill for ministers to judge how the level works in practice and amend it in order to choose a more suitable level if that proves necessary. I hope that the committee will support amendment 119.

Dr Simpson: The £50 level in section 47 followed a recommendation from the Scottish Law Commission. The working group also wanted to ensure that the effect of realising assets under the new procedure would be to reduce the debt. Amendment 119 would double the threshold value, increasing it to £100.

Discussions on the bill made it clear that the threshold of £50 was thought to be too low. The Executive recognises the committee's concern and will not object to raising the level as an initial step. As Cathie Craigie indicated, section 47(2) deals with subsequent amendments to the level, which may be necessary if the level is felt to be too low in future. The Executive considers amendment 119 to meet the working group's aim without significantly eroding the benefit for creditors. That balance of interests is always to be borne in mind.

We support amendment 119. It addresses the concern adequately. We are not persuaded that there is a case to change the other leg of the formula that the Scottish Law Commission proposed. I have said that, in accordance with the working group's recommendations, we intend to monitor how the new arrangements work. Ministers will have the power to alter the minimum thresholds by order if experience shows that to be appropriate.

However, although I am not a lawyer, I am rather concerned about the way that section 47(1)(c)(ii) reads. It refers to

"whichever is the lesser of 10 per cent"—

or, if Mr Gibson's amendment 137 is accepted, 20 per cent—

"of the debt due … and £50."

That does not reflect the policy intention. The policy is to have a reasonable minimum level below which an exceptional attachment order should not be applied. I do not believe that the provision addresses that intention entirely appropriately.

Although the Executive is happy to accept amendment 119, we will come back with a further amendment to ensure that there is an overall minimum, which is the intention of Mr Gibson's amendment 137, although it does not achieve that. I will illustrate. If the debt were, for example, £500, 10 per cent of that would be £50 and 20 per cent would only just bring us up to £100. Any debt less than that for which an exceptional attachment order was made would result in an attachment being applied to a sum of less than £100. I do not think that that is the committee's intention.

The Executive will come back on that, but I propose that amendment 119 be accepted at this point in time.

Mr Gibson: I am shocked at the minister's stance on amendment 137 and amendment 119, despite his intricate and long-winded explanation. The amendments are simply consistent with each other: they both double the threshold. It therefore seems to me bizarre that one would be supported and the other not. I will press amendment 137 and support amendment 119.

The Convener: The question is, that amendment 137 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 137 disagreed to.

Amendments 119 and 120 moved—[Cathie Craigie]—and agreed to.

Amendment 132 not moved.

The Convener: Amendment 133 is in a group of its own.

Robert Brown: Amendment 133 replaces my amendment 55 which, on reflection, I thought would not deliver what I wanted it to.

Section 47, which refers to earnings arrestments and so on, is designed to point creditors in the direction of that sort of mechanism for recovering their debts and to allow them to get an exceptional attachment order only once that route has been explored. However, often the creditor does not have detailed information about the debtor's earnings or perhaps the debtor is not in a position in which an earnings arrestment would be appropriate. I am therefore trying to strike a more satisfactory balance and avoid meaningless attempts to carry out arrestments because of a formulaic adherence to the terms of the section. If creditors have reached a well-based conclusion that arrestment would be ineffective, they do not need to serve an arrestment that would simply add to the cost of debt recovery for all sides.

That is a reasonable improvement to the bill and therefore I move amendment 133.

Dr Simpson: I welcome amendment 133, which will help to deliver the intended purposes of amendment 55 more effectively. The amendment in no way dilutes the requirement on the creditor in the current text of the bill to attempt to execute an arrestment when reasonable or the obligation on the creditor to at least try to ascertain whether such an attempt may be successful. However, no one gains from requiring creditors who have made reasonable inquiries that have led to the conclusion that arrestment would be ineffective having to serve an arrestment that would have no chance of reducing the debt. That would involve unnecessary procedure for the creditors and debtors as well as for third parties and would incur unnecessary expenses.

The Executive supports amendment 133 and asks the committee to do so too.

Amendment 133 agreed to.

The Convener: We may now have a short debate on section 47.

Tommy Sheridan: I ask the minister whether the words

"an arrestment and action of furthcoming or sale"

in section 47(1)(b) also refer to attempts to arrest benefit through direct deduction. Before granting an exceptional attachment order, will the sheriff insist that a creditor must have pursued benefit arrestment if they have the power to do so?

Section 47(1)(c) talks about the sheriff being satisfied

"that there is a reasonable prospect that the sum recovered from an auction of the debtor's non-essential assets would be at least equal to the aggregate"

of a number of sums of money before granting an exceptional attachment order. However, how is the sheriff to assess whether there will be enough recoverable non-essential assets to meet the minimum amounts required? If there has been no visit to a home, what is the method of assessment?

The Convener: Before the minister replies, I must state that, in the short debates on the sections in general, I am genuinely trying to encourage discussion and comment on individual issues rather than arrange another question-and-answer session with the minister. The general principles of the bill were debated at stage 1 and stage 2 gives us an opportunity to probe particular issues through the lodging of amendments. I hope that people bear that in mind when we come to the end of the next section.

Dr Simpson: The matter of benefits that Mr Sheridan alludes to is complex. As I indicated earlier, the deduction of benefits is open only to certain creditors. However, I will consider the issue further before stage 3 and ensure that, where a deduction of benefit can be considered, it is considered. The intention is certainly not to progress directly to an exceptional attachment order. We need to consider this complex issue carefully.

I understand that section 47(1)(b) means that the creditor has to have executed an arrestment if they are capable of doing so. Those creditors who have the power to arrest benefits will have had to have attempted to do so before an exceptional attachment order is granted. I will address the point at stage 3.

Section 47, as amended, agreed to.

The Convener: We will suspend for a few minutes. Too much water.

12:00

Meeting suspended.

12:13

On resuming—

Section 48—Power of entry

The Convener: We resume our consideration of the bill at section 48. We must consider the section as a whole.

Robert Brown: I am genuinely uncertain about the interrelation of some of the provisions. Section 48 concerns the power of entry and talks about the sheriff officers serving a notice before they can enter a dwelling-house. Instead of having to make one visit or two, the section seems to say that the sheriff officers will have to make one and a half visits.

I would like to know how that relates to section 46. Is it intended that sheriff officers should routinely serve four days' notice before they go, or would they go, find that they cannot get into the dwelling-house and come back four days later? How does that relate to the other practicalities?

The minister has not altogether persuaded me of how the attachment and the power of entry—the visit and returning later or not returning later—hang together. Nor am I persuaded that the practicalities have been fully considered with advice from sheriff officers. Would the minister be prepared to discuss further with sheriff officers how the various sorts of visit, the bill's objectives and the need to avoid exceptional intrusion and additional expense relate to each other?

Several issues are outstanding, and the major issue that I am raising relates to section 48. I would be interested in the minister's giving some thought to reconsidering those matters as a whole, now that the minister has heard the debate and some of the arguments. Now that sheriff officers have seen the bill's emerging shape, do they remain as unhappy with it as they were, or can they live with the changes and the framework from the developing debate?

12:15

The Convener: The open debate on issues that section 48 raises has tested my good nature, because it is turning into an opportunity to question the minister. That opportunity was given when we took evidence at stage 1, in the stage 1 debate in the chamber and through lodging stage 2 amendments. If members wish to probe issues, please do so in a way that is not couched in direct questions to the minister.

We are in danger of rehearing arguments that may be dealt with at stage 3 or should have been processed in another way at stage 2 or stage 1. I do not want to close down debate, but members should remember that the process is intended to allow members to highlight concerns, rather than to revisit earlier stages of the bill's consideration.

Tommy Sheridan: The latitude that the convener has allowed has helped. At stage 2, the bill is dissected. At stage 1, which deals with more general aspects, it is not always appropriate to deal with some issues. It is appropriate that the convener allowed the minister to be questioned about some aspects. Some matters have been illuminated, which has helped.

The Convener: I tried to clarify that I am not providing an opportunity for the minister to be requestioned. I ask members to be flexible with language by raising issues without turning the meeting into a question-and-answer session with the minister. That is not the purpose of stage 2. This discussion's purpose is to allow people to highlight concerns that have been raised with them and which they may wish to pursue if they did not pursue them as stage 2 amendments.

Tommy Sheridan: On that basis, I say that section 48 could be contentious. The minister must address some of Robert Brown's points. I ask for comment on subsections (3) and (4). It is serious to entitle someone by law to come to a person's home and break down their door or otherwise remove the locks on their door. The bill contains no requirement for that person to be in the home when that happens or for that person to be notified of what will happen. The bill contains no requirement to notify that person that someone will try to obtain the right to take that action or to inform them that they can challenge the right to do that.

Subsections (3) and (4) could confer an awful lot of power on sheriff officers. I ask the minister to elaborate on and illuminate why he feels that they need that. The provision has not been discussed in detail and it could be punitive.

Dr Simpson: The committee has expressed several general concerns. The second of Robert Brown's alternatives would apply. Someone who came to a house and found nobody in would have to give notice before they returned.

Committee members who spoke, and others, have concerns about the general practice of executing the exceptional attachment order. It is clearly in all our interests that it should work in practice. We must bear in mind the fact that the rules of court that support the bill and deal with the

practical arrangements will be spelled out in due course and will have to be workable. Having said that, I think that we would want to re-examine the valuation issue, which was discussed earlier and has been raised again, and we will have further discussions with those who will be carrying out the work in practice to ensure that the rules of court proposals are practicable.

On the points raised by Mr Sheridan, individuals will already have received a notice of execution of the order. They will have been given notice that an exceptional attachment order will be executed, so it should not come entirely as a surprise when sheriff officers present themselves to execute it.

I hope that we have answered the points, but if members have other specific queries about which they want to write to us for consideration for stage 3, we will take that into account.

Section 48 agreed to.

Section 49—Unlawful acts before attachment

The Convener: Amendment 125 is in a group on its own.

Dr Simpson: Section 49 prohibits the removal, sale, gifting or other disposal of a debtor's non-essential articles and their wilful destruction or damage by the debtor or a third party when in their possession. That applies during the period after an exceptional attachment order is made and before items are removed for auction.

Amendment 115, which was agreed by the committee on 9 October, clarified that the creditor or officer would not be excluded under section 16 for liability for the removal, sale, gifting or other disposal of attached articles. When we discussed that amendment, I said that it was the possession aspect that was relevant. Neither the creditor nor the officer will, in fact, be in possession of the items attached during the period concerned, and as such the legal meaning or consequences of the section would not be affected by deletion of the phrase in brackets, which the earlier amendment 115 removed. I also agreed that it would help for the purpose of clarity in a straightforward reading of the text.

Amendment 125 makes a similar adjustment to the text in the case of assets attached following the granting of an exceptional attachment order. I should say, however, that the amendment deletes the phrase where it appears in line 20. The committee will see that the phrase also occurs in line 13, and the amendment does not cover that one so I simply advise that we will tidy that up with a further amendment at stage 3.

I move amendment 125.

Amendment 125 agreed to.

The Convener: Before Tommy Sheridan comes in, I remind members that if comments made when debating sections could usefully have been put through amendments, I shall ask them to curtail their comments.

Tommy Sheridan: I do not know how I could have put this point through an amendment because I do not know how a debtor is to know what is a non-essential item that would be attached. An exceptional attachment order is granted in court. Between its being granted and carried out, how will the debtor know which goods they can have moved, sold or whatever, to prevent them from being liable under the section for breach of the order?

Dr Simpson: The items that are regarded as non-essential will be those that are not listed in the bill. Therefore, removal of any item that is not in the bill would be inappropriate, so the bill is clear. We will need to ensure that the individuals on whom an exceptional attachment order is served are given a list of those items that are defined in the bill as being essential.

Section 49, as amended, agreed to.

Section 50—Articles with sentimental value

The Convener: Amendment 21 is grouped with amendments 128 and 129.

Dr Simpson: Section 50 exempts from attachment under an exceptional attachment order assets that are likely to be of sentimental value to the debtor and whose value does not exceed £150. Section 52(2), when read with section 52(3), allows the debtor to apply for the release of such assets where they have been attached.

Amendments 21, 128 and 129 are intended to clarify those provisions. The exemption of assets of sentimental value was recommended by the Scottish Law Commission. The exemption, as recommended by the commission, was for items with an aggregate value of £150 or less. As currently drafted, sections 50 and 52(3) may not make that clear. The amendments provide additional clarity.

I move amendment 21.

Mr Gibson: On a point of clarification, is there any reason why the commission chose £150? It seems an odd figure.

The Convener: As no other member wishes to speak, I invite the minister to wind up.

Mr Gibson: I am sorry—I was asking a question rather than making a point.

The Convener: I took what you said as a contribution.

Mr Gibson: I would like to ask another question. Is it necessary to specify a financial amount? I

realise that amounts are prescribed in regulations made by Scottish ministers, but we could be talking about a grandmother's wedding ring, for example.

The Convener: Are you finished now, Kenny?

Mr Gibson: Sure.

The Convener: Members should make contributions. I will then ask the minister to wind up and respond to all contributions, rather than have a dialogue.

Dr Simpson: I think that the Scottish Law Commission recommended that a sum be mentioned. It is possible for us to amend that sum. We have powers to amend it and, if it seems appropriate, we will do so. However, £150 seemed a reasonable starting point in respect of a sentimental asset. Such assets should be protected. I do not know what your grandmother's engagement ring is worth, Kenny, but it might be worth a lot of money. We should aim to protect such assets, which might be very valuable, as they have sentimental attachments. It is not appropriate to use such assets to try to sort out debts.

Amendment 21 agreed to.

Section 50, as amended, agreed to.

Section 51—Removal of articles attached in dwellinghouse

The Convener: Amendment 56 has already been debated with amendment 134. I invite Robert Brown to move amendment 56.

Robert Brown: In the light of the minister's earlier comments, I will not move the amendment at this stage.

Mr Gibson: In that case, I will move it.

Amendment 56 moved—[Mr Kenneth Gibson].

The Convener: The question is, that amendment 56 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)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)

AGAINST

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

ABSTENTIONS

Brown, Robert (Glasgow) (LD)

The Convener: The result of the division is: For 3, Against 3, Abstentions 1. As the vote is tied, I will use my casting vote to resist the amendment.

Amendment 56 disagreed to.

The Convener: Amendment 57, in the name of Robert Brown, has already been debated with amendment 134. I invite Robert Brown to move amendment 57.

Robert Brown: On the same basis as before, I will not move amendment 57.

Mr Gibson: On the same basis as before, I will.

Amendment 57 moved—[Mr Kenneth Gibson].

The Convener: The question is, that amendment 57 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 57 disagreed to.

Section 51 agreed to.

Section 52—Release of articles from attachment

Amendments 128 and 129 moved—[Dr Richard Simpson]—and agreed to.

Section 52, as amended, agreed to.

Section 53—Redemption

The Convener: Amendment 138 is in a group of its own.

Mr Gibson: Section 53 requires that the auction of articles that are attached under an exceptional attachment order not be optioned within seven days of attachment. The amendment changes that timing to 14 days, which would allow more time for redemption by the debtor prior to auction.

I move amendment 138.

Dr Simpson: Amendment 138 would provide that non-essential assets could be redeemed within a longer period than is currently provided. The seven-day limit is consistent with a related provision in section 52, which allows a period of seven days for seeking the return of an asset on the grounds that attachment was incompetent, that auction would be unduly harsh or that the asset has sentimental value. Those two periods should be the same for consistency.

The multistage process that has to be gone through before any exceptional attachment order can be granted means that the debtor will have had ample opportunity to reach a negotiated settlement. Redemption will nonetheless provide the debtor with a further opportunity to retain his asset, but it should not further extend the already lengthy process. Accordingly, we recommend that amendment 138 should either not be pressed or, if pressed, rejected.

12:30

Mr Gibson: I will press amendment 138. The circumstances are the same as those that applied in section 52. I repeat that we should be allowing the debtor a period of time to settle their debts in order to prevent the possible humiliation of a public auction of their goods.

The Convener: The question is that amendment 138 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)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)

AGAINST

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

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 138 disagreed to.

Amendment 58 not moved.

Section 53 agreed to.

Section 54—Power to provide for lay representation

The Convener: Amendment 121 is grouped with amendment 122.

Karen Whitefield: Amendment 121 will give the assistance of lay representatives to all debtors who want to make applications to the court. At the moment, such assistance is available only in the case of exceptional attachment orders. Money advisers or other lay people can assist and look after the interests of debtors.

It should not matter whether the order is an attachment order or an exceptional attachment order. I believe that the same opportunity ought to apply to everyone. It may be that the need for such assistance will not arise in the case of attachment orders, as more often they relate to commercial cases. However, it would be a great pity if such assistance was not made available across the board for even those few occasions when people might want to take advantage of the services of a money adviser or lay person. I hope that the committee agrees that that would be helpful.

I move amendment 121.

Dr Simpson: The Executive has no objection to amendments 121 or 122. If they are passed, they will allow the bill to be consistent throughout in respect of lay representation. I recommend that the committee agree amendments 121 and 122.

Amendment 121 agreed to.

Section 54, as amended, agreed to.

Linda Fabiani: I am confused—what about amendment 122?

The Convener: The amendments are dealt with in order. Amendment 122 comes after amendment 121, as it relates to a separate section.

Amendment 122 moved—[Karen Whitefield]—and agreed to.

Section 55—Appeals

The Convener: Amendment 139 is grouped with amendment 140.

Mr Gibson: Section 55(a) would cause unnecessary difficulties for debtors and creditors by referring all appeals against a sheriff's decision to the Court of Session, which would prove expensive and impractical. People might be intimidated by visiting Scotland's highest court and travel difficulties are also an issue. It would be better if debtors could appeal to their local sheriff principal.

Amendment 140 would simply delete the provision that a person must ask the sheriff who made the decision to allow an appeal to be made. It is inappropriate to ask the person who took a decision to decide whether that decision can be appealed.

I move amendment 139.

Robert Brown: I support Kenny Gibson's suggestion that appeals should be to the sheriff principal. The point of the Scottish procedure of appealing to the sheriff principal is to provide a cheap, speedy and reasonably convenient mechanism for appeals. However, I do not agree with his point about seeking the sheriff's leave to appeal. The requirement to have the sheriff's leave for certain types of appeal is standard. The sheriff applies legal tests to decide whether leave to appeal should be granted. It is not unreasonable that there should be a tight cut-off point. People should not appeal to get a re-hearing—that is not the point of appeals—but

because a significant legal issue should be considered. Therefore, it is appropriate that the sheriff's leave to appeal be required.

Dr Simpson: Under the bill as drafted, appeals would go directly to the Court of Session and would progress only with the sheriff's leave, which follows the arrangements for appeals under the Debtors (Scotland) Act 1987. Notwithstanding that procedure, we accept that it is probably more appropriate for appeals to be heard by the sheriff principal.

As Mr Brown suggested, the requirement for leave to be granted is necessary to ensure that appeals are made on points of law and that they are not frivolous or patently without merit. We want to ensure that, if the committee agrees to amendment 139, the sheriff principal's time is used to best effect, and it would not be good use of the sheriff principal's or the Court of Session's time to allow appeals to proceed without initial scrutiny. Accordingly, the Executive recommends that the committee accept amendment 139 but reject amendment 140.

Mr Gibson: I thank the minister for his comments. I will press amendment 139, but given the minister's and Robert Brown's comments, I will not move amendment 140.

Amendment 139 agreed to.

Amendment 140 not moved.

Section 55, as amended, agreed to.

Section 56 agreed to.

Section 57—Saving

Amendments 22 to 25 moved—[Dr Richard Simpson]—and agreed to.

Section 57, as amended, agreed to.

Section 58—Application of this Act to sequestration for rent and arrestment

The Convener: Amendment 26 is in a group on its own.

Dr Simpson: Amendment 26 is a technical amendment to correct a drafting error that was noted by the Subordinate Legislation Committee. Section 58 allows schedule 2, which specifies exempted assets under an exceptional attachment order, to be applied to other methods of enforcement—that is, sequestration for rent and arrestment. Section 58(4) enables that provision to be modified by the Scottish ministers by order. It is anticipated that such modification may be appropriate in light of other intended reforms to the feudal system. As the power is not expressed as a consequential provision, it could be used in anticipation of the new land tenure legislation and, to extent, it would have substantive effect. As drafted, the power could be exercised in circumstances other than as a consequence of the abolition of the feudal system. That was not the intention and the amendment clarifies the position.

I move amendment 26.

Amendment 26 agreed to.

Section 58, as amended, agreed to.

Section 59 agreed to.

Schedule 3

MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

The Convener: Amendment 27 is grouped with amendments 126, 28 and 30. I ask the minister to move amendment 27 and speak to all the amendments in the group.

Dr Simpson: Amendment 27 would enable debtors who are heavily over-indebted to apply for their own sequestration under the Bankruptcy (Scotland) Act 1985 when attachment has been unsuccessful. A schedule confirming an unsuccessful attachment will act as a trigger for apparent insolvency. Debtors' advice groups have advocated for such a procedure, which could be used as proof of insolvency by debtors who petition for their own sequestration.

The other amendments in the group are technical and provide for minor and consequential changes to other legislation that are necessary as a result of the bill. Amendment 126 would allow existing provisions about apparent insolvency to apply to attachment following the bill's enactment—those provisions arise in paragraphs 24(1) and 24(3) of schedule 3 to the Bankruptcy (Scotland) Act 1985. Amendment 28 would enable unpaid water charges due under the Water Industry (Scotland) Act 2002 to be recovered by attachment, and amendment 30 would extend a protection in relation to the Civil Legal Aid (Scotland) Regulations 1996.

I move amendment 27.

Amendment 27 agreed to.

Amendments 126 and 28 to 30 moved—[Dr Richard Simpson]—and agreed to.

Schedule 3, as amended, agreed to.

Section 60—Regulations and orders

The Convener: Amendment 123 is grouped with amendment 124. I ask Karen Whitefield to move amendment 123 and speak to amendment 124.

Karen Whitefield: Colleagues will remember that the Subordinate Legislation Committee

recommended to the committee that any order made under section 46(6) to modify section 46(4) should be subject to debate by and the approval of the Scottish Parliament. Section 46(4) relates to exceptional attachment orders and the factors that a sheriff must take into account when deciding whether to grant an exceptional attachment order. Those factors are extremely important because they will determine whether the circumstances are indeed exceptional. Therefore, Parliament must be able to debate any such changes and ensure that attachment orders will be available only in exceptional circumstances. In my opinion, such changes must be made only by affirmative resolution, as the Subordinate Legislation Committee suggested.

I agree with the Subordinate Legislation Committee's recommendation to the Social Justice Committee. I know that the Executive told the Subordinate Legislation Committee that it would reconsider the matter and I hope that the Executive has reflected on and will accept amendments 123 and 124.

I move amendment 123.

12:45

Dr Simpson: The Executive has indeed reflected on the Subordinate Legislation Committee's recommendation, and modifications of section 46(4) would go to the heart of the exceptionality of the order. We agree that Parliament should be able to debate, by affirmative resolution, any proposed changes. Therefore, we welcome amendments 123 and 124 and would be happy for the committee to support them.

Amendment 123 agreed to.

Amendment 124 moved—[Karen Whitefield]—and agreed to.

Section 60, as amended, agreed to.

Section 61 agreed to.

Section 62—Short title and commencement

The Convener: We now come to amendment 59, which is in a group of its own. I ask Robert Brown to move and speak to amendment 59.

Robert Brown: It is my privilege to move the final amendment. After the concentration on exceptional attachment orders, it is perhaps appropriate that amendment 59 relates to the coming into force of the main thrust of the bill, which is the debt arrangement scheme that is laid out in sections 1 to 9.

I seek to achieve something simple with amendment 59. Section 62(4) states:

"Sections 1 to 9 above come into force on such day as the Scottish Ministers may by order appoint."

I suppose that, in theory, that could refer to any time in the future. However, I think that the committee's clear view is that sections 1 to 9 should be operative as soon as is practically possible, and the intention of amendment 59 is to put a six-month time limit on that. However, if the minister gave reasonable assurances about when sections 1 to 9 will come into force, that would be satisfactory to the committee.

I move amendment 59.

Dr Simpson: Amendment 59 would provide for the debt arrangement scheme to come into force no more than six months after royal assent. We believe that amendment 59 is extremely unwise because it could mean that if an unexpected event arose, the Executive would not be able to introduce the regulations without first introducing a bill to amend the primary legislation.

The Executive aims to introduce the debt arrangement scheme as soon as possible, as I have said previously. I have also said that we want to get the scheme right so that consultation on it is as inclusive, meaningful and workable as possible. We will do that as quickly as we can, but without cutting corners.

There are good reasons for taking a sensible, ordered approach. We do not want to tempt fate and end up getting into the kind of guddle that was caused by the legislation that originally abolished poindings and warrant sales. Therefore, we urge the withdrawal or rejection of amendment 59, having given the undertaking that we will move as speedily as we can.

Amendment 59, by agreement, withdrawn.

Section 62 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the Debt Arrangement and Attachment (Scotland) Bill.

I suggest that, as we can reasonably say that we have had a productive meeting, we should agree to defer item 4, on the Building (Scotland) Bill, and item 5, on the budget process 2003-4, to our next meeting. Is that agreed?

Members *indicated agreement*.

The Convener: I thank the minister and members for their attendance.

Meeting closed at 12:49.

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